Projects such as Cedar-Riverside point out the best thing about a gasoline shortage; most things that need to be done to cope with it are things that ought to be done anyway. It is time for the richest country in the world to overcome the poverty of its cities. It will take a combination of national economic reforms to reduce poverty, massive housing programs, new land-use planning policies, and institutional arrangements for managing and financing the urban habitat. But we know from new communities around the world that building and rebuilding whole cities is physically possible and can prove financially feasible through cost-saving techniques, new design concepts, a combination of public and private efforts, and the use for community purposes of the profits from rising land values.

Transforming urban America would require a single urban development fund to consolidate federal aid for urban areas, and the creation of urban development agencies at the metropolitan level with city-building responsibilities.

Making urban areas livable, desirable, and attractive for people of all incomes and races is the overriding domestic challenge for the last quarter of this century. Putting the emphasis on living instead of moving is a shift in priorities that seems bound to save gasoline. If we put our minds to it, it might even save urban society.

HOUSE OF REPRESENTATIVES—*Monday, February 25, 1974*

The House met at 12 o'clock noon.

Rev. Philip A. Tammaru, Estonian Evangelical Lutheran Church, Seabrook, N.J., offered the following prayer:

Dear Father, with so much bitterness in the world, we pray for a broader vision of the needs of all mankind.

Many nations have become enslaved by communism; among them Estonia. Today we observe her day of independence. Yet she is captive.

We ask that Your spirit may help the leaders of the nations to find a way by which the peoples of the Earth can be free and live at peace with one another.

Bless the President. Give courage to the Representatives in the Congress to do the right thing in Your sight.

May this country still offer refuge to the "tempest tossed" and "huddled masses yearning to breathe free." May the challenge of the spirit of '76 be always before us. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2296. An act to provide for the Forest Service, Department of Agriculture, to protect, develop, and enhance the environment of certain of the Nation's lands and resources, and for other purposes.

APPOINTMENT AS MEMBERS OF BOARD OF VISITORS OF U.S. MILITARY ACADEMY

The SPEAKER. Pursuant to the provisions of title 10, United States Code, section 4355(a), the Chair appoints as members of the Board of Visitors to the U.S. Military Academy the following members on the part of the House: Mr. MURPHY of New York; Mr. LONG of Maryland; Mr. MINSHALL of Ohio; and Mr. GILMAN, of New York.

APPOINTMENT AS MEMBERS OF BOARD OF VISITORS OF U.S. NAVAL ACADEMY

The SPEAKER. Pursuant to the provision of title 10, United States Code, section 6968(a), the Chair appoints as members of the Board of Visitors to the U.S. Naval Academy the following members on the part of the House: Mr. FLOOD, of Pennsylvania; Mr. STRATTON, of New York; Mr. HORTON, of New York; and Mr. EDWARDS of Alabama.

APPOINTMENT AS MEMBERS OF BOARD OF VISITORS OF U.S. AIR FORCE ACADEMY

The SPEAKER. Pursuant to the provisions of title 10, United States Code, section 9355(a), the Chair appoints as members of the Board of Visitors to the U.S. Air Force Academy the following members on the part of the House: Mr. FLYNT, of Georgia; Mr. SIKES, of Florida; Mr. DAVIS of Wisconsin; and Mr. ARMSTRONG, of Colorado.

TOURISM

(Mr. RONCALIO of Wyoming asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. RONCALIO of Wyoming. Mr. Speaker, tourism is in fact the second ranking retail expenditure in the United States. It makes a significant contribution to my State of Wyoming ranking as our third largest industry. Wyoming and several other States could not prosper without it today.

In light of the role of tourism in our national economy, I think that it is appropriate that proper consideration be given in any allocation of fuels to providing adequate supplies of energy for all segments of the tourism industry. Today I am introducing a resolution asking for such due and proper consideration.

RESOLUTION DIRECTING IMMEDIATE FACTFINDING ON OIL SUPPLIES

(Mr. LONG of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LONG of Maryland. Mr Speaker, the Shah of Iran said yesterday on a national television network that the United States has no oil shortage—that imports of oil into the United States are as great as ever and possibly greater, and suggested oil companies are guilty of manipulating an oil shortage in order to increase their profits.

This statement comes from the head of a nation which exports 5 million barrels of oil a day, one-fourth of all the oil from the Middle East and which is a principal exporter to the United States.

Withholding of oil and especially gasoline from the public has created a national emergency in which millions of people cannot get to work, children cannot get to school, and businesses—especially small firms—are forced to close their doors. Americans must know now the facts behind the so-called oil shortage.

Today, I am introducing a resolution authorizing and directing the Committee on Interstate and Foreign Commerce to find out those facts. The committee will be empowered to subpena every American oil executive, to require them to report to Congress under oath precise import figures, inventories in the United States or under U.S. companies' control, and on distribution of oil in and exports from the United States. My resolution calls for the committee to report its findings and recommendations to the House within 30 days from the passage of the resolution. I am delighted to state that eight of my colleagues have already joined me in this measure: JOHN MCFALL, of California; GLENN ANDERSON, of California; JOHN MURPHY, of New York; DOMINICK DANIELS, of New Jersey; PARREN MITCHELL, of Maryland; JONATHAN BINGHAM, of New York; KEN HECHLER, of West Virginia; and CHARLES RANGEL, of New York.

PLIGHT OF SERVICE STATION OPERATORS

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GONZALEZ. Mr. Speaker, yesterday in my district I had a very important and very interesting meeting for all of the gasoline dealers, the service station operators, if you please, whether they were independent agents or dealers or the like.

I wish that every Member of the House could have been present, because a sense of urgency would have been communicated. Of those present, 90 percent stated categorically that if things continue as they now are, they will be out of business in less than 60 days. Everyone present reported having dismissed on an average of four employees from their business within the last 60 days. There is absolute chaos and confusion as to the regulations and the allocation program that the Government is supposed to be conducting. There are contradictions, confusion, and disorder is rampant.

It seems to me ironic after the meeting that the great Government of the United States, the Congress included, and the great high priest of free enterprise, the so-called petroleum industry, should have conspired to, in effect, stamp out, eradicate, and extinguish the one real remaining free entrepriser, who is the small independent businessman.

Also, we had verifiable reports of the extensive beginnings of what would be a substantial black market in gasoline. It has begun. It is beginning to thrive and it will destroy whatever semblance of remaining little bit of order that we might have in this industry.

Also, some of the major oil companies are taking advantage of the situation, I regret to say, and are attempting to push out the dealer, because it pays them more to get rid of the dealer and to have their own agency outlets, whether they are self-service or otherwise; they can make more money and they can sell the gas a little bit cheaper, but they are eliminating patriotic taxpaying hardworking Americans who are the last element of independent enterprise in the major oil companies and have worked over a course of years to build up a small independent business.

If we get the so-called emergency bill on energy, I intend to offer amendments to protect this bulwark of small independent American businessmen.

ISRAEL SHOULD RETAIN THE GOLAN HEIGHTS

(Mr. BINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BINGHAM. Mr. Speaker, as the Secretary of State leaves for the Middle East, we all wish him well and hope that he will be able to achieve a disengagement between Syria and Israel similar to what he achieved with extraordinary success as far as Egypt and Israel were concerned.

However, no one should expect that this agreement would be achieved at the cost of requiring Israel to promise to go back to the pre-1967 lines below the Golan Heights. Of all the territorial problems that exist in that area, I think this is one that is abundantly clear to any observer.

Anyone who has visited what used to be called the Sea of Galilee and looked across the lake at the hills that rise above the shoreline on the east side of the lake cannot fail to understand how the pre-1967 border was absolutely intolerable for Israel. The Israelis had only a narrow strip a few hundred yards wide at the foot of those hills, utterly at the mercy of any sniping, any artillery fire, any shooting from up above on the heights.

So, as these new negotiations proceed, we should be fully understanding and supportive of the insistence of the Israelis that they must hold on to the slopes and the heights above them. The exact line to be drawn on the heights can be worked out in negotiations, but no one should expect the Israelis to return to the bottom of the hills.

THE DICKEY-LINCOLN SCHOOL HYDROELECTRIC POWER PROJECT

(Mr. BURKE of Massachusetts asked and was given permission to address the House for 1 minute to revise and extend his remarks and include extraneous matter.)

Mr. BURKE of Massachusetts. Mr. Speaker, as one of a majority of Members from New England who voted against funding the Dickey-Lincoln School hydroelectric power project in Maine during 1967, I want to go on record today as actively seeking funds this session to guarantee that the project gets underway immediately.

Why the change of heart? My opposition in the past was based on sound and indisputable facts; however, conditions have changed dramatically in New England, and the prevailing conditions can truly be said to justify what will be no small investment for all the New England States for this electric power source. My early objections to the project were for just such reasons. While we were being told that the project would benefit not just Maine, but all of the New England States, in fact, we would only have electricity in the "peaking hours." Now even this hour of electricity a day is crucial to our region.

No one could have guessed that residual oil costs would have skyrocketed raising prices by 400 percent in some areas. Nor could we have known that our hopes for a cheap and abundant source of nuclear power for the region would become so quagmired in safety and environmental problems, and more expensive than anticipated. At the time, environmental pressures against Dickey-Lincoln were exceptionally strong as ecological dislocations of mammoth proportions were expected.

However, the picture has changed and we must be willing to obtain energy where we can get it, and the Dickey-Lincoln project, where it was not economically feasible or even practical more than 5 years ago, has become a necessity due to the unusual set of factors playing havoc with our energy needs in the region. Had we all had the benefit of hindsight, I am confident that the project would have been funded earlier; however, we must put our differences aside and work for the rapid implementation of the project.

I commend to the attention of the Members of the House the excellent editorial which appeared in the Patriot Ledger last Tuesday, February 19 entitled "Dickey-Lincoln Dam":

DICKEY-LINCOLN DAM

Congress ought to revive and approve the Dickey-Lincoln School hydroelectric power project in Maine.

With the luxury of hindsight it may be said that Congress should have advanced the project when it was under consideration in the 1960s. The critical vote came in 1967 when the House failed to accept Senate-passed legislation funding final studies of the project. This effectively killed the project.

All the local House members at the time—Reps. James A. Burke, D-Milton, Margaret Heckler, R-Wellesley, and Hastings Keith, R-Bridgewater—voted against Dickey-Lincoln. The New England congressional delegation was split on the issue, something which is usually (and was) fatal to huge regional public works projects.

A key element in the debate was an intense lobbying campaign by the electric companies. However, Dickey-Lincoln was nowhere near as attractive an idea in 1967 as it is today. Although The Patriot Ledger opposed the project then. Several things have happened to drastically alter the situation.

First, nuclear power has failed to live up to its promise as an "ideal" source of low-cost power which could be employed by private electric companies.

Cost estimates for Dickey-Lincoln promised .4 cents per kilowatt hour, a figure the nuclear plants also were supposed to achieve. But, in fact, nuclear plants have been producing power at costs in excess of 1.5 cents per killowatt hour.

Nuclear plants also have had the operational problems which attend any complex new technology and these technical difficulties have been compounded by safety and environmental considerations.

The environmental dangers posed by Dickey-Lincoln once seemed formidable. Much land would be flooded to serve as a reservoir, and power transmission lines would have to be strung across the Maine wilderness to get the power to market.

Since 1967, however, the environmental dangers of fossil fuel and nuclear plants have become much more clear. Also, the creation of the New England electric power pool (NEPOOL) interconnecting the region's electric plants has greatly reduced the transmission problem.

Cost was another consideration in the '60s. Dickey-Lincoln was expected to require more than $300 million of the taxpayers' money to produce power which might or might not be less expensive than the power produced by the private electric companies.

Evidence that Dickey-Lincoln power might be less costly was not entirely convincing, and proponents of the plan tended to tie the projects financial impact to the idea of creating a price "yardstick" against which the cost of private power could be compared.

But the development which has totally changed the price picture and the environmental picture is, of course, the energy crisis.

A perpetually-renewable energy source such as hydroelectric power now is vastly more critical than it was in 1967. Dickey-Lincoln might have been an expensive luxury in the '60s, now it has become a vital necessity.

The price of oil has soared, thus throwing all the old price calculations out the window. Dickey-Lincoln is almost certain to produce power at lower cost than oil-fired plants. Moreover, it should be less environmentally damaging than coal-fired plants, and both less environmentally dangerous and cheaper than nuclear plants.

As now envisioned, Dickey-Lincoln would be a source of low-cost "peaking power" to help the region deal with its chronic shortage of electric power to meet the loads at peak usage hours. This shortage has resulted in voltage reductions, brownouts and the threat of blackouts.

Emergency energy legislation before Congress calls for extensive work on alternative energy sources, such as hydroelectric power to supplement or replace fossil and nuclear fuels. And one of those alternatives ought to be Dickey-Lincoln.

CONGRESSMAN MOSS' INVESTIGATION RESULTS IN REASSERTING THE POWER OF THE PEOPLE

(Mr. DINGELL asked and was given permission to address the House for 1 minute to revise and extend his remarks and include extraneous matter.)

Mr. DINGELL. Mr. Speaker, following persistent investigation by Congressman JOHN E. MOSS, of California, the Comptroller General of the United States has ruled that future payments for Secret Service protection of former Vice President Agnew would be disallowed by the Comptroller's Office.

Congressman Moss has stated in connection with the ruling:

This constituted a reclamation by the General Accounting Office of the powers of the Congress and the people, which had unlawfully been usurped by the President of the United States. The longest journey, we are informed, begins with a single step. That step, perhaps has now been taken.

Mr. Speaker, I am pleased to have the opportunity to offer correspondence to Congressman Moss from the Comptroller General, Mr. Elmer Staats, noting the GAO ruling, and the letter from Mr. Staats, sent to the Secretary of the Treasury, informing him of the GAO decision:

WASHINGTON, D.C.,
February 15, 1973.

Hon. JOHN E. MOSS,
House of Representatives,

DEAR MR. MOSS: This refers to our series of reports to you on services and facilities being provided by the Government for former Vice President Agnew. There is enclosed herewith for your information a copy of our decision of today to the Secretary of the Treasury, notifying him that future payments made for Secret Service protection for former Vice President Agnew will be disallowed by our Office.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

WASHINGTON, D.C.,
February 15, 1973.

The Honorable the SECRETARY OF THE TREASURY.

DEAR MR. SECRETARY: As you are aware this Office has considered the question of whether the protective services being provided by the Secret Service at your direction—pursuant to the request of the President—for former Vice President Agnew are authorized by law. We have concluded that they are not so authorized.

The statute authorizing Secret Service protection is 18 U.S.C. 3056(a). It provides in this respect as follows:

"Subject to the direction of the Secretary of the Treasury, the United States Secret Service, Treasury Department, is authorized to protect the person of the President of the United States, the members of his immediate family, the President-elect, the Vice President or other officer next in the order of succession to the office of President, and the Vice President-elect; protect the person of a former President and his wife during his lifetime, the person of the widow of a former President until her death or remarriage, and minor children of a former President until they reach sixteen years of age, unless such protection is declined; protect the person of a visiting head of a foreign state or foreign government and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad; * * * and perform such other functions and duties as are authorized by law * * *."

(See also Public Law 90-331, set out as a note to 18 U.S.C. 3056, providing for protection of "major presidential or vice presidential candidates who should receive such protection.")

Section 3056(a) of title 18 thus provides specifically for protection of an incumbent Vice President and of a Vice President-elect, and for protection of a former President during his lifetime, but not for protection of a former Vice President. Moreover, the Congress has provided for certain services and facilities to be made available to former Vice Presidents, without including specific provision for Secret Service protection (act of March 7, 1964, Pub. L. 88-277, 78 Stat. 153), and for protection of candidates for presidential or vice presidential office (Pub. L. 90-331). It is thus beyond question that there is no statutory authorization for Secret Service protection of Mr. Agnew.

Nor can we agree with the reported contention of the Treasury Department that the President has "inherent executive power" to order Secret Service protection of Mr. Agnew. We believe that the President's power "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952). In this case, as already noted, the acts of Congress provided no basis for the claim of Presidential power to order protection for Mr. Agnew.

With respect to the question of constitutional authority to order such protection, we note that section 3056(a) of title 18 gives the President certain discretionary authority to order protection of distinguished foreign visitors to the United States (other than heads of state) or of official representatives of the United States performing special missions abroad. Also, we are aware that, in the legislative history of the act of January 5, 1971, Pub. L. 91-651, 84 Stat. 1940, which added that discretionary provision to section 3056(a), there is a statement by the Treasury Department that the President has "inherent constitutional authority" to order protection of distinguished foreign visitors. S. Rept. No. 91-1463, 91st Cong., 2d Sess. 2. However, the circumstances there involved were that the Department of State traditionally provided protection for foreign visitors under its general responsibilities for state visits, that this was considered to be a "foreign affairs function," and that the proposed legislation merely transferred the existing responsibility from the State Department to the Secret Service. Your Department there made no such claim of executive power as is apparently now being asserted; the letter from the Acting Secretary of the Treasury transmitting the proposed legislation stated that "it is our view that the President now has the inherent constitutional authority to direct the Secret Service to perform the functions *which would be authorized by this legislation*" (S. Rept. No. 91-1463, p. 3, emphasis supplied)—i.e., the protection of foreign visitors and official American representatives abroad. Moreover, and notwithstanding the claimed executive authority, the Secretary of the Treasury requested and obtained specific statutory authority for the performance of the functions in question.

We would agree that, under his constitutional duties to "receive Ambassadors and other public Ministers" (article II, section 3), and to make treaties subject to Senate advice and consent (article II, section 2), the President can provide for protection of distinguished foreign visitors to this country or of official representatives of the United States while they are abroad. Whether he could order the Secret Service to take over such functions from the Department of State without statutory authority it is unnecessary to decide, since the Congress saw fit to give him specific legislation to accomplish this purpose. However, in that situation, it is clear that the claim of inherent executive power finds its justification in furtherance of the President's performance of a constitutional duty, the conduct of foreign affairs. No such justification in terms of any constitutional duty of the President has, insofar as we know, been claimed in connection with the protection of Mr. Agnew, and none appears to this Office to be present. We must conclude that the reported claim of inherent executive power is without foundation. Hence, and since there is no statutory authority for furnishing Secret Service protection to Mr. Agnew, the furnishing of such protection is without authority of law.

We understand that the protection service is still being provided and that the Department of the Treasury intends to continue it at least until sometime in April. We must advise, in light of the foregoing, that appropriations for the operations of the Secret Service are not available to pay the costs of furnishing Secret Service protection to former Vice President Agnew. Therefore future payments made for such purpose will be disallowed by our Office. Recognizing the administrative problems involved in discontinuing the protection being furnished, the disallowances will be made on any payments made after February 17, 1974. The concerned certifying officers should be immediately so informed.

Copies of this decision are being sent to the respective chairmen of the Committees on Appropriations of the House and Senate, to Representative John E. Moss, and to other Members of Congress who have inquired to us concerning this matter.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

SALARY INCREASES OPPOSED

(Mr. FLYNT asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. FLYNT. Mr. Speaker, the day the President submitted his fiscal year 1975 budget to the Congress, I introduced House Resolution 806 calling for the disapproval of the President's recommendations for salary increases for certain officials in the executive, legislative, and judicial branches of the Federal Government.

The failure of the House Post Office and Civil Service Committee to muster a quorum last Thursday so that this and similar resolutions could be acted on is deplorable. Each and every Member of this House should be required to stand up and be counted on this. To do less is irresponsible, but I have little hope that the Committee on Post Office and Civil Service will act on House Resolution 806.

The gentleman from Iowa (Mr. GROSS) has introduced House Resolution 900 to have the Rules Committee take up his disapproval resolution. I urge the members of the Committee on Rules to act on House Resolution 900.

Federal congressional, executive, and judicial salary increases at this time are irresponsible. The single most important cause of the inflation plaguing our economy today is excessive Government spending. The 1969 salary increases contributed to the inflation we are experiencing today. These new salary increases will further increase inflation.

Congress must set the example of self-discipline and fiscal restraint by rejecting these proposed salary increases. All Americans are being asked to hold the line in the fight against inflation. We in the Congress must exercise the same restraint that we ask of the people of this country. If we do not act with restraint, how can we ask or expect the American people to limit wage and price increases?

"Ask not what your country can do for you; ask what you can do for your country."

LET UNITED NATIONS DIPLOMATS GET IN THE GAS LINES

(Mr. PEYSER asked and was given permission to address the house for 1 minute and to revise and extend his remarks.)

Mr. PEYSER. Mr. Speaker, this morning I was outraged by an article I read in the New York Times.

The Arab diplomats in the United Nations, together with other diplomats in the United Nations displaying unmitigated gall are demanding that the United States provide gasoline for them so that they do not have to wait in lines in New York to secure gasoline. The Arab diplomat has complained that when he goes into a station and shows his credit card, the people do not want to serve him.

Mr. Speaker, I do not blame them. I want to be on record as urging Mr. Simon, the Federal Energy Office chief, to under no circumstances give special permission or special gasoline to U.N. diplomats.

Mr. Speaker, in the last week I spent 2½ hours in various gasoline lines waiting to get gasoline, and I am not about to have the Arabs in the United Nations get gasoline under special treatment.

Mr. Speaker, I hope this message is loud and clear.

REPEAL EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

(Mr. ROUSSELOT asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. ROUSSELOT. Mr. Speaker, I am today introducing a bill to repeal the Emergency Petroleum Allocation Act of 197[illegible]. This legislation directed the President to provide for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product.

This week we will be considering the conference report on the so-called National Energy Emergency Act, which will increase the power of the Federal Government to control fuel supplies. It is my belief that instead of giving additional power to the Federal bureaucracy to further distort the ability of free market forces to provide increased supplies to meet demands, we should be focusing our efforts on repealing the hastily enacted Allocation Act of last session.

Senator HENRY M. JACKSON, chairman of the Senate Interior and Insular Affairs Committee, has announced that the Senate committee will soon conduct an investigation to determine why the fuel allocation program has failed to meet the needs of American consumers. Mr. Speaker, in my opinion the answer to this question is that no federally administered program can take the place of the free market in providing for the distribution of fuel supplies.

I urge my colleagues to join with me in this effort to get the Federal Government out of the business of controlling the production and allocation of our vitally needed energy products.

The bill I am introducing is as follows:

H.R. —

A bill to repeal the Emergency Petroleum Allocation Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Emergency Petroleum Allocation Act of 1973 is repealed.

IRAN ENTERS THE FOREIGN AID BUSINESS

(Mr. GROSS asked and was given permission to address the House for 1 minute to revise and extend his remarks and include extraneous matter.)

Mr. GROSS. Mr. Speaker, we have all heard the old saying that every cloud has a silver lining and last Friday I hope I saw such a lining when I read a news dispatch to the effect that Iran is going into the foreign aid business. A billion dollars in foreign aid from their oil profits.

Mr. Speaker, I suggest that the House immediately urge the President to go over to Iran and get some of the money fast.

This country is busted, in part, by our interminable handouts around the globe and here is an opportunity to get some aid for the staggering American taxpayers who have been bled white.

There is no reason on Earth why the United States should not be first on the list for some assistance and at the same giveaway rates this country has used—50-year so-called loans with a 10-year grace period and no interest payments.

And if everything works out as it has for us, we can send Ambassador Moynihan over in a few years and arrange for the whole loan to be written off, as he did for India.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, D.C., *February 22, 1974.*

Hon. CARL ALBERT,
The Speaker,
U.S. House of Representatives.

DEAR MR. SPEAKER: I have the honor to transmit herewith a sealed envelope from the White House, received in the Clerk's Office at 11:35 A.M. on Friday, February 22, 1974, and said to contain a message from the President concerning the Eighth Annual Report of the National Endowment for the Humanities for Fiscal Year 1973.

With kind regards, I am,

Sincerely,

W. PAT JENNINGS, *Clerk,*
House of Representatives.

EIGHTH ANNUAL REPORT OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES FOR FISCAL YEAR 1973—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Education and Labor:

To the Congress of the United States:

I am pleased to transmit the Eighth Annual Report of the National Endowment for the Humanities for fiscal year 1973. Training in the humanities, history, literature, and philosophy, among other disciplines, guided those who shaped the American nation and its basic documents two hundred years ago. Now, as at the beginning of our history, the ongoing enrichment of the humanities is central to the solution of those problems which challenge a nation, young or old—problems which affect the quest for a life of quality by all its citizens.

The Federal Government recognized and affirmed the importance of the humanities nine years ago with the establishment of the National Foundation on the Arts and the Humanities. It reaffirmed that importance last year with legislation extending the Foundation for another three years.

As the National Endowment for the Humanities has grown it has increasingly attracted gifts from individuals, corporations, and foundations. I am happy to note that these, for the fourth year in a row, have more than matched Federal funds appropriated for that purpose. Such public confidence in the Humanities Endowment and its work more than justifies the strong support the Endowment has received from both the legislative and executive branches and augurs well for the future development of the humanities in this country.

RICHARD NIXON.

THE WHITE HOUSE, *February 22, 1974.*

SOVIET-AMERICAN FERTILIZER PRODUCTION MEANS HELP FOR U.S. FARMERS

The SPEAKER pro tempore (Mr. MCFALL). Under a previous order of the House, the gentleman from Texas (Mr. PATMAN) is recognized for 30 minutes.

Mr. PATMAN. Mr. Speaker, it is obvious that the good Lord gave us only a certain amount of land and water on this Earth to do with as we best can. It is, therefore, our responsibility to increase productivity through maximum utilization of our natural resources. The tremendous growth of American agriculture is based on the availability of commercial fertilizer in adequate quantities.

Remembering too, Thomas Edison's aphorism that "we never miss what we have never gotten used to," there is a great deal of wisdom in any policy that involves the Soviet people in a better appreciation of the consumer amenities we enjoy in this country. It follows, therefore, that any arrangement is beneficial that teaches Russians to prefer consumer goods to the weapons of war while at the same time supplying us with the fertilizer our farmers and ranchers must have to maintain U.S. agricultural production. In accord with this line of thought, I would like to make the following observations.

Soviet-American détente has received close attention in recent weeks and months as we struggle to find the key to peaceful relations with all nations of the world.

The meeting of the Soviet-American Trade and Economic Council next week will focus additional attention on the delicate problems that remain to be resolved between the two great powers of the world. This group composed of 26 leading American businessmen and a like number of Russian business executives will begin to get down to specifics in regard to the rapidly expanding trade between the United States and the Soviet Union.

Those of us who have served in the Congress for many years frequently wrestle with the problems that could be created by making a trading partner of a great rival like the Soviet Union. We must not allow our fears to overcome commonsense in dealing with a nation like the Soviet Union where great economic benefits can be derived for America.

I am reminded that Benjamin Franklin once said, "No nation was ever ruined by trade." I believe that, and I also believe that trade with the Soviet Union can benefit both countries. I would caution, however, that the utmost care must be used as agreements between American industry and the Soviets begin to emerge in coming months. Trade is an excellent way to bridge the gaps between two nations with diverse ideologies, but the concept of détente will be successful only if all involved work toward the careful development of a sound trade relationship.

My years in this great representative body, however, have taught me that we must never drop our guard in any way. While trade can be beneficial to all, we must also assure the American people that the benefits that they receive from America's strong defense posture are not eroded by the signing of trade agreements. Our Nation has been a world leader for many decades, and the great advantages and experience that we have built up in that period of time must be faithfully preserved.

It does occur to me, however, that the tenor of events in Washington these days might cause the American people to be fearful that all trade agreements with the Soviet Union will somehow be used against us in future years. We must avoid this type of thinking if we are to continue to prosper as a nation.

Perhaps one of the key successes of détente so far has been the decision by the Soviet Union to build a trade center in Moscow. This center, which will feature a hotel, office building, and apartments, will be open not only to American businessmen, but to representatives of all countries seeking to do business with the Soviet Union. Indeed, it will simplify conduct of trade. More important, however, it indicates that the Soviets are serious about the idea of expanded trade with the free world.

Negotiations by Occidental Petroleum Corp. to build a fertilizer complex in Russia may represent a real opportunity for this country to acquire fertilizer materials which are in extremely short supply. Under the terms of this agreement, the Russians will purchase about $200 million worth of concentrated phosphates from Occidental each year which will be shipped to a Black Sea port and then to the fertilizer complex. These phosphate materials will represent expanded production from new mines using low-grade ores which would not have been opened except for this transaction. In return, Occidental has agreed to buy approximately $200 million worth of ammonia and urea annually. Since both are made from natural gas feedstocks, they are in very short supply. Yet both products are needed to sustain our agricultural production.

There have been recent press reports and Senate Agriculture Subcommittee hearings which indicate that the U.S. fertilizer shortage is extremely serious. This United States-Soviet agreement can provide additional supplies of fertilizer materials and in this way assist the American farmer. In addition, approximately $750 million will be expended in the United States for plant equipment, thereby providing additional jobs and significantly improving our balance-of-payments situation.

I think it is important to realize that this fertilizer transaction required something unique by our Government—its written approval before it could be implemented. This approval was given by the U.S. Government last June 1, when Secretary of Commerce Dent issued his "no impediment letter" to Deputy Minister of Foreign Trade V. S. Alkhinov, after our Government had carefully studied all the ramifications of the agreement, including our Nation's future fertilizer needs. Many other projects of similar magnitude are already underway and benefiting other industries, such as those involved in the huge Kama River project.

If we are selective and careful as we approach the funding of each of these projects, and if we make a good business deal for our industries, it seems to me that we will have kept the pledge of the U.S. Government to seek a true and lasting détente through trade. I urge that we approach each of these projects with great care, but with an understanding of their importance to us—economically and politically—and that we do not permit the emotions of the moment to sweep away this rare opportunity to achieve a lasting peace.

CONDITIONAL AMNESTY—A STEP TOWARD NATIONAL RECONCILIATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. Robison) is recognized for 30 minutes.

Mr. ROBISON of New York. Mr. Speaker, too many currents of emotion have, in the recent past, pulled our country apart, and set good people at odds with one another—frequently just for a lack of adequate understanding. In any event, if this divisiveness continues—for whatever reason—it will find new ways to feed upon and perpetuate itself; it will transform itself into the long and dangerous stalemate of attitudinal entrenchment, with contending groups of opposing points of view squandering their energies on recrimination; and that mood could abide, for decades, until we Americans rediscover a unifying national purpose.

The process to follow for breaking out of that mood is a complicated and uncertain one—specially when new causes for national divisiveness, and for setting attitudes in opposition to one another, crowd in upon still unresolved disputes and differences of opinion stemming from issues that we have, in large part, put behind us. Without wishing to reopen the wounds inflicted on our land and its people by those long and tragic years of U.S. military involvement in Southeast Asia, it is a fact—for which I am deeply grateful—that, for us, that war is now over. When it ended it is true that I, for one, looked for the development of an era of reconciliation for Americans—a time when this Nation could, as it were, come to peace with itself, again.

That optimism on my part was misplaced—or at least premature—in that other, and different, reasons for an extended period of national doubt, of national self-flaggelation, and for divisiveness, arose to take the place of those born out of those unhappy war years. I do not intend, here, to address myself to that new area for concern—despite the fact that our awareness of it clouds our collective vision. But, Mr. Speaker, I suggest—with some urgency—that the mere appearance of "new business," even despite the transcendental importance of the same, should not influence us so much as to divert our attention totally from that which might be considered "old business," the disposal of which might be a step, however so small, toward that national reconciliation of which I speak.

It is for such reasons that I believe an objective look at the question of amnesty would be timely, Mr. Speaker, even in the midst of that multitude of other issues and problems that so confound us and are of immediate urgency—especially since, forsooth, we do not seem to know what to do about those latter problems, anyway.

As some of my colleagues have noted, I have attempted, over the past year, to encourage that sort of a discussion of this difficult, emotion laden, and almost politically taboo issue. I have done so, even though often discouraged over finding myself so alone in even wishing to talk about it, because I have felt that the potential for moving from an acceptable resolution of the amnesty question—a leftover from those war years—at least a couple of steps toward that attitudinal climate which would allow a spirit of reconciliation to be kindled was well worth doing. Even if few others wanted to talk about it, at least I felt I was doing something that had to be done. Naturally enough, then, when our former colleague, Melvin Laird—and former Secretary of Defense, as well—also surfaced on the issue, and took a position very close to my own, I was vastly encouraged. Mel Laird took, almost at once, his "lumps" for so speaking out—though his action was characteristic of his often displayed courage and directness both while a colleague of ours, here in the Congress, and while at the Pentagon.

Mr. Laird needs no defense from me—since he can do a very capable job on his own in that regard, as will be indicated.

Thus, Mr. Speaker, I now insert Mr. Laird's letter to Comdr. Ray R. Soden, of the Veterans of Foreign Wars. Some of my colleagues may know that this letter addresses Commander Soden's critical response to Mr. Laird's public statements on conditional amnesty. By speaking his mind on amnesty, and by amplifying those statements for the benefit of the Veterans of Foreign Wars, Mel Laird has dramatically shown us that responsible men—whether they be a former Secretary of Defense or sitting Members of Congress—ought to come to grips with the question of amnesty now. Mr. Laird's comments follow:

THE WHITE HOUSE,
Washington, January 28, 1974.

Comdr. RAY R. SODEN,
Veterans of Foreign Wars of the United States, Washington Memorial Building, Washington, D.C.

DEAR COMMANDER: I received a copy of your letter to the President on amnesty and would like to comment.

As a member of the Veterans of Foreign Wars, I share with you, Commander, a great pride in our nation's strength and freedom. As part of our heritage of freedom, we have always cherished the redemptive quality of our system of justice.

As you know, during my tenure as Secretary of Defense, I felt strongly that it was completely inappropriate, unwise and unjust to consider granting any form of amnesty. I felt that while brave Americans were fighting and dying in battle any consideration of granting amnesty was unwarranted and would have had an adverse effect on the morale of our Armed Forces.

My feelings at that time were identical whether the amnesty being discussed by some was "conditional" or "general." I did make known, however, that looking beyond Vietnam we were studying various reports and studies on the complex question of amnesty.

On my departure from the Department of Defense, circumstances had changed markedly. No longer were American troops fighting and dying in combat anywhere in the world. As a result of changed conditions, my views with respect to considering the question of amnesty have also changed.

Throughout my career of public service, I have learned to avoid absolute, dogmatic positions. Neither the political system nor the judicial system of the United States works on "blanket" and arbitrary approaches. Both recognize the vital voles of (1) circumstances and (2) motivation in determining political or judicial solutions to our problems. As I have said, we pride ourselves on administering justice with mercy and understanding.

With respect to the question of a "blanket" or "general" amnesty, let me emphasize that I am now and always have been opposed to a sweeping general grant of amnesty. However, there are individual cases where the circumstances require that justice provide for what some have termed "conditional amnesty." I do not like this term and only use it for lack of a better description of an equitable approach to this difficult problem. It is my view that circumstance and motivation on a case-by-case basis, under our concept of justice, must be taken into account today when dealing with violators of our selective service laws. It is noteworthy that only a small percentage of these men have thus far been prosecuted by the Department of Justice, and in these cases widely differing penalties have been assigned to individuals varying by jurisdiction.

I hope these comments will allay some of your understandable concerns. As you know, I have nothing but a profound sense of respect and gratitude to the men and women who served in Vietnam, 56,244 of whom gave their lives in the service of our country. It is a lasting source of pride to me that I had the opportunity and privilege to associate with such fine Americans and their families. I have never committed any act, nor would I, which would be a "breach of faith" with these men and women.

Finally, I am grateful to the Veterans of Foreign Wars and to the Ladies Auxiliary for their steadfast support of our defense effort, and especially for your steadfast support during my service as Secretary of Defense. I trust, and am sure, that you will continue to extend that support to the President and to his defense policy in the cause of strength and peace.

Sincerely,

MELVIN R. LAIRD,
Counselor to the President for Domestic Affairs.

When considering the prospect of a case-by-case amnesty during the latter days of American involvement in Vietnam, and in now speaking his mind on the question, I believe Mel Laird felt the spirit which lies below the surface of the present national mood. It waits only to be addressed, and there will be response. Americans want, and want desperately, to be part of something better than that which they lived through during the last decade of disruption. They can be, Mr. Speaker, if Congress now moves to adopt the necessary legislation to commence a just process of amnesty for those young men who left the country, or hid from society, during the Indochinese war.

Whatever the form of amnesty, it will succeed only by the standards of national reconciliation. In its process, an amnesty must convince all observers that basic precepts of national justice are being applied. An amnesty must be the gesture of a confident nation looking calmly toward the future and dispassionately at the past. And the process of any amnesty must exhibit the human quality of reconciliation. That is the expression which comes from a confident individual or, in the political realm, from a confident nation that says: "We don't and maybe can't agree, but you are my neighbor, a member of my community, a fellow citizen." That is an amnesty which springs from a toleration of differing viewpoints, rather than from a categorical demand for agreement with any particular set of moral and political principles.

Mr. Speaker, these are the standards I have set for any legislation which proposes amnesty, and these are the standards which cast the outline of the bill which I introduced on Thursday. If I have been successful, in any part, it will be to the degree that I have suggested a process of granting amnesty which can bring us some release from the tightening grip of contentiousness and self-righteousness—on both sides of this issue—in our country, and which might bring us a little more brotherhood, after all the freely expended hate, contempt and violence of the last decade. These are movements which will bring people together, and they are also the vital signs of the health of our system of government, which constantly demands the production of a comity and toleration among conflicting points of view.

In summary, my proposal would establish a National Amnesty Board, patterned after the Amnesty Board appointed by President Truman after the Second World War. The National Amnesty Board would review each application for amnesty in detail; and, after investigating all cases before it, would make a set of recommendations to the President. Among its recommendations, the Board would suggest an appropriate term of conditional service, should the President choose to grant a pardon.

By taking this legislative approach to amnesty and by proposing a process of what some are called "conditional amnesty," I have been pushed to consider questions of far more complexity than might occur in a proposal for so-called blanket amnesty. Yet, as I have explained in previous statements, the actual working process of any future amnesty may well be as important to ultimate public reaction as the pardons which result.

As part of the working process of this amnesty, my proposal first sets the conditions for suspension of legal punishment of those who evaded, or refused, Selective Service registration or military induction during the period of U.S. participation in the Indochinese War. For purposes of an amnesty request, that period would begin with August 4, 1964, the date of congressional enactment of the "Gulf of Tonkin resolution," and terminate on either of two dates: March 29, 1973, the day the last combat troops left Vietnam, or on that day publicly proclaimed by the President when all Americans missing in action in Indochina have been accounted for.

To be eligible for amnesty, I am proposing that an individual agree to serve up to 2 years, either in a branch of military service, or in alternate civilian services which have been determined to contribute to such national objectives as health, safety, or environmental quality. Further, conditional service should begin at the lowest-existing pay grade; although my bill specifies that an individual may be allowed to progress to higher salary levels. It is conceivable that some of these men can bring highly professional skills to the jobs they may take in fulfillment of their conditional service, and several of those who have commented on my developing ideas on amnesty legislation have felt that possibilities for promotion or salary increases should remain open to these returnees to our society.

Throughout, my proposal speaks in terms of "agreements." The process of this amnesty is a process of agreement between the person seeking amnesty and the National Amnesty Board established in the bill. Individual circumstances may vary, and the Board, as it is instructed to do in the bill, may choose to tailor the conditional terms of an amnesty, or its suggestions for immunity from such requirement. If those terms are agreed to by the individual who seeks amnesty, the Board will then make its final recommendation.

Once the general "norms" for eligibility have been set, my proposal further attempts to provide for those exceptional circumstances which may appear. For instance, it is stated in the bill that the National Amnesty Board may waive some part of the required conditional service, should it be evident that special circumstances of the applicant's case, such as disability to perform alternate service, merit special consideration.

I also suggest, in this section, that Congress reiterate a constitutional doctrine which may come into question. My proposal emphasizes that no person who enters into an amnesty agreement shall be deemed to have lost his American citizenship. It is my present understanding that recent court decisions, such as

Schneider against Rusk and Afroyim against Rusk, have established the abiding nature of U.S. citizenship. However, I have concluded that mention of this principle would clarify any misunderstanding of my intention.

I have also specified that those who willfully fail to comply with the terms of their agreement are to be subject to prosecution for pending violations. Also, time taken to seek amnesty agreement, or to complete conditional service, is not to be considered for the purposes of any statute of limitation pertaining to indictable offenses.

It has been presumed, to this point in my discussion, that those who may seek amnesty will either return to the country, or emerge from their places of hiding, in order to take their cases to the National Amnesty Board Yet, there are other young men who chose to go to prison for violation of draft or induction laws, and I understand some 250 of them still remain in prison. I would propose that these individuals be allowed to present themselves to the Amnesty Board—even if still in prison—to request consideration for amnesty. The Board would be empowered to consider these requests, regardless of whether the applicant's prison sentence, or part of it, is for an offense unrelated to his violation of draft or induction laws. However, my bill also specifies that the terms of amnesty granted such an individual would not alter his sentence for an unrelated offense.

For those serving prison sentences related, solely, to violations of draft or induction laws, my proposal would permit a release from prison and a waiver of any remaining prison sentence, on the condition that the individual completes the conditional service recommended by the Board. This section of the bill requires that the National Amnesty Board deduct time served in prison from the period of conditional service required for an amnesty agreement, and further specifies that anyone who enters into an amnesty agreement and has served as much as 18 months in prison shall have his conditional service waived.

Here is one of those questions which require a *difficult* balancing of equities, and one I would hold out for the closest scrutiny of my colleagues. My presumption in writing this language is that the justice worked by the National Amnesty Board will be of the kind which redresses several distortions of fairness which became evident with changes in court rulings, and subsequent Selective Service regulations, relating to conscientious objectors.

Although I have not had sufficiently detailed data available to determine how often the case, it appears that some young men who served prison sentences for draft evasion, or failure to report for induction, did so on the basis of Selective Service regulations which were later revised by court decisions. For example, in United States against Seeger and Levy against United States, the Supreme Court considerably revised the former criteria for determining conscientious objection.

From those amnesty cases which stem from outdated Selective Service regulations, it should be particularly clear that an Amnesty Board ought to consider time served in prison. I would also add to the scale of these equities, the known fact that in some States it was considerably easier to be deferred from the draft or to receive conscientious objector status than in others.

On a number of occasions, I have attempted to request information from the Selective Service which would indicate the ratio of deferments and CO classifications among the States, but I found that such information has not been compiled on a nationwide basis; nor do many States tabulate the number and kinds of deferments granted by their local draft boards.

It is most difficult to set a hard standard for balancing the conditional service necessary for amnesty with prison time already served; and admittedly, the 18-month prison sentence I have used, as a criterion, is one man's attempt to find a mean between the two. Again, I would hope that our legislative process can find a consensus on this question.

To this point, I have described how an amnesty would work through my proposal. However, I have not ventured into the question of who shall be the final authority in granting an amnesty. On May 14 of last year, I attempted to summarize for the House the post-Civil War debate over the constitutionality of a congressionally initiated amnesty. I explained, then, that during the Civil War and for some years after it, several Members of the House and Senate challenged the President's right to declare broad amnesties. There ensued a confused dialog between President and Congress, during which Congress mandated a number of amnesties. The President followed by granting amnesty but, in doing so, cited his constitutional authority, rather than a previous mandate of Congress.

Among the powers granted the President in article II of the Constitution is the provision that—

> . . . he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in cases of impeachment.

Abraham Lincoln cited that clause as his basis for issuing a number of amnesty proclamations, as did Andrew Johnson when he proclaimed several post-Civil War amnesties. Congressmen and Senators who objected to those Presidential amnesties did so by questioning the meaning of the word "pardon," within its constitutional context. And, in February 1869, the Senate Judiciary Committee, acting under the instructions of the Senate, completed a report which stated:

> . . . it will be perceived that amnesty is a larger power than pardon . . . proceeding, like what is called a general pardon, not from the executive, be he King or President but from the *government*, the *sovereign power*, which in England was the king, in and with his Parliament, as in the United States it is the Congress acting with the approval of the President, or by a two thirds vote without it.

In addition to these precedents, we have a few Federal court decisions which have, in part, discussed the respective powers of the President and Congress with regard to amnesty. Yet, there has been no decision singly devoted to this question, or one which has provided clear indication of constitutional intent.

I raise these questions both to preview any similar discussion which may arise from a congressional attempt to set amnesty in motion, and also to highlight the necessity of my bill's languages—which expresses the "sense of Congress" that the President may grant a pardon to any person convicted of a violation of draft or military-induction law, conditioned upon the individual's completion of required conditional service.

Since the first of my working principles has been that the process of any amnesty must exhibit widely shared principles of justice, I chose the "Truman precedent" of a case-by-case review by an appointive amnesty board. This National Amnesty Board would make recommendations to the President regarding each individual case where an agreement has been entered into to complete a term of either military, or civilian, service. In the context of my proposal, "pardon" is used in the narrowest sense of the word, since I find little room for argument over the possibility that Congress may draw upon its own constitutional prerogative to unilaterally grant individual pardons. Further, an amnesty without the President cannot move the Nation toward a new unity; it can only make the question of amnesty another divisive battleground. My proposal, then, rests upon the assumption that the President will participate in accepting the recommendations of a National Amnesty Board, and that the Board, itself, will be in part his own creation.

I also suggest that the President closely follow the Truman precedent by appointing a three-member board, with the advice and consent of the Senate. Although the Truman Board was convened by Executive order, with no concurrence of the Senate, its membership was highly contributory to popular acceptance of the Truman amnesty. Sitting on that board was a former Supreme Court Justice, Owen J. Robert; a past president of the American Bar Association, Willis Smith; and a police chief from Manchester, N.H., James F. O'Neill. I would think it critical to the success of any new amnesty board that membership include persons of the reputation and competence possessed by those on the Truman board.

Mr. Speaker, I fervently hope that in what I have said about my proposal I have conveyed more than one man's desire to get a bill passed. Of course, I would like to see this proposal, or some form of it, adopted because of my own stated convictions. But I would also hope that the act of introducing this legislation and describing it as I have will cause others to think, to judge and to contribute their comments.

In moving toward this step, I have tried to build a preliminary discussion of amnesty through the six historical statements on amnesty I presented to the House in April and May of 1973. The content of my bill has, itself, been the subject of extensive discussion, stretching over many months; and I have sought guidance from every quarter—my colleagues, my constituents, my friends, and family. The culmination of this purposely extended discussion is the bill I introduced last Thursday.

In my previous statements and, I would hope, Mr. Speaker, in what I have said today, I have tried to contribute to the honor of only one thing—and that is certainly not the act of draft-evasion, as some have suggested, or I have tried only to honor the long-held concept of national justice, reflected throughout the history of this country.

Mr. Speaker, the text of my bill follows:

H.R. —

A bill to amend title 18, United States Code, to provide for the conditional suspension of the application of certain penal provisions of law

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, is amended by inserting immediately after chapter 119 a new chapter, as follows:

"Chapter 121.—CONDITIONAL SUSPENSION OF THE APPLICATION OF CERTAIN PENAL PROVISIONS OF LAW

"Sec.
"2610. Amnesty; conditions.
"2611. Release of persons convicted; dismissal of proceedings.
"2612. Pardons.
"2613. Administration.

"§ 2610. Amnesty; conditions.

"(a) No law providing for the punishment of persons evading or refusing registration for the military service of the United States, or of persons evading or refusing induction in the Armed Forces of the United States, shall apply to any person who has evaded or refused such registration or induction during the period beginning August 4, 1964, and ending March 29, 1973, if such person—

"(1) presents himself to the National Amnesty Board, established under section 2614 of this title, not later than two years after the date of the enactment of this Act, or that date, as determined and publicly proclaimed by the President on which all Americans missing in action who have been held by or known to such government or such forces have been accounted for, whichever date is later;

"(2) agrees, in accordance with regulations established by the National Amnesty Board under section 2614 of this title, to serve for a period of two years in the Armed Forces of the United States, or to serve for a period of two years in such alternate civilian service as the National Amnesty Board determines will contribute to the maintenance of the national health, safety, environmental quality, or other interest; and

"(3) agrees, in accordance with regulations established by the National Amnesty Board under section 2614 of this title to begin such service in the lowest pay grade at which persons serve in the Armed Forces or eligible alternate civilian service, and to continue such service at pay levels no greater than those approved by the National Amnesty Board.

"(b) The National Amnesty Board may, for good cause shown by an applicant for amnesty under the provisions of this chapter, waive in part or in whole the service requirement of subsection (a) of this section with respect to such applicant, after opportunity for a hearing on the record, if in the judgment of such Board the special circumstances of such applicant's case, such as disability to perform such service, merit such extraordinary action.

"(c) Notwithstanding the provisions of section 349 of the Immigration and Nationality Act (8 U.S.C. 1481), no person who makes an agreement under subsection (a) of this section shall be deemed to have lost his status as a national of the United States.

"(d) All laws providing for the punishment of persons evading or refusing registration for the military service of the United States, or of persons evading or refusing induction in the Armed Forces of the United States, shall apply to any person who willfully fails or refuses to comply with the terms of his agreement made under this section. The period beginning with such person's application to the National Amnesty Board under section 2610 of this title and concluding with the end of his compliance with the terms of his agreement shall not be counted toward the running of any statute of limitation with respect to any offense for which amnesty is given under this chapter.

"(e) Any person in prison, whether with respect to an offense for which amnesty may be given under the provisions of this chapter, or with respect to another offense, shall be afforded an opportunity to present himself to the National Amnesty Board pursuant to this chapter for the purpose of seeking the amnesty offered under this chapter. If such Board determines such person is eligible for amnesty under this chapter, such determination shall not modify that person's obligations with respect to any offense other than that offense or offenses with respect to which such Board has acted.

"§ 2611. Release of persons convicted; dismissal of proceedings.

"(a) Any person who has been convicted and is serving a prison sentence for evading or failing to register for the military service of the United States during the period beginning August 4, 1964, and ending March 29, 1973, or for evading or refusing induction in the Armed Forces of the United States during such period shall be released from prison, and the remaining portion of any punishment shall be waived, if such person complies with the provision of section 2610(a) of this title, except that the two-year period of military or civilian service required thereunder shall be reduced by a period equal to the period served by such person in prison with respect to his conviction, and the service requirement shall be completely waived in the case of any person who has served at least 18 months in prison solely with respect to such conviction.

"(b) Any criminal proceeding brought against any person as a result of his evading or failing to register for the military service of the United States during the period beginning August 4, 1964, and ending March 29, 1973, or for evading or refusing induction in the Armed Forces of the United States during such period, shall be dismissed if such person enters into an agreement described in section 2610(a) of this title and completes the period of military or civilian service prescribed in such agreement, and such proceedings shall be stayed during the period of such service.

"§ 2612. Pardons.

"(a) It is the sense of the Congress that the President grant a pardon to any person convicted of any offense described in section 2611(a) of this title if such person presents himself to the National Amnesty Board and enters into an agreement, under section 2610 of this title, and that such pardon shall be conditioned upon the completion of the service prescribed in such agreement, except that with respect to any such person who has been imprisoned with respect to such conviction, such service shall be reduced by a period equal to the period served by such person in prison solely with respect to such conviction. It is the sense of Congress that such service requirement should be waived entirely in the case of any person who has served at least 18 months in prison solely with respect to such conviction.

"(b) It is the sense of Congress that any pardon made under this chapter shall have the effect of restoring all civil and political rights which may have been lost or impaired as a result of any conviction for which amnesty was given under this chapter, and any such pardon shall have such effect to the extent not prohibited by the Constitution.

"§ 2613. Administration.

"(a) There is established, as of the date of the proclamation referred to in section 2610 of this title, the National Amnesty Board (hereinafter referred to as the 'Board').

"(b) The Board shall be composed of three members who shall be appointed by the President by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. The President shall designate one of the members to serve as Chairman. The Chairman shall serve full time and be an official of the United States. The Chairman shall appoint an Executive Director of the Board who shall serve under the direction of the Chairman of the Board and perform such duties as the Chairman may specify.

"(c) The Board is authorized to issue such rules and regulations as may be necessary to carry out effectively the provisions of this chapter. The Board is also authorized to review such other cases involving offenses or alleged offenses against the United States as the President considers appropriate for such review consistent with the purposes of this chapter, and the Board shall make a report to the President which shall include its findings and its recommendations as to whether pardon or immunity from prosecution (or both) should be granted or denied, and, in any case in which it recommends that such pardon or immunity be granted, its recommendations with respect to the conditions, if any, of such pardon or immunity.

"(d) The members of the Board, except for the Chairman, shall serve without compensation, but shall be entitled to necessary expenses incurred in the performance of their duties under this chapter, as persons employed intermittently in the Government service under section 5703(b) of title 5 of the United States Code. The Chairman of the Board shall be entitled to necessary expenses on the same basis and to the same extent as other members, but shall also receive such compensation as the President shall determine.

"(e) All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Board in its work, and to furnish the Board all appropriate information and assistance.

"(f) The Board shall cease to exist no later than two years after the end of the one year period following the date determined by the President under section 2610(a)(1) of this title.".

SEC. 2. (a) The table of chapters of title 18, United States Code, is amended by inserting at the end of the table of chapters for Part I—CRIMES, the following:

"121. Conditional suspension of the application of certain penal provisions of law ____________ 2610".

(b) The table of chapters of part I of title 18, United States Code, is amended by inserting at the end thereof the following:

"121. Conditional suspension of the application of certain penal provision of law ____________ 2610".

SEC. 3. Section 12(a) of the Military Selective Service Act of 1967 is amended by striking out "Any" at the beginning of such section and inserting in lieu thereof "Except as provided in chapter 121 of title 18, United States Code, any".

IMPEACHMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Alabama (Mr. EDWARDS) is recognized for 5 minutes.

Mr. EDWARDS of Alabama. Mr. Speaker, the question of impeachment of the President continues to be on the minds of my constituents and, of course, on the minds of the Members of this body. Opinions range from "throw him out" to "get off his back," and there are innumerable positions in between.

For nearly a year now, the public has been greeted almost daily with revelation of the whole sordid Watergate affair. There is an understandable feeling of frustration and bewilderment.

I believe it is important that Watergate and the impeachment proceedings be concluded as soon as possible. As an individual, I feel a responsibility to refrain from taking a hard position until the Judiciary Committee makes its report, to keep on open mind as a potential grand juror. The Congress as a whole, I believe, should likewise feel a strong responsibility to move with great dispatch to wind up this difficult affair. And it should feel an equally strong responsibility not to allow Watergate and related matters to distract it from the pressing problems of inflation, the energy crisis, unemployment, crime, the need to bring Federal spending under control, and many others.

The impeachment of a President, any President, is almost too awesome to contemplate. It cannot, it must not, be done in an air of frenzy and emotion. By the same token, it must not be done on the basis of partisan loyalty. In fact, if ever there was a time when a vote should be approached on a nonpartisan basis, it is in the case of impeachment.

I urged the President months ago to release the Watergate tapes, and I still believe that the best course of action is to spread all the evidence on the table for all the American people to see. The passage of time has not changed my view that there is such a crisis of confidence in our government that the people desperately need to know that the President had nothing to hide. I am reminded of the Biblical passage which asserts that the honest man comes to the light so that it may be clearly seen that what he does is good. I know the President feels very strongly about the doctrines of executive privilege and separation of powers, but the need to "come to the light" with the American people is overriding.

I have received a great deal of helpful advice from my constituents on the Watergate issue. I trust I will continue to receive that counsel so that I can make the wisest possible decision on an impeachment vote, should one occur. In the meantime, I repeat that it is of the utmost importance that this Congress moves forward on the issue of energy and inflation, and the many other unsolved problems facing our Nation. Neither the people nor the President are being well served by dragging out the Watergate investigation.

THE RHODESIAN CHROME DEBATE: FACT AND FICTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. FRASER) is recognized for 5 minutes.

Mr. FRASER. Mr. Speaker, interest is mounting steadily among Members of the House over a bill which would nullify the Byrd amendment of 1971 on Rhodesian chrome and return the United States to full compliance with U.N. sanctions under international law. The bill, S. 1868, passed the Senate last December. As a sponsor of the House version of that bill, my own position is clear: I am convinced that for reasons of national security, economic well-being, international law and human rights, the Byrd amendment is unjustified and should be rendered inoperative by passage of S. 1868.

In almost any debate there are rational arguments which can be made by both sides, but what concerns me about some of the arguments in defense of the Byrd amendment is a seeming lack of regard for the truth. It is as if the old arguments of 2 years ago are being injected into the current debate without even being dusted off. These are arguments which were either without foundation in fact in 1971 when the amendment was passed, or have been proven false by the passage of time. This is all the more obvious in view of the failure of Byrd amendment proponents to back their allegations with supporting evidence. There is good reason for their not giving supporting evidence since the facts do not support their allegations, as the following will show:

First. Allegation: That the Byrd amendment is necessary in order to decrease U.S. reliance on the Soviet Union for chrome ore.

Fact: In the 2 years since passage of the Byrd amendment, imports of Soviet chrome ore have more than doubled from 24 to 51 percent of total chrome imports.

Second. Allegation: That the United States needs Rhodesian chrome for the national stockpile of strategic and critical materials for defense production.

Fact: The Defense Department has stated that its need for metallurgical grade chromite for 1 year of war is 2.3 percent of the quantity held in the national stockpile. Since the stockpile has more than 2 million tons of chromite, the United States could wage war for several decades without depleting the present stockpile of chromite.

Third. Allegation: That the Soviet Union is buying Rhodesian chrome ore and transhipping it to the United States.

Fact: While the sanctions against Rhodesian chrome were in effect in the United States, the Geological Survey of the Department of the Interior examined samples of chrome ore imported from the Soviet Union and determined conclusively that the ores in question were of Soviet origin.

Fourth. Allegation: That Rhodesian chrome ore is cheaper than Soviet ore.

Fact: According to U.S. Commerce Department figures on the average prices of chrome ore imports for the first 11 months of 1973, the price of Soviet ore was $59 per ton; the price of Rhodesian chrome was $80 per ton, placing Rhodesian chrome among the highest priced bought by the United States.

Fifth. Allegation: Compliance with U.N. sanctions against Rhodesia will create unemployment in the United States.

Fact: Neither the U.S. Government nor the United Steel Workers has any evidence of unemployment as a result of Rhodesian sanctions.

In the light of these facts, Secretary of State Kissinger's written statement of October 3, 1973, seems especially convincing—

> . . . the Byrd provision is not essential to our national security, brings us no real economic advantage, and is detrimental to the conduct of foreign relations.

If we are to conduct a rational debate on the Rhodesian chrome issue in the House of Representatives, it should be on the basis of fact, not fiction. I challenge the supporters of the Byrd amendment to back their statements with facts.

MODERN CONGRESS ACT OF 1974

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Utah (Mr. OWENS) is recognized for 20 minutes.

Mr. OWENS. Mr. Speaker, in a recent opinion poll, the public's rating of Congress was the lowest ever recorded by the Harris survey. Only 21 percent of the American people believe the Congress is doing a good job. This is lower than the overall job rating for President Nixon, which is also at its lowest point.

If the findings of the Harris poll do not motivate Congress to undertake some critical self-analysis and to follow through with effective reforms, it is hard to believe anything will.

I am introducing today the "Modern Congress Act of 1974." The bill is designed to assist Congress to do a better job by modernizing some of its procedures. Essentially the same bill was introduced in the Senate by Senator HUMPHREY on February 5. The intent of this legislation is to initiate positive changes in Congress at a time when there is strong public sentiment favoring reform.

Congress is not equipped to deal with today's problems or to uphold its part of the balance between the executive, legislative, and judicial branches. A 20th-century Congress cannot be effective when it employs 18th- and 19th-century techniques. If preventive measures are not taken, all human organizations tend to stagnate, rigidify, and eventually surrender to the infirmities of age. But preventive measures are possible. Organizations can continuously renew themselves. It is imperative that Congress undertake a major exercise in self-improvement. Congress must regain the policymaking authority which it has increasingly abdicated to the executive branch.

There are many internal problems which must be overcome to strengthen ourselves. The Modern Congress Act establishes the necessary tools and framework to meet some of the challenges that Congress faces in performing its constitutionally delegated responsibilities.

Since the Legislative Reorganization Act of 1946, Congress has had the formal responsibility of not only writing the laws of the land, but also seeing that the executive branch carries them out. Through oversight Congress is supposed to determine whether Federal programs are administered in a manner which satisfies the intention of Congress. In the judgment of political scientists, public interest groups, and many Members of Congress the national legislature has failed to perform its oversight function.

Today the Federal Government is engaged in hundreds of programs authorized and funded by Congress that seek to change or redirect human behavior. Yet all too often congressional committees and individual members either lack time, interest, or resources to know which programs are working effectively and which ones are not. The point is that Congress exerts a substantial influence on the administrative process, but it is not organized to review the impact of legislative actions.

The responsibility of Congress does not end when a law is enacted or a program is launched. We must evaluate the administration of these laws and programs and recommend reforms to overcome deficiencies. The most we have done about oversight is to overlook it as an obligation. To fulfill this duty a systematic method of reviewing the administration of laws and the operation of programs must be formulated.

The legislation I introduce today proposes the establishment of legislative review subcommittees within each of the standing committees of Congress to conduct continual oversight functions. The bill expands the powers of the General Accounting Office, the major factfinding arm of the legislative branch. In addition, the Modern Congress Act establishes the Office of Congressional Counsel. Congress has frequently suffered from lack of legal counsel to represent it in court proceedings involving other agents of government who fail to comply with the laws of Congress.

This legislation creates a Citizens' Committee to study Congress in order to assist the Congress in an appraisal of itself as an institution. In any vortex of incomplete knowledge, outsiders may make a significant contribution by analyzing questions from a more detached viewpoint than that of the immersed participants. Congress would have serious problems in attempting to reform itself without outside stimulus.

The Citizens' Committee will immediately undertake a thorough assessment of the reforms needed for Congress to be open, responsive, and assertive. This body will provide the perspective to pursue needed changes which many of us within the Congress tend to overlook or neglect.

One of the major factors which determines our effectiveness as legislators is the quality of available reference material on the wide spectrum of issues that come before Congress. The importance to Congress of precise, objective information cannot be overestimated. Congress communications network must be equipped with the latest innovations derived from the new communications sciences.

The Modern Congress Act creates the Office of Congressional Communications to maintain a video tape library of important public interest broadcasts, provide closed circuit telecasts of committee proceedings, arrange for each Member of Congress to view such documents in his own office, and further modernize the communications-information services available to Congress.

Congress has failed to provide the public with meaningful analysis of its objectives, accomplishments, and deficiencies. This bill would partially address this problem by instituting a congressional annual report or a "State of the Congress" message to be presented by the congressional leadership. The report would force Congress to take a critical look at its past and future performance and would represent a meaningful effort to earn renewed public attention and respect.

A further provision in the bill would create a joint committee to integrate and oversee the entire national security policy area. Another section would commission a study of the use of computer programs to improve scheduling of the work of the House.

Mr. Speaker, if these proposals sound familiar, it is because many of them have been discussed for years. We all recognize that Congress demands change within itself, and there is no shortage of sensible ideas on how to streamline Congress to do a better job. But there has been a shortage of simple willpower that is needed if the reforms are ever to be put into effect. This bill represents a sincere effort to address problems at the most basic level of congressional organization—problems which have a significant impact on the behavior and performance of the Congress.

SECTION-BY-SECTION COMMENT

Title I of the bill would create a Citizens' Committee To Study Congress. The country's leading experts on congressional reform would be asked to serve on the committee. The committee would submit a comprehensive report of the changes required to make Congress a responsive and coequal branch of government. This type of independent perspective is needed because Congress will have difficulty if it depends solely on its own Members to suggest reforms.

Committee members will be selected by a special committee composed of three members, one of whom shall be appointed by the President pro tempore of the Senate, the Speaker of the House, and the President, respectively. This committee will then select 15 members to serve on the committee, not more than two of whom shall be Members of the Senate, the House, and the executive branch, respectively.

The committee will consider the policymaking role of Congress, determine the best method of congressional review and evaluation, examine the operation of the Congress and factors that affect it, and investigate other matters the committee deems appropriate. Through the committee's widespread hearings, a beginning can be made toward restoring public confidence in the Congress.

Title II establishes an Office of Congressional Counsel. It has been difficult to assert those laws which Congress has passed without counsel to represent Congress in court appearances. Recent controversy over administrative actions of the executive branch, such as the unconstitutional impoundment of funds, has forced Members of Congress to pursue court fights themselves without the help of congressional counsel.

Both the Senate and House would be able to employ the services of this counsel, who will be an independent legal adviser and advocate. Congress must have access to counsel who can defend and prosecute when necessary, especially when an administration impedes or intentionally ignores the legislation of Congress.

Title III would grant new powers to the GAO. The limitations which now constrain the GAO make it difficult to obtain information which is vital to the operation of Congress. The bill authorizes the Comptroller General to subpena information and to bring civil action against any executive branch attempt to use public funds in an illegal or erroneous manner or amount. The auditing arm of Congress must be strengthened in order to acquire the information Congress demands to function efficiently.

Title IV establishes by legislative mandate a formalized state of the Congress report consisting of messages on the activities of the Congress. The leadership of both parties would be responsible to address the Nation concerning the initiatives, priorities, and shortcomings of the session just concluded. The message would make the public more aware of the operations of Congress, and it might have the desirable side effect of generating more interest in the legislative process.

Title V amends the Rules of the House for the purpose of instituting House Legislative Review Subcommittees in each standing committee of the House. With the creation and staffing of the proposed subcommittees responsible solely to review the implementation and actual effects of legislation that has been enacted, the critical need for legislative oversight will receive more of the attention that is desperately needed. The bill calls for close monitoring of executive agencies to preclude executive waste, mismanagement, and usurpation of congressional authority.

Title VI creates the Office of Congressional Communications—OCC—which will provide Congressmen with modernized technical facilities by introducing various communication innovations into congressional operations. Congress has failed to take advantage of the innovations in the field of communications—a field which is so basic to the duties of a Congressman.

The OCC would include a video library that would store various tapes and recordings which a congressman wishes to view. Documentaries, news programs, and similar informative broadcasts would be at the immediate disposal of the Congressman. The OCC would install a network of television facilities within the Capitol which would include television terminals within the office of each member. Through a computerized method, the member could request a viewing of any material within the video library. This network would also include facilities to monitor congressional hearings, floor proceedings, and other congressional business which a Congressman may wish to observe. Adoption of the latest innovations in the communications field would hopefully make the Congress a better informed body.

Title VII instructs the Citizens' Committee to study the potential for applying computer programs to the scheduling problems of the House. This study would focus, among other things, on the possible use of computers to improve scheduling of committee and subcommittee meetings in order to minimize committee meeting conflicts.

Title VIII creates a Joint Committee on National Security which is intended to improve the participation of Congress in the formulation of foreign, domestic, and military policies related to our Nation's security. The committee would provide a means for the integration of policies formulated within the several committees of Congress having jurisdiction over aspects of the security of the United States.

The joint committee would be responsible to continually study the degree of integration of the many portions of public policy known as "national security" and it would act as a focal point for congressional review of the National Security Council and the plans and objectives it promotes.

Mr. Speaker, a Congress intended by the framers of the Constitution to be the Nation's foremost policy-setter, lawmaker, and reflector of the collective will has been forfeiting its power for years. We have in Congress an organization with structures and procedures that were designed to solve problems which no longer exist. I feel that the "Modern Congress Act of 1974" will enhance the ability of Congress to function effectively in an increasingly complex world. The innovations contained in this bill are simply designed to bring Congress up to the level of modernization enjoyed for years by large organizations in other fields. The internal changes are no more than an effort to optimize the use of resources which the Congress already controls.

There is no one ideal mode of organization for Congress which will spare us later reorganization. As long as free self-government endures, we will be correcting imbalances of power, coping with new threats to responsive government, and fighting the tendency of human institutions to age and stagnate. Every human organization must evolve or perish. The only way to preserve is to innovate. I hope my colleagues in the House will join me this year in an attempt to transform Congress into an effective, up-to-date institution.

Mr. ALBERT. Mr. Speaker, I commend my colleague from Utah for his excellent statement. Congressional reform is one of the best means by which Congress can insure its full share of the policymaking power with the executive branch.

The gentleman from Utah is an able student of the congressional process and is obviously committed to the proposition that Congress must define the direction and parameters of Federal activity. He has exhibited great insight in his remarks today, and the legislation he is introducing addresses some of the fundamental problems of the Congress.

I agree with my colleague that Congress must now move with dispatch to pursue needed organizational changes. Probably no other young Member of Congress knows as much about the operations of Congress as WAYNE OWENS. He has worked here for 9 years and has made congressional reform a point of major emphasis. I thank the gentleman from Utah for his excellent presentation and compliment him on his willingness to devote his time to this legislation designed to help improve congressional procedures.

GENERAL LEAVE

Mr. OWENS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

THE IMPEACHMENT DILEMMA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri (Mr. HUNGATE) is recognized for 60 minutes.

Mr. HUNGATE. Mr. Speaker, if you study the impeachment question long enough, you may find yourself reduced to reciting poetry, some of which does not seem totally irrelevant to our current situation, although written over a century ago:

Guvener B. is a sensible man;
He stays to his home an' looks arter his folks;
He draws his furrer ez straight ez he can,
An' into nobody's tater-patch pokes;

But John P.
Robinson he
Sez he wunt vote fer Guvener B.

My! aint it terrible! Wut shall we du?
We can't never choose him o'course,—thet's flat;
Guess we shall hev to come round, (don't you?)
An' go in fer thunder an' guns, an' all thet;

But John B.
Robinson he
Sez he wunt vote fer Guvener B.

Gineral C. is a dreffle smart man:
He's ben on all sides thet give places or pelf;
But consistency still wuz a part of his plan,—
He's ben true to one party—an' thet is himself—

So John P.
Robinson he
Sez he shall vote fer Gineral C.

Gineral C. he goes in fer the war;
He don't vally principle more'n any old cud;
Wut did God make us raytional creeturs fer,
But glory an' gunpowder, plunder an' blood?

So John P.
Robinson he
Sez he shall vote for Gineral C.

We were gittin' on nicely up here to our village,
With good ole idees o'wut's right an' wut aint,
We kind o'thought Christ went agin war an' pillage,
An' thet eppyletts worn't the best mark of a saint;

But John P.
Robinson he
Sez this kind o'thing's an exploded idee.

This side of our country must ollers be took,
An' President Polk, you kno, he is our country.
An' the angel thet writes all our sins in a book
Puts the debit to him, an' to us the per contry.

An' John P.
Robinson he
Sez this is his view o' the thing to a T. . . .

(1847–1848, Hosea Biglow–1847.)

HISTORICAL CONSIDERATIONS

The Presidential impeachment inquiry getting underway in the House Judiciary Committee with the appointment of counsels John Doar and Bert Jenner, follows a pattern of almost 200 years.

There have been 65 possible impeachment cases in Congress, of which 55 involved Federal judges.

The House has voted impeachment articles 12 times.

Of these 12, the Senate, sitting as a high court, has acquitted 7, convicted 4, while 1 resigned.

The most spectacular cases were those of Justice Samuel Chase of the Supreme Court in 1805 and President Andrew Johnson in 1868.

The process was taken over by the Founding Fathers from the British law. For example, in 1388 Chancellor Michael de la Pole, Earl of Suffolk, was tried for "high crimes and misdemeanors" on the charge that he applied appropriated funds to purposes "other than those specified."

Alexander Hamilton, in the "Federalist Papers," No. 69, page 429, 1818 edition, in 1787 stated:

> The President of the United States would be liable to be impeached, tried, and, upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law. The person of the King of Great Britain is sacred and inviolable; there is no constitutional tribunal to which he is amenable; no punishment to which he can

be subjected without involving the crisis of a national revolution. In this delicate and important circumstance of personal responsibility, the President . . . would stand upon no better ground than a governor of New York, and upon worse ground than the governors of Virginia and Delaware.

In 1787, Richard Brinsley Sheridan delivered a 5-hour speech against Warren Hastings, Governor General of India. Despite widespread acclaim—Lord Byron called it "The very best oration ever conceived or heard in this country"—no full copy of this address exists. A short excerpt will give an idea of its style:

The public capacity of Mr. Hastings exhibits no proof that he has any just claim to . . . greatness. We see nothing solid or penetrating, nothing noble or magnanimous, nothing open, direct, liberal, manly, or superior, in his measures or his mind. All is dark, insidious, sordid and insincere. Wherever he has option in the choice of his objects, or his instruments, he instinctively settles on the worst. His course is one invariable deviation from rectitude. And the only trace or vestige of system discernible in the whole of a dozen years' administration is that of "acting without any." The serpent may as well abandon the characteristic obliquity of his motion for the direct flight of an arrow, as he can excuse his purposes with honesty and fairness. He is all shuffling, twisting, cold and little. There is nothing open or upright, simple or unmixed. There is by some strange, mysterious predominance in his vice, such a prominence as totally shades and conceals his virtues. There is, by some foul, unfathomable, physical cause in his mind, a conjunction merely of whatever is calculated to make human nature hang its head with a sorrow or shame. His crimes are the only great thing about him, and these are contrasted by the littleness of his motives. He is at once a tyrant, a trickster, a visionary, and a deceiver. He affects to be a conquer and law-giver, an Alexander and a Caesar; but he is no more than a Dionysius and a Scapin . . . He reasons in bombast, prevaricates in metaphor, and quibbles in heroics.

This statement will show some consideration of what the view was in England at the time our Constitution was made on the subject of impeachable offenses.

Further statements by Edmund Burke in the same debate in 1788 may provide assistance.

I impeach Warren Hastings, Esquire, of high crimes and misdemeanors.

I impeach him in the name of the Commons of Great Britain in Parliament assembled, whose parliamentary trust he has betrayed.

I impeach him in the name of the Commons of Great Britain, whose national character he has dishonored.

I impeach him in the name of the people of India, whose laws, rights, and liberties he has subverted; whose properties he has destroyed; whose country he has laid waste and desolate.

I impeach him in the name, and by virtue, of those eternal laws of justice which he has violated.

I impeach him in the name of human nature itself, which he has cruelly outraged, injured, and oppressed in both sexes, in every age, rank, situation, and condition of life.

DIVERGENT VIEWS OF THE IMPEACHMENT PROBLEM

Certainly the issue does not appear the same to each Member of Congress today. As one of our colleagues indicated in his remarks on this problem on November 1, 1973, from which the following are excerpts:

FACTS AS A DEMOCRAT UNDERSTANDS THEM

MY FELLOW AMERICANS. . . . I say without equivocation or mental reservation that in my considered judgment, President Richard M. Nixon's integrity is unimpeachable. His greatness has been established—so much so that certain segments of the Democratic Party, of which I am a member, and for political reasons, are trying to destroy his greatness. Does it not appear that there are prejudiced judges who, through a subconscious urging, may be making themselves a party to the scheme to destroy President Nixon, and acting as prosecutors rather than judges? . . .

Look at those who are trying to destroy our President! Do you wish to turn this country over to the type of people who by majority nominated George McGovern as the Democratic nominee in Miami? We are in trouble in this country. We are being misled, and some of our best people are having their minds slowly but surely shaped by prejudiced commentators, and the radical segment of the news media. . . .

I do not condone what some of President Nixon's aides have done, but remember that they did not break into Democratic Headquarters looking for silver or gold. It was a political act. Doubtless, they were looking for political information, perhaps trying to find out how the people who later appeared in Miami to support McGovern had gotten control of the Democratic Party. (This statement is completely free of racial implication.) Without attempting to defend their actions, these actions did not involve the security of our country. I am thoroughly convinced that President Nixon had no knowledge whatsoever of the Watergate break-in. Let us prosecute the guilty, but not involve our President when there is no indication that he had any knowledge of their actions. . . .

Contrast this view with those in the New York Times magazine of Sunday, December 16, 1973, in an article entitled "Letter from London," by J. H. Plumb:

Watergate is like dry rot. Dry rot will crumble the strongest timbers with a dangerous speed, and the only cure is surgery. Even Dr. Kissinger's assurances could not obliterate the suspicion that placing American forces on a nuclear alert was an excessive overreaction by the President, intended to distract attention from his domestic problems. After all, Europe's memory is long and amply historical, and it was commonplace of the old absolutist monarch's policies to use foreign affairs to distract attention from domestic problems. After so many months of Watergate, the credibility of the Administration is at total risk, whatever dramatic action it may take. Not only experts in American affairs, but also ordinary men and women will now search for the hidden reason for dramatic actions. What is wrecking America's image is not whether the President has technically broken or not broken the law, but that a man so self-confessed in misjudgment of other men and their actions should still be in control of the world's most powerful nation.

And the irony, for a British historian, is that no minister of George III, nor even George III himself, could have survived such a record of disaster. James II never broke the law, but he was chased from his kingdom. Many ministers in England have been impeached, or threatened with impeachment, for incompetence or for erroneous judgment, not for breaking a law or obstructing justice. Many Americans misunderstand the concept of impeachment, which is directly derived from English constitutional practice of the 17th and 18th centuries. It was a device developed by Parliament (the legislative branch) when it was weak, both in relation to the monarchy (the executive) and the judges—so that the king could be forced to part with ministers who were corrupt or incompetent, or whose policy Parliament loathed. It was a weapon, quite deliberately devised, to check the excesses of the executive; to bring not only criminals to justice, but also those who were bringing English institutions into disrepute.

"If ministers or heads of state are removable only if they technically break the law, the prospects for absolutism and tyranny must be very bright—even in America. And to many Englishmen the debate about Watergate seems to move away all too quickly from the central issue to peripheral and fundamentally unimportant arguments—the tapes, the real-estate purchases, the income-tax payments, or prior knowledge of the burglaries. The glaring enormity is that a man who chooses one self-confessed grafter for his deputy, whose aides are indicted on charges of perjury, conspiracy, burglary and the rest, has not been compelled to give up office. In no other country, Communist or free, would this be so. Not to recognize this, and not to recognize the intense harm that it is doing to America's image overseas, and therefore to America's power to influence the world, is the most dangerous of attitudes. At present, America's capacity to influence events depends upon one man and one man alone—Dr. Kissinger; an extraordinarily dangerous situation for a great power. There is a great deal of anti-Americanism in Europe and elsewhere in the world, and now it has a glaring blemish upon which it can fasten and pump in its poison.

Certainly Europe was developing a more independent attitude in economic and foreign affairs before Watergate, but surely no one can doubt that the process has accelerated since that debacle. And what should be realized is that Watergate is news, still headline news, in London, avidly read, avidly discussed day after day after day. Watergate is not a local, internal domestic affair. The schizophrenic attitude that American foreign policy sails on magnificently and effectively untouched by White House "horrors" or by the lies and evasions is a cruel delusion. Watergate is a cancerous growth eating at America's strength. Watergate is bad enough, but what worries America's friends far more deeply is the weakness of a constitutional system that renders a change of a President during his elected term almost impossible, except by death. This, in effect, becomes elected monarchy, and a monarchy far more powerful than George III ever enjoyed.

The whole political and constitutional history of Britain centered on the Watergate problem—how to curb a monarch's bad judgment in choosing ministers; that is why we invented impeachment, and used it. And one longs to hear some voices on Capitol Hill stating loudly and clearly the central issue; that the responsibility of a President is not to a mandate given one year, two years, three years previously, but a *daily* responsibility to the people's elected representatives, answerable at all times and on all matters, not only for keeping the law, but also in choosing men of integrity and honor. If the trust committed to the President is not honorably discharged, removal is essential for the well-being of the country. . . ."

IMPEACHMENT AND ALTERNATIVE SOLUTIONS

Presently we find ourselves with 16 impeachment resolutions in the House Judiciary Committee, and 20 impeachment resolutions sent to the Rules Committee. Altogether, these resolutions have been sponsored or cosponsored by a total of 95 Members. While many would assert any such proceedings would be bipartisan, to date only one Republican member has introduced such a resolution, and no Republican member of the Judiciary Committee has yet filed such a resolution.

One Member has introduced a resolution to censure the President. This provides an alternative procedure, along with that requested by some—which is Presidential resignation—or the possible dilemma foreseen by Howard K. Smith, Christian Science Monitor of Friday, December 28, 1973, that—

A Nixon out of power might be more dangerous than a Nixon in power. If he resigns there may be a terrible backlash. He might become the center about which all the right-wing forces in the nation would *coalesce*.

Discussion is also heard about immunity legislation to be coupled with resignation, but action along these lines so far remains incomplete.

Others question the damage to the country and the precedent set if impeachment is voted, while still others question the consequences to our country under the present circumstances if impeachment is not voted and the precedent this would establish.

IMPEACHABLE OFFENSES

What properly constitute the grounds for impeachment?

Should we follow Congressman and former Minority Leader GERALD R. FORD, now Vice President, in his 1970 address on the proposed impeachment of Justice William O. Douglas?:

What, then, is an impeachable offense? The only honest answer is that an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office. . . . There are few fixed principles among the handful of precedents. (CONGRESSIONAL RECORD, vol. 116, pt. 9, p. 11913.)

In the first Congress in 1789, Mr. Madison stated:

I think it absolutely necessary that the President should have the power of removing from office; it will make him, in a peculiar manner, responsible for their conduct, and subject him to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses. On the Constitutionality of the declaration I have no manner of doubt. . . .

Now, if the heads of the Executive departments are subjected to removal by the President alone, we have in him security for the good behaviour of the officer. If he does not conform to the judgment of the President in doing the executive duties of his office, he can be displaced. This makes him responsible to the great Executive power, and makes the President responsible to the public for the conduct of the person he has nominated and appointed to aid him in the administration of his department. But if the President shall join in a collusion with this officer, and continue a bad man in officer, the case of impeachment will reach the culprit, and drag him forth to punishment. . . .

I think that those who love the House of Representatives and consider its Members to be truly tribunes of the people, will find the following quote appealing:

In England the practice of impeachments by the House of Commons before the House of Lords has existed from very ancient times. Its foundation is that a subject intrusted with the administration of public affairs may sometimes infringe the rights of the people and be guilty of such crimes as the ordinary magistrates either dare not or can not punish. Of these, the representatives of the people, or House of Commons, can not judge, because they and their constituents are the persons injured, and can therefore only accuse. But the ordinary tribunals would naturally be swayed by the authority of so powerful an accuser. That branch of the legislature which represents the people, therefore, brings the charge before the other branch, which consists of the nobility, who are said not to have the same interests or the same passions as the popular assembly.

At the time of impeachment of the Earl of Suffolk in 1388, misdemeanors were not crimes as they now are in the United States, but rather crimes were prosecuted as trespasses. So, misdemeanors as used in connection with impeachment has a different meaning from the ordinary connotation given it today in American law.

In considering this measure, there is the "get on with the Nation's business" school, the "impeach him or get off his back" syndrome, and the recurrent cry—not always unjustified—of partisanship. There are also those who would demand a 3-minute egg after cooking it only 2 minutes. If a Democratic Congress undertakes an inquiry into impeachment action concerning a Republican President, it may be well to reexamine history on the only other Presidential impeachment action in our history, when a Republican Congress in 1867 undertook the impeachment of Democratic President Andrew Johnson.

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ANDREW JOHNSON, 1867

January 7th—Charges of Usurpation of Power referred to House Judiciary Committee.

November 25th—Judiciary Committee Report recommended impeachment. The Report of the Committee on the Judiciary on charges brought against the President resolved that he "be impeached for high crimes and misdemeanors."

December 1st—First Session of the 40th Congress adjourned.

December 2nd—Second Session of the 40th Congress began.

December 7th—Resolution to Impeach defeated in the House.

1868

February 21st—Motion to Impeach made in the House. The motion, presented by Representative John Covode of Pennsylvania, was referred to the Committee on Reconstruction.

February 22nd—Committee on Reconstruction Report recommended Resolution for Impeachment.

February 24th—House voted to impeach, 126 to 47.

February 25th—Impeachment reported at the Bar of the Senate.

March 2nd—Nine Articles of Impeachment agreed upon in the House.

March 3rd—Two additional Articles of Impeachment agreed upon in the House.

March 5th—Senate convened as Court of Impeachment. He (President Johnson) was summoned to appear and answer charges. The Court adjourned to March 13th.

March 12th—Attorney General Stanbery resigned to serve as one of the counsels for President Johnson in the impeachment trial.

March 13th—Court of Impeachment formally reopened, adjourned to March 23rd. He was given ten days instead of the forty he had asked, for preparation of his answer to the charges of violation of the Tenure of Office Act and other irregularities.

March 23rd—His answer read by counsel. It challenged the constitutionality of the Tenure of Office Act. The Act was declared unconstitutional by the Supreme Court, Myers vs. U.S., 1926.

March 30th—His trial began.

May 16th—Acquitted on 11th Article of Impeachment. The Senate voted 35 to 19 that he was guilty of a high misdemeanor. Acquitted because ⅔ votes necessary to convict. The Court adjourned until after the Republican National Convention.

May 26th—Acquitted on the Second and Third Articles of Impeachment on votes of 35 to 19, then adjourned sine die by a vote of 34 to 16.

In the most recent Judiciary Committee inquiry into impeachment, involving Justice Douglas in 1970, then Minority Leader GERALD FORD stated:

The function of the subcommittee is not to make a *final* assessment. It is to present all the available and relevant facts and evidence to the Members of the full committee, in the first instance; and to the Members of the House of Representatives in the final instance. Only the House as a whole has the power of impeachment, and even this is not a *final* assessment.

The final assessment of the *validity* of the charges is made in the Senate sitting as a court of impeachment. From this there is no appeal. The preliminary assessment required of the House as a whole is whether the charges and preliminary showing of evidence are of sufficient gravity to warrant a formal trial in the interests of both the public and of the accused.

I gave my informal agreement to a 60-day time extension for your investigation because no responsible Member of the House, on a Constitutional question of this moment, would wish to act in haste or in the absence of every available element of testimony and evidence.

A Democratic supporter of the Douglas impeachment resolution stated:

My concern and desire for a full and fair inquiry into the conduct and behavior of Associate Justice Douglas which has become a matter of common fame. I cannot believe that you, Mr. Chairman, would knowingly condone the publication of such a travesty on proper investigative procedures at a time when the credibility of the Congress is under such attack and the confidence of the country in our Supreme Court has been severely shaken.

It is readily apparent to me that many stones remain unturned, and will remain unturned under the methods now being pursued. And I have every reason to believe there is a great deal of relevant information under those stones.

Mr. Chairman, I am deeply serious in demanding a full, fair and factual inquiry into the Douglas matter, conducted in the normal manner by which the Congress uses its broad powers to inform itself and the American people. I believe the more than 100 other Members on both sides of the aisle and from all parts of the nation who are joined in the aforementioned Resolutions are equally determined and sincere. We want an *aggressive, adversary*, earnest determination of the truth. . . .

I respectfully request that the following witnesses be subpoenaed to testify and be cross examined under oath before your Special Subcommittee:" (The names of 14 witnesses followed.)

In the same inquiry, another colleague, who seemed to oppose that impeachment but seems to favor this one, wrote Chairman Celler in part as follows:

1. Impeachment should be considered in the nature of a criminal proceeding, since its end result is "conviction" and the debates in the Constitutional Convention of 1787 infer a common understanding of the delegates that impeachment was analogous to a criminal proceeding. This is noteworthy in that, under traditional American principles of justice, we customarily require that the *prosecutor* be himself convinced that the potential accused is guilty before filing the complaint or urging an indictment. Thus, the House, before bringing impeachment proceedings, should collectively reach the conclusion by a majority vote that the accused is guilty of the charges filed, not just that he *may* be guilty.

Mr. Speaker, it is my hope that the foregoing materials will be of assistance in placing the issue of impeachment in its appropriate historical perspective:

EPILOGUE

Wal, it's a marcy we've got folks to tell us
 The rights an' the wrongs o' these matters, I vow,—
God sends country lawyers, an' other wise fellers,
 To start the world's team wen it gits in a slough;

Fer John P.
Robinson he
Sez the world'll go right, ef he hollers out Gee!

STOP WASTE NOW

(Mr. RONCALIO of Wyoming asked and was given permision to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. RONCALIO of Wyoming. Mr. Speaker, representing the resource-rich and energy-exporting State of Wyoming, I fully appreciate how important it is to marshal support for a vast range of research and development projects.

I am equally convinced, however, that in the rush to enact energy legislation, Congress must exercise extreme caution so that we are not squandering funds in misguided programs.

On the basis of 2 years of research, reinforced by my work on the Joint Committee on Atomic Energy, I believe continued funding of the Plowshare program represents such waste. It will waste tax dollars and it will waste resources, both in the uranium diverted for literally thousands of underground nuclear blasts and in the possible jeopardizing of resources in surrounding areas. I oppose this program on the grounds it is not efficient and it is not going to make a significant contribution to meeting energy needs.

I am therefore, inserting for the RECORD a position paper on Plowshare. No Member of Congress can afford to be ignorant of this information.

The report follows:

PLOWSHARE—A TECHNOLOGY IN SEARCH OF A USE

(Hon. TENO RONCALIO, paper prepared for the Tri-State Energy Conference, Denver, Colo., February 1, 1974)

INTRODUCTION

During the last three years, I have devoted much research to Plowshare, and particularly to nuclear stimulation. I would like to give you my evaluation of this wasteful and potentially hazardous process which, in spite of the $34 million spent during more than 10 years of research and experimentation, has yet to market a single cubic foot of usable gas, or prove the potential usability of gas so produced.

Since I serve on both the House Interior and Insular Affairs Committee and the Joint-House-Senate Committee on Atomic Energy and represent the resource-rich State of Wyoming, I am very much aware of the imperatives of the pending energy crunch. It is clear that we must do everything within reason to extract untapped resources, including gas trapped in the Green River and Piceance Creek Basins. But to remain with reason we must insure that their extraction does not waste more energy than is recovered, or clearly endanger human life.

We must be sure that the resource we are going after is worth *all* of the prices and consequences of its recovery. Then, we must be sure that we are pursuing recovery in the safest and most efficient way. The West's "tight" gas reserves are worth going after; the 300 trillion cubic feet estimated to be retrievable from the Green River and Piceance Creek Basins could augment our nation's reserves by about 30 percent. This contribution must, however, be viewed in perspective; nuclear stimulated wells could at most contribute no more than 1.8 percent toward meeting the national gas requirement of 1980, and less than a mere 0.8 percent toward meeting our total 1980 energy needs. In the long run, this is "a drop in the bucket," hardly worth the risks of nuclear extraction.

HISTORY

More than $150 million has been expended on the Atomic Energy Commission's Project Plowshare, which has, for more than 16 years, been attempting development of nuclear explosives in a host of excavation, underground engineering, and purely science-oriented applications. Excavation proposals have included plans for nuclear digging of canals, harbors, mountain passes, and underground reservoirs. After more than a decade of study and experimentation (under Projects Sedan, Buggy, Cabriolet, Schooner, Ketch and Gnome), public opposition to use of nuclear explosives has combined with fears of interfering with nuclear test ban treaty arrangements and failure to demonstrate success to force their abandonment.

Now, in the current crisis atmosphere, the residual target of Plowshare is natural resource recovery. Extensive studies have investigated the feasibility of using explosives for underground mining (Projects Hardhat, Danny Boy, Handcar and Rainier), for inplace leaching of copper (Sloop), and for recovery of oil from oil shale (Bronco). However, because of siting problems, lack of industrial interest, and continued public opposition, all of these projects have been virtually abandoned.

Recently Plowshare was shifted to explosives for stimulation of natural gas. As plans continue for the fourth nuclear gas recovery experiment, the fact is that the three tests to date have failed to live up to production expectations and questions of radioactive contamination remain unresolved. Further information should be gathered from the explosions already conducted before another is allowed.

PROJECT GASBUGGY

The first experiment along these lines was Project Gasbuggy in 1967. A device with 29 kilotons of explosive power was detonated about three-fourths of a mile beneath a site near Farmington, New Mexico. Gas production from existing wells in the same geologic formation was known to be disappointingly low because of the low permeability. It was contended that the explosion would fracture the so-called "tight" rock formation and create a giant cavity or "chimney" and the trapped gas would then seep through the remaining cracks into the chimney from which it could be piped to the surface.

Drillback into the Gasbuggy chimney was completed in January, 1968, and periodic testing of the stimulated gas return is continuing. Thus far, *all* of the gas produced, except for small samples withheld for testing purposes, has been flared, because it still contains small quantities of radioactivity. Existing CFR's* must be satisfied before any manmade radioactivity can be introduced into a consumer product.

In general, the results of Gasbuggy have shown that the gas flow fell off much faster than expected, that the BTU content of the gas was below normal, and that radioactivity has decreased at a slower rate than expected. Growing disappointment was indicated as recently as November 12, 1973, when Robert McHugh, president of the Colorado Interstate Gas Company, said that Gasbuggy (and the second experiment, Project Rulison) could not be "considered management motivators."

With regard to proven productivity, it should be noted that Gasbuggy is the only nuclear gas stimulation experiment from which we have data for more than just the period following the explosion.

The AEC reported on December 14, 1973, that production for the six year period between December, 1967, and December, 1973, totalled 383 million cubic feet. In comparing this production with that of nearby wells it has been said that "the nearest well completed by conventional means has produced only 81 million cubic feet of gas over a ten year period," and that "this number should be compared with eight years' production of about 70 million cubic feet in the nearest conventional well." However, careful comparison of the first six years of production from nearby conventionally completed, hydraulically fractured wells in the same Chosa Mesa Pictured Cliffs Field, shows that two wells, with initial six year productivities of 465.9 and 443.4 million cubic feet, have actually exceeded the 383 million cubic feet produced at Gasbuggy, and that another has produced a respectable 295.2 million cubic feet during its first six years of operation.

PROJECT RULISON

In Project Rulison, the second nuclear stimulation experiment, a 40 kiloton device was detonated about one mile and a half underground. Limited flow testing has led to varied calculations and it is difficult to have much confidence in the reliability of gas flow predictions for Rulison.

Further and continued testing is essential for completion of the Rulison experiment. However, the Austral Oil Company, which owns the rights to the Rulison gas, has "shut in" the well, contending that that gas is too valuable to be flared in production testing. Accordingly, they are pursuing and publicizing plans to sell gas from Rulison to the Rocky Mountain Natural Gas Company. Project officials estimate that two or more years will be required for CFR compliance. This lengthy but necessary addition to the gas recovery lead time is another disadvantage of the nuclear approach.

After four years, Austral estimates that the Rulison radioactivity level is about 7 to 10 picocuries per cubic centimeter. They propose mixing this gas with large quantities of higher quality gas from conventional wells, to achieve further reduction to about 17 percent of its present level of radioactivity and to improve the overall quality of the gas before it reaches the consumer.

Those critical of Rulison have pointed out that "this gas is not pipeline gas. It is a mixture of methane, hydrogen, carbon dioxide and steam. At the start of production,

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*CFR—Code of Federal Regulations.

the gas produced from the well was about 48 percent carbon dioxide and 17 percent hydrogen. When the well was shut in nearly a year later at the end of the third test, the 'gas' produced still included 25 percent carbon dioxide, 3 percent hydrogen, as well as some water." It is also feared that sooner or later Rulison's radioactivity may seep into the Colorado River system and contaminate the drinking water of 27 million people in seven states.

In defense of Rulison, AEC Chairman Dixy Lee Ray has countered that the initial gas did contain an appreciable amount of carbon dioxide, but that this was expected because of the decomposition of carbonate rocks; and that neither the Gasbuggy nor Rulison shots were economical, but that this too was expected because they were experimental wells designed to obtain data for evaluating the technical feasibility of nuclear stimulation. Yet, it is noted that Austral Oil Company's actions toward obtaining approval for sale of the Rulison gas are clearly contradictory to this argument.

With regard to production, Dr. Ray has stated that post-shot calculations based on 100 days of flow tests have shown good agreement with predictions, pointing out that the 450 million cubic feet of gas produced is more than could have been produced by a non-stimulated well in 30 years. Yet, it is clear that the long term production performance of Rulison remains unproven.

Final resolution of these points and counterparts requires reopening of the Rulison well for further testing. Sale of the gas was not a goal planned for any of the experimental wells. Economics and sound scientific procedure require that extended testing and data gathering at the existing sites be completed before new and perhaps equally inconclusive experimental wells are undertaken.

PROJECT RIO BLANCO

The third nuclear gas stimulation explosion took place on May 17, 1973. In this experiment, designated Rio Blanco and cosponsored by CER Geonuclear Coporation, Equity Oil, and the AEC, three 30 kiloton explosions were detonated more than a mile beneath the surface of the Piceance Basin in western Colorado. One of the test's primary goals was to determine whether or not the three vertically-placed explosions, which were predicted to produce three interconnecting chimneys for a total cavity depth of about 1200 feet with radius of about 70 feet, would stimulate a significantly increased volume of gas.

Another goal of Rio Blanco was testing of a new method of re-entry after the blast. The explosives were lowered into the well on a seven-inch drill-pipe which was cemented in place and filled with water and a concrete plug. It was anticipated that the well could be re-entered simply by drilling out the concrete plug after the explosion. Since this would eliminate need for drilling another re-entry well parallel to the original well, significant savings in re-entry cost were expected. However, the plan failed completely; the drill-pipe was so badly twisted and deformed by the explosion that the operator of of the well, Continental Oil Company, was forced to "whipstock" or drill out of the casing at an angle. This was reportedly done at a depth of 5300 feet, at a point about 545 feet above the predicted chimney cavity.

After several failures the well was finally re-entered on November 14, 1973, and production testing as well as tests of the radioactivity and chemical composition of the gas continued for six days. At the end of this time, the well was shut in to allow analysis of a rapid decline in pressure and time for equipment changes. The reasons for the rapid pressure drop are still not known. It has been speculated that perhaps only one of the three blast cavities has been tapped; that the blasts did not affect connection between the three chimneys as planned. The facts that three (one in each explosive) radioactive tracers were implanted in the wellbore for verification of interconnection and that only one has been detected on re-entry suggest this explanation.

Other speculations include the possibility that the fractures have become clogged with drilling mud, or that cooling, due to introduction of excessive amounts of mud into the cavity, has dropped the pressure. So far, 12,000 barrels of mud have been used in re-entry. It was intended that this mud, which was introduced for lubrication of the drill and for carrying cuttings to the surface, would be recirculated. However, recirculation has not been achieved. It is suspected that the mud has either fallen into the chimney or that it has been baked dry by the hot gas.

These complications and others, such as gas temperatures too hot (to 430° F) for the gas well equipment, a five times to 20 percent smaller than predicted gas production rate, and a 30 percent lower than predicted bottom hole pressure have forced officials to reconsider plans for Rio Blanco. A meeting for this purpose was held on December 10–14 in Las Vegas. As a result, special cooling equipment will soon be installed, and flow testing in spite of the pressure drop will continue after February 1, 1974.

RADIATION PROBLEMS

Questions of potential hazards from exposure to radioactive nuclides produced by the explosion also remain unresolved. For example, one of the radionuclides carried to the surface with the stimulated gas is Carbon–14. Discussions of its production are dismissed with the comment that it is produced in much smaller quantities (by a factor of 10 or more) than are tritium or Krpton–85. Yet the Rio Blanco environmental statement predicts producing of 22.5 curies of Carbon–14 in the initial Rio Blanco gas. Considering these figures for one well, one might conclude that the 1190 wells planned for development by 1990 may be expected to produce 26,800 curies of Carbon–14. This is nearly 100 million times the maximum total body content listed as permissible in a 40 hour week. Further, since it attacks the body's fat and bone tissues, one must expect that once it is inhaled or ingested into the body it remains permanently. Its half-life is 5,730 years. More careful consideration of this potentially dangerous radionuclide, which will remain with mankind for more than 150 generations, is essential.

Tritium concentration in the water produced and brought to the surface is also a problem. The Task Force study for the National Gas Survey has estimated that nuclear development of the Green River, Piceance and Unita Basins will result in production of 17,400 acre feet of water per year. It is estimated that the tritium concentration in this water will be six to fifty times greater than the maximum concentration permissible for water under existing federal standards.

Absolute containment of this massive quantity of water is doubtful. The very real possibility that it could contaminate the drinking water of millions of people in several states must be considered.

PROJECT WAGON WHEEL

The Wagon Wheel experiment, which is to involve for the first time sequential detonations of five 100 kiloton explosives, is planned for the Green River Basin in Wyoming. The five shots will be detonated with several minutes between explosions to avoid exceeding the 100 kiloton level considered acceptably safe.

At present, because of strong political and public opposition, work on this project is restricted to development of explosive devices capable of sequential firing in spite of exposure to nuclear shocks, and AEC Chairman Dixy Lee Ray has stated that in truth Wagon Wheel is "dead as a doornail."

The entire Plowshare budget for FY 1974 was in fact cut severely from the FY 1973 level of $6.8 million to $3.8 million, and it was required by the AEC Authorizing Legislation for FY 1974 that "special new techniques such as 'gas hydrofacturing' will be examined for purposes of comparison with nuclear stimulation." This massive cut in the Plowshare budget in the face of the growing energy crisis and the requirement for investigation of alternate hydrofacturing methods are further indications of growing disillusionment and disappointment in nuclear stimulation technology.

Nonetheless, planning and budgeting for something is continuing. In her proposed five-year plan for establishment of U.S. energy independence, Dr. Ray has included $56.2 million for a demonstration field experiment with stimulation of 5–6 wells with 3–5 explosions per well. As in Rio Blanco, the detonations in each well will be simultaneous, but each stimulation will be separated by several minutes. Further tests to develop a sequential firing capability will be conducted at the Nevada Test Site.

IMPACT ON NATIONAL GAS AND ENERGY NEEDS

In viewing the merits of spending these funds we must consider the impact or benefits which nuclear stimulation could bring to the people of the United States. It has been said that "our lot today with respect to energy and other scarce natural resources would be considerably better" had we "embraced Plowshare early" (Rep. Craig Hosmer), and that nuclear stimulation could solve the gas crisis in four years. I have studied the AEC's proposed schedule for full-field nuclear stimulation, and I believe that such statements are misleading and pure baloney!

By 1980, the AEC proposes stimulation of 190 wells. This would entail detonation of more than 750 nuclear bombs with explosive power totalling more than 75,000 kilotons, the equivalent of 3,750 Hiroshimas. Yet the total anticipated gas recovery, even using initial optimistic estimates now proven doubtful by the Gasbuggy results, could contribute only about 1.8 percent toward the 1980 U.S. natural gas requirements and a mere 0.8 percent toward meeting our projected total 1980 energy demands.

By 1990, with stimulation of 1,190 wells proposed, and detonation of more than 4,760 bombs having explosive power in excess of 23,800 Hiroshimas beneath the Piceance and Green River Basins of Colorado and Wyoming, the total anticipated gas could meet only about 5.1 percent of our natural gas demand and about 1.9 percent of our total energy demand. To me it is clear that even with full-field production only a small, virtually negligible percentage of U.S. demand for natural gas and energy could possibly be met by nuclear stimulated gas wells. Yet the price we will have to pay for such full-field recovery will be exposure to the really unknown after-effects of thousands of nuclear detonations with explosive power which by the year 2000 will total more than 50,000 times that of Hiroshima.

A more realistic estimate of the true situation was given by AEC Chairman James Schlesinger in January 1973, before the Joint Committee on Atomic Energy. Dr. Schlesinger spoke of the potential merits of the nuclear stimulation program, and I quote from the record: "It does not solve the problem. It makes a contribution to the solution of the problem." Further he said, "it is undesirable to go into a production program until we have a fuller support of the public." I point out to you that a 1973 straw vote in Sublette County, Wyoming, revealed 7 to 1 public opposition to use of nuclear explosives for recovery of Wyoming's speculated "tight" gas reserves.

UNREALISTIC PROJECTIONS

Another of Dr. Schlesinger's remarks on January 30, 1973, is also noted for your consideration: "Unless we are able to demonstrate the overall effectiveness of this program, including the availability of the gas in the near time frame, it would not alleviate the near term gas shortage." The AEC had foreseen that 20 nuclear stimulated wells would be productive in 1977, yielding a first-year gas production of about 86 billion cubic feet. Yet, as we begin 1974, it is clear that this projection was totally unrealistic. Gas production from Gasbuggy and Rulison has been disappointing. Rio Blanco, in view of its sudden excessive and unexplained drop in bottom hole pressure, is beginning to appear even more disappointing, and Wagon Wheel is deferred until 1977 at the earliest, if not "dead as a doornail."

Production lead times must also be considered. Gas company officials estimate, for example, that it will be late 1975 (about 2 years) before sale of the Rulison gas can be expected—provided that regulatory approval of sale of gas containing measurable quantities of radioactive contaminants with half-lives ranging from 10 to more than 5,000 years can be obtained. One must expect, therefore, that many years will pass, perhaps more than 20, before such gas can have even a few percent impact, upon our national gas crisis. By this time the relative importance of fossil fuels to our national energy supply will hopefully be diminished by the onset of a growing capability for energy recovery from alternate sources (nuclear, solar, etc.).

WASTE THAT MAKES WELFARE PROGRAMS LOOK EFFICIENT

The economics of nuclear stimulation bears a look. More than $11 million has been spent by the government alone on each of the three experimental wells thus far. At this rate, stimulation of 2,000 wells would cost more than $22 billion, and 13,000 wells would cost about $147 billion. If one considers industrial investment, the costs are even more staggering. By the end of FY 1974 government investment in nuclear stimulation will total about $36 million, and industrial investment will be about $46 million. The real costs of Gasbuggy, Rulison, and Rio Blanco therefore average out to more than $27 million per well. At this rate a 2,000 well field would cost $54 billion, and a 13,000 well field would cost $351 billion. In short, to be effective nuclear gas well stimulation alone could cost more than 35 times as much as President Nixon has proposed for meeting our energy R & D needs during the next five "crisis" years!!

Looking at it another way, Gasbuggy, Rulison and Rio Blanco costs so far total about $82 million. The total 25 year gas recovery projected is about 25 Bcf: 1 Bcf from Gasbuggy, 6 Bcf from Rulison, and 18 Bcf from Rio Blanco. Using wellhead costs now being proposed for sale of Rulison gas (between 50c and $1.20 per thousand cubic feet), the value of the gas recovered would be between $12.5 and $30 million. Thus, even with 25 years of production and recovery of all of the gas believed recoverable, only between 15 percent and 40 percent of the investment will be recovered.

Finally, even accepting the argument that a good investment return should not be expected from existing experimental wells and assuming the accuracy of AEC cost estimates for commercial well development ($3.34 million per well by government with a parallel of $4.35 million contribution by industry), the Gasbuggy, Rulison and Rio Blanco costs would total more than $23 million. When weighed against a marginal (at best) return from recovery of gas valued between $12.5 and $30 million, the potential hazards posed by detonation of more than 50,000 "Hiroshimas" cannot begin to be justified.

ENERGY TRADE-OFFS INVOLVED IN NUCLEAR GAS-WELL STIMULATION

Estimates of the number of wells that will have to be stimulated for recovery of the 300 trillion cubic feet of natural gas believed retrievable from submarginal reservoirs in the Rocky Mountain region range from 2,000 to 13,000. Such a program will endanger and expend vast amounts of our natural energy reserves. We must consider the potential dangers of loss, contamination, and/or increased difficulties in mining of the valuable uranium reserves of Wyoming, Colorado, and Utah, which make up more than 40 percent of our nation's total uranium reserves. Also endangered will be our coal reserves (more than 20 percent of national reserve) and shale deposits. The BTU content of the 1.8 trillion barrels of oil estimated to be recoverable from the Green River formation's shale is more than 30 times greater than that of the 300 trillion cubic feet of gas estimated to be retrievable by nuclear stimulation. Clearly, we cannot afford to endanger these vast shale resources.

DIVERSION OF URANIUM

We must also weigh the energy trade-off incurred by use of our uranium reserves for production of the nuclear explosions themselves. An AEC spokesman has indicated that the nuclear reactor program will require about 120,000 tons of U_3O_8 in the year 2000. This is more than twice the amount (about 51,000 tons) the Bureau of Mines estimates will be produced in that year. Using very limited information, which the AEC was able to provide for me on an unclassified basis on January 7, 1974, I have concluded that between 6,170 and 40,105 tons of uranium would be consumed by full-field gas well stimulation. With this diversion a much more severe shortage of uranium must be anticipated.

Nuclear well simulation could consume as much as 3 years of U_3O_8 production at the 1971 production rate (12,260 tons), or, looking at it another way, it could consume more than ¾ of the entire amount of U_3O_8 projected for production in the year 2000. Yet nuclear stimulation could at best contribute only about 5 percent toward meeting our 1990 demand for gas and less than 2 percent toward meeting our total energy needs. Though the AEC contends that the energy yield from nuclear stimulated gas will be greater than could be derived from the fissile materials used, I must continue to contend, on the basis of the information made available to me, that this diversion of vital and already scarce uranium reserves in return for an almost negligible contribution to our energy economy cannot be justified.

The natural gas flared during flow testing of experimental wells is another energy resource already lost in this wasteful procedure. The AEC reported on December 13, 1973, that a total of 876 million cubic feet of gas has been flared from its experimental wells: 383 million from Gasbuggy, 455 million from Rulison, and 38 million from Rio Blanco. In terms of energy trade-offs, the BtU content of this flared gas was sufficient to supply the electrical energy needs of the entire State of Wyoming for more than a month.

A similar consideration of the uranium already expended in the Gasbuggy, Rulison, and Rio Blanco experiments shows that at least one ton of natural uranium has already been consumed in production of the nuclear devices detonated. If used in a high performance fission breeder reactor this ton of uranium could produce enough electricity to meet the needs of the entire State of Wyoming for more than 4 years!

GO CONVENTIONAL, GET GAS NOW

In closing, I would like to emphasize that I am *not* opposed to recovery of the gas locked in our Western reserves. I am opposed to the nuclear method of recovery. "The end does *not* justify the means." New technologies for releasing the gas from tight rock formations by hydrofracturing and by combined use of conventional chemical explosives with hydraulic fracturing are here, now. Because of our spectacular visions for Plowshare, these alternate approaches have not been adequately funded in the past, and, unfortunately, are still not receiving equitable support in Dr. Dixy Lee Ray's proposed five-year energy R. & D. budget. Whereas the government has spent more than $34 million on the nuclear method, less than $1 million ($715,000 between FY 1963 and FY 1973) has been expended for non-nuclear mehods. Dr. Ray's proposed budget continues this unbalanced funding with requests of $56.2 million for nuclear gas stimulation and only $40.1 million for all types of non-nuclear gas recovery.

Two non-nuclear methods have been used in the United States, one involving "shooting" with high chemical explosives and the other involving injection of liquids under high pressure. Both techniques cause fracturing of the tight rock formations. In the hydrofracturing procedure, sand or some other material held in suspension by the fluid being injected is forced into the cracks. These materials remain in the artificially created crevices and hold them open so that the gas has a comparatively smooth permeable pathway to the wellbore.

With nuclear stimulation, on the other hand, it is quite likely that the initial fractures produced by the explosion are soon forced to close again by the tremendous depth pressures. Industrial experimenters have also reported that the area of tight rock formation exposed to the "pressure sink" which forces the gas to the wellbore "will be at least comparable, and may be considerably higher with massive hydraulic fracturing" because the gas can enter the fracture from both fracture faces. In nuclear stimulation, "all gas flow . . . is radially inward to the nuclear fractured area. In the hydraulic fracture system, the flow in tight rock is largely linear and enters the fracture from both sides of the fracture."

ADVANTAGES OF NON-NUCLEAR RECOVERY

In spite of the absence of federal funding incentives which the nuclear method has enjoyed, the advantages of non-nuclear methods are beginning to be recognized. With non-nuclear recovery there are no fears of nuclear hazards or problems with sale of substandard or contaminated gas. There are no costly trade-offs of valuable uranium or gas lost in flaring. Costs are also far more favorable, as demonstrated by the fact that twenty-nine wells near the Rio Blanco site have already been successfully stimulated, by nonnuclear methods, at an average cost of only $14,000 per well.

It is clear that the non-nuclear methods are in every respect worth going after, and that is exactly what industry is beginning to do. AMOCO is using a new fracturing fluid composed of water and hydro-carbon condensates, in combination with a patented system of varying pumping pressures and rates, to increase the yield from its Wattenberg Field in Colorado. They project that this new technique should improve both the initial and long-term production rates of their wells by more than a factor of two. Even CER Geonuclear Corporation, which cosponsored the Rio Blanco nuclear blasts and has been a staunch advocate of nuclear stimulation, has now begun promotion of hydraulic fracturing as an alternative to nuclear blasting. CER vice president, Hal Aronson, announced in late December 1973, that they are in fact planning for testing of an hydraulically fractured well near the Rio Blanco site for comparison with their nuclear well results.

I wish to commend both AMOCO and CER for these efforts. I intend to continue to do all that I can through my Congressional Committees to see that such efforts receive greater support from the government. The U.S. Bureau of Mines has already been appropriated $922,000 in FY 1974 for massive hydraulic fracturing, for combined hydraulic fracturing and high chemical explosive experiments, and for drilling and fracturing of deviated wells to improve recovery by intersection with natural fractures. A supplementary request for $1.8 million to expand these programs in FY 1974 is awaiting approval by the House and Senate Interior Appropriations Subcommittees.

You may be assured of my continued support for these promising but long-neglected programs. However, after weighing my findings from more than three years of study, you may also be assured of my continued firm opposition to any extension or expansion of Plowshare's wasteful and dangerous efforts at nuclear recovery.

DEPARTMENT CONCURRENCE

In conclusion, Mr. Speaker, I returned from Denver after delivering the above paper, and was immediately admitted to Bethesda National Naval Medical Center where one of my fellow patients there for a few days was Rogers C. B. Morton, the Secretary of the Interior. I handed him a copy of this speech and asked for his candid evaluation and I am happy to report his letter to me which supports the contention of the Department of the Interior that the continuation of any full field Rio Blanco development would preclude the orderly and efficient development of the overlying oil shale resource. Thus to continue this program would be to jeopardize one of the most valuable public assets left in the national inventory. His letter follows:

THE SECRETARY OF THE INTERIOR,
Washington, D.C., February 22, 1974.
Hon. TENO RONCALIO,
House of Representatives,
Washington, D.C.

DEAR TENO: I had the opportunity to review your paper on the nuclear extraction program with some of our people. There seems to be very little disagreement with your conclusions.

As you may remember, the Department of the Interior participated as a co-sponsor in Project Gas Buggy and Project Rulison. Subsequent to the Rulison Project all of the funds available to the Department for gas stimulation investigations have been expended on development of various forms of hydrofracturing technology which we in the Department feel have more favorable cost-benefit ratios and also have potential applications in oil recovery.

The Department was not a co-sponsor of Rio Blanco and indeed it has been the position of the Department that implementation of the full field Rio Blanco development would preclude orderly and efficient development of the overlying oil shale resource.

I hope this finds you fully recovered from your bout in the hospital.

Yours sincerely,

ROGERS C. B. MORTON.

INDIANA DUNES

(Mr. ROUSH asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. ROUSH. Mr. Speaker, last week I reintroduced legislation that I introduced last year to expand the present boundaries of the Indiana Dunes National Lakeshore so that I might add cosponsors.

It was in 1966 that the Congress approved the first legislation creating the National Lakeshore, but at that time certain important pieces of land were not included; since then, it has become obvious that certain other additions are necessary to protect the original investment that has been made in land purchases for the present national lakeshore.

Since 1966 many acres of unprotected Indiana Dunes have been destroyed at the very threshold of the national lakeshore and we can expect more of the same unless this legislation adding 5,328 acres to the national lakeshore is passed.

In 1963 a compromise solution was worked out between those who supported a park along the shores of Lake Michigan and those who wanted a port. We were to have both. The bill that was introduced to create the national lakeshore called for an area significantly larger than that which finally passed the Congress. Thus you will find in this bill today areas contained in the original 1963 compromise proposal as well as other significant additions.

This proposed legislation reflects my intention, and that of the cosponsors, to save some of the irreplaceable dunes and wetlands surrounding the present park boundaries since they are now threatened by urban and industrial development.

The bill in hand would include certain buffer zone additions, wooded dunes parcels in the West Beach area; semideveloped lands, such as the remaining sections of the town of Beverly Shores, which are still outside the park and which contain valuable dunes. Wooded and moving dunes in the Ogden Dunes area are included.

This bill adds to the National Lakeshore a blue heron nesting haven in the Little Calumet wetlands area. The blue heron haven is an important wildlife refuge. The Little Calumet bottomlands is an important potential recreation spot for stream-bank fishing and canoeing. Cattail marshes, dune ridges and oak groves in the Old Glacier Lake Dunes unit would be added thus including an area that also provides a unique display of successive stages of the old lake bottom and shoreline dunes.

Presently, there are small areas surrounded by but not included in the boundaries of the national lakeshore in Porter County; these I believe should be included. Toward Gary, we need to add a Long Lake extension unit in order to control the entire watershed of Long Lake to prevent future pollution damage to the waters in the present park area. This bill would also seek to protect Pinhook Bog from pollution. The bog is a national landmark area, a region of intense botanical and ecological significance. Its boundaries would be enlarged.

A total of 5,328 acres are recommended for inclusion. The bill has been so drawn as to avoid, where possible, areas where there has been a great deal of improvement.

It is impossible to assess the value of these lands for the present and for the future. What we are dealing with here is an area with rare scenic, geological, ecological characteristics; a region that should serve as a prime recreational area, a place in which to learn first-hand about nature and observe unimpeded balances in operation. Such an area cannot be replaced or reproduced. Unless we act now, some of the lands involved, and the wildlife, will disappear permanently, maybe to appear in textbooks in the future. For indeed, other uses will be made and proper care will not be taken to insure continued flourishing of the flora, the animal life, the dunes—unless we take the precaution to preserve this heritage now.

Those of you who live in or near the Midwest are aware of the importance of this national lakeshore as a prime recreational area for a highly urbanized region. Contracts for planning for construction in the area have been let and the national lakeshore will have beachhouses and parking facilities, nature trails for the more than 10 million people who live and work within easy access to the present lakeshore and the proposed additions.

But someone has said all of this much better than I. At the formal dedication of the national lakeshore in 1972, Secretary of the Interior, Rogers C. B. Morton, described the present park as "an enclave." He went on to say that it would preserve one of our most unique shore areas and also provide outdoor recreation and environmental educational opportunities for some 87,000 visitors daily—thus indicating the regional and national significance of the area.

According to Secretary Morton:

Indiana Dunes is a paradise of white sands, shoreline, and rich wetlands, of cottonwoods, sassafras, and jack pine, of egrets, whistling swans, and beaver.

He went on to say:

Indiana Dunes will be a laboratory for naturalists;

A recreational area for hikers and campers; and

An environmental classroom for thousands of children who will study nature's ways in the wooded area and bogs here.

I concur with Secretary Morton's assessment of the value and the potential of the present national lakeshore. I want to add to it parts that were intended for inclusion in the first bills and add other areas valuable and significant for the thousands who will enjoy the national lakeshore. Surely we can afford to add these acres for the recreation and education of the American people. I hope the Congress will speedily pass this legislation.

SPECIAL PRESIDENTIAL ELECTIONS

(Mr. BINGHAM asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BINGHAM. Mr. Speaker, the steadily accumulating evidence of corruption, criminal behavior, and abuse of the powers of Government by the present administration has put into motion the impeachment machinery provided in the Constitution. Impeachment is the only tool provided by the framers of the Constitution for dealing with suspected Presidential wrongdoing between elections, and it is the only process to which the President is fully accountable. I have supported the initiation of impeachment proceedings and I shall continue to do so, since impeachment by the House and trial by the Senate provide the only hope for resolving the serious charges involved.

However, I am convinced of the need

for an alternative procedure for dealing with serious misconduct by the President or his administration. Impeachment frightens millions of people who see it as an invitation to national political disruption, bitterness, and instability involving months or even years without national leadership and attention to the thousands of other pressing problems which confront the Nation. A careful examination of the nature of an impeachment trial in the Senate gives weight to these fears, for that part of the process involves tremendous complications and virtually unlimited opportunities for delay and divisiveness. It is conceivable that the question of impeachment of this President may be with us for years.

Such fears led me to introduce on May 8, 1973, an amendment to the Constitution which would empower the Congress to call new Presidential elections by statute whenever it might determine that "the President has lost the confidence of the people to so great an extent that he can no longer effectively perform his responsibilities." Such a law would no doubt require a two-thirds vote of both Houses since it presumably would have to be passed over a Presidential veto. A President accused of pervasive misconduct in his administration or of serious election irregularities would be allowed, if he chooses, to run in any such new Presidential election called by Congress. The effect of such new elections would then be to let the people decide whether a President and Vice President should be removed from office, and if so, who would replace them. Such new elections would be a constructive solution which would produce a new mandate to govern, in contrast to impeachment which might further weaken public confidence in government rather than reestablish it. The result of a successful impeachment proceeding would be to replace a discredited President with his Vice President, who may himself command little public confidence, or who, as in the present case, may not have been chosen by the national electorate.

I commend this proposal to the attention of my colleagues, and include the full text of my resolution at this point in my remarks.

H.J. Res. 547

Joint resolution proposing an amendment to the Constitution of the United States relating to the election of the President and Vice President

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"Article —

"Section 1. Whenever the Congress may determine that the President has lost the confidence of the people to so great an extent that he can no longer effectively perform his responsibilities, the Congress may by law provide that the term of the President and Vice President shall end on a date certain before the expiration of the four-year term and may by law provide for a special election for the Presidency and the Vice Presidency.

"Sec. 2. Unless the incumbent President or Vice President shall have been impeached and removed from office, they shall be eligible to seek election."

EMPLOYEE BENEFIT SECURITY ACT OF 1974

(Mr. PERKINS asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. PERKINS. Mr. Speaker, as the Members know, on last Tuesday the Committee on Rules granted a modified rule on H.R. 2, making it in order for the House to consider an amendment in the nature of a substitute to H.R. 2. That amendment represents the work of many weeks by both the Committee on Education and Labor and the Committee on Ways and Means.

On Tuesday afternoon, the Committee on Education and Labor met and approved title I of this amendment in the nature of a substitute. Since the amendment incorporates very substantial changes in substance and detail from H.R. 2, I thought it would be useful for the Members of the House to have an opportunity to see material in the nature of a committee report that they may be better informed on the bill and its substance when we debate it later this week:

Employee Benefit Security Act of 1974: Material Explaining H.R. 12906 Together With Supplemental Views

[To accompany H.R. 2]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2) to revise the Welfare and Penson Plans Disclosure Act, having considered the same, reported favorably thereon and recommended that the bill pass. On February 19, 1974 the Committee considered and approved the text of H.R. 12906 and authorized the Chairman to offer those provisions as a Committee amendment in the form of a substitute for the text of H.R. 2 when it is considered by the House.

The Committee, in acting on this bill, anticipates that it will, in the House action, become a part of a bill dealing with retirement plans on both the broad basis contained in this bill as well as specific provisions dealing with qualifications for preferential treatment for tax purposes. It is expected that this bill will be combined with H.R. 12855, reported by the Committee on Ways and Means. Because of the coordination between the two bills, it is not expected that the dual jurisdiction provided for in the bill in the areas of participation, vesting and funding will present problems. Not only have the standards in the two bills been coordinated, but also provisions have been made for joint regulations in areas where problems might otherwise arise.

I. SYNOPSIS

The Employee Benefit Security Act as reported by the Committee is designed to remedy certain defects in the private retirement system which limit the effectiveness of the system in providing retirement income security. The primary purpose of the bill is the protection of individual pension rights, but the committee has been constrained to recognize the voluntary nature of private retirement plans. The relative improvements required by this Act have been weighed against the additional burdens to be placed on the system. While modest cost increases are to be anticipated when the Act becomes effective, the adverse impact of these increases have been minimized. Additionally, all of the provisions in the Act have been analysed on the basis of their projected costs in relation to the anticipated benefit to the employee participant. In broad outline, the bill is designed to:

(1) establish equitable standards of plan administration;

(2) mandate minimum standards of plan design with respect to the vesting of plan benefits;

(3) require minimum standards of fiscal responsibility by requiring the amortization of unfunded liabilities;

(4) insure the vested portion of unfunded liabilities against the risk of premature plan termination; and

(5) promote a renewed expansion of private retirement plans and increase the number of participants receiving retirement benefits.

Provision is made for the imposition of criminal penalties on those willfully violating their duties under the Act. The Labor Department is given primary authority to administer the provisions of the Act, but the Committee has placed the principal focus of the enforcement effort on anticipated civil litigation to be initiated by the Secretary of Labor as well as participants and beneficiaries.

II. BACKGROUND

The private pension system is a relatively modern economic institution tracing its role as an important social and economic factor only from the mid 1940's. A variety of converging financial and social trends in our society have created a favorable environment for the growth and expansion of private deferred compensation schemes and retirement programs in general. As our economy has matured, an ever increasing number of employers have recognized their responsibility for the physical and economic welfare of their employees, even for the years beyond retirement. Its development parallels and is a response to the transition of the American life style from its rural agrarian antecedents into its present urbanized, wage earner society. The dynamic asset growth necessary to meet its responsibilities has placed the private pension system in a position to influence the level of savings, the operation of our capital markets, and the relative financial security of millions of consumers, three of the fundamental elements of our national economic security.

The growth of the private pension movement in the United States proceeded slowly until the years preceding World War II. As the full implications of the economic changes sweeping the nation were felt, American beliefs and attitudes regarding retirement security changed. The passage of the Railroad Retirement Act and the Social Security Act marked the turning point in American thinking, and dissatisfaction with those early governmental programs contributed to an accelerated interest in private retirement plans. The wage freezes imposed during World War II and the Korean conflict focused increased attention on the deferred component of compensation as a means of avoiding the freeze restrictions.

In 1947 a series of administrative proceedings and court decisions under the National Labor Relations Act of 1935 held that pensions were a form of remuneration for the purposes of that Act, and they accordingly became mandatory subjects of collective bargaining. (Inland Steel Company v. NLRB, 170 f.2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960 (1949)). In the same time period a Presidential fact finding commission in presenting its report on the steel industry labor dispute in 1949 stated that:

"We think all industry in the absence of adequate Government programs owes an obligation to workers to provide for maintenance of the human body in the form of medical and similar benefits and full depreciation in the form of old age retirement—in the same way as it now does for plant and machinery."

In 1940, an estimated four million employees were covered by private pension plans; in 1950, the figure had increased to almost 10 million and in 1960 over 21 million were covered. Currently, over 30 million employees or almost one half of the private non-farm work force are covered by these plans. This phenomenal expansion of coverage has been matched by an even more startling accumulation of assets to back the benefit structure. Today, in excess of $150 billion in assets are held in reserve to pay benefits credited to private plan participants.

This rapid growth has constituted the basis for legislative efforts at both the federal and state levels to assure equitable and fair administration of all pension plans.

Various aspects of pension plans have been affected to some degree by most of the major labor legislation of the twentieth century, including the National Labor Relations Act (1935), the Labor Management Relations Act (1947), and the Labor Management Reporting and Disclosure Act (1959). However, not until 1958, with the enactment of the Welfare and Pension Plans Disclosure Act, was legislation effected which was specifically designed to exercise regulatory controls over pension and welfare funds. Based upon disclosure of malfeasance and improper activities by pension administrators, trustees, or fiduciaries, the Act was amended in 1962 to designate certain acts of conduct as federal crimes when they occurred in connection with welfare and pension plans. The amendments also conferred investigatory and various regulatory powers upon the Secretary over pension and welfare funds. In the decade since the amendments were enacted, experience has shown that, despite intermittent enforcement of the reporting requirements and the criminal provisions, the protection accomplished by statute has not been sufficient to accomplish Congressional intent.

THE EXISTING LAW

The growth and development of the private pension system in the past two decades has been substantial. Yet, regulation of the private system's scope and operation has been minimal and its effectiveness a matter of debate. The assets of private plans, estimated to be in excess of $150 billion, constitute the only large private accumulation of funds which have escaped the imprimatur of effective federal regulation.

At the federal level, there are essentially three federal statutes which, although accomplishing different purposes and vested within different federal departments for enforcement, are all compatible in their regulatory responsibilities. These are the Welfare and Pension Plans Disclosure Act (29 U.S.C. Sec. 301 et. seq.), the Labor Management Relations Act (29 U.S.C. Sec. 141, et. seq.) and the Internal Revenue Code I.R.C. of 1954, Secs. 401–404, 501–503).

A complete description of the federal regulation affecting the administration of private plans can be found in Interim Report of The Private Welfare and Pension Plan Study, 1971, Senate Report No. 92–634 of the 92d Congress, 2d Session.

After a comprehensive investigation of abuses in the administration and investment of private fund assets, Congress adopted the Welfare and Pension Plan Disclosure Act in 1958. The policy underlying enactment of this Act was purportedly to protect the interest of welfare and pension plan participants and beneficiaries through disclosure of information with respect to such plans. The essential requirement of the Act was that the plan administrator compile, file with the Secretary of Labor, and send to participants and their beneficiaries upon written request, a description and annual report of the plan. It was expected that the knowledge thus disseminated would enable participants to police their plans. The Act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks federal crimes if they occur in connection with welfare and pension plans. The 1962 amendments also conferred limited investigatory and regulatory powers upon the Secretary of Labor, and required bonding of plan officials.

Experience in the decade since the passage of the above amendments has demonstrated the inadequacy of the Welfare and Pension Plans Disclosure Act in regulating the private pension system for the purpose of protecting rights and benefits due to workers. It is weak in its limited disclosure requirements and wholly lacking in substantive fiduciary standards. Its chief procedural weakness can be found in its complete reliance upon the initiative of the individual employee to police the management of his plan.

The Labor Management Relations Act, Sec. 302, provides the fundamental guidelines for the establishment and operation of pension funds administered jointly by an employer and a union. The Act is not intended to establish nor does it provide standards for the preservation of vested benefits, funding adequacy, security of investment, or fiduciary conduct.

Tax deduction benefits accruing to employers are prescribed by the Internal Revenue Code under which the employer is granted a deduction within certain limits for contributions made to a qualified plan, and the investment earnings on such plans are made tax-exempt. To attain "qualified status" under the Code, the plan must be (1) for the exclusive benefit of the participants; (2) for the purpose of distributing the corpus or income to the participants; (3) established in such a manner to make it impossible for the employer to use or divert funds before satisfying the plan's liabilities; and (4) not discriminate in favor of officers, stockholders, or highly-compensated or supervisory employees.

The Internal Revenue Code provides only limited safeguards for the security of anticipated benefit in private plans since its primary functions are designed to produce revenue and to prevent evasion of tax obligations. The essence of enforcement under the Code lies in the power of the Internal Revenue Service to grant or disallow qualified status to a pension plan, thus determining the availability of statutory tax advantages. The Internal Revenue Service jurisdiction and enforcement capabilities are solely to allow various tax advantages to accrue to employers who establish and maintain pension plans which can qualify for such tax benefit privileges.

In the absence of adequate standards, the participant is left to rely on the traditional equitable remedies of the common law of trusts. A few states, including New York, Washington, Wisconsin, Massachusetts, and California have codified existing trust principles and enacted legislation which requires in many instances a degree of disclosure similar to that required by federal statute.

The fact that statutory rules exist says little as to their efficacy in adjusting inequities that are visited upon plan participants, as evidenced by the hearings before this Committee. In almost every instance, participants lose their benefits not because of some violation of federal law, but rather because of the manner in which the plan is executed with respect to its contractual requirements of vesting or funding. Courts strictly interpret the plan indenture and are reluctant to apply concepts of equitable relief or to disregard technical document wording. Thus, under present law, accumulated pension credits can be lost even when separated employees are within a few months, or even days, of qualifying for retirement.

The proposed bill would, therefore, establish minimum standards of vesting, funding, and fiduciary and a system of compulsory benefit insurance to protect the security of pension rights.

As suggested by the President's Cabinet Committee Report of 1965; "As a matter of equity and fair treatment an employee covered by a pension plan is entitled, after a reasonable period of service, to protection of his future retirement benefit against any termination of his employment." Concern for loss of benefits by workers after long years of labor through circumstances beyond their control was similarly expressed by President Richard M. Nixon on December 8, 1971, when, in a message to the Congress he said, "When a pension plan is terminated, an employee participating in it can lose all or part of the benefits which he has long been relying on, even if his plan is fully vested . . . even one worker whose retirement security is destroyed by the termination of a plan is one too many."

III. MAJOR ISSUES

Although the need for legislative reform has been and continues to be widely acknowledged among all persons and sectors affected, federal mandation of essential improvements has been resisted due to the belief that such legislation might impede plan growth. However, the Committee's inquiries have revealed that the costs associated with the vesting and funding proposals in the Act are sufficiently modest as not to constitute a major impediment to plan growth. Additionally, any added cost attributable to the imposition of vesting and funding standards will innure directly to the benefits and added security.

The principal issues affecting the vital and basic needs for legislation involved consideration of the essential elements of pensions:

Problem areas

While the achievements of private retirement plans are substantial, a number of serious problems have become apparent. Those dealt with by this bill can be briefly outlined as follows:

Inadequate coverage.—Despite the rapid growth in pension coverage, about one-half of all employees in private nonagricultural employment are still not covered. Moreover, many plans have overly restrictive age and service requirements for participation, resulting in the exclusion of many employees.

Inadequate vesting.—Present law generally does not require an employee plan to give a covered employee vested rights to benefits—that is, the right to receive benefits if he leaves or loses his job before retirement age. Many private pension plans do provide vested rights to benefits before retirement, but as a general rule, employees do not acquire vested rights until they have served a fairly long time with the firm and/or are relatively mature. As a result, even employees with substantial periods of service may not acquire rights to pension benefits upon separation from employment.

Inadequate funding.—A significant number of pension plans are not adequately funded—that is, they are not accumulating sufficient assets to pay benefits in the future to covered employees. Under the present minimum funding requirements, contributions to qualified plans must be at least large enough to pay the normal costs (the pension liabilities created in the current year) plus the interest on unfunded accrued liabilities attributable to the past service of the covered employees. However, this minimum funding requirement is not adequate because it does not require the unfunded accrued liabilities for past service to be amortized.

Additionally, untimely termination of plans prior to completion of the funding cycle has led to inadequate reservers to meet plan liabilities where past or prior service credits are granted. No satisfactory vehicle currently exists to protect participants against such losses.

IV. PROVISIONS OF THE BILL

The bill deals with these problems in many different ways. The principal provisions of the bill are summarized below:

SUBTITLE A—CONTENTS; POLICY; DEFINITIONS

Purposes

The Employee Benefit Security Act is designed (1) to establish minimum standards of fiduciary conduct for Trustees, Administrators and others dealing with retirement plans, to provide for their enforcement through civil and criminal sanctions, to require adequate public disclosure of the plans' administrative and financial affairs, and (2) to improve the equitable character and soundness of private pension plans by requiring them to: (a) vest the accrued benefits of employees with significant periods of service with an employer, (b) meet minimum standards of funding and (c) guarantee the adequacy of the plan's assets against the risk of plan termination prior to completion of the normal funding cycle by insuring the unfunded portion of the benefits promised.

Section 1. Findings
Section 2. Declaration of policy
Section 3. Definitions

1. Employee Welfare Benefit Plan
2. Employee Pension Benefit Plan
3. Employee Benefit Plan (or Plan)
4. Employer Organization
5. Employer
6. Employee
7. Participant
8. Beneficiary
9. Person
10. State
11. Commerce
12. Industry or Activity Affecting Commerce
13. Secretary
14. Party in interest
15. Relative
16. Administrator
17. Separate Account
18. Adequate Consideration
19. Nonforfeitable (Pension Benefit or Right)
20. Security
21. Fiduciary
22. Regular Retirement Benefit
23. Accrued Benefit
24. Normal Retirement Age
25. Vested Liabilities
26. Current Value
27. Present Value
28. Normal Service Cost
29. Present Value of Annuity Certain
30. Accrued Liability
31. Unfunded Accrued Liability
32. Advance Funding Actuarial Cost Method (Actuarial Cost Method)
33. Government Plan
34. Church Plan
35. Individual Account Plan
36. Defined Benefit Plan
37. Supplemental Plan
38. Multiemployer Plan
39. Investment Manager

SUBTITLE B—REGULATORY PROVISIONS

Part 1—Fiduciary responsibility and disclosure

Section 101. Coverage

Title I would cover all private employee benefit plans under Commerce Clause jurisdiction except:

1. Federal, State and local governmental plans;
2. Plans required under workmen's compensation, unemployment compensation, and disability insurance laws;
3. Plans established or maintained outside the United States for the benefit of non-United States citizens;

4. Unfunded deferred compensation schemes of top executives.

Section 102. Duty of disclosure and reporting

The administrator of a pension or welfare plan would be required to publish to each participant or beneficiary a description of the plan as set forth in section 103 and a summary of the annual financial report as set forth in section 104. The report woud be in such form and detail as the administrator finds necessary to disclose fully and fairly all pertinent facts.

Upon termination of a pension or welfare plan, the administrator would be required to file a special terminal report as prescribed by the Secretary of Labor.

Section 103. Description of the plan

Plan descriptions would be required to be published within 120 days after the establishment of a plan or within 120 days after a plan becomes subject to this title, whichever is later. Amendments to plans would have to be published within 120 days, and descriptions would have to be republished at least every 5 years. The description would have to be comprehensive and written in a manner calculated to be understood by the average plan participant. Among other things it would have to include: the name and address of the administrator; the schedule of benefits; a description of the plan's vesting provisions; the source of the plan's financing; and the procedures to be followed in presenting claims for benefits as well as those for appealing claims which are denied.

Section 104. Annual reports

An annual financial report to the Secretary of Labor would be required by this section for all plans. Sec. 105 provides that the Secretary shall exempt plans with less than 26 and may exempt plans with less than 100 participants. Information required in the report would include:

An audit and opinion by an independent qualified public accountant (with exceptions for public plans and financial statements certified by a bank or insurance carrier);

An actuarial statement of valuation (where appropriate) accompanied by a certification from the actuary preparing the valuation;

The number of employees, benefits paid, and information regarding fiduciaries, trustees and administrators and compensation paid them;

A summary financial statement of assets and liabilities;

A summary of receipts and disbursements;

A schedule of all assets listed by issuer;

A schedule of known party-in-interest transactions;

A schedule of loans which are in default and uncollectible;

A schedule of leases which are in default and uncollectible;

A bank or insurance carrier statement of assets and liabilities for common and collective trusts.

If some or all of the plan's assets are held in common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the bank or carrier would also be required to file a statement of assets and liabilities.

If some or all of the benefits under the plan are provided by an insurance carrier or other organization, such report would also have to include: The premium rate or subscription charge and the total premium or subscription charges paid to each carrier and the approximate number of persons covered by each class of benefits; the total premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carriers, or, if separate experience ratings are not kept, a statement as to the basis of a carrier's premium rate or a copy of the financial report of the carrier.

Section 105. Publication

The Secretary would be authorized to reject any report which after a hearing before him was found to be incomplete or to contain a qualified opinion by an accountant or an actuary.

A copy of the plan description and each annual report would have to be filed with the Secretary of Labor who would make them available for inspection in the public document room of the Department of Labor. The administrator would be required to make copies of the annual report and plan description as well as the bargaining agreement, and trust instrument creating the plan available for examination by any plan participant or beneficiary in the administrator's principal office, and in such other place as necessary to fully and fairly disclose all pertinent facts.

All pension and welfare plan participants would be furnished with a copy of the plan description initially and a description of any subsequent amendment, including:

A schedule of benefits;

Eligibility and vesting provisions;

Claim procedures and remedies;

Basis of financing;

Other relevant plan provisions affecting their rights and the annual report, including a summary financial statement of assets and receipts and disbursements, and the ratio of assets to value of nonforfeitable pension benefits.

Upon written request to the plan administrator, or a participant could receive a copy of a statement as to his or her rights and the amount of any nonforfeitable benefit; and a copy of the plan, trust, bargaining agreement or other document. These copies would be furnished at the cost of reproduction.

Upon termination, all pension plan participants would receive a statement showing his or her benefits, indicating when and how they may be claimed, and including any other information affecting their rights.

A statement of a pension plan participant's right to deferred vested benefits from former pension plans would be furnished upon request to the Social Security Administration and when action is taken on the participant's Social Security account. To assure timely filings and payment of vested benefits, the address and identity of all plans would be kept up-to-date.

Section 106. Disclosure of benefit rights to participants

The administrator is required to inform each participant when his benefits become nonforfeitable. Upon written request of any participant or beneficiary, the administrator is required to disclose the rights of that participant.

Violation of the provisions dealing with the retention of records subjects a person to a fine of up to $5,000 and/or imprisonment of up to 2 years. Violations of the provisions of 111(b)(2) (dealing with prohibited transactions) would subject a person to a fine of up to $10,000 and/or up to 5 years' imprisonment.

This section would give the Secretary of Labor authority to investigate any plan. He would be given authority to demand sufficient information as he may deem necessary to enable him to conduct his investigations.

Plan participants, beneficiaries, or the Secretary of Labor on behalf of the participants and beneficiaries would be allowed to bring civil actions to redress breaches of a fiduciary's responsibility or to remove a fiduciary who has failed to carry out his duties. The Secretary would also be empowered to bring an action to enjoin any act or practice which appears to him to violate the title. Civil actions brought by a participant or beneficiary may be brought in any court, State or Federal. However, the Secretary would have the right to intervene in a case and remove it to a Federal district court. In any actions by a participant or beneficiary, the Court could, at its discretion, allow reasonable attorneys' fees and costs of action to either party. Class actions shall be brought where requirements for class actions could be met.

Section 107

All reports filed with the Secretary shall be public information.

Section 108

Detailed records must be retained for 6 years.

Section 109

Proven reliance upon a regulation or written interpretation by the Secretary of Labor would constitute a defense in a criminal or civil proceeding under certain sections of the act.

Section 110

Persons subject to the fiduciary provisions of the act would have to be bonded.

Section 111. Fiduciary responsibility

This section would deem every employee benefit fund to be a trust held for the exclusive purpose of providing benefits to participants and their beneficiaries as well as defraying reasonable administrative expenses. Each plan would have to be in writing.

A fiduciary is defined in section 3(29) as anyone who exercises any power of control, management or disposition with regard to a fund's assets or who has authority to do so or who has authority or responsibility in the plan's administration. Fiduciaries would be required to discharge their duties with respect to the fund ". . . solely in the interest of the participants and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

A fiduciary would also have to diversify the investments, except in the case of profit-sharing, stock bonus, or thrift and savings plans, so as to minimize the risk of large losses under the circumstances it is prudent not to do so and in accordance with the documents and instruments governing the fund.

A fiduciary would be specifically prohibited from making the following transactions:

Dealing with such fund for his own account . . .

Acting in any transaction involving the fund on behalf of a party adverse to the interests of the plan or participant . . .

Receiving personal consideration from any party dealing with the fund in connection with a transaction involving the fund . . .

Transferring property to any party in interest for less than adequate consideration . . .

Permitting the acquisition of property from any party in interest for more than adequate consideration.

Section 112. Pension plan termination

An equitable priority distribution of assets would be provided upon plan termination. Assets not previously allocated to individual accounts would have to be distributed according to the following priorities:

(a) Contributions by employees would be returned;

(b) Those presently receiving benefits and those who could voluntarily elect to receive benefits;

(c) Those other than in (b)—to the extent of their vested benefits;

(d) All others, including the nonvested benefits of those in (c).

Benefit increases within 5 years prior to plan termination would trigger an allocation based on the prior benefit formula, any remaining assets being distributed on the basis of increases in the more recent benefit formulas:

(e) Investment income attributable to employee contributions would be distributed pro rata to the employees' accounts.

(f) Any benefit liabilities incurred as a result of plan termination would be given last priority.

(g) Any remaining assets would be returned to the employer if the plan so provides; otherwise, they would be distributed pro ratably to the employees.

Section 113

Certain persons convicted of crimes may not serve as officers, administrators, trustees, or paid consultants.

Section 114

A 15-member Advisory Council on Employee Welfare and Pension Benefit Plans would be established.

Section 115

The Welfare and Pension Plans Disclosure Act would be repealed upon the effective date of the act, which would be 6 months after enactment.

Part 2—Vesting and eligibility requirements

Section 201. Coverage

Title III would cover all private pension benefit plans including profit-sharing plans which provide benefits after retirement, except:

1. Federal, State and local plans;
2. Keogh plans benefiting the self-employed and owner-employees;
3. Plans established or maintained outside the United States for the benefit of workers who are not United States citizens;
4. Executive deferred compensation plans; and
5. Supplementary plans
6. Church plans

Section 202. Eligibility requirements

No plan, after the effective date of this title, would be allowed to require as a condition for eligibility to participate in it an age greater than 25 or a period of service longer than 1 year (3 years for plans which provide for immediate 100% vesting or for crediting of all pre-participation service for benefit purposes), whichever is the later. Existing plans would be permitted to retain their eligibility requirements for 3 years or until they are amended, whichever is sooner.

Section 203. Nonforfeitable benefits

Every pension plan would be given a choice of one of three vesting rules:

1. Ten-Year Service Rule (100% vested at 10 years of covered service);
2. Graded 15 year service rule (25% vested after 5 years of covered service such percentage increasing by 5% each year until the tenth year and then at the rate of 10% for each additional year through the 15th when 100% vesting is achieved);
3. Rule of 45 (50% vested when age plus covered service equals 45, such percentage increasing by 10% each year until 100% is reached).

The vesting rules use a fully retroactive service provision in calculating the vesting percentage and the amount of the accrued portion of the regular retirement benefit. A plan would be permitted to change vesting rules at any time if provision is made that vested benefits not be reduced or delayed for participants in the plan at the time of change. A plan would always be permitted to allow for vesting of benefits after a lesser period and in greater amount than is required under any of the three vesting rules.

Class year profit-sharing plans.—Class year plans would be required to vest 100% of the employer's contribution no later than 5 years after the contribution was made.

Covered service.—In computing the period of covered service under a plan, an employee's entire service with the employer contributing to or maintaining the plan shall be considered. However, service prior to age 25, service during which the employee declined to contribute to a plan requiring employee contributions, service with a predecessor of the employer contributing to or maintaining the plan (except where the plan has been continued in effect by the successor employer), service broken by periods of suspension of employment (provided the rules governing such breaks in service are not unreasonable or arbitrary), and service where a participant has previously attained a 100% nonforfeitable right may be disregarded.

Contributory plans.—No plan may provide for forfeiture of benefits attributable to employer contributions on account of withdrawal of employee contributions.

Section 204. Distribution of nonforfeitable benefits to terminating participants

Vested benefits to participants terminating before 65 would have to be distributed, at the option of the participant, at regular retirement age or age 65. Vested benefits to participants terminating after age 65 would have to commence immediately at the option of the participant except that no plan would be required to commence paying any benefits to any participant, until such participant has completed up to 10 years of service. Survivor annuity and other options offered by a plan to normal retirees would have to be extended to all terminated vested participants.

Social Security offset plans.—Any pension plan with a Social Security offset feature would be required at the time of the first plan amendment, to provide that the amount of any offset not increase (1) for participants receiving benefits and (2) after the date of termination of vested participant.

Section 205. Accrued Benefit Requirements

Each defined benefit plan would be required to credit benefits to participants over a period not to exceed 33⅓ years or in the alternative over a longer period of time but without excessive "front loading" or "back loading".

Section 206. Definition of Year of Service

The definition of Year of Service for purposes of eligibility, vesting and benefit accruals will have to meet a reasonableness standard.

Section 207. Effective Date

Part 2 shall become effective with respect to existing plans for plan years beginning after December 31, 1975, except that with respect to multiemployer plans the effect may be delayed until as late as plan years beginning after December 31, 1980 (where the bargaining agreements extend until that date).

Part 3—Funding

Section 301. Coverage

Title III would cover all private pension benefit plans covered under title II except for profit sharing and other individual account plans or plans not providing for employer contributions.

Section 302. Funding Account

Every pension plan subject to title III (other than the above) must make annual minimum contributions equal to:

1. Normal cost plus 30 (in the case of a single employer plan) or 40-year (in the case of a multiemployer plan) amortization of unfunded accrued liabilities for all plan benefits; any accumulated actuarial gains and losses would be spread over 15 years; or, if larger,

2. A percentage of the unfunded portion of the present value of the nonforfeitable pension benefits. The unfunded portion would be recalculated each year so that an interest assumption of 5% would reduce the remaining unfunded portion by about 9.2% per annum or by about 57% in 20 years or 72% in 30 years.

Contributions made in excess of the minimum could be used to offset future minimum contributions, thereby permitting funding flexibility.

Section 303. Enforcement of funding requirements; variances

Application would have to be made to the Secretary for a waiver of part or all of a minimum funding contribution. Benefits could not be increased until all such waived contributions had been paid off. After five waivers in a 10-year period, the Secretary could, after notice and hearing, order the termination of the plan or the merger of the plan with another plan of the employer. Benefits could not be increased by amendment during a period of waiver.

Section 304. Special distribution and merger requirements

Asset distributions or mergers which would dilute the benefits funded within priority classifications would be prohibited.

Section 305. Effective date

Part 3 shall become effective with respect to existing plans for plan years beginning after December 31, 1975, except that with respect to multiemployer plans the effect may be delayed until as late as plan years beginning after December 31, 1980 (where the bargaining agreements extend until that date).

Part 4—Plan Termination Insurance

Section 401. Establishment of Pension Insurance Corporation

This section establishes a Pension Benefit Guaranty Corporation administered by the Secretary, with a board of directors made up of the Secretary and two officers or employees of the Department of Labor.

Section 402. Purposes and Powers of the Corporation

The purposes of the corporation are to encourage the continuation and maintenance of voluntary private pension plans, guaranteed payment of benefits and to minimize the premiums charged to support the program. The corporation is granted all powers necessary to fulfill its function.

Section 403. Conditions of Insurance

The corporation shall insure any benefit loss arising from any termination proceeding under Section 112.

Section 404. Plan Termination Insurance Funds

Two primary trust funds covering single employer and multiemployer plans are established. Additional trust funds relating to optional and supplementary insurance coverage are established. Investment of the fund assets are at the discretion of the corporation. The corporation is authorized to borrow up to $100,000,000 from the Treasury.

Section 405. Premium Schedules

Separate premiums are required with respect to single and multiemployer plans. These premium rates must be uniform with respect to all plans within these groups. The premium will be levied one-half against the unfunded vested liabilities and one-half against the accrued liabilities.

Premiums charged for supplemental coverage shall be based on actual and projected experience losses. Initial premium rates for the period prior to filing a revised premium schedule as provided in Section 406 shall be limited to 0.1 percent with respect to single employer plans and 0.025 percent with respect to multiemployer plans.

Section 406. Revised Premium Schedule Procedure

Revision of the initial basic premium schedule to exceed the limits in Section 405, requires Congressional approval before becoming effective.

Section 407. Cooperation and assistance of Government Agencies.

Section 408. Reports.

Section 409. Coverage.

Section 410. Reportable events.

Section 411. Termination of Plan.

Section 412. Management functions.

Section 413. Functions of Secretary.

Section 414. Employer liability.

Section 415. Allocation of assets.

Section 416. Effective date.

Part 5—General provisions

Section 501. Variations; Appeals Board

The Secretary is authorized to grant variations from the requirements of parts 2, 3 and 4 and section 112. A Variation Appeal Board would be established to hear and determine appeals from decisions denying grants of variations.

Section 502. Studies

This section directs the Secretary to conduct research relating to the effects of the act, the role of private pensions, the operation of public and private pension plans, and methods to encourage the growth of the private pension system.

Section 503. Enforcement

This section would give the Secretary authority to conduct such investigations as may be necessary to determine whether any person has violated or is about to violate any provisions of title II or III or any rules or regulations which would result from enactment of titles II and III. Information about such investigations would be made available to any interested person and included in an annual report by the Secretary. Criminal penalties of 5 years imprisonment and $10,000 fine or up to a $200,000 fine in the case of a corporate felon would be assessed for willful violation of the act. Civil actions by the Secretary, participants or beneficiaries to enforce the provisions of the act are authorized in Federal Court.

Sections 504. Annual Report of the Secretary

The Secretary would be required to submit an annual report to the Congress covering his administration of the act.

Section 505. Rules and regulations

This section would authorize the Secretary to prescribe such rules and regulations as he finds necessary to carry out the provisions of the act.

Section 506. Other agencies and departments

The Secretary would be authorized to enter into agreements that would avoid unnecessary expense and duplication and would permit cooperation among Government agencies in performing his functions under title II or III. He would also be authorized to reimburse other Federal agencies for facilities or services he utilized in doing so. The Attorney General would be authorized to receive such evidence as developed by the Secretary which may be found to warrant consideration for criminal prosecution.

Section 507. Administration

Chapters 5 and 7 of title 5 United States Code (relating to administrative procedure) would be applicable to this act.

No employee of the Department of Labor would be able to administer or enforce the act with respect to any employee organization of which he is a member or employer organization in which he has an interest.

Section 508. This section would authorize to the Secretary such sums as may be necessary to carry out this act.

Section 509. If any provision of this act were held invalid, the remainder of the act would not be affected.

Section 510. Interference with the rights protected under the act would be unlawful.—The provisions of section 404 and 405 would be applicable in the enforcement of this section.

Section 511

Any person who used coercion to interfere with the rights protected under the act would be subject to a $10,000 fine and/or imprisonment for up to 1 year.

Section 512. Registration

Within 270 days after the effective date of titles II and III, each pension and profit-sharing plan would have to file an application with the Secretary of Labor for qualification and registration. Plans established after that date would have 270 days in which to file such application. Plan amendments similarly would have to be reported to the Secretary. A certificate would be issued and continued in force so long as the eligibility, vesting and funding requirements of the act are met.

Section 513. Enforcement of Registration

The Secretary of Labor may seek a court order to secure compliance whenever a determination is made that no application for registration has been filed, that the application should be denied or the registration canceled, or that a plan has failed to make the required contribution or to pay such other assessments or fees as are required.

Section 514. Effect on Other Laws

All States laws would be pre-empted except for those covering plans not subject to titles II and III.

V. REASONS FOR THE BILL

One of the most important matters of public policy facing the nation today is how to assure that individuals who have spent their careers in useful and socially productive work will have adequate incomes to meet their needs when they retire. This legislation is concerned with improving the fairness and effectiveness of qualified retirement plans in their vital role of providing retirement income. In broad outline, the objective is to increase the number of individuals participating in employer-financed plans; to make sure to the greatest extent possible that those who do participate in such plans actually receive benefits and do not lose their benefits as a result of unduly restrictive forfeiture provisions or failure of the pension plan to accumulate and retain sufficient funds to meet its obligations; and to make the tax laws relating to qualified retirement plans fairer by providing greater equality of treatment under such plans for the different taxpayer groups concerned.

Essentially, this bill represents a significant improvement in the treatment now applicable to plan participants. Your committee regards the present legislation as part of an evolutionary process which keeps this basic framework but which builds on it new provisions which experience indicates are necessary for the proper functioning of these plans.

A fundamental aspect of present law, which the committee bill continues, is reliance on voluntary action by employers (and employees under contributory plans) for the establishment of retirement plans. The committee bill also continues the approach in present law of encouraging the establishment of retirement plans which contain socially desirable provisions. In other words, under the new legislation as under the present law, no one is compelled to establish a retirement plan. However, a retirement plan will now be required to comply with specified new requirements which are designed to improve the retirement system.

The Welfare and Pension Plans Disclosure Act, which is administered by the Labor Department, was adopted in 1958 to protect the interests of welfare and pension plan participants and beneficiaries by requiring disclosure of information regarding such plans. This Act requires the plan administrators to file with the Secretary of Labor and to send to participants upon written request a description and annual report of the plan. The Act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks Federal crimes where these occur in connection with welfare and pension plans. The 1962 amendment also conferred limited investigatory and regulatory powers upon the Secretary of Labor. However, abuses in the administration of pension plans and in the handling of pension funds have continued.

The Internal Revenue Code (sec. 503(b)) seeks to prevent abuses in the use of funds held under qualified retirement plans by prohibiting qualified trusteed plans from engaging in certain specified prohibited transactions such as lending funds without adequate security and a reasonable rate of interest to the creator of the plan, his family, or corporations controlled by him. Other prohibited transactions include payment of excessive salaries, purchase of property for more than an adequate consideration, sale of property for less than an adequate consideration, or any other transactions which result in a substantial diversion of funds to such individuals. Special additional rules apply to payment of excessive salaries, purchase of property for more than trusts benefitting owner-employees.

VI. COMMITTEE VIEWS

Policy of "Employee Benefit Security Act"

Underlying the provisions of ths Act is a recognition of the necessity for a comprehensive legislative program dealing not only with malfeasance and maladministration in the plans, or the consequences of lack of inadequate vesting, but also with the broad spectrum of questions such as adequacy of funding, plant shut downs and plan terminations, adequate communication to participants, and, in short, the establishment of certain minimum standards to which all private pension plans must conform if the private pension promise is to become real rather than illusory.

Definitions

The Committee has the following technical notes concerning definitions:

The definition of "employee" is intended to encompass any person who has the status of an "employee" under a collective bargaining agreement.

The exclusion of assets of investment companies regulated under the Investment Company Act of 1940 from the definition of "fund" is not intended to exclude participating shares in an investment company held by the fund.

With respect to the term "profit-sharing retirement" plan", it is intended that stock bonus, thrift and savings or similar plans with retirement features be treated as the equivalent of profit-sharing retirement plans for purposes of this Act unless expressly indicated otherwise.

With respect to the term "non-forfeitable right" or "vested right", it is not contemplated that vesting be required in benefits such as death benefits, disability benefits, or other forms of ancillary benefits provided by the plan. The plan may, of course, at its option, provide for vesting in such benefits.

With respect to "adequate consideration," it is intended that this term be read to include the fair market value of the use of leased property.

In formulating the definition of "multiemployer plan" the Committee was guided by the concept that such a plan, if sufficiently comprehensive in size or scope, would be unlikely to terminate because its existence did not depend on the economic fortunes of one employer or employer entity. The Committee recognized that certain single employer plans have characteristics similar to those of the multi-employer type described in the definition, but, on balance, it is believed that experience on plan terminations provides a reasonable basis for the distinction.

Also, in addition, the bill provides that an open-end mutual fund, the mutual fund's investment advisers, and the mutual fund's principal underwriters are not to be considered as plan fiduciaries or parties in interest merely because an employee benefit trust purchases shares in the mutual fund. Mutual funds are currently subject to substantial restrictions on transactions with affiliated persons under the Investment Company Act of 1940, and also it appears that unintended results might occur (such as preventing a trust from redeeming its mutual fund shares) if mutual funds were not excluded from these definitions. However, this provision would not prevent an investment adviser to a mutual fund being considered as a plan fiduciary in a situation where such adviser has the responsibility on behalf of an employee benefit plan to choose the plan's investment medium and selects the shares of the mutual fund for such investment.

The definition of the term "nonforfeitable" is intended to preclude any conditions to receipt of vested benefits other than those noted in the definition. Accordingly, receipt of a vested benefit may be conditioned on the survival of the participant or beneficiary, but in the case of a joint and survivor benefit, the death of a participant subsequent to the earliest age at which he or she could elect to receive any benefit in the form of an annuity from the plan will not have the effect of forfeiting the survivors benefit.

With respect to the term "supplementary plan" it is the intention that where there are two or more plans financed by the same employer or employers and where one plan is subject to the provisions of Parts 2 and 3 of the Act, the second plan be denominated as a supplementary plan if the first (Primary) plan is designed to provide a life annuity to each participant of not less than 2.0 percent of the final five year average compensation of each such participant.

In as much as the effect of having one plan defined as a supplementary plan will be to allow that plan to avoid the coverage under Parts 2, 3 and 4 of the bill, the Secretary will have to exercise the utmost care to avoid jeopardizing the overall retirement security of the participants. The Committee expects that he will issue regulations which will protect against this possibility and he may choose to require funding in excess of the minimum requirements contained in Part 3, as a condition of receiving the exemption of coverage accorded the supplementary plan.

The Committee would expect that where two plans existed, one a defined contribution plan and the other a defined benefit, that the Secretary would not allow the special treatment accorded to supplementary plans to be extended to the defined contribution plan. This result should be avoided in the opinion of the Committee, as the basic retirement security of the participants in that environment would be best served by extending coverage to the defined benefit plan.

Part 1—Disclosure and fiduciary standards

Part 1 represents a major departure from current law. First, by additions to and changes in the reporting requirements designed to disclose more significant information about plans and the transatcions engaged in by those controlling plan operations and to provide specific data to participants and beneficiaries concerning the rights and benefits they are entitled to under the plans and the circumstances which may result in their not being entitled to benefits. Second, by the addition of a new section setting forth responsibilities and proscriptions applicable to persons occupying a fiduciary relationship to employee benefit plans, including a "prudent man" standard for evaluating the conduct of all fiduciaries, and by barring from responsible fiduciary provisions in such plans for a period of five years all persons convicted of certain listed criminal offenses.

Reporting and Disclosure

The underlying theory of the Welfare and Pension Plans Disclosure Act to date has been that reporting of generalized information concerning plan operations to plan participants and beneficiaries and to the public in general would, by subjecting the dealings of persons controlling employee benefit plans to the light of public scrutiny, insure that the plan would be operated according to instructions and in the best interests of participants and beneficiaries. The Secretary's role in this scheme was minimal. Disclosure has been seen as a device to impart to employees sufficient information and data to enable them to know whether the plan was financially sound and being administered as intended. It was expected that the information disclosed would enable employees to police their plans. But experience has shown that the limited data available under the present Act is insufficient. Changes are therefore required to increase the information and data required in the reports both in scope and detail. Experience has also demonstrated a need for a more particularized form of reporting so that the individual participant knows exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted. At the same time, the safeguarding effect of the fiduciary responsibility section will operate efficiently only if fiduciaries are aware that the details of their dealings will be open to inspection, and that individual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general.

The bill recognizes the particular problems of multiemployer plans in reporting employees who terminate with vested rights. Separation from one participating employer may not be significant. Break-in-service rules may permit fairly extended periods of interrupted employement. The fact that an employee has become inactive in covered employment may not be known to the plan until a period of time, such as two years, has elapsed. Moreover, it may not be feasible for many of the multiemployer plans automatically to furnish in all cases a precise statement of the vested status and non-forfeitable benefit of a terminated employee, whether because records of past or prior service have not been amassed or because it has not been possible for the plan administrator to secure other necessary data.

Fiduciary Responsibility

A fiduciary is one who occupies a position of confidence of trust. As defined by the Act, a fiduciary is a person who exercises any power of control, management or disposition with respect to monies or other property of an employee benefit fund, or who has authority or responsibility to do so. It is not the intent of the Committee, however, that where the sole power of control, management or disposition with respect to plan funds rests with the participants themselves, as may be the case with respect to certain plans where the participant has the sole discretion over an individual account established in his name, that such participants shall be regarded as fiduciaries. The fiduciary responsibility section, in essence, codifies and makes applicable to these fiduciaries certain principles developed in the evolution of the law of trusts. The section was deemed necessary for several reasons.

First, a number of plans are structured in such a way that it is unclear whether the traditional law of trusts is applicable. Predominantly, these are plans, such as insured plans, which do not use the trust form as their mode of funding. Administrators and others exercising control functions in such plans under the present Act are subject only to minimal restrictions and the applicability of present State laws to employee benefit plans is sometimes unclear. Second, even where the funding mechanism of the plan is in the form of a trust, reliance on conventional trust law often is insufficient to adequately protect the interests of plan participants and beneficiaries. This is because trust law had developed in the context of testamentary and inter vivos trusts (usually designed to pass designated property to an individual or small group of persons) with an attendant emphasis on carrying out the instructions of the settlor. Thus, if the settlor includes in the trust document an exculpatory clause under which the trustee is relieved from liability for certain actions which would otherwise constitute a breach of duty, or if the settlor specifies that the trustee shall be allowed to make investments which might otherwise be considered imprudent, the trust law in many states will be interpreted to allow the deviation. In the absence of a fiduciary responsibility section in the present Act, courts applying trust law to employee benefit plans have allowed the same kinds of deviations, even though the typical employee benefit plan, covering hundreds or even thousands of participants, is quite different from the testamentary trust both in purpose and in nature.

Third, even assuming that the law of trusts is applicable, without detailed information about the plan, access to the courts, and without standards by which a participant can measure the fiduciary's conduct he is not equipped to safeguard either his own rights or the plan assets. Furthermore, a fiduciary standard embodied in Federal legislation is considered desirable because it will bring a measure of uniformity in an area where decisions under the same set of facts may differ from state to state. It is expected that courts will interpret the prudent man rule and other fiduciary standards bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by the Act.

Finally, it is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.

It is to be noted that the definition of "employee benefit fund" excludes assets of an investment company regulated under the Investment Company Act of 1940 but any participanting shares held by the employee benefit fund in an investment company are assets of the fund and subject to coverage under this section.

The Committee also has made provision for contributory plans to equitably distribute any surplus funds remaining on plan termination to the participants in accordance with their rate of contribution. This requirement is applicable only after plan assets have been used to satisfy all liabilities. The Committee believes it is unfair to permit the complete recapture by employers of surplus funds in terminated contributory plans, without regard to the fact that contributions by the workers helped to generate the surplus. The Committee wishes to emphasize that while it is not passing judgment on any particular case now pending, it has concluded that equitable principles require that this particular subject be governed by a specific rule which reflects what the Committee regards as essential protection for the interests of workers in such plans.

The principles of fiduciary conduct are adopted from existing trust law, but with modifications appropriate for employee benefit plans. These salient principles place a twofold duty on every fiduciary: to act in his relationship to the plan's fund as a prudent man in a similar situation and under like conditions would act, and to act consistently with the principles of administering the trust for the exclusive purposes previously enumerated, and in accordance with the documents and instruments governing the fund unless they are inconsistent with the fiduciary principles of the section.

While the magnitude of improper practices is small in relation to the total number of plans in existence, the seriousness of the improper practices disclosed indicates the need for additional precautions to insure that these specific examples do not become general conditions.

It was the purpose of the Committee to include within the definition of fiduciary a broad range of persons dealing with these funds and to impose on them the obligations as specified in Section 111. While certain fiduciaries have been given additional, more specific duties under the bill, those not mentioned specifically as well as those with special obligations are equally responsible for their conduct under the provisions dealing with fiduciaries in general.

The Committee has adopted the view that the definition of fiduciary is of necessity broad and it intends to impose strict duties on those whose activities bring them within the definition. A fiduciary need not be a person with direct access to the assets of a plan nor is there any requirement of a written or other formal acknowledgement of fiduciary status. Conduct alone may in an appropriate circumstance impose fiduciary obligations. It is the clear intention of the Committee that any person with a specific duty imposed on him by this statute be deemed to be a fiduciary. This is a departure from current judicial precedents but is necessary to the proper protection of these plans. Imposition of the duty will of course give rise to liability for any breach of such duty.

The bill requires that actuarial valuations be prepared for each plan not less frequently than every three years. The requirement that each plan file its statement of valuation every year is designed to assure that interim changes or updating of the valuations will be available to all interested parties. These statements will be certified by enrolled actuaries who meet qualifications established by the Secretary. The bill contains broad standards for establishing these qualifications but underlying all of them is the strong conviction of the Committee that any such standards must go directly to the issue of professional competency.

The assumptions utilized in determining plan liabilities and assets and the choice of appropriate valuation and funding methodology are crucial to adequate funding of a plan. The actuaries performing these plan services will fall within the definition of fiduciary and will be held to the duties imposed on such individuals, including personal liability for any breach of such duties. The Committee is convinced that notwithstanding the threat of personal liability, additional constraints are necessary to establish directly the professional qualifications of those who perform these vital services. In applying the standards for qualification outlined in the bill, the Secretary should be mindful of the difficult and sometimes subjective judgments to be made by actuaries and should take care that those who qualify be prepared to perform all of the tasks that may be required of an actuary under the bill. The prior restraints imposed on actuaries in the form of enrollment by the Secretary, as well as personal liability for failure to meet their responsibilities, impose a substantial burden on the actuary. The Committee is convinced that such burden is consistent with the importance of the function performed by these fiduciaries.

Partial Termination

In the event of partial termination, net assets of the plan are to be allocated on behalf of the participants and beneficiaries giving rise to the termination in accordance with priority classes as if a complete termination had occurred. Calculations would have to be made, allocating the net assets of the plan to each priority class, as prescribed by the plan within the requirements of the statute, for all plan participants and beneficiaries, as if the entire plan were being terminated. This calculation, involving respective allocations, would determine the net assets to be allocated on behalf of the participants and beneficiaries giving rise to the partial termination.

Investment of Plan Assets

Fiduciaries exercising investment functions are required to diversify investments to minimize the risk of large losses unless under the circumstances it is prudent not to do so. The degree of investment concentration necessary to violate this requirement cannot be stated as a fixed percentage, because a prudent fiduciary must consider the facts and circumstances of each case. The factors to be considered include (1) the purposes of the trust; (2) the amount of the trust fund; (3) financial and industrial conditions; (4) the type of investment, whether mortgages, bonds or shares of stock or otherwise; (5) distribution as to geographical location; (6) distribution as to industries; (7) the dates of maturity.

The fiduciary should not usually invest the whole or an unreasonably large proportion of the trust property in a single security. Ordinarily the fiduciary should not invest the whole or an unduly large proportion of the trust property in one type of security or in various types of securities dependent upon the success of one enterprise or upon conditions in one locality, since the effect is to increase the risk of large losses. Thus, although the fiduciary may be authorized to invest in industrial stocks, he should not invest a disproportionate amount of the trust fund in the share of corporations engaged in a particular industry. If he is investing in mortgages on real estate he should not invest a disproportionate amount of the trust in mortgages in a particular district or upon a particular class of property so that a decline in property values in that district or of that class might cause a large loss.

To apply these principles in a particular case is ultimately a judicial function. In the past, fiduciaries have seldom been liable for investment losses unless the degree of concentration in a single security or type of security has exceeded 50%. Currently we would expect the courts to follow those cases which have applied a stricter standard, particularly as to equities of a single issuer. On the other hand, there appears to be no judicial indication that a fiduciary would ordinarily be prohibited from investing as much as 25% of trust assets in one type of securities, like real estate in a particular locale or securities of a particular industry.

A fiduciary would also have to diversify investments so as to minimize the risk of large losses unless under the circumstances it is prudent not to do so. The assets of many pension plans are managed by one or more investment managers. For example, one investment manager, *A*, may be responsible for 10% of the assets of a plan and instructed by the administrator or trustee to invest solely in bonds; another investment manager, *B*, may be responsible for a different 10% of the assets of the same plan and instructed to invest solely in equities. Such arrangements often result in investment returns which are quite favorable to the plan, its participants, and its beneficiaries. In these circumstances, *A* would invest solely in bonds in accordance with his instructions and would diversify the bond investments in accordance with the diversification standards of section 111(b)(1)(C), the prudent man standard of section 111(b)(1)(B) and all other provisions applicable to *A* as a fiduciary. Similarly, *B* would invest solely in equities in accordance with his instructions and these standards. Neither *A* nor *B* would incur any liability for diversifying assets subject to their management in accordance with their instructions.

The list of prohibited transactions contained in Section 111(b)(2) does not preclude a fiduciary from performing additional services for the plan and receiving reasonable *compensation* therefor, since this is permitted by Section 111(c)(2). Section 111(b)(2)(E) also permits a fiduciary to contract with a party in interest for such additional services at no more than adequate consideration. The prudent man rule still applies to the fiduciary's arrangement for such services, however. Thus, for example, a bank acting as manager for a pension trust may also act as custodian for that trust or a brokerage firm acting as manager may also provide brokerage services itself or through a party in interest. The bank or broker, of course, may receive no more than reasonable compensation if it provides the service itself. If the bank or broker arranges for such services to be provided by a party in interest, the bank or broker may not permit such party in interest to receive more than adequate consideration.

The committee is aware that many Banks serving as trustees to personal trusts and pension trusts have traditionally held in their commercial departments cash in the process of investment, and cash awaiting disbursement to pay expenses and benefits. A number of short-term investment vehicles have been developed to keep such cash at a minimum.

Paragraph 111(b)(2)(A) is not intended to prevent bank trustees from holding such cash in their commercial departments so long as these funds are not excessive. The administration and investment of a pension plan requires the maintenance of reasonable cash balances. It would make no sense to require bank A to deposit such balances in bank B and vice-versa. The banking agencies review cash balances when they examine trust departments and the committee would assume the Labor Department, employers and plan participants would also watch the size of the cash balances maintained.

Objectives of the Main Provisions of the Bill

It is time for new legislation to conform the pension provisions to the present day situation and to provide remedial action for the various problems that have arisen in the retirement plan area during the past three decades. In taking action, the committee has been mindful of the need to construct the new requirements so that they will provide meaningful improvement in the various problem areas noted under the present law. At the same time, the committee is aware that under our voluntary pension system, the cost of financing pension plans is an important factor in determining whether any particular retirement plan will be adopted and in determining the benefit levels if a plan is adopted, and that unduly large increases in costs could impede the growth and improvement of the private retirement system. For this reason, in the case of those requirements which add to the cost of financing retirement plans, the committee has sought to adopt provisions which strike a balance between providing meaningful reform and keeping costs within reasonable limits.

Generally, it would appear that the wider or more comprehensive the coverage, vesting, and funding, the more desirable it is from the standpoint of national policy. However, since these plans are voluntary on the part of the employer and both the institution of new pension plans and increases in benefits depend upon employer willingness to establish or expand a plan, it is necessary to take into account additional costs from the standpoint of the employer. If employers respond to more comprehensive coverage, vesting and funding rules by decreasing benefits under existing plans or slowing the rate of formation of new plans, little if anything would be gained from the standpoint of securing broader use of employee pensions and related plans. At the same time, there are advantages in setting minimum standards in these areas both to serve as a guideline for employers in establishing or improving plans and also to prevent the promise of more in the form of pensions or related benefits than eventually is available.

Coverage.—One of the major objectives of the new legislation is to extend coverage under retirement plans more widely. For this reason, the committee bill sets minimum standards on the age and service requirements which can be used to exclude employees from participation in plans. Under the new rules a plan cannot require an employee to serve longer than one year or attain an age greater than 25 (whichever occurs later) as a condition of eligibility to participate in the plan. Thus, an employee who reaches age 25 and has at least a year of service would be eligible to participate (unless he is excluded for some reason other than age or service). However, a plan that provides vested rights immediately on participation will be permitted to set the participation requirements at no more than 3 years of service and age 25.

The Committee believes that these rules are reasonable. They provide a balance between the need to grant employees the right to participate in pension plans at a relatively early age so that they can begin to acquire pension rights and the need to avoid the administrative drawbacks that would be involved in granting coverage to immature and transient employees whose benefits would in any event be small. The participation rules also prevent potential avoidance of the vesting rules in the committee bill.

The bill also adopts a number of provisions which are carefully designed to make the minimum age and service requirements for participation work effectively. The Secretary is given the authority to determine under regulations what constitutes a year of service for purposes of fulfilling the participation requirement in order to make the service requirement sufficiently flexible to meet the many varying situations which arise in different industries operating under different conditions of employment. At the same time, guidance is provided to those framing the regulations so as to minimize the possibilities of abuse. The bill, for example, provides that a qualified plan may not establish a service requirement for participation which has the practical effect of treating as a year of service an average period for all employees of more than 12 months or which excludes any employee who has more than 17 months of continuous service. In addition, the bill provides that a seasonal employee whose customary employment is for at least 5 months in a 12-month period is generally to be given credit for a year of service if he works his customary season months in a 12-month period.

The Secretary is also given authority to prescribe by regulations different rules for determining a "year of service" for those industries whose normal work schedules are substantially different from those that are generally applicable. (For example, the regulations could, where consistent with the practice of an industry, permit 100 hours of employment to be treated as one month, or 1,000 hours of employment to be treated as one year.)

The bill also provides guidance to the Secretary in issuing regulations in regard to the computation of the years of service of an employee who has a break in service. This is of significance since an employee will generally receive greater vested rights if all his periods of service with the employer are combined and treated as one period of service than if each period of service interrupted by a break is treated separately. This matter involves difficult issues. On the one hand, it appears desirable not to require service prior to the break to be merged with service after the break where the break in service is of substantial duration and the period of prior service is relatively short. This is because in such cases, the plan frequently will not have records regarding the employee's prior service and the administrative difficulties resulting from any requirement to merge service prior to the break with service after the break might make employers reluctant to rehire employees and yet at the same time would not provide substantial benefits for the latter. On the other hand, where the break in service is of relatively moderate duration, treating each period of service as a separate period could give rise to abuses by giving employers an inducement to discharge covered employees and then rehire them after a short time in order to reduce the cost of financing plan benefits. An additional consideration is that where an employee has acquired an attachment to the firm by serving a substantial number of years, and particularly where he has accumulated substantial vested rights to benefits, it seems reasonable that all his service including service prior to the break should be taken into consideration in determining his participation under the plan.

Your committee has resolved these issues by providing that where an employer rehires an employee who has had a break of service of at least one year after serving with the employer for less than 4 consecutive years, the plan will not be considered to be following an unreasonable procedure merely because it does not take into consideration his prior service. However, where a rehired employee had completed at least 4 consecutive years of service before the break, his prior years of service must be taken into consideration for purposes of computing his years of service unless the break is for 6 years or more. However, if a rehired employee acquired a nonforfeitable right to at least 50 percent of his accrued benefits derived from employer contributions prior to the service break, all his prior service must be taken into consideration in computing his years of service, regardless of the duration of the break.

Under plans which provide defined or specified benefits, it is more expensive for an employer to finance an equivalent retirement benefit for an older employee than for a young employee. To avoid making it more difficult for older workers to find employment, the bill permits plans which provide defined benefits to exclude from participation employees who begin employment within 5 years of the normal retirement age. This, for example, permits a defined benefit plan which provides for a normal retirement age of 65 to exclude an employee who begins work at the age of 60. Such exclusions are not permitted under money purchase pension plans or profit sharing plans. Under these plans, an employee is not promised any specified benefits, but instead is entitled only to the amount that is in his account (employer contributions, forfeitures, and employee contributions, adjustments for earning, losses, and expenses) with the result that it is no more expensive for the employer to cover older employees than younger employees under such plans.

Finally, all government plans (including the federal civil service pension plan) and plans of churches (unless they elect to be subject to the new rules) are exempted from the new participation standards as well as from the minimum vesting and minimum funding standards described below. The committee exempted government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on government plans. For this reason the bill specifically provides that the Committee on Ways and Means and the Committee on Education and Labor are to study the participation, vesting, and funding practices of government plans, government plan fiduciary standards, factors affecting the mobility of government employees and those employed under Federal procurement contracts, and the need for Federal standards in each of these matters. Each committee is to submit to the House of Representatives not later than December 31, 1976, the results of the studies, together with its recommendations.

To give existing plans time to adjust to the new age and service participation requirements, the effective date of these requirements is deferred to January 1, 1976, for plans in existence on January 1, 1974. For plans adopted on or after January 1, 1974, the new minimum age and service requirements will be effective in the first plan year beginning after the date of enactment. However, for existing plans which were the subject of collective bargaining agreements, the minimum funding standards will not apply until the last of the present collective bargaining agreements terminates or January 1, 1981, whichever is sooner.

Vesting.—Coverage under a pension plan does not aid an individual if he later forfeits his right to his pension benefits upon voluntary or involuntary termination of employment. This is an important consideration in view of the fact that ours is a fairly mobile economy where employees tend to change jobs frequently, especially in their younger years. Moreover, the cyclical and technological nature of certain industries results in frequent layoffs over a work career for employees in those industries, as in aerospace and defense. The committee bills deals with this problem by requiring pension plans to grant covered employees reasonable minimum vested rights to their accrued benefits.

The committee bill helps to assure that covered employees will actually benefit from pension plans by requiring plans, as a condition of qualification, to meet reasonable minimum vesting standards. Plans are required to grant covered employees nonforfeitable rights with respect to their own contributions. In addition, such plans are required to provide covered employees minimum vested rights with regard to employer contributions after they have fulfilled certain specified requirements. In adopting these minimum vesting requirements, your committee was guided by two broad considerations. The first relates to the need to balance the protection offered by the minimum vesting provision against the additional cost involved in financing the plan. Employees of course, would be accorded the maximum protection if they were granted immediate and full vested rights to plan benefits. However, it is generally recognized that a requirement for immediate and full vesting would not be feasible because it would involve such substantial additional costs that it would impede the adoption of new plans and the liberalization of existing ones.

The second broad consideration guiding the committee in regard to minimum vesting is the need to provide adequate flexibility to the hundreds of thousands of retirement plans, to enable these plans to provide adequate vesting protection to their covered employees in the light of the individual circumstances and conditions confronting them. In other words, the committee does not believe that it would be desirable to force all retirement plans into one rigid mold so far as vesting is concerned.

In view of these considerations, the committee bill provides three alternative vesting options:

Under one option, a plan would be required to provide an employee with vested rights to at least 25 percent of his accrued benefits from employer contributions after 5 years of covered service, plus an additional 5 percent for each of the next 5 years and 10 percent for each of the next following 5 years. This means that under this option, at least 50 percent of the employer-provided benefits must be vested after 10 years of covered service and 100 percent vested after 15 years of covered service. This option is designed to enable plans to provide the required vesting on a gradual basis according to years of service, generally without reference to the age of the employee. This option is neutral with respect to age, since all employees who fulfill the required service requirements are entitled to the specified vesting without regard to their age.

A second option permits firms which wish to provide faster vesting for their more mature employees than for their younger ones to do so by taking into consideration the age of the employee as well as his service for purposes of computing his vested rights. Under this option, the plan is required to provide a covered employee who has at least 5 years of covered service a vested right in at least 50 per cent of the accrued benefits financed by the employer's contributions when the sum of his age and years of service equals 45; the minimum required vesting percentage would thereafter be increased by 10 percentage points a year in each of the following 5 years. This would, for example, provide an employee who began work for the employer at the age of 25, a vested right in 50 percent of his accrued benefits financed by employer contributions after 10 years of covered service when he reaches the age of 35. After completing an additional 5 years of service and attaining age 40 he would then be vested in 100 percent of his accrued benefits. On the other hand, an employee who starts to work for the employer at the age of 40 under this option would at the age of 45, upon completion of 5 years of service, receive a 50 percent vested right in his accrued benefits.

The third option provided under the committee bill permits qualified plans to fulfill the minimum vesting requirements by providing employees a 100 percent nonforfeitable right to accrued benefits derived from employer contributions when they have achieved at least 10 years of service. The committee provided this option because it grants covered employees complete vesting protection after the completion of a reasonably short period of service.

Because the objective is to encourage more adequate provision for retirement, plans are permitted to defer the payment of benefits to individuals with vested rights until they reach normal retirement age and are separated from the firm.[1] As a general rule, the plan will specify what is normal retirement age for this purpose. However, in order to prevent undue delay in the payment of benefits, payment must begin not later than 60 days after the close of the last plan year in which the participant (1) attains age 65, (2) reaches the 10th anniversary of the start of his participation, or (3) terminates his employment. The "10th anniversary" provision was adopted to encourage the employment of individuals who are hired at mature ages for a long enough period to enable them to earn significant benefits under the plan.

The committee further decided to apply the minimum vesting requirements to benefits accured prior to the effective date of the provision as well as to benefits accrued after this date on the ground that employees merit equal protection with regard to plan benefits regardless of when these benefits accrued. This is achieved by generally taking into account the employee's entire service with the employer in determining both his nonforfeitable vesting percentages and the amount of accrued benefits to which these vesting percentages are applied.

To keep the operation of the minimum vesting requirement reasonable and avoid imposing undue burdens on plans, certain periods of service are permitted to be excluded in determining the employee's nonforfeitable rights. The service which may be excluded is:

(1) service before age 25,

(2) service during a period for which the employee declined to contribute to a plan requiring employee contributions,

(3) service during any period for which the employee did not maintain the plan,

(4) seasonal service which does not include a sufficient long period of time in each 12-month period to be counted as service for purposes of the plan,

(5) certain service broken by periods of suspension of employment, and

(6) service before January 1, 1969, unless the employee has had at least 5 years of service after December 31, 1968. (This latter exclusion was adopted to prevent the possibility that plans would otherwise be required to incur extremely large costs for benefits to previously retired employees who would otherwise have the incentive to come back to a firm for relatively short periods of time, primarily in order to obtain plan benefits for their prior service).

How much protection is actually afforded to employees under the minimum vesting provision depends not only on the minimum vesting percentages set forth in the bill but also in the case of defined benefits on the accrued benefits to which these minimum vesting percentages are applied. For this reason, your committee has devoted particular attention to the development of fair and equitable procedures for the computation of accrued benefits.

Under the first option, the accrued benefit is determined by providing that the plan may not require employees to accrue benefits in any year of service at a rate which is more than 133⅓ percent of the rate of accrual in any other year.[2] The primary purpose of this provision is to prevent attempts to defeat the objectives of the minimum vesting provisions by providing undue "backloading", i.e., by providing inordinately low rates of accrual in the employee's early years of service when he is most likely to leave the firm and by concentrating the accrual of benefits in the employee's later years of service when he is most likely to remain with the firm until retirement. Of course, a plan under which employees accrue benefits at a uniform rate would satisfy the requirements of this option.

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[1] However, to avoid requiring a plan to carry relatively small amounts of benefits on its books for a long period of time, the bill permits a plan to elect to pay off employee's vested rights in the form of a lump-sum payment when the employee is separated if the amount of the distribution is less than $1,750. In addition, at the election of the employee, a plan which so provides may make lump-sum payments of any amount to employees at the time they are separated from service in lieu of retirement benefits.

[2] In testing the annual rate of accrual for any plan year against the annual rate of accrual for any prior plan year, the plan may provide that accruals for any prior period before the 11th year of service are not to be taken into account.

Under a second option, a defined benefit plan may provide for an annual rate of accrual which is not less than 3 percent of the maximum benefit to which the participant would be entitled if he became a participant at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the retirement age specified under the plan. This treatment provides equal amounts of accrued benefits to employees who are separated prior to retirement age after having worked the same number of years, regardless of their respective ages at the time the service was performed.

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Table 3 shows that the additional costs of financing plans involved when the minimum vesting requirement adopted by your committee becomes fully effective is expected to be moderate. These cost estimates are necessarily based on assumptions as to turnover rates, age distribution, etc. However, the range of costs is believed to be broadly indicative of the expected experience of employers generally.

TABLE 3.—ESTIMATED RANGE OF INCREASE IN PENSION PLAN COSTS UNDER THE REQUIREMENTS FOR MINIMUM VESTING ADOPTED BY THE COMMITTEE

	Present vesting—			
	None	Moderate[1]	Liberal[2]	All plans
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 under committee vesting requirement:				
As a percent of payroll	.2–1.5	.1–.2	0	0–1.5
As a percent of present plan cost	5.58	1.8	0	0.58

[1] Plan provides some vesting, but less liberal than full vesting after 10 yrs of service.

[2] Plan provides full vesting after 10 yrs service or less, with no age requirement.

Source: "Estimates prepared for the Joint Committee on Internal Revenue Taxation," by Donald S. Grubbs, Jr.

The additional costs will of course, be zero or smallest for those plans which now have liberal vesting provisions and greatest for those plans which now provide no vesting prior to retirement. This reflects the fact that the minimum vesting provisions will generally bring the costs of the latter plans up to the level of those plans which now have liberal vesting provisions. Overall, for all plans, the cost increases resulting from the new minimum vesting requirements will range from 0 to 1.5 percent of payroll.

In the case of plans adopted after January 1, 1974—which will have been adopted with knowledge of the new requirement—the effective date is the first plan year beginning after the date of enactment. However, for plans in existence on January 1, 1974, to provide time to adjust to the new minimum vesting requirements, the effective date of the minimum vesting standards is plan years beginning after December 31, 1975. For plans, which are maintained pursuant to collective bargaining agreements, however, the minimum vesting requirements take effect for plan years beginning after the expiration of the latest agreement or December 31, 1980, whichever is earlier (but in no event before January 1, 1977).

In addition, for all plans in existence on December 31, 1973, the vesting provisions are to become effective gradually over a 5-year transition period. Under this rule, 50 percent of the vested rights generally called for under the legislation are to become effective in the first year in which the vesting requirement applies. Thereafter the required vesting is to increase 10 percentage points each year until reaching 100 percent of the vested rights generally required under the legislation after the fifth year.

Finally, the Secretary is authorized to provide variances from the generally applicable minimum vesting requirements for plans whenever he finds that the application of these requirements would (1) increase the cost of the parties to the plan to such an extent that there would be (a) a substantial risk to the voluntary continuation of the plan, or (b) a substantial curtailment of pension levels or the levels of employees' compensation, or (2) impose unreasonable administrative burdens regarding the operation of the plan, and (3) where the application of these requirements would be adverse to the interest of plan participants generally. Under such variances the Secretary would prescribe alternative methods by which the multi-employer plan concerned could satisfy the minimum vesting requirements for the period of time this is necessary. These variances from the vesting requirements are not, however, to be prescribed unless all plan participants and other interested persons have received adequate notice from the plan administrator of any hearing to be held to consider the variance.

Fundamental to the authority to grant variations is the consideration that the vesting, funding, and other requirements are intended to further the security of employees and not to inhibit or frustrate the provision of adequate benefits. Consequently, it will be important, in the opinion of the Committee, for the Secretary of Labor to give great weight, in granting variations, to the following factors: (a) that the benefits provided by the plan are relatively modest, (b) that the plan was established and developed through collective bargaining, and (c) that the employer or industry is one of declining or marginal profitability, with limited capacity to meet substantial increments in cost.

Minimum funding standards.—Your committee believes that it is essential for plans to be adequately funded in accordance with a contributions schedule which will produce sufficient funds to meet the obligations of the plan when they fall due. Such an adequate contributions schedule for funding plans not only protects tht rights of employees under the plan but also provides an orderly and systematic way for employers to pay their plan costs.

Your committee believes that the minimum funding requirements under present law are inadequate because they do not require any provision to be made to amortize unfunded past service liabilities. Instead they merely require the contributions to the plan to be sufficient to pay normal costs attributable to the current operation of the plan) and to prevent an increase in unfunded liabilities. To remedy this, your committee has provided new minimum funding standards for qualified plans. In the most typical case, the standard requires contributions to the plan to be sufficient not only to pay normal costs but also to amortize all unfunded past service liabilities in level payments over specified periods of time. A second standard requires contributions to be based on the accrued unfunded vested liabilities of the plan if this results in higher annual payments than the general funding standard. It is anticipated that this second standard will be used for only a small minority of the plans which have relatively large unfunded vested liabilities.

The new funding standards do not apply to the following types of qualified plans:

(1) Profit-sharing and stock bonus plans. (There is no need for a requirement that contributions be sufficient to fund a specified level of benefits in the case of these plans since they do not specify that participants are to receive any designated amount of benefits, but instead require the paying out of whatever benefits the funds in the plan will purchase on the date the benefits are to begin.)

(2) Plans funded exclusively through the purchase of individual insurance contracts which provide for level annual premium payments. (These plans are excluded from the funding requirements because they have behind them the funding of the insurance companies involved.)

(3) Government plans. (However, government plans are still required to meet the present funding standards which require contributions to be sufficient to pay normal pension costs plus the interest on past service liabilities. Also, as noted previously, your committee has provided for a study of government plans to determine the need for supplying funding standards.)

(4) Church plans unless these plans elect to be covered by such requirements, and

(5) Plans which after the date of enactment of the legislation do not provide for employer contributions.

In the most typical case where the first general funding standard is employed, employers maintaining single-employer plants not in existence on the effective date of the legislation must pay normal costs currently and amortize their past service liabilities in level payments over no more than 30 years. A similar amortization period of no more than 30 years is required for past service liabilities arising as a result of single-employer plan amendments after the effective date. However, in recognition of the fact that large numbers of plans assumed heavy past service liabilities prior to any requirement to amortize such liabilities plans in existence on the effective date of the legislation are allowed a longer period—up to 40 years—to amortize past service liabilities existing at the beginning of the first plan year to which the requirement applies. In addition, multi-employer plans are allowed to amortize all past service liabilities, including those created after the effective date of the legislation, over a period of up to 40 years. This recognizes that multi-employer plans generally have an added element of financial strength in that their contributions come from a number of employers who as a group are less likely than comparable single employers to experience business difficulties.

This funding standard, which will apply to the overwhelming majority of plans, is comprehensive since it requires amortization of all accrued past service liabilities (i.e., both vested and nonvested unfunded past service liabilities).

The level payment method of funding adopted by your committee is analogous to the payment of a home mortgage in that each specified payment includes a payment for both interest and principal. It has the advantage of spreading the payments out evenly over the payment period which generally makes it easier for the employer to plan for meeting the payments. Another factor in your committee's decision is that the level payment method, while providing for adequate amortization of past service costs, initially adds only relatively moderate amounts to an employer's existing funding costs. This is because interest on unfunded accrued past service costs, which accounts for the bulk of the payments under the level payment method in the early years, is already required to be contributed to a defined benefit plan under present law.

Provision is also made for the equitable funding of experience deficiencies which arise when the actual plan costs turn out to be greater than were previously estimated on the basis of the acturial assumptions to the extent that changes in the assumptions are required—for example, when the value of the plan assets is less than was expected. In establishing a minimum funding standard for such experience deficiencies, the committee sought to avoid two problems. If it allowed the experience, deficiencies to be funded over a very long period of time, an incentive would be provided for the use of actuarial assumptions which understate the costs since any resulting deficiencies could then be made up over a long period of time without penalty. On the other hand, if the experience deficiencies were required to be amortized over too short a period, employers would encounter hardship in meeting the annual payments. This is especially pertinent in view of the fact that most actuarial or experience deficiencies are inadvertent.

Your committee's bill seeks to avoid both these problems by allowing experience deficiencies to be funded in level amounts over a period of up to 15 years for single employer plans and up to 20 years for multiemployer plans. Symmetrical treatment is provided for experience gains which are attributable to a favorable variation between actual experience and the actuarial assumptions entering into the determination of the employer's cost and contributions.

The determination of experience gains and losses for this purpose will generally be made every three years except where the Secretary (pursuant to regulations) finds it necessary to require the determination to be made more frequently.

Relief measures are provided to mitigate the impact of the funding requirements in cases where it would otherwise result in hardship. The bill gives the Secretary the authority to proscribe an alternative to the minimum funding requirement in cases where the application of this requirement would involve substantial business hardship to the employer and would be adverse to the interests of plan participants in the aggregate.

Conceivably an attempt might be made to secure uniform application of the minimum funding standards by authorizing the Secretary or some other authority to establish the specific actuarial assumptions and methods that could be used by pension plans. This would involve, for example, setting a specific rate of interest that could be used by certain pension plans or by specifying certain turnover rates for specified types of firms. However, the committee does not believe that this would be an appropriate procedure, since the proper actuarial assumptions may differ substantially between industries, among firms, geographically, and over time. Further, in estimating plan costs each actuarial assumption may be reasonable over a significant range and it would appear that the proper test would be whether all actuarial assumptions used together are reasonable. These considerations strongly indicate that any attempt to specify actuarial assumptions and funding methods for pension plans would in effect place these plans in a straitjacket so far as estimating costs is concerned, and would be likely to result in cost estimates that are not reasonable.

For plans adopted after January 1, 1974, which will have been adopted with knowledge of the new requirement, the effective date of the new funding requirements is the first plan year beginning after the date of enactment. For plans in existence on January 1, 1974, which are not maintained pursuant to collective bargaining agreements, the effective date of the minimum funding standards is deferred to plan years beginning after December 31, 1975. And for plans which are maintained pursuant to collective bargaining agreements, the minimum funding requirements take effect for plan years beginning after the expiration of the latest agreement (if this is after December 31, 1975) or after December 31, 1980, whichever is earlier.

Other provisions to protect covered employees and their beneficiaries.—In addition to the minimum participation, vesting and funding standards provided in the bill, your committee has adopted a number of specific provisions to protect the rights of employees and beneficiaries under qualified plans.

Qualified plans must pay benefits in the form of a joint and survivor annuity, giving the surviving spouse an annuity equal to at least 50 percent of the annuity paid during the joint lives, unless the participant elects in writing before the annuity starting date not to take a joint and survivor annuity.

Qualified plans must provide that retirement benefits may not be assigned or alienated, except for voluntary and revocable assignments of not more than 10 percent of the benefits in payment of premiums for life insurance and medical and hospital insurance and certain other items.

Provision is made to prevent mergers or consolidation of plans from reducing the rights of participants. This is achieved by specifying that immediately after the merger each participant would be entitled to receive a benefit equal to or greater than the benefit he would have been entitled to receive immediately before the merger had the plan been terminated.

Protection is given to retired individuals and individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increase. In general, under present integration procedures, social security benefits attributable to employer contributions are treated as though they were part of the private plan. As a result when the level of social security benefits increases, some integrated plans have reduced the amount of the retirement benefits that they provide for covered employees.

Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and are already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service (whichever is applicable) if that date is later.

Portability.—In view of the fact that ours is a highly mobile economy, characterized by high employee turnover rates, various proposals have been made to establish a system for the portability of vested rights to benefits from one plan to another when an employee changes jobs.

While the complete portability of vested rights to benefits from one pension fund to another is hard to achieve because of the numerous basic differences in private pension plans, your committee's bill contains a number of provisions which will achieve much of the advantage of portability. Under present law, when an employee changes jobs, it is already possible for funds representing his vested rights to benefits under his old employer's plan to be transferred to the retirement plan of his new employer without payment of tax on an optional basis—that is, if the employee and the administrators of the plans involved agree to the transfer.

Provision also is made to supply adequate information to plan participants regarding their vested rights to retirement benefits so that they will not neglect to claim these benefits when they become eligible to receive them. In this connection, plan administrators are required to furnish each separated employee who has vested rights an individual statement showing the nature, amount and form of the deferred vested benefit to which he is entitled.

Also, in order to insure that employees will be fully alerted to their retirement benefits, the Social Security Administration will keep records regarding the vested rights of separated employees under single employer plans. Annual information pertaining to such vested rights will be forwarded by plan administrators to the Social Security Administration through the Secretary of Labor. The Social Security Administration will then furnish this information regarding vested rights to individuals both on request and at the same time that official information is supplied to the employee or his beneficiary regarding social security benefits.

Because the furnishing of such information involves considerably more difficulties for multi-employer plans than for single-employer plans, the bill does not require multi-employer plans to supply individual statements regarding vested rights to separated employees; nor does it require multi-employer plans to file information showing the vested rights of separated employees. However, the Secretary, after consultation with the Secretary of Health, Education, and Welfare, may prescribe regulations requiring multi-employer plans to submit such information to the extent it is found feasible.

Part 2. Plan participation—Age and service requirements

General reasons for change

The committee believes that, in general, it is desirable to have as many employees as possible covered by private pension plans and to begin such coverage as early as possible, since an employee's ultimate pension benefits usually depend to a considerable extent on the number of his years of participation in the plan. This is particularly important for employees who, because of the nature of their employment, shift from employer to employer over their working careers. In addition, early participation tends to spread the cost of providing employees with adequate pensions more evenly over the various firms for which the employee has worked over his entire working career, instead of concentrating the cost on his last few employers.

Of course, the general desirability of early participation must be balanced against the cost involved for the employer. Also from an administrative standpoint, it is not desirable to require coverage of transient employees, since benefits earned by short-term employees, in any case, are quite small. On the other hand, the committee believes that overly restrictive age and service eligibility requirements can arbitrarily frustrate the effective functioning of the private pension system. In view of these considerations, the committee has concluded that it is appropriate to specifically limit age and service eligibility requirements which an employer may incorporate in a qualified pension plan.

Explanation of provisions

In general.—In view of the considerations outlined above, the committee bill provides that a plan is not to require, as a condition of participation, more than one year of service, or an age greater than 25 (whichever occurs later).[3] The committee believes that this rule will significantly increase coverage under private pension plans, without imposing an undue cost on employers. From an administrative point of view, however, the rule will allow the exclusion of employees who, because of youth or inexperience with the job in question, have not made a career

[3] This rule applies whether or not the plan is a trusteed plan. That is, a plan funded through purchase of annuities from an insurance company is subject to these rules, as is a plan with investments managed by a trustee.

decision in favor of a particular employer or a particular industry. Also to encourage plans which provide 100 percent immediate vesting the committee bill provides that such plans may require 3 years of service (and on age of 25) as a condition of participation. The committee believes that these rules take full account of the reasonable administrative and cost needs of plans to exclude employees in high turnover or high cost of benefit categories.

Plans may provide for participation on the first of a month, quarter, or year, rather than immediately after the point at which each employee attains age 25 and completes one year of service. It is expected that regulations will permit this practical accommodation *provided that* the terms will, on the average, provide participation directly after attainment of age 25 and completion of one year of service.

Year of service defined.—For purposes of the vesting and participation rules, the committee bill provides flexibility by indicating that the Secretary is to define a "year of service" by regulations in a manner which provides for its determination on a reasonable and consistent basis. For example, the regulations could specify that a plan could provide that each employee who had met the age and service requirements was to begin his participation on the anniversary date of his own employment, or that all eligible employees would be admitted on the anniversary date of the plan, or that each employee would be covered under the plan on the first quarterly anniversary date of the plan following the anniversary date of his employment.

However, to ensure that no abuse situation arises, the bill provides certain guidelines as to what constitutes a "reasonable" definition of a year of service would have to be such that no employee with more than 17 months of continuous[4] service could be excluded from the plan on account of service; moreover, the average employee (assuming hypothetically that employees were hired at the same rate each day throughout the year) could not have a wait of more than 12 months for participation. Of course this definition does not apply for purposes of benefit accrual, and a plan may use any reasonable definition of "year of service" for this purpose that is consistently applied, so long as the plan meets the antidiscrimination requirements of the law.

A "year of service" for purposes of participation and degree of vesting, will be defined by regulations. The intention is to identify those who have displayed substantial attachment to the employment. Consequently, it is expected that regulations will give recognition to the patterns of employment typical of various industries and occupations. For example, a year of service for this purpose may be defined for the building and construction trades as 1,000 hours in any year set by the plan for measuring service; and in the event of less employment, a month may be credited for each 100 hours; or the case of the maritime trades 150 days per year of employment. Alternative definitions will be required, based on days or weeks of employment, to fit other patterns of employment.

Nothing in the bill precludes the crediting toward a year of service of non-work time such as periods of layoff, disability, military service, leaves of absence, etc., nor the application of such time in extending what would otherwise constitute a break in service under the plan.

Participation of temporary and seasonal employees.—In the case of the seasonal employee, whose customary employment is at least 5 months, his normal season will be treated as a year. For example, if there is a 5-month fishing season in a certain area, and a fisherman is employed throughout the season by a company having a qualified pension plan, then, on the anniversary date of his employment, the fisherman is to be treated under the plan as though he had at least twelve months of continuous service for purposes of determining his right to participate in the plan.

Break in service.—The bill also provides a series of rules as to the effect of an employee terminating his service with an employer but then subsequently returning. These determinations are used in deciding whether the vesting schedule is to start over after the participant's break in service or to continue as of its status when the break in service first occurred. The rules governing the treatment of breaks in service set forth below in general are designed to place the employee, when he returns to service, at the same point in the vesting schedule that he was before the break in service, insofar as this is practicable without creating serious administrative problems. The bill provides for four interrelating rules.

First, where a break in service has occurred, a plan can provide that where an employee subsequently returns to service, the earlier service is not added to the more recent service until the employee has been back at least a year. This rule makes it unnecessary to search out the extent of prior service in the case of employees who return but stay for only a short period of time.

A second rule provides that where an employee has been in service at any time in the past for a sufficiently long period of time to obtain a vested right to 50 percent or more of the accrued benefits from employer contributions, upon return to employment his prior service, before the break in service, is to be taken into account in applying the participation and vesting rules to his current situation. (The prior service would satisfy the plan's service requirements for participation.) The first rule set forth above, however, provides an exception to this rule.

Third, in the case of an employee who has completed 4 consecutive years of service before the break in service occurs, except as provided in the first rule above and the fourth rule below, service before the break is to be taken into account upon the employee's return to employment.

Fourth, in the case of an employee who has a break in service for a period of six years or more, service performed by the employee before the break in service need not be taken into account under the plan except in the case of employees coming under the second rule set forth above—that is, only where an employee has a vested right to 50 percent or more of employer contributions. Thus, where longer breaks in service occur, it will not be necessary to take into account prior service except in those cases where the employee had previously built-up vested rights to the level of 50 percent or more.

Joint regulations on a year of service.—The regulations as to the meaning of a year of service, including those relating to breaks in service, are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of Treasury. Where the bill's provisions apply before that date (as in the case of new plans and plans which elect earlier dates), then regulations may be prescribed without the necessity of approval by the Secretary of Treasury. However, those regulations are not to apply beyond the December 31, 1975, plan year cutoff date.

Other rules.—The committee intends that Labor regulations specify the extent to which service with a predecessor of the employer is to be counted for purposes of the eligibility requirements. In the case of a multiemployer plan, service with any employer who was a member of the plan is to be counted towards an individual's participation requirement.

For purposes of these rules (and elsewhere in the bill), a "multiemployer plan" is a plan maintained pursuant to a collective bargaining agreement, to which more than one employer is required to contribute, and to which no one employer makes as much as 50 percent of the contributions. (After a plan has once qualified as a multiemployer plan, however, up to 75 percent of the contributions may be made by a single employer without affecting the multiemployer status of the plan. In addition, the Secretary is authorized to prescribe regulations establishing certain other requirements in the case of a multiemployer plan, dealing, for example, with the extent to which the plan should be liable to make benefit payments to participants, regardless of whether the participant's employer continues to make contributions under the plan.

Maximum age requirement.—In order not to discourage the hiring of older employees, the bill would permit a defined benefit pension plan to exclude employees who are within 5 years of normal retirement age at the time they would otherwise become eligible to participate. Also, the plan may provide that the employee is not eligible to begin drawing retirement benefits until 10 years after he began to participate in the plan of participation. If a maximum age provision were to be prohibited, in the case of a defined benefit plan the cost considerations of providing a defined benefit to an older employee might discourage the hiring of the elderly. In the case of a defined contribution plan (such as profit-sharing plan or a money purchase pension plan), however, these cost considerations do not generally apply, and the committee therefore did not see why a maximum age therefor did not see why a maximum age limitation of this type should be permitted.

Government and church plans.—These provisions (as well as the corresponding provisions of the bill relating to vesting and funding) do not apply in the case of government plans, including the Federal civil service plan, and plans sponsored by State and local governments (including the District of Columbia), and any plan to which the Railroad Retirement Act applies. These plans may continue to remain qualified by continuing to meet the current law requirements (as in effect on the day before enactment). Also, new government plans may be qualified if they meet the requirements of present law. However, the Committee on Ways and Means and the Committee on Education and Labor are to study the extent to which it would be desirable to bring government plans under Federal participation, vesting, funding, and fiduciary standards, as well as matters affecting mobility of government employees and those employed under Federal procurement, construction, or research contracts or grants. The committees are to report to the House of Representatives no later than December 31, 1976.

Likewise, church plans (and plans of associations or convention of churches) will be exempt from the requirements of the bill unless the church files an election, in a form and manner to be prescribed in regulations, electing to come under the participation, vesting, and funding provisions of the bill (and the other rules which relate to these provisions), rather than to comply with the requirements of present law. Once an election is filed, however, it will be irrevocable. Generally, a "church plan" includes any plan maintained by a church or association or convention of churches, other than a plan primarily for benefit of employees in an unrelated trade or business of the church, or a multiemployer plan which includes employees which are not churches. However, for purposes of this definition of "church

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[4] The term "continuous" is also to be defined in regulations to take account of the problem of seasonal employees, as well as factors such as sick leave, holidays and vacation periods, etc.

plan", if the plan was in existence on January 1, 1974, and at that time covered employees of another organization exempt from tax (under sec. 501) which was an agency of the church, then employees of the agency are to be considered as employees of the church.

Effective dates

These provisions apply generally to plan years beginning after the date of enactment of the bill. However, to allow time for amendment for plans in existence on January 1, 1974, the provisions are to take effect in these cases for plan years beginning after December 31, 1975, unless the plan administrator makes an irrevocable election to have the provisions apply sooner (under regulations prescribed by the Secretary or his delegate), in which case the provisions will take effect at the beginning of the first plan year which occurs after the election.

Where the plan is subject to the provisions of a collective bargaining agreement in effect on January 1, 1974, the effective date is further postponed until plan years beginning after December 31, 1976, or, if later, plan years beginning after the expiration of the collective bargaining agreement (or the expiration of the last relevant agreement in the case of a multiemployer plan or a single plan subject to more than one collective bargaining agreement), but without regard to any extension made after the date of enactment. For this purpose, a collective bargaining agreement will not be considered as terminated if it can be (or is) reopened with respect to relatively narrow issues only. For example, a collective bargaining agreement would not be considered as being terminated for this purpose if it can be reopened with respect to the benefit payable to a surviving spouse, if it can be reopened because of a change in payments with respect to voluntary coverage under Part B of the Medicare benefits under the Social Security Act, or if it can be reopened to increase benefits with respect to a quite limited group of employees.

A question has arisen as to how the effective date rules are to be applied to a plan which includes employees subject to one or more collective bargaining agreements and also employees not under any such agreement. The intent is that the presence of an insignificant number of union members as participants in a plan is not to be sufficient to delay the effective dates for an additional 5 years. On the other hand, the presence of a small number of nonunion participants should not force the untimely renegotiation of labor-management contracts. As a result, your committee intends that a plan is to be regarded as maintained pursuant to a collective bargaining agreement if (1) either the contribution levels or the benefit levels under the plan are to be determined under the agreement and (2) at least 25 percent of the participants are members of the unit of employees covered by the agreement. In addition, where an employer has one plan for collective bargaining unit employees and another plan for other employees, but those plans are essentially the same with regard to benefits and contributions, then the two will be considered as one for purposes of applying the rule described above as to when a plan with both union and nonunion participants is to be entitled to delayed effective date provisions. Finally, where an employer has a plan for collective bargaining unit employees and another plan for other employees, and the second plan consists of two parts, one part of which is essentially the same as that for collective bargaining employees, the part which is essentially the same will be considered as a part of the collective bargaining plan for purposes of this effective data provision.

Vesting

Present law

Plans are now required to provide vested (i.e., nonforfeitable) rights to participating employees when they attain the normal or stated retirement age. Employees must also be granted vested rights if the plan terminates or the employer discontinues his contributions.

However, qualified corporate plans are generally not required to provide vested rights to participating employees before normal retirement age unless this is considered to be necessary—in view of the likely pattern of employees turnover—to prevent discrimination against the rank and file employees in favor of officers, shareholders, supervisors, or highly paid employees. In other words, preretirement vesting is required only where its absence would cause discrimination in favor of officers, etc., who could be expected to remain with the firm long enough to retire and qualify for benefits, while the rank and file employees would continually be separated from the firm and lose their benefits.

General reasons for change

Unless an employee's rights to his accrued pension benefits are nonforfeitable, he has no assurance that he will ultimately receive a pension. Thus, pension rights which have slowly been stockpiled over many years may suddenly be lost if the employee leaves or loses his job prior to retirement. Quite apart from the resulting hardship, your committee believes that such losses of pension rights are inequitable, since the pension contributions previously made on behalf of the employee may have been made in lieu of additional compensation or some other benefits which he would have received.

Today, slightly over two-thirds of the private pension plans provide some vested rights to pension benefits before retirement. However, as a general rule, employees do not acquire vested rights until they have been employed for a fairly long period with a firm or are relatively mature. Since there is no general applicable legal requirement for preretirement vesting, some plans do not offer this type of vesting at all, and among those plans which do, there is no uniformity in the vesting rules as provided. At present, only one out of every three employees participating in employer-financed plans has a 50-percent or greater vested right to his accrued pension benefits. Even for employees, a substantial portion do not have vested rights. For example, 58 percent of covered employees between the ages of 50 and 60, and 54 percent of covered employees 60 years of age and over, still do not have vested rights to even 50 percent of their accrued pension benefits. As a result, even employees with substantial periods of service may lose pension benefits on separation from employment. Extreme cases have been noted in which employees have lost pension rights at advanced ages as a result of being discharged shortly before they would be eligible to retire. In addition, your committee believes that more rapid vesting is desirable because it will improve the mobility of labor, and in this manner promote a more healthy economy.

For reasons indicated above, your committee concluded that it is necessary and desirable to provide a minimum standard of vesting for all qualified pension plans. Clearly, however, it would be counterproductive to increase employer costs by more rapid vesting to such an extent as to significantly curtail the creation of new retirement plans (or to significantly curtail the increase of benefits in existing plans). The committee bill deals with this problem by requiring that all plans must meet one of three minimum standards for vesting.

Explanation of provisions

General rule.—The committee bill provides that a qualified plan would have to meet one of three vesting standards with regard to benefits derived from employer contributions:

1. a graded vesting standard, under which the employee must be at least 25 percent vested in his accrued benefit after 5 years of covered service, with a gradual increase in this percentage in subsequent years, so that the employee must be 100 percent vested after 15 years of service;

2. full vesting after 10 years of covered service; or

3. a "rule of 45, under which an employee with 5 or more years of covered service must be at least 50 percent vested in his accrued benefit when the sum of his age and years of covered service total 45, with 10 percent additional vesting for each year thereafter.

Whichever of these alternatives is adopted, each employee would have to be fully and immediately vested in his accrued benefit derived from his own contributions.[1]

It should be made clear that the standards provided in the committee bill are only minimum standards. The bill's provisions are not intended to prohibit plans with more rapid vesting than that required under the standards in the bill.

Your committee believes that the new vesting rules should provide flexibility, so as to allow plans to choose from several reasonable standards a vesting schedule best suited to the needs of the particular business, and so as not to disrupt existing plans which already have provided reasonable vesting under one of several formulas. In addition, a transition rule and delayed effective dates are provided, so that plans may be amended in an orderly manner to come into compliance with the new minimum standards. Compliance with any of these standards, together with continued vitality of the antidiscrimination standards of the Internal Revenue Code, should afford substantial protection to employees against possible loss of their pension rights.

Graded vesting.—One of the alternatives under the committee bill provides that a plan (whether trusteed or insured) would be required to give each participant vested rights to at least 25 percent of his accrued benefit from employer contributions after 5 years of service, plus 5 percentage points a year for each of the next 5 years and 10 percentage points a year thereafter. This would mean that there must be 100 percent vesting after 15 years of covered services.

This approach has the advantage of providing some vesting at a relatively early point in the employee's career. Thus, if the employee changes jobs after 5 years of service, he would be protected in his rights to at least some part of his accrued benefit. This rule (and, to a lesser extent, the 10-year 100-percent vesting rule and the rule of 45 vesting rule) proceeds on the assumption that some part of the obligation to provide reasonable retirement benefits should be shifted from the employee's last employer and should be shared by those who employed him earlier in his working career.

Ten-year 100-percent vesting.—Another alternative under the committee bill provides that a qualified plan could meet the vesting requirements by giving each participant vested rights to 100 percent of his accrued benefit derived from employer contributions after 10 years of service.

This approach avoids the recordkeeping and other administrative costs involved in accounting for partially vested rights. In the case of the employee who serves for 10 years, this alternative provides greater vesting pro-

[1] Thus, in general, the rules described hereafter relate only to benefits derived from employer contributions.

tection than the graded vesting rule (discussed above) or, in general, the rule of 45 (discussed below).

The "rule of 45".—The third alternative under the bill, known as the rule of 45, would require that a plan provide each employee with vested rights to at least 50 percent of his accrued benefit when the sum of his age and years of covered service equals 45 (subject to a minimum service requirement of 5 years), with at least 10 percent additional vesting for each year of service thereafter.

The age-weighted approach has the advantage that it provides more protection to the older worker, who is closer to retirement, and who may not get another chance to earn a pension if he leaves his employment prior to retirement.[2] For this reason, your committee believes that the rule of 45 should be available as an alternative for those plans which would prefer to take an age-weighted approach.

Transition rule.—Your committee has concluded it is important that all qualified plans ultimately meet one of the three minimum standards in the bill. However, to impose the full force of these standards on existing plans without some transition period would, in some cases, subject these plans to substantial additional costs to pay for the required vesting, possibly causing a reduction of benefits in some plans, or even plan termination. To ease the cost factor in the case of plans already in existence which have not previously been subject to vesting requirements such as those set forth in the committee bill, the bill provides a transitional rule under which plans actually in effect on December 31, 1973,[3] would have a reduced vesting requirement for the first 5 years to which the new rules apply.

During the first year to which the bill's vesting standards apply, the plan would have to provide at least 50 percent of the regular requirement under the applicable vesting schedule—this 50-percent level would have to then be increased by 10 percentage points a year, so that the new rules would fully apply in the sixth year after the effective date. For example, under the graded vesting approach, during the first year in which the rules were applicable, an employee with 5 years of covered service would be at least 12.5 percent vested in his total accrued benefit (50 percent of the 25-percent requirement which is generally to apply after 5 years of service); this would increase to 18 percent the next year as the next step in the transition period was reached and also as the employee moved along the graded vesting schedule (60 percent of 30 percent), 24.5 percent the next year (70 percent of 35 percent), 32 percent the next year (80 percent of 40 percent), 40.5 percent the next year (90 percent of 45 percent), 50 percent the next year (100 percent of 50 percent), and by an additional 10 percentage points each year thereafter under the fully effective graded vesting schedule alternative of the bill. By use of this gradual approach, your committee believes that it will be possible to implement the new rules with a minimum of disruption to existing plans.

Preparticipation service.—Once an employee becomes eligible to participate in a pension plan, generally all his years of service with an employer, including preparticipation service, are to be taken into account for purposes of determining his place on the vesting schedule.

However, the plan may ignore service during a period for which thhe employee decided not to make contributions to a plan requiring employee contributions. Also, service need not be taken into account for periods for which the plan employer did not maintain the plan (e.g., periods before the plan was established or after the employer discontinued contributions but the plan was kept in existence for the purpose of paying already-earned benefits when due).

The committee bill also provide that for purposes of the vesting schedule, service before age 25 may be ignored whether or not the employee was a participant in the plan. This will have the effect of not discouraging plans from providing immediate participation and accrual of benefits for all employees. For example, in a plan providing for immediate participation, at age 30 an employee who had started on the job at 18 would have to be at least 25-percent vested in 12 years of accrued benefits under these rules (instead of only 5 years of accrued benefits, which would be the case if the plan did not permit participation until the employee was 25).

Service for an employer is to be taken into account for purposes of placement on the vesting schedule, even though the service was in a different division of the corporation, or with a different corporation member of the affiliated group. However, the bill does not require that such service be taken into account for purposes of accruing benefits while the employee works for a division which does not have a plan. This may be illustrated by the following example.

Assume that an employee begins work at age 25 for division A of a corporation, which does not have a pension plan, and, at age 40 he transfers to division B, which does have a plan. Under all of the vesting standards, the employee would immediately become fully vested in the benefits which accrue under the plan, because of his 15 years of prior service with the employer.[4]

Benefits accrued in the past.—Generally, the vesting requirements of the bill are to apply to all accrued benefits, including those which accrued before the effective date of the provision. Years of service prior to the effective date also are to be counted for purposes of determining the extent to which the employee is entitled to vesting. For example, in the case of a plan electing the graded vesting alternative, if an employee joined a company at age 30 (at which time a plan was in effect), became a participant in the plan at age 35, and was age 40 on the effective date of the vesting provisions, he would have to become at least 50-percent vested at that time based on 10 years of service (although this percentage would be reduced under the transition rule for plans in effect on December 1, 1973). However, he might not have more than 5 years of accrued benefits since the minimum benefit accrual is based on participation.

This would occur because of his 5 years of participation under the plan plus his 5 years of preparticipation service. Without this pre-effective date rule, it was apparent to your committee that employees who are now older employees would receive the advantages of required vesting only for the accrued benefits they would be able to build up gradually in the future and would receive no protection for benefits accrued prior to the effective date of these provisions, which would usually be the bulk of the benefits earned during their lifetimes.

Your committee considered various methods of providing that pre-effective date service be taken into account in the case of older employees only, but concluded that most such methods provided some type of undesirable "notch" effect and in most cases would result in little cost saving to the employer relative to the rule adopted in the bill.

However, it does not appear to be desirable to provide for retroactive vesting for employees who have already terminated their service with the employer, since this would create a substantial unexpected cost for the plan (thereby possibly jeopardizing the size of benefits for employees still covered under the plan) and might involve serious recordkeeping problems. Thus, the committee bill specifically provides that the plan is not required to take into account service performed prior to January 1, 1969, until the employee has served at least 5 years with his employer after December 31, 1968.

Multiemployer plans.—In the case of a multiemployer plan governed by a collective bargaining agreement, the vesting requirements of the committee bill generally are to be applied as if all employers who are parties to the plan constituted a single employer. For example, years of service with employers A and B under the plan will be counted together in determining vesting, even though the employee now works for employer C.

Service that is seasonal, intermittent, etc.—For purposes of the minimum vesting rules, the question of whether an employee has performed a "year of service" will be determined in accordance with the same regulations which defined this term in connection with the participation requirements, described above. Of course, a seasonal or part-time employee who performs a year of service for purposes of determining his place on the vesting schedule, may nonetheless accrue benefits at a slower rate than his full-time, year-round counterpart. However, the relationship between the rate of accrual for a full-time employee, and a part-time or seasonal employee would have to be reasonable and applied on a consistent basis under the plan in order to meet these requirements. Service with a predecessor of the employer would also be counted, for purposes of the vesting rules, to the extent provided in regulations. Your committee anticipates that the regulations in this area will prevent a situation where an employee might lose his rights to vesting as a result of a business reorganization.

The basic rules have been set forth in terms of "years of service". However, the committee recognizes that there are a substantial number of industries in which the common concepts of years, months, weeks, or hours of service do not apply. For example, it may be appropriate in some industries to provide that a participant must work at least 1,000 hours in order to have completed a "year of service" for purposes of the participation rules and for purposes of determining where he is to be placed on the vesting schedule. Under the bill, the regulations are to take into account such variations of customary working periods.

It must be noted that it is not necessary that the "year of service" concept used for participation or vesting purposes be the same as the "year of service" concept used for purposes of accrual of benefits. For example (as indicated above), in a particular industry it may be appropriate to advance a person one year on the vesting schedule if he has completed 1,000 hours of work during the plan year. However, that same plan may provide that a full year's worth of benefits will accrue only if the employee completes 1,600

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[2] Under the present law, all rights must be fully vested when the employee attains the normal or stated retirement age, but an older employee who terminates his service prior to reaching retirement age generally does not have to be vested under present law (except to prevent discrimination).

[3] A plan which went into effect after this date would not be eligible to use the transitional rule, even if the plan agreement included a retroactive clause which provided that the plan was in effect "as of" December 31, 1973.

[4] Conversely, an employee who worked for 5 years in division B, and then shifted to division A, would continue to increase his percentage of vesting in the benefits which he had accrued under the division B plan, even though division A did not have a plan. Of course he would accrue no benefits in the division B plan on account of his division A service (unless the plan provides otherwise).

hours of service during the plan year. In such a case, completion of 1,200 hours would provide an accrual of .75 of a year's benefits. 1,000 hours would provide accrual of .625 of a year's benefits, 800 hours would provide accrual of .5 of a year's benefits.

Permitted forfeitures of vested rights.—A retirement plan under the committee bill may provide that an employee's vested rights in accrued benefits derived from employer contributions (but not from his own contributions) may be forfeited in the event of the employee's death (although this exception is not to apply if the employee had retired or was eligible to retire and a "joint and survivor" annuity was to be provided).

Also, a plan is permitted to suspend payment of benefits while the participant is working for the employer (for example, where an early retiree returns to work to increase his subsequent pension benefits). In the case of a multiemployer plan, the benefits may be suspended if the employee has resumed employment in the same industry even though not with the same employer. These rules are not to prevent suspension of part of an early retirement supplement (such as a so-called social security supplement) on account of reemployment, even with another employer or in another industry.

In addition, the bill provides for circumstances under which a retroactive plan amendment, if approved for this purpose by the Secretary, may be permitted to divest accrued benefits that had already become nonforfeitable. In order to be approved by the Secretary, such a retroactive amendment which divests what were otherwise nonforfeitable benefits, must have been initiated by the Secretary or proposed by the plan administrator and the Secretary must be satisfied that the administrator has given adequate notice of all plan participants and other interested persons. The Secretary must then give those interested persons an opportunity to be heard and must notify the Secretary of the Treasury of any such hearing. Further, the Secretary may approve such a divesting retroactive amendment only if he finds that (1) the amendment affects the plan only to such an extent as is necessary or appropriate to carry out the purposes of this pension bill and to provide adequate protection to the participants and beneficiaries, (2) but for the amendment, there would be a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employee compensation, and (3) failure to make the amendment would be adverse to the interests of plan participants in the aggregate. Your committee concluded that, when such conditions occurred and those procedural safeguards were followed, it was appropriate to permit these divestitures.

It is permissible for the employee's vested accrued benefits to be "cashed out" under specified circumstances. On termination of participation if the value of the nonforfeitable benefit is less than $1,750, then the benefit may be cashed out by a lump-sum distribution whether or not the employee agrees to receive the distribution (but only if the plan permits such a distribution without regard to the employee's preferences). If the employee agrees to the cashing out of his nonforfeitable benefit then, whether or not the amount is less than $1,750, the benefit may be cashed out if the distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided by regulations. Such a nontermination cashing out of accrued benefit might be permitted, for example, on the occasion of a revision of the formula for computation of accrued benefits under the plan. It must be noted that the rule described above permits the cashing out of vested accrued benefits but the service to which those benefits relate nevertheless must continue to be taken into account, in accordance with the rules described above (service that is seasonal, intermittent, etc.) for purposes of determining whether the employee has met the service requirement for participation and for the purposes of determining the employee's place on the vesting schedule with regard to benefits that accrue in the future. Also in cases where the employee's accrued benefit is not cashed out when the employee leaves the employer's service, if the employee is later reemployed, his percentage of vesting in the benefit which accrued before the service break may be increased on account of service which occurs after the break.

With the limited exceptions noted above, no rights, once they are required to be vested, may be lost by the employee under any circumstances (although, as under present law, the plan may pay the employee the actuarial value of his vested rights upon separation from service). For example, a vested benefit is not to be forfeited because the employee later went to work for a competitor, or in some other way was considered "disloyal" to the employer.[5] Also, rights to benefits are not to be forfeited merely because the employer (or plan administrator) cannot find the employee.

Accrued benefits.—Under the committee bill, the vested employee is protected in his rights to all, or a certain percentage, of his "accrued benefit." It is necessary to provide a statutory definition of an "accrued benefit" because, unless this is a defined amount, vesting of an "accrued benefit" in whatever form is specified by the plan has little, if any, meaning. In the case of any retirement plan other than a defined benefit pension plan, under the bill the employee's "accrued benefit" is the balance in his plan account.[6] This would include, for example, a money purchase pension plan, a profit-sharing plan and a stock-bonus plan.

In the case of a defined benefit plan the bill provides that the accrued benefit is to be determined under the plan, subject to certain requirements. The term "accrued benefit" refers to pension or retirement benefits and is not intended to apply to certain ancillary benefits, such as medical insurance or life insurance, which are sometimes provided for employees in conjunction with a pension plan, and are sometimes provided separately. To require the vesting of these ancillary benefits would seriously complicate the administration and increase the cost of plans whose primary function is to provide retirement income. Also, where the employee moves from one employer to another, the ancillary benefits (which are usually on a contingency basis) would often be provided by the new employer, whereas the new employer normally would not provide pension benefits based on service with the old employer. Also, the accrued benefit to which the vesting rules apply is not to include such items as the value of the right to receive benefits commencing at an age before normal retirement age, so-called social security supplements which are commonly paid in the case of early retirement but then cease when the retiree attains the age at which he becomes entitled to receive current social security benefits, and any value in a plan's joint and survivor annuity provisions to the extent that exceeds the value of what the participant would be entitled to receive under a single life annuity.

The accrued benefit which is to be vested is defined in terms of the benefit payable at normal retirement age. That is to be the age designated as such by the plan, but not later than 65 and the completion of 10 years of participation.

The annual benefit payable from the normal retirement age is to be the benefit as generally defined in the plan, subject however to one of two limitations intended to assure a fair and proportionate accrual for employees who acquire nonforfeitable rights to deferred benefits. The minimums are prescribed to avoid the possibility that a plan may set so low a rate of accrual for relatively short service or for younger employees as to emasculate the vesting requirements.

One alternative minimum is that the accrual for each year of participation is not to be less than 3 percent of the plan's maximum benefit for a participant who began participation at the earliest possible entry age under the plan and continued to normal retirement age. The maximum accrual is of course limited to 100 percent of such maximum benefit.

The objective of this minimum is to deal with a wide variety of benefit formulas by prorating the maximum benefit payable at the normal retirement age over a full working career of not more than 33⅓ years.

The other alternative minimum is that the plan may define its own rate of benefit accrual for each year of service, except that with respect to years of service (for accrual of benefit purposes) preceding a participant's eligibility to elect to receive immediately benefits which are not reduced on account of his age or service:

"The annual rate of accrual for any plan year may not be greater than 133⅓ percent of the accrual rate for any other plan."

In general, this rule will provide a constraint on differentials in the rates at which benefits are accrued in various stages of participants total service under a plan. It is the intention that both "backloading" (ascribing a greater weight to later years of service than to earlier years) as well as "frontloading" (ascribing a greater weight to earlier years than to later years) be constrained by application of the 133⅓ percent limit.

In recognition of certain situations where the application of the rule needed to be modified, the bill provides that any "frontloading" in any of the first ten years of service (for benefit accrual purposes) in relation to another year within the first ten or in relation to a year subsequent to the tenth will be permitted. In addition, prospect plan amendments will be treated as being in effect for all other plan years in applying the rule.

The purpose of the limitation on "backloading" is to prohibit a potential mechanism for avoiding the desired and intended effect of the minimum vesting standards in Part 2 of the bill. It would be possible by heavily weighting the later periods of service for accrual purposes to achieve a situation in which little or no benefits would be provided those who terminated service subsequent to vesting but prior to completing twenty or thirty years of service. The "frontloading" constraint is designed to prevent the alternative rule provided in Section 205 (b)(2) from being utilized as a device to spread the accrual period beyond 33⅓ years, except in those cases where all years prior to, what in effect is the earliest normal retirement age, are credited for accrual of benefit purposes.

For purposes of making the loading calculation, it will be assumed that compensation, social security benefits, cost of living adjustments, investment performance (where relevant), and all other relevant factors used to compute plan benefits will remain constant.

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[5] Some plans also provide that an employer may have lien rights against employee interest in a pension plan. These clauses would also be prohibited under the committee bill, except where the plan requires that the employee be given prior notice of any impending lien and there is a judicial hearing on the probable validity of the employer's claim.

[6] Separate accounting for each employee is required under the committee bill in the case of contributions to a defined contribution plan and for voluntary employee contributions to a defined benefit plan.

In the case of plans which provide for early retirement, for example, "30 and out" plans, or plans which allow retirement at age 55 after 20 years of service, the employee who meets the conditions for early retirement may receive a much greater benefit in terms of value than the employee who fails to meet the early retirement conditions. For example, if there were a plan which had a normal retirement age of 65, and an early retirement age of 55, with 30 years of service, and an annual benefit accrual of one percent of compensation, subject to a 30 percent of compensation ceiling, an employee who began work at 25, and retired at 55, would receive a benefit of 30 percent of compensation each year thereafter; but, if the employee left his job at age 54, he would receive a benefit of 29 percent a year which was not payable until age 65.

The committee believes it is desirable not to discourage early retirement plans, accordingly the accrued benefit computation shall be made, for the purposes of the bill, only with regard to the benefit payable at the normal or regular retirement age. The value of any benefit payable under a plan prior to that age may be disregarded.

Changes in vesting schedule.—Under the bill, if a plan is amended in a manner which changes its vesting schedule, each person who is a participant in the plan on the date the amendment is adopted (or is a participant in the plan on the amendment's effective date) is to continue to vest his accrued benefits at no less than the rate at which those benefits had been scheduled to be vested under the preamendment vesting schedule. This is to apply both to accrued benefits from preamendment service and to subsequent accrued benefits, and is to apply whether or not the participant had any vested benefits at the time of the amendment. The application of this rule may be illustrated by the following example: Suppose that A is a participant in a plan which follows the minimum requirements of the graded vesting schedule and that A has completed 4 years of service on the amendment date. The amendment provides that the plan is to vest under the minimum requirements of the 10-year 100-percent vesting schedule. Under this rule, at the end of A's next (fifth) year of service, he is to be 25 percent vested in his accrued benefits, as he would have been had the amended vesting schedule not been adopted. This vesting percentage is to be increased by 5 percentage points for each of the next 5 years, as under the minimum requirements of the graded vesting schedule. However, at the end of the tenth year of service, A's vesting percentage becomes 100 percent, because that is the higher rate provided under the new vesting schedule. The same vesting percentages would apply in each of the years if the amendment had been to change the vesting schedule in the opposite manner (i.e., from 10-year 100-percent vesting to graded vesting).

Allocations between employer and employee contributions.—In plans where there are both employer and employee contributions, it will be necessary to allocate the accrued benefit between the portion derived from the employer contributions, and the portion derived from the employee contributions. This allocation may have to be made because the employee is always fully vested with respect to amounts attributable to his own contributions but not necessarily with respect to those of the employer. Also, information of this type would be needed if an employee, upon leaving employment, desires to withdraw his own contributions.

In the case of any plan other than a defined benefit pension plan, the accrued benefit derived from the employee's contributions under the bill is the amount in his own separate account. If the employee and employer contributions were not accounted for separately, the employee-contributed portion of the total accrued benefit would be treated as the fraction of the total which is the ratio of employee contributions to total contributions (after taking account of withdrawals).

In the case of a defined benefit pension plan which provides an annual benefit in the form of a single life annuity commencing at normal retirement age (without ancillary benefits), the accrued benefit derived from mandatory employee contributions (which could never be in excess of his total accrued benefit under the plan) would be treated as the total amount of the employee's "accumulated contributions" multiplied by a conversion factor.[7] In general, the conversion factor, which initially is to be fixed at 10 percent for a normal retirement age of 65, is to be used to convert the amount of the accumulated contributions to a single life annuity commencing at normal retirement age. For other normal retirement ages, the conversion factor is to be determined by regulations.

In determining the employee's accumulated contributions, under the bill, interest on the employee's mandatory contributions is to be compounded annually, initially at a rate of 5 percent (beginning with the first plan year subject to the vesting requirements imposed under the committee bill) to the date when the employee would reach normal retirement age. In addition, any interest accumulated on the employee's contributions (either compounded or simple) in accordance with the terms of the plan, prior to the date when the vesting provisions of the bill first apply to that plan, are to be treated as part of the employee's accumulated contributions. For purposes of this rule, an employee's mandatory contributions include any contributions made to the plan by the employee as a condition of employment, or of participation in the plan, or of obtaining benefits under the plan which are attributable to employer contributions.

The bill authorizes the Secretary or his delegate to adjust the conversion factor, and the assumed rate of interest on employee contributions, on a prospective basis, from time to time, as may be appropriate, but requires him to give at least one year's notice of any such action. The adjustment in the interest rate would be made by comparing the long-term money rates and investment yields for a 10-year period ending at least 12 months prior to the year in which the adjustment would first apply, with the corresponding rates and yield for the 10-year period from 1964 through 1973.[8]

The committee anticipates that the Secretary, in determining money rates and investment yields, will use a composite of a number of indicators. For example, one possible approach might be to give equal values to the dividend yields of the Dow-Jones Industrial Average and the Standard and Poor's 500-Stock Average, and to the interest rates of Barron's or Moody's highest-rated bonds and United States Treasury long-term obligations. This composite, for the 1964–1973 base period, would be set at 5, and the interest rate in the future would be determined by the Secretary's comparison of this composite for the base period, with the same composite for the then most recent 10-year period. It is contemplated that this interest rate will be adjusted not less often than annually, and that due regard will be given to the impact of any such adjustment on existing plans.

Plan termination.—Under present law, all accrued benefits in a qualified pension plan must become fully vested (to the extent then funded) in the event of a termination, or the complete discontinuance of contributions under a pension plan. This rule will no longer be necessary with respect to discontinued contributions, because the committee bill now provides for an excise tax on underfunding. Employers whose plans are subject to the funding requirements of the committee bill cannot terminate their plans merely by discontinuing contributions, since the employers continue to remain liable for the required contributions.[9] However, the committee bill makes clear that this rule of full immediate vesting is still to apply in the case of a termination, or a partial termination. (Examples of a partial termination might include, under certain circumstances, a large reduction in the work force, or a sizable reduction in benefits under the plan.) Moreover, even after the plan has terminated, the employer is still under an obligation to pay the required funding of the plan through the date of termination and these make-up amounts (if any) are to be taken into account in determining the accrued liabilities which may become vested upon termination.

Class year plans.—A class year plan is a profit-sharing or stock bonus plan which provides for the separate vesting of employee rights to contributions (or rights derived from contributions) to a plan on a year-by-year basis and the withdrawal of these amounts on a class-by-class basis as they mature. The minimum vesting requirements of the bill applicable to a class year plan are satisfied under the bill if the plan provides for 100-percent vesting of the benefits derived from employer contributions within 5 years after the end of the plan year for which the contributions were made. A separate rule is needed for class year plans since they are structured differently than most other types of plans. The 5-year full vesting rule provided in this case by the committee bill assures an employee who terminates his employment under a class year plan that he will not forfeit his rights to more than 4 years of employer contributions.

Recordkeeping requirements.—To carry out the intent of the vesting provisions (primarily those involving intermittent employment), the employer would be required to keep records of the years of service of his employees and the percentage of vesting which the employees had earned, together with any additional information required by the Secretary in order to determine the employee's benefits. In the case of a multiemployer plan, the employer would furnish the required information to the plan administrator (who would be required to maintain the records), in accordance with regulations.

Failure to maintain or furnish the required records would result in a civil penalty of $10 for each employee with respect to whom the failure occurs, unless it is shown that the failure is due to reasonable cause. The committee expects that the necessary records will be retained by employers for at least 6 years following a break in service. After that, the employee could still establish his right to vesting based on prior service, but the burden of producing the evidence would shift to the employee.

In additon, the Social Security Administration is to be informed, in a time and manner to be prescribed under regulations, when an employee terminates his service prior to re-

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[7] Voluntary employee contributions are to be treated the same as a separate account.

[8] Plans which are not subject to the funding requirements (e.g., profit-sharing plans, church plans, and government plans) can be required to provide vesting of employee benefits (to the extent funded) if contributions are completely discontinued.

[9] In the case of a multiemployer plan the Secretary or his delegate may provide by regulations for the situation where all the employers of the terminated plan did not contribute at the same rate or on the same basis,

tirement with vested benefits.[10] This information, in turn, will be supplied to plan participants and beneficiaries upon request, and when the individual applies for social security benefits. This provision should minimize the danger that vested rghts may be lost because a participant is unaware that he is entitled to receive a pension. (Regulations will provide for the situations where adequate records are not available for periods before the effective date of bill.)

Under the bill, the "plan administrator" would generally be the person so designated under the plan or, if there were no designation, the employer or organization who maintained the plan.

Variations.—In the case of any plan, the bill (in sec. 501.) permits the Secretary to prescribe an alternative method (often referred to as a "variance") of satisfying the vesting schedules and accrued benefit requirements with respect to benefits attributable to employer contributions, if it is established to his satisfaction that rigid application of the requirements of the bill would increase the costs of the plan to such an extent that there was a substantial risk that the plan would be terminated, or there would be a substantial reduction in the benefits under the plan, or in the compensation of the employees. Such a variance could also be granted to prevent an undue administrative burden in connection with the plan.

The rules for such variances (which may be considered by the Secretary either on his own motion or on petition by the plan administrator, and only with appropriate notice and hearing safeguards) are described in detail below (in the funding portion of this general explanation).

Joint and survivor annuities.—Under present law, there is no requirement that a qualified employee plan must provide for survivor annuities. This can result in a hardship where an individual primarily dependent on his pension as a source of retirement income is unable to make adequate provision for his spouse's retirement years should he predecease her. To correct this situation, the committee's bill requires that if a plan provides for a lifetime annuity then, where the participant is married on the annuity starting date, the plan must provide for a joint and survivor annuity (or an arrangement, such as supplementary benefits for the participant's spouse which has essentially the same effect) where the survivor annuity is at least half of the annuity payable to the participant during the joint lives of the participant and his spouse.

The plan may provide that the participant has a reasonable period (as prescribed in regulations) before the annuity starting date during which he may elect in writing—after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of such an election—not to take the joint and survivor annuity. The bill does not require the plan to "subsidize" the joint and survivor annuity. Consequently, such a joint and survivor annuity could be less (in terms of dollars per annuity payment) than the single life annuity. Also, the bill does not forbid plans from making reasonable actuarial adjustments to take appropriate account of the possibility that otherwise total costs would be increased because of adverse selection.

The reduction permitted on the basis of actuarial equivalence need not involve a variety of reductions dependent on the life expectancy of each participant and of the participant's spouse. A uniform reduction or a simplified schedule of reductions will fulfill the intent of this provision if it can be established to provide actuarial equivalence in the case of the average participant.

The joint and survivor annuity requirements are to apply only to plans to which the new vesting requirements of this bill are applicable. In other words, the joint and survivor rules would not apply to government plans, they would not apply to church plans unless an election had been made to come under the new rules, and the effective date in the case of existing plans would be delayed to the same extent that the effective date is delayed generally with regard to the new vesting provisions. Of course, the plans not subject to these provisions (or to which the new provisions would not apply for some years into the future) may offer joint and survivor options if they wish to do so. The mandatory provisions of the bill will not apply unless that participant's annuity starting date is on or after the effective date with regard to that plan and would not apply unless that participant was an active participant in the plan on or after that effective date.

Plan mergers.—The committee bill contains a provision to ensure that the rights of participants are fully protected in the event of plan mergers. Under this provision, which applies to any plan merger occurring after October 22, 1973, each participant must be entitled to receive a benefit immediately after the merger (determined as if the plan then terminated) which has not less than the value of the benefit he would have been entitled to receive immediately before the merger (determined as if the plan then terminated). Moreover, the funding of his accrued benefit must be at least as adequate after the merger as it was before the merger. Without such a provision, the committee was concerned that the rights of plan participants might be diluted in some instances, as the result of plan mergers. As a further safeguard, the bill requires that in the case of any plan merger which occurs after enactment, the plan administrator must give 30 days notice, including an actuarial statement indicating that the requirements of the bill have been met.

Alienation.—To further ensure that the employee's accrued benefits are actually available for retirement purposes, the committee bill also contains a provision requiring that plan to provide that benefits may not be assigned or alienated. (Of course, this provision is not intended to prevent the transfer of benefit rights from one qualified plan to another.)

Nevertheless, a plan will be permitted to provide for voluntary and revocable assignments (not to exceed 10 percent of any benefit payment).

Your committee understands that many plans provide for payments of premiums for supplemental hospital benefits (under the Social Security Act) and this provision is intended to specifically permit such an alienation. Your committee determined to permit reasonable flexibility to extend this practice to other types of payments in the future, concluding that the safeguards (revocability, 10-percent limit, and regulations) would be sufficient to prevent abuses which might endanger the right of future retirees to be secure in their retirement incomes.

This provision is not intended to interfere with the current practice in many plans of using vested benefits as collateral for reasonable loans from the plans, where the "prohibited transactions" provision of present law and other fiduciary requirements are not violated.

Benefits of terminated participants.—Protection is given to retired individuals and individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increase.

Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service (whichever is applicable) if that date is later.

These changes do not affect the ability of plans to use the integration procedures to reduce the benefits that they pay to individuals who are currently covered when social security benefits are liberalized. Your committee, however, believes that such practices raise important issues. On the one hand, the objective of the Congress in increasing social security benefits might be considered to be frustrated to the extent that individuals with low and moderate incomes have their private retirement benefits reduced as a result of the integration procedures. On the other hand, your committee is very much aware that many present plans are fully or partly integrated and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the growth or perhaps even eliminated private retirement plans.

In view of the serious issues involved in the integration of private plans with the social security system, your committee defers to the planned consideration of this matter by the Committee on Ways and Means.

Payment of benefits.—To ensure that a participant can reasonably expect to receive his benefits during his retirement years, the committee bill requires a qualified plan (to which the basic vesting provisions apply) to commence payment of benefits to the participant (unless he elects otherwise in writing and this election is permitted by the incidental death benefits rule) not later than the 60th day after the close of the plan year in which the latest of these events occurs: (1) the participant attains age 65; (2) the 10th anniversary of the time the participant commenced participation in the plan; or (3) the participant terminates his service with the employer. This requirement is set in terms of the end of a plan year, rather than the date on which the event occurs, in order not to disrupt unduly the administrative practice of plans that begin retirement benefits for all new retirees on the same date. The second of the above alternatives (the 10th anniversary of commencement of service) is designed to permit a defined benefit plan to have an adequate period of time in which to fund the benefit for a person who first enters the plan at a relatively late age. The third of the above alternatives (termination of service) has been added in recognition of the fact that these benefits

[10] In the case of a multiemployer plan, the information would generally be furnished only when the employee left the plan; there would be no need to notify the Social Security Administration merely because the participant changed employers. Also, because of the large "turnover" rate in multiemployer plans, your committee contemplates that the regulations will provide that in the case of a multiemployer plan, no reporting is required for a reasonable period of, say, 2 years after the employee has last performed service under the plan.

are designed primarily to provide for the participant's retirement.

Effect of withdrawal of employee contribution.—At the present time, many employee plans require employees to make contributions order to receive employer contributions (or benefits to be funded by the employer). Some such plans permit employees to withdraw their contributions (or the benefits derived from their contributions) but impose as a "penalty" for such withdrawal the forfeiture of some or all of the benefits derived from employer contributions. Where this occurs, the effect is to reduce the retirement protection afforded to the employee. Your committee is not at this point expressing a view as to whether employee contributions or the right to withdraw those contributions are desirable features of retirement plans. H. wever, it does not appear appropriate to provide for forfeitures derived from employer contributions merely because of a withdrawal by the employee. Accordingly, the committee bill specifically requires all qualified plans to forbid forfeitures of nonforfeitable benefits derived from employer contributions solely because of withdrawals by employees of any parts of the benefits derived from the employees' contributions.

This limitation is to apply only to plans to which the new vesting provisions of the bill apply.

Church and government plans, and union-sponsored plans.—Church and government plans (described above under participation and coverage) are exempt from the vesting provisions of the bill but must comply with the requirements of present law in this area (as in effect on the day before enactment) in order to be qualified. Church plans may elect to come under the provisions of the bill and, once made, such an election will be irrevocable.

The committee bill also exempts from the vesting requirements plans which do not, any time after enactment, provide for employer contributions—in other words, union-sponsored plans. Since these plans are, in effect, controlled ' y the employees for whose benefit they are established, there is no need to impose the vesting requirements of the bill. However, if the plan provides for employer contributions, the mere fact that no such contributions are made (either because the plan is fully funded, or because the employer fails to comply with the funding requirements of the bill, or for some other reason), will not result in an exemption for the plan from the vesting requirement.

Effective Dates

These provisions apply generally to plan years beginning after the date of enactment of the bill. Later effective dates (which may vary from 1976 to 1981, depending on the circumstances of the plan) are provided in the case of plans in existence on January 1, 1974, in order to afford such plans adequate opportunity to adopt any amendments needed in order to conform to the new requirements resulting from this bill. The effective date provisions are described more fully above, in the discussion of participation and coverage requirements.

Part 3. Funding

Present Law

Pension plan liabilities [1] generally are estimates and are based on actuarial calculations. Consequently, all actuarial methods, factors, and assumptions used must, taken together, be reasonable and appropriate in the individual employer's situation. When applying for a determination letter from the Internal Revenue Service that a plan is qualified, the actuarial methods, factors, and assumptions used generally must be reported to the Service, along with other information to permit verification to the reasonableness of the actuarial methods used. Changes in actuarial assumptions and methods must be reported annually to the Service.

Actual experience may turn out to be different from anticipated experience, changing the estimated pension liabilities (and needed contributions requiring adjustments in assumptions and thereby resulting in experience loss or experience gain. Depending on the circumstances, the contributions needed to make up experience losses may be made currently or may be added to past service costs and amortized.[2] Similarly, depending on the circumstances, experience gains may reduce the plan cost currently or reduce costs under one of the spreading methods used to determine the amounts deductible.

The value of the plan assets also affects the amount of contributions. Under administrative rulings, assets may be valued by using any valuation basis if it is consistently followed and results in costs that are reasonable.

If an employer does not make the minimum required contributions to a qualified plan, under administrative practice the deficiency may be added to unfunded past service costs. However, the plan also may be considered terminated, and immediate vesting of the employees' rights, to the extent funded, may be required.

Under the bill, normal costs of covered plans are to be currently funded. Additionally, newly-established unfunded past service liabilities of covered plans generally are to be amortized over no more than 30 years, although existing past service liabilities generally are to be amortized over no more than 40 years. In addition, experience deficiencies generally are to be amortized over no more than 15 years. (Generally, longer periods are to be allowed for multiemployer plans.) Alternatively, if funding requirements are higher under a second general standard which is based on accrued vested liabilities, this standard is to apply in lieu of the rules set forth above. Under this standard, accrued vested liabilities are determined, as also are the value of the plan's assets. To the extent the vested liabilities exceed the value of assets, the first year's payment under a 20 year amortization schedule (principal and interest) of unfunded vested liabilities is to be paid in the current year. A new determination with respect to the applicability of this second general standard is to be made in each of the succeeding years, starting with a new 20 year period. Of course, pension liabilities may be amortized at a faster rate than under the minimum required standard, if desired.

Your committee recognizes that the amount required to fund a pension plan is in large part determined by actuaries' estimates of future plan costs, which in turn are based on the actuarial methods and assumptions used for each plan. Consequently, the determination of the amount of contributions that must be made to a plan to adequately fund the plan benefits is significantly affected by the professional decisions of the plan's actuary. The bill provides that actuaries enrolled to certify plan costs must report the actuarial methods and assumptions used for each pension plan. Your committee also contemplates that the Secretary may establish an actuarial advisory board to provide assistance in setting standards for enrolling actuaries, setting guidelines for actuarial assumptions and in other pertinent matters.

Explanation of provisions

Minimum funding rules, in general.—Your committee's bill establishes new minimum funding requirements for qualified plans so these plans will accumulate sufficient assets within a reasonable time to pay benefits to covered employees when they retire. Of course, contributions generally may be greater than these minimum requirements if the employer so desires. The new funding rules generally are to apply to any plan year after the effective date of the plan. However, the new requirements generally are not to apply to profit-sharing or stock bonus plans, governmental plans, certain church plans, plans with no employer contributions, and certain insured plans. Once a plan or trust has been covered the minimum funding requirements will apply, and they are to continue to apply to the plan or trust, even if it later loses its qualified status. If a plan loses its qualified status, the deduction rules for nonqualified plans are to apply even though the minimum funding standard continues to apply to the plan.

Generally, under the new funding requirements the minimum amount that an employer is to contribute annually to a defined benefit pension plan includes the normal costs of the plan (as under current law), plus amortization of past service liabilities, experience losses, etc. The minimum amortization payments required by the bill are calculated on a level payment basis—including interest and principal—over stated periods of time. Generally, initial past service liabilities and past service liabilities arising under plan amendments are to be amortized over no more than 30 years (40 years for the unfunded past service liabilities on the effective date of these new funding rules, in the case of existing plans), and experience losses are to be amortized over no more than 15 years. However, generally experience gains and losses need not be calculated more than every three years. With respect to multiemployer plans, past service liabilities generally may be amortized over no more than 40 years, and experience losses over no more than 20 years. However, an alternative funding standard, based on contributing a portion of the unfunded nonforfeitable liabilities under the plan, is to be used if it brings a higher level of funding in any year than would the basic minimum funding standard. This alternative standard is to apply both to multiemployer and other plans.

For money purchase pension plans, the minimum amount that an employer is to annually contribute to the plan is the amount that must be contributed for the year under the plan formula. For purposes of this rule, a plan (for example, a so-called Taft-Hartley plan) which provides an agreed level of benefits and a specified level of contributions during the contract period is not to be considered a money purchase plan if the employer or his representative participated in the determination of the benefits. On the other hand, a "target benefit plan" is to be treated as a money purchase plan for purposes of the minimum funding rules.

Under the new funding rules, generally each covered plan is to maintain a new account called a "funding standard account." The account also is used to assure that a plan which has funded more than the minimum amount required is properly credited for that excess and for the interest earned on the excess. Similarly, where a plan has paid too little, the account is to assist in enforcing the minimum funding standard.

Each year the funding standard account is to be charged with the liabilities which must be paid to meet the minimum fund-

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[1] In determining liabilities, an employer must take into account factors such as the basis on which benefits are computed, expected mortality, interest, employee turnover, and changes in compensation levels.

[2] Under the "10-percent" deduction limit (sec. 404(a)(1)(C) of the Code), if the experience loss occurs using the same assumptions as previously, the additional contributions, subject to certain restrictions, may be deducted currently. If the deficit results from a loss in asset values or revaluation of liabilities using more conservative assumptions the deficit may be added to past service cost. Rev. Bull. 57-550, 1957-2 C.B. 266.

ing standard. Also, each year the funding standard account is to be credited with contributions under the plan and with any other decrease in liabilities (such as amortized experience gains). If the plan meets the minimum funding requirements at the end of each year, the funding standard account will show a zero balance (or a positive balance, if the employer has contributed more than the minimum required). If the minimum contributions have not been made, the funding standard account will show a deficiency (called an "accumulated funding deficiency").

The funding rules established by the bill are in addition to the rules which provide the maximum deduction limits for contributions to a plan. However, generally a contribution that is required by the minimum funding rules is to be deductible currently. In addition, the rules governing the maximum deduction limitations are to be changed to make them more compatible with the minimum funding requirements.

Normal costs and initial past service liabilities.—Your committee's bill specifically continues the requirement of present law that the normal costs (arising from current liabilities) of a defined benefit pension plan must be currently funded. In addition, in order to give assurance that a plan will have sufficient assets to pay benefits, the bill establishes new minimum requirements for funding accrued past service liabilities.

In general, the bill requires that an employer's contributions to a defined benefit pension plan for initial past service liabilities is to be sufficient to amortize these liabilities, on an accrued basis, over no more than 30 years from the date that the plan is established (40 years for multiemployer plans).

For a plan in existence on the date of enactment, unfunded past service liabilities existing as of the effective date of the new funding provisions applicable to the plan are to be treated as initial past service cost to come under the minimum funding rule and are to be amortized over no more than 40 years. This longer period will allow existing plans sufficient time to make the transition into the new funding rules. Since existing plans may have to be amended to meet the new vesting and participation requirements of the bill (and those amendments would affect plan costs), the 40-year amortization period is to be allowed for past service liabilities existing as of the plan year for which the bill becomes effective, including those liabilities arising from amendments made to meet the new vesting and participation requirements, even if those amendments are made retroactive after the effective date respecting the plan. However, the 40-year amortization is allowed only with respect to liabilities arising from retroactive amendments that are made by the time the employer must file his tax return for his taxable year in or with which the first plan year to which the new minimum funding requirements apply ends. In the case of multiemployer plans, such retroactive amendments may be made within two years after the close of the first plan year to which the new minimum funding requirements apply.

The minimum funding requirement for past service liabilities in effect is analogous to payment over 30 years of a loan secured by a home mortgage. It requires contributions to the plan to be made not less rapidly than if made on a level payment basis over 30 years, with each payment including both interest and principal. For example, if the past service liability is $1,000,000 at the time a plan is established, the minimum level payment that is to be made each year, for 30 years, to meet the funding requirement (calculated at an interest rate of 6 percent per annum over the 30-year period) is $68,537 per year (assuming contributions are made at the beginning of each year). In addition, the employer would be required to contribute annually to the plan an amount equal to the normal cost of the plan.

The interest rate or rates to be used in calculating the minimum payments for amortization of initial past service liabilities is the same rate or rates as that used in determining plan cost, at the time the plan is established, or at the time the new funding requirements apply to the plan, in the case of plans in existence on the date of enactment. (Similarly, the interest rate or rates used to amortize past service liabilities arising from amendments, to amortize experience losses, and to amortize contribution waivers also is the rate or rates used to determine plan costs at the time the liability in question first arose.) If the interest rate used to determine plan costs is changed as of a later date in order to conform with experience, the initial amortization schedule of level payments is not to be changed, but the consequent increase (or decrease) in plan costs is to be amortized as an experience loss or gain (treated in the manner described below).

Under your committee's bill, the basic minimum funding rules—both those which apply to all past service liabilities and those which apply to normal costs—require funding on the basis of accrued, (that is, both vested and nonvested) liabilities, not merely on the basis of vested liabilities. The use of accrued liabilities for this purpose appears appropriate because it generally provides the most orderly and comprehensive method for funding the plan's entire liabilities. In this way, gradual payments will be made to fund all of a plan's present liabilities, including the presently nonvested accrued liabilities which are expected to vest in the future. Moreover, funding on the basis of accrued liabilities tends to produce somewhat more rapid funding, and as a result generally provides more protection to plan participants.

Generally, the 30-year amortization requirements initially add only moderately to an employer's funding cost under present law. This is true because under present law interest on unfunded accrued past service liabilities (which accounts for the bulk of the level amortization payments required under the bill in the early years) must be contributed to a qualified pension plan. Therefore, your committee believes that 30-year amortization will not hamper an employer in starting a new plan, or in adding plan amendments, that includes past service liabilities. Similarly, the 40-year amortization will not unduly increase present costs of an employer with an existing plan.

Plan amendments.—The bill provides that past service liabilities created by plan amendments are to be treated generally in the same way as initial past service liabilities of new plans for purposes of the minimum funding rules. Under the minimum funding rules these liabilities are to be amortized separately over a 30-year period (40 years for multiemployer plans) from the date the amendment is adopted if this precedes the date on which benefits increase. For example, if the unfunded accrued past service liability added by an amendment is $100,000, the employer generally is to amortize this increase in past service liability in 30 annual payments of $6,854 (assuming an interest rate of 6 percent and that contributions are made at the beginning of each plan year).

Plan amendments which decrease past service liabilities (by decreasing plan benefits) are treated consistently with plan amendments increasing benefits; that is, decreases in past service liabilities from plan amendments are to be amortized over 30 years (40 years for multi-employer plans). Consequently, the minimum amortized annual payments to fund past service liabilities that must be contributed by an employer who decreases plan benefits generally will not be less, in any one year, than amortized payments required for an employer who started out with a plan providing the same (lower) benefits. (Of course, a decrease in benefits will often also decrease the normal cost which must be funded annually.)

Under the bill plan amendments may be made on a retroactive basis, to a limited extent, without the approval of the Secretary. In this case, plan amendments may be made after the close of a plan year and yet apply to that year if they are made within the time for filing the employer's return (including extensions) for the employer's taxable year with or within which that plan year ends. (Since a single employer's plan year is not a workable standard for multiemployer plans, with respect to multiemployer plans, an amendment may be made within two years after the close of the plan year.) It is expected that this provision may be used to decrease plan liabilities where an error has been made in calculating the amount of benefits that can be provided and funded under the minimum standard. However, amendments made under this provision are not to decrease accrued benefits of any participant determined as of the beginning of the first plan year to which the amendment applies.

This provision also may be used with respect to increases in plan liabilities. As discussed above, to the extent that past service liabilities are added by plan amendments that are effective as of the effective date of the new funding requirements for existing plans, and are made within the time allowed for retroactive amendment, these past service liabilities may be amortized over a 40-year period.

Your committee also recognizes that in certain cases where plan participants would otherwise suffer substantial adverse consequences, it may be appropriate for plan benefits to be retroactively reduced beyond the limit described above. Therefore, the bill provides that, on application of the plan administrator (or on motion of the Secretary) and after proper notice to all interested parties and a public hearing where interested parties are provided adequate opportunity to be heard, the Secretary may approve a retroactive decrease in plan benefits (whether or not nonforfeitable). However, before such approval is granted, the Secretary must make findings of fact that if the amendment is not approved, there would be a substantial risk that the plan would not be continued, a substantial risk of a curtailment of benefits (more than the curtailment that would occur with approval of the amendment), or a substantial risk that current levels of employee compensation would be substantially curtailed. Furthermore, the Secretary must find that failure to approve the amendment would be adverse to the interests of plan participants in the aggregate. Any amendment approved by the Secretary is to be retroactive only for such limited time period, and is to decrease benefits only to such extent, as is necessary or appropriate to carry out the purposes of the bill and as is necessary or appropriate to provide adequate protection to plan participants and beneficiaries.

Experience losses and gains.—During the course of a pension plan, actual plan experience may turn out to be poorer than anticipated. For example, the value of plan assets may turn out to be less than expected. Where this occurs, there generally will be an "experience loss" which must be funded if the plan is to be able to pay the benefits owed.[5]

[5] However, the bill provides that experience gains and losses are to be determined under the funding method used to determine costs under the plan. It is understood that some funding methods, such as the "aggregate method", do not provide experience gains or losses, but differences between anticipated and actual experience are subsumed in the basic funding requirements of the method. If a plan were to use such a funding method, it is anticipated that the plan would not need to separately amortize experience gains or losses.

Since experience losses relate to previously established plan liability, they may indicate that the plan has become underfunded in relation to the required minimum for funding normal costs and past service liabilities. Consequently, your committee believes it is reasonable to require faster funding for these amounts than for newly established past service liabilities. The bill provides that under the minimum funding rules these losses are to be amortized (with level annual payments, including principal and interest) over not more than 15 years (20 years for multiemployer plans) from the date the loss is determined. Your committee believes that a 15-year amortization period generally will provide adequate funding of experience losses, while at the same time protecting employers *from potentially* severe financial burdens arising from experience losses created by uncontrollable events.

Your committee understands that the 15-year period, while protecting the financial security of plans, generally will not discourage pension plans such as "final average pay plans" which increase accrued benefits as pay increases, and thus are generally desirable from the employee's view. Additionally, it is believed that under the 15-year requirement employers will not be subject to unnecessary financial burdens where they have experienced losses beyond their control.

A pension plan also may have experience gains during the course of its operation. These gains would occur because experience is more favorable than anticipated. For example, the value of plan assets may be greater than expected. The bill treats experience gains symmetrically with experience losses, so that gains are spread over 15 years (20 years of multiemployer plans) from the date they are determined.

The bill provides that changes in accrued plan liabilities resulting from changes in actuarial method or assumptions are to be treated as experience losses (or gains). Additionally, the bill provides that changes in plan cost that result from changes in the Social Security Act (or other retirement benefits created by State or Federal law) or in the definition of wages under section 3121 of the Internal Revenue Code are treated as experience losses (or gains). It is expected that the actuarial assumptions for plans affected by social security, etc. now generally will allow for such changes since to a substantial extent these changes may be anticipated. In this circumstance, if changes in plan cost from changes in social security were not treated as experience gains to be amortized, employers with plans that did not properly allow for social security changes might be able to, upon increases in social security payments, substantially decrease current contributions and thereupon plan participants would receive correspondingly less protection.

Your committee recognizes that plan experience rarely conforms to anticipation on a year-by-year basis, but that experience often is close to expectations over a longer period. Therefore, to smooth fluctuations in funding required by amortization of experience gains and losses, the bill provides that experience gains and losses are to be determined at least every three years and generally need not be determined any more frequently. However, under the bill the Secretary may provide by regulations that experience gains and losses are to be determined more frequently than every three years, in particular cases. Your committee expects that this generally will be required only for plans that show an unusual need for frequent calculations, such as for plans with relatively high claims for payments with respect to assets available. (Under the bill, regulations requiring more frequent determinations of gains and losses are to be effective with respect to plan years beginning after December 31, 1975, only if approved by the Secretary of the Treasury.) This is to ensure that the rules of the Internal Revenue Service and the Department of Labor with respect to frequency of determination of gains and losses are similar. It is anticipated that similar regulations prescribed by the Secretary of the Treasury are not to be effective for those years until approved by the Secretary of Labor.

Additional funding standard.—Your committee recognizes that certain plans with a high proportion of nonforfeitable benefits in relation to assets available may not be adequately funded under the basic minimum funding standard. Therefore, an additional minimum funding standard is provided in the bill which is to be used in any year in which it would require a greater amount of plan contributions than would the basic minimum funding standard.

Under the additional funding standard, the plan is to determine unfunded nonforfeitable liabilities (total nonforfeitable liabilities less plan assets). When the amount required to amortize these unfunded nonforfeitable liabilities over a period of 20 years (including principal and interest) is to be calculated, the amount to be contributed is the first year's payment under that amortization schedule. This calculation is to be repeated each year (on the basis of a new 20 year period) in which the additional funding standard would require a higher contribution than the basic standard. Since the amount of unfunded nonforfeitable liabilities generally will decrease with contributions, in succeeding years the payment under the additional funding standard generally will be less than the prior year's payment. Therefore, this is a declining balance method of funding.

Your committee anticipates that the amount of unfunded nonforfeitable liabilities generally will be reported on an annual basis, and, thus, the basic figures required for this calculation will be readily available to most plans. Additionally, your committee understands that this additional standard will apply infrequently but that it will bring about necessary additional funding in the few cases where it will apply.

Your committee recognizes that in some situations it would be inappropriate to require plans to meet the basic funding requirements. To meet this problem, the bill provides that the Secretary may prescribe an alternate funding method for a plan, determining the annual contributions and credits to the funding standard account. The Secretary may also prescribe, under the variance procedure, alternative methods for satisfying the requirements of the bill with respect to changing the multi-employer plan's funding method or plan year.

A variance may be prescribed by the Secretary only after he holds a public hearing on the plan in question and allows interested persons, including participants and beneficiaries of the plan, an opportunity to present their views. In this regard, a variance cannot be granted unless the Secretary is satisfied that all plan participants and other interested persons have received adequate notice from the plan administrator prior to any public hearing on the variance. If a variance is to be granted, the Secretary, after a public hearing, is to make a finding that the basic funding requirements would increase plan costs to such an extent that there would be a substantial risk that the plan would be terminated, that benefits under the plan would be substantially decreased without the variance, that (if the plan were continued at its current level) employee compensation would be substantially decreased, or that unreasonable administrative burdens would be imposed on the plan under the basic funding requirements. Additionally, the Secretary is to make a finding that the basic funding requirements (or discontinuance of the plan) would be adverse to the interests of plan participants in the aggregate. A variance is to be allowed by the Secretary only for such a limited period as is necessary or appropriate to carry out the purposes of the bill, and to provide adequate protection to plan participants and beneficiaries.

The funding standard account.—As previously indicated, the bill requires that each covered plan must maintain a funding standard account. The purpose of this account is to facilitate the determination of whether a plan has met the minimum funding standard. A plan will meet the minimum funding requirements only if, at the end of each plan year, the account does not, on a cumulative basis, have an excess of charges for all plan years over credits for all plan years. The account is to be charged each year with the normal costs for that year and with the minimum amortization requirements for past service costs, experience losses, and waived contributions for each year. On the other hand the account is to be credited with the contributions made for the year, with amortized portions of cost decreases, resulting from plan amendments and experience gains, and with any waived contributions.

To determine if the plan meets the minimum funding standard, the funding standard account is to be reviewed as of the end of each plan year. However, the bill provides that an employer may contribute to a plan after the end of his taxable year and up to the date of filing his tax return, and these contributions may relate back to his previous taxable year. Thus, for example, where the plan and taxable years are the same this will allow payments made within this time to relate back to the previous plan year for purposes of the minimum funding requirements and the funding standard account. This should provide an employer with sufficient time to reconcile the funding standard account and make the contributions needed to avoid underfunding.

If the account has a positive balance at the end of the plan year, the employer will have contributed more than the minimum funding standard requires. Since income will be earned on amounts in the plan, the bill provides that this positive balance is to be credited with interest,[6] which will reduce the need for future contributions to meet the minimum funding standard. On the other hand, if the funding standard account has a deficit balance, the employer will have contributed less than required under the minimum funding rules, and the deficiency is to be charged with interest. Interest is charged in this case because the deficiency will become larger over time by the amount of income the plan would have earned had the minimum requirements been complied with and therefore the employer will have to pay more to the plan than just the amount he failed to contribute in the plan year. (A plan in existence on the date of enactment will start with a zero balance in its funding standard account on the effective date for the new funding rules applicable to the plan. Similarly, a newly-established plan will start with a zero balance in its funding standard account.)

An example of the operation of the funding standard account for a single employer defined benefit pension plan is described below.

It is assumed that in 1978 the plan is established with a past service liability of $1

[6] The interest rate or rates to be used to charge or credit the account are to be consistent with the rate or rates used under the plan to determine costs and are to be charged or credited in accordance with regulations.

million and a normal cost of $70,000. The interest rate used to determine liabilities under the plan for 1978 and for all years in this example is 6 percent per year. It is also assumed that this plan chooses to determine experience gains and losses on an annual basis, rather than every three years, as is generally allowed under the bill. In the first plan year, the employer contributes $138,537. The plan's funding standard account for 1978 will be as follows:

Credits: Employer contributions	$138,537
Charges:	
Normal cost	70,000
Amortization—initial past service cost (30 years)	68,537
Total	138,537
Net balance	0

In the year 1979 the plan is amended (effective for 1979), increasing past service liabilities by $100,000. The plan's normal cost for benefits as amended is $75,500. There is a net experience gain of $5,000 over the prior year. In this year, the employer's contribution is $165,975. The plan's funding standard account for 1979 will be as follows:

Credits:	
Employer contributions	$165,975
Amortization—experience gain (15 years)	486
Total	166,461
Charges:	
Normal cost	75,500
Amortization—initial past service liability	68,537
Amortization—past service liability from amendment (30 years)	6,854
Total	150,891
Balance	15,570
Interest on balance	[1] 934
Net balance	16,504

[1] This assumes that all amounts other than interest are charged and credited at the beginning of the year.

In 1980 the normal cost of the plan is $76,200. There is an experience loss for the preceding year of $10,000. The employer contributes $135,572. The plan's funding standard account for 1980 will be as follows:

Credits:	
Employer contributions	$135,572
Amortization—experience gain	486
Total	136,058
Charges:	
Normal cost	76,200
Amortization—initial past service liability	68,537
Amortization—past service liability from amendment	6,854
Amortization—experience loss (15 years)	971
Total	152,562
Net	−16,504
Balance from previous year	16,504
Balance	0
Interest on balance	0
Net balance	0

In case the additional funding standard applies, the funding standard account is to be charged with the excess of the amount to be contributed under the additional funding standard over the amount to be charged as normal cost, amortization of past service costs and experience losses, less the amortized credits for plan amendments that decrease liabilities and for experience gains. (However, to ensure the account is properly maintained, these amounts also are to be charged and credited to the account in this case.)

The funding standard account—special rules—combining and offsetting amounts to be amortized.—Your committee recognizes that the amortization rules may require a plan to keep accounts for amortizing a number of different items. While the amortization charges and credits to be entered in the funding standard account for any one year will net out to a single figure, some may prefer not to maintain a number of different amortization accounts. Therefore, the bill provides that amounts required to be amortized may, at the taxpayer's discretion, be combined into a single amount to be amortized.

The bill provides, pursuant to regulations to be issued by the Secretary, that amounts which are amortizable credits and charges may be offset against each other with the balance to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into the credits or charges, whichever is greater. Also, pursuant to regulations, amortizable credits (or amortizable charges) may be combined into one credit or one charge to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into the combined amount. It is expected that if a plan elects to offset or combine amounts to be amortized, this election will apply to all amounts (both charges and credits) required to be amortized for the year of election.

An example of the netting and combining of amortizable amounts by a single employer plan is described below.

It is assumed that the plan has no past service cost. It is also assumed that the plan chooses to determine experience gains and losses on an annual basis rather than every three years as is generally allowed under the bill. In year 1, the plan has an experience loss of $40,000. In year 2, the plan has an experience gain of $15,000. In year 3, the plan has an experience loss of $10,000. In all these years the plan uses a 5-percent per annum interest rate in computing its plan costs.

The $40,000 experience loss that occurs in year 1 must be amortized over 15 years, requiring annual payments of $3,670. The first payment to amortize this amount is made in year 2.

At the end of year 2 (after one payment of $3,670) the remaining unamortized balance of the $40,000 experience loss is $38,145.[7]

The $15,000 experience gain that occurs in year 2 also is to be amortized over 15 years. Alternatively, it may be combined with the remaining experience loss of $38,145, reducing the unamortized loss by ($38,145 minus $15,000) to $23,145. It is expected that under regulations to be issued by the Secretary the balance of $23,145 may be amortized over 14 years (the remaining amortization period of the greater amount), in equal annual payments of $2,227. At the end of year 3 (after one payment of $2,227) the remaining unamortized balance of the netted experience loss and gain is $21,964 (requiring annual payments of $2,227 over 13 years).

The $10,000 experience loss that occurs in year 3 would be amortized over 15 years in equal payments of $918 per year if it were to be separately computed and amortized. On combining this loss with the previous net experience loss, the base for amortization is $21,964 plus $10,000 or $31,964. It is anticipated that under regulations to be issued by the Secretary of the Treasury this amount may be amortized by 13 annual payments of $3,145 ($2,227 plus $918) and thereafter one payment of $1,780.

[7] This is based on the assumption of a 5 percent interest charge on the unpaid balance during the year.

Special rules—the full funding limitation.—In some cases, the difference between the total liabilities of the plan (all accrued liabilities including normal cost) and the total value of the plan assets may be smaller than the minimum funding requirement for the year. For example, this could occur where the plan assets had increased substantially and unexpectedly in value. Where the excess of total plan liabilities over assets is less than the minimum funding requirement otherwise determined, your committee believes that an employer should not have to contribute more than the amount of this excess liability, for upon contribution of this amount the plan will become fully funded. As a result, in this case the bill provides that the amount to be charged to the funding standard account (and to be contributed) is to be limited to the difference between the total liabilities of the plan and the fair market value of the plan assets. Since the full funding limitation reduces the amount otherwise required to be contributed to a plan, it appears appropriate to use the lower of fair market value or the value of plan assets as normally determined. (As discussed below, the value of plan assets as normally determined may be greater than fair market value in certain cases and in such situations use of the normal valuation method could inappropriately limit contributions to a plan.)

When the full funding limit applies, the amortization schedule for charges and credits to the funding standard account are to be considered as fully amortized, and these schedules generally are to be eliminated from the calculations under the funding standard account. However, if the plan is amended in later years to increase plan liabilities, a new amortization schedule would be established with respect to this increase in liabilities. For years after the full funding level is reached, the funding standard account will continue to be charged with the normal cost of the plan. Consequently, unless asset values increase correspondingly with the increase in plan liabilities, eventually the full funding limitation will not be applicable and the employer will have to make contributions to the pan to meet the minimum funding requirements.

If the employer fails to make the required contributions in a year in which the full funding limitation is applicable, the excise tax (described below) on underfunding in that year is to be based only on the amount that should have been contributed, given the full funding limitation.

For the purpose of calculating the full funding limitation, the bill provides that plan liabilities (including normal cost) are to be determined under the funding method used by the plan to determine costs for the year, if the liabilities can be directly calculated under this funding method. However, if this cannot be done under the plan's funding method, in order to allow the full funding limitation to apply, the bill provides that the accrued liabilities are to be calculated under the entry age normal method, solely for the purpose of determining the application of the full funding limitation.

Whether the full funding limitation applies generally is to be determined at the end of the plan year, after all plan liabilities for that year have accrued. For purposes of the full funding limitation, the value of plan assets generally is to be determined as of the usual valuation date for the plan. Since, as discussed above, contributions generally can be made to a plan after the end of a plan year and yet relate back to the previous plan year, there should be no timing problem with respect to such year-end calculations.

Special rules—money purchase pension

plans.—Generally, the funding standard account for money purchase pension plans is to be charged annually with the amount that must be contributed for the year under the plan formula, and is to be credited with the amount that is paid. As a result, employers who have these plans must annually make the payments required under the plan.

For purposes of the funding rules, a "target benefit plan" generally is to be treated as a money purchase pension plan. However, a plan (for example, a so-called Taft-Hartley plan) that provides an agreed level of benefits and a specified level of contributions is not to be considered a money purchase pension plan if the employer or his representative participated in the determination of the benefits.

Special rules—collectively bargained plans and plans of controlled groups.—Plans maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers often provide for a predetermined level of contributions over a period longer than 12 months. Your committee believes that for the funding requirements to be workable in these cases, employers generally must be allowed to base their contributions on the bargained and agreed upon basis. Consequently, for purposes of maintaining the funding standard account, a plan year of a plan maintained pursuant to a collective bargaining agreement generally is to be considered as extending for the term of the collective bargaining agreement. This provision is intended to adapt the minimum funding standard to those plans where contributions are fixed by contract in accordance with a fixed standard, such as a specific dollar amount per hour of covered employment or a specific amount per ton of coal mined.

Under such a plan if the actuarial assumptions were reasonable and the actuarial calculations were correct as of the beginning of the term of the agreement, and the agreed contribution were made, there would be no deficiency in the funding standard account for the term of the collective bargaining agreement. Any experience loss could be made up by adjustment of the contribution rate or the level of benefits for the term of the required periods of amortization or the computation of the excise tax; also, with respect to collectively bargained plans it is intended that experience gains and losses generally are to be determined at the end of each contract period, or at the end of every 3 calendar years if more appropriate for the particular plan.

The bill also provides that, to meet the needs of other collectively bargained plans, the Secretary may issue regulations that provide other periods that may be treated as plan years. For example, it is understood that some multiemployer collectively bargained plans are based on a number of contracts, each expiring at different times. It is expected that in this case the regulations would provide that the plan could use a 12-month period (or perhaps longer period if needed) for the plan year. In this case, when experience losses are determined, the plan trustees could arrange for an increase in contributions for the next year, or could arrange for a decrease in future benefits to allow negotiations to occur later to increase contributions. Additionally, as discussed above, limited retroactive plan amendments would be allowed without the approval of the Secretary for up to 2 years after the end of the plan year, so benefits could be reduced to a limited extent if needed to avoid a funding deficiency.

The bill also provides that in the case of collectively bargained plans, the minimum funding standard is to be determined as if all participants in the plan were employed by a single employer. The bill provides the same treatment for deduction purposes. This merely restates existing law.

Exclusions from coverage—insured plans.—If a pension plan is funded exclusively with certain individual insurance contracts, the bill provides that the plan is not subject to the minimum funding requirements. Your committee believes that if qualified insurance contracts are used to fund a plan and payments are timely made, the plan will be properly funded.

The contracts that are to qualify for this treatment are level annual premium individual insurance contracts where the premium is paid from the first date of an individual's participation in the plan (and from the time an increase in benefits becomes effective) and is not paid beyond the individual's retirement age. Also, the benefits under the plan must be the same as the benefits provided by the individual contracts at normal retirement age. In addition, the benefits must be guaranteed by the insurance company to the extent that premiums are paid. For the contracts to qualify, the insurance company must be licensed to do business in the State where the plan is located. Furthermore, premiums for all plan years must have been timely paid or the policy reinstated. In addition, rights under the contracts must not have been subject to a security interest during the plan year, and no loans must have been made on the policy during the plan year.

If any of these requirements are not satisfied, then the normal rules with respect to the funding standard must be followed. If a plan is initially funded with qualified insurance contracts, but, *e.g.*, a contract payment is not made, then the plan will become subject to the minimum funding rules and an excise tax may be owed (as described below) if the plan funding falls below the minimum standard. (Generally, if the payments had been timely made until this time, the funding standard account for the year of nonpayment would start with a zero balance, the accrued plan liabilities and properly amortized amounts would be charged to the account for the year in question, and any excise tax owed would be based on the net charges to the funding standard account for that year.)

Exclusions from coverage—profit-sharing plans, etc.—Under present law profit-sharing and stock bonus plans do not require a definite predetermined formula for determining the portion of profits to be shared annually with the employees. Since the contributions to these plans may be varied substantially year-by-year under the plan, your committee believes that it is inappropriate for profit-sharing and stock bonus plans to be governed by the minimum funding standard.

On the other hand, employer contributions under money purchase pension plans must be definitely determinable and fixed without being geared to profits. It is appropriate for these plans to be governed by the minimum funding standard since the application of this standard (as under present law) will require the employer to make definitely determined contributions to the plan.

Your committee intends that plans generally are to be considered money purchase pension plans which meet the "definitely determinable" standard where the employer's contributions are fixed by the plan, even if the employer's obligation to contribute for any individual employee may vary based on the amount contributed to the plan in any year by the employee. For example, it is expected that a matching plan which provides that an employer will annually contribute up to 6 percent of an employee's salary, but that this contribution will be no more than the employee's own (nondeductible) contribution, will meet the "definitely determinable" criteria. In this case, the employer's contributions are set by the plan, will not vary with profits, and cannot be varied by the employer's action (other than by a plan amendment).

Exclusions from coverage—government plans and church plans.—It has been argued that government plans should be exempt from the funding standards since the taxing power can be viewed as a practical substitute for these standards. On the other hand, your committee is concerned with reports that in the case of a number of governmental units, such generous pension promises have been made and so little funds have been set aside currently, that the practical likelihood of imposing sufficient taxes to pay those benefits may be open to question.

In view of the information received with respect to possible underfunding problems of the plans, the bill provides that your committee and the Committee on Ways and Means are to study whether plans maintained by Federal, State, or local governments are adequately funded (taking into account the new minimum funding standards of the bill). Your committee and the Committee on Ways and Means is to submit to the House of Representatives the results of this study together with recommendations on funding standards for government plans by December 31, 1976.

Under the bill, government plans are plans established and maintained for their employees by the United States Government, or by the government of any State or political subdivision of a State, or by any agency or instrumentality of such governments. Also, except for the study described above, a plan to which the Railroad Retirement Act of 1935 or 1937 applies is to be treated as a government plan.

The bill also generally exempts church plans from the new funding requirements if these plans meet the funding requirements of present law. However, a church plan may elect to have all the provisions regarding participation, vesting, funding, and form of benefit apply. If such an election is made, then the minimum funding provisions will apply to the plan. (Under the bill, once it is made, the election is irrevocable.)

A church plan is defined under the bill as a plan established and maintained by a church (or convention or association of churches) that is tax-exempt under section 501 of the Code. However, a church plan does not include a plan established and maintained primarily for the benefit of persons employed in connection with an unrelated trade or business. Nor does a church plan include a multiemployer plan if one or more employers are not tax-exempt under section 501 of the Code as a church (or convention or association of churches). With respect to plans in existence on January 1, 1974, if the plan applied on that date to employees of any tax-exempt agency of a church (or convention or association of churches) which established and maintained the plan, then the employees of the agency are to be treated as employees of the church (or convention or association of churches).

Actuarial considerations—actuarial assumptions, methods, valuation of assets.—Since actuarial calculations determine plan costs, the bill includes several basic rules regarding these calculations. Under the bill, plan liabilities must be determined on the basis of actuarial assumptions that, in the aggregate, are reasonable. Your committee recognizes that frequently there is a range of actuarial assumptions which may be appropriate for determining the costs of a defined benefit pension plan, and the choice of the appropriate assumptions is very much a matter of judgment. In this circumstance, an employer may attempt to substitute his judgment for that of his actuary, which may lead to situations where plan costs are not being independently determined by an actuary. Your committee believes that it is inappropriate for an employer to substitute his judgment in these matters for that of a qualified actuary, and it is contemplated that if such a circumstance were to arise an actuary would have to refuse giving his favorable opinion with regard to the plan or risk the sanctions imposed in fiduciaries who breach their duty.

Your committee recognizes that there are a substantial number of accepted methods of valuing assets of pension plans and many of these methods are designed to take into account market value and also to level out short-run market swings. Your committee believes that such valuation methods are appropriate since sharp, short-run variations in asset values could significantly affect the required funding if fair market value were the only accepted method of valuing assets for funding purposes. This would be inappropriate since pension plans are funded to meet the needs of the long-run, frequently over an employee's whole working life. On the other hand, your committee also recognizes that pension plans must value assets in a way that takes into account market value. Otherwise, there may be no relation between a plan's funding program and the assets actually available to pay benefits.

Under the bill, generally plan assets are to be valued on the basis of any reasonable acturial method of valuation that takes into account fair market value, pursuant to regulations to be issued by the Secretary. An acceptable alternative method, particularly as to bonds and other fixed-income investments, will be to value assets at their present or commuted value, in accordance with which the expected income stream is discounted by the valuation rate of interest and expressed as a capitalized sum. (Your committee anticipates that plan assets also will be valued for purposes of minimum funding requirements that are to be administered by the Department of Treasury. In order to provide for a uniform valuation of assets, regulations with respect to valuation which apply to plan years beginning after December 31, 1975, are to be effective only if approved by the Secretary of Treasury. Similarly, your committee anticipates that regulations applying to such plan years issued by the Department of Treasury are to be effective only if approved by the Secretary of Labor.)

Your committee anticipates that fair market value generally would be an acceptable valuation method. On the other hand, it is contemplated that using cost or book value without taking account of changes in fair market value would not be an acceptable valuation method.[8] However, it is intended that acceptable valuation methods may include (but not be limited to) the use of a moving average (over, *e.g.*, five years), or increasing asset values each year by a stated percentage of the previous year's asset value under the assumption that an even long-range appreciation will occur (in some cases, this increase may be reduced by realized appreciation or other income received from the asset.) Another alternative method may be to capitalize the current amount of income from each asset as a perpetuity, using the plan valuation rate of interest. For a valuation method to be reasonable, it is expected that the asset values obtained under the method of valuation used are to bear a reasonable relationship to fair market value, and that if fair market value and the value under the method used differ significantly over a period of several years that the value under the plan would be adjusted accordingly. However, where an unacceptable method is being used by an existing plan, it is contemplated that the Secretary will allow a transition so that the plan will have time to write up its asset values. Furthermore, it is expected that the method chosen must be used consistently by the plan.

It is also expected that the regulations will provide reasonable methods for valuing life insurance or annuity contracts, which will recognize the special nature of such contracts for valuation of pension plans.

[8] However, in a case where fair market value tended to fluctuate around cost, a reasonable actuarial method may determine that cost is the appropriate value.

Your committee also recognizes that often a pension plan will require bonds or other debt instruments as a long-term investment to be held until maturity. In that event, it would seem inappropriate to require the plan to change its valuation of the bond in accordance with market fluctuations. Therefore, the bill provides that a plan may elect to value its bonds or evidence of indebtedness on an amortized basis. At the election of the plan, the amortization may run from initial cost at purchase to par value at earliest call date or to par value at maturity. This election is to be made at the time and in the manner prescribed by regulations. The election is to be revocable only with the consent of the Secretary and is to apply to all bonds and evidences of indebtedness owned by the plan. Although the bill explicity recognizes this as one reasonalbe method of valuation that a plan may use to value bonds or evidences of indebtedness, other valuation methods may be used for these assets. (Also, it may be reasonable to use the method explicitly recognized for bonds or indebtedness for valuing other assets.)

Plan 4—Plan Termination Insurance

Section 401

This section establishes a Pension Benefit Insurance Corporation administered by the Secretary of Labor, which requires plans to insure unfunded vested insured liabilities incurred prior to enactment of the Act, as well as after enactment of the Act. The Pension Benefit Insurance Corporation is hereinafter referred to as the Corporation.

Section 402. Purposes and Powers of the Corporation

In general the purposes of the Corporation are to (1) encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants, (2) provide for the timely and uninterrupted payment of pension benefits to the participants and beneficiaries under all insured plans, and (3) minimize over the long run the premiums charged by the Corporation.

Under the general powers, the Corporation may enter into contracts. To the extent the Corporation chooses to enter into insurance contracts, the Corporation may purchase single premium annuities only from qualified carriers, only on a competitive bidding basis, and only to the extent that such action is consistent with the objective of minimizing over the long run the premiums charged by the Corporation.

Section 403. Conditions of Insurance

The Corporation shall insure participants and beneficiaries of any plan covered under this part against the loss of benefits (insured under section 409) which arise from the complete or partial termination of such plans. A partial termination shall not be deemed to have occurred if all nonforfeitable benefits of participants and beneficiaries to which the partial termination applies continue as obligations of the plan or are otherwise satisfied.

Section 404. Plan Termination Insurance Funds

Initially two funds are established—the Single Employer Primary Trust Fund relating only to single employer plans, and the Multiemployer Trust Fund relating only to multiemployer plans. After June 1, 1977 the Corporation may establish a Single Employer Optional Trust Fund for single employer plans choosing such option in order to be treated more favorably in regard to the employer liability imposed under section 414. Other funds may be established by the Corporation relating to insurance coverage for benefits other than the normal retirement benefits insured under the Single Employer Primary and Optional Trust Funds and the Multiemployer Trust Fund.

The integrity of the Single Employer Primary and Optional Trust Fund and the Multiemployer Trust Fund is to be maintained at all times.

The Corporation shall insure covered benefits of single employer plans and shall pay such benefits from the Single Employer Primary Trust Fund, except as provided in section 405(c)(8) and section 409(c). The Corporation shall insure covered benefits, as determined in section 409, for participants and beneficiaries of multiemployer plans and shall pay such benefits from the Multiemployer Trust Fund, except as provided in section 409(c).

Section 405. Premium Schedules

In general.—Separate premium schedules are to be applied to single employer plans and multiemployer plans.

Basis for Setting Premiums.—The initial premiums charged single employer plans for insurance of normal retirement benefits is made up of two parts—a rate not in excess of .1% times the excess of the present value of insured benefits over the value of the plan's assets and a rate (to be set by the corporation at a level which will produce revenue from the second part approximately equal to the first part) times the present value of insured benefits. The initial premiums charged multiemployer plans is made up of two parts in the same manner as for single employer plans except that the rate for the first part is not to exceed .025%.

The premiums for single employer plans are to be based only on the actual and projected experience of single employer plans, and the premiums for multiemployer plans are to be based only on the actual and projected experience of multiemployer plans.

Any increase in the premium rates charged plans insured under the Single Employer Primary Trust Fund or the Multiemployer Trust Fund is to be approved by Congress by a concurrent resolution originating in the House.

The Corporation may establish the Single Employer Optional Trust Fund after June 1, 1977 in which case the premiums charged single employer electing coverage under such Optional Trust Fund shall be based on rates set by the Corporation which reflect the actual and expected experience of the single employer plans electing such optional coverage (for plan years beginning after June 1, 1977).

The Corporation is to adopt rules relating to the valuation of a plan's assets and liabilities for premium purpose. The Corporation shall adopt such rules only after considering recommendations made by actuaries, actuarial organizations, and other interested parties. Such rules shall be adopted by the Corporation giving due consideration to those methods which would best minimize the cost of calculating such premiums to the plans.

Section 406. Revised Premium Schedule Procedure

Section 406 shall apply only in the case where the Corporation determines that increased rates are necessary under section 405 (c)(1). The revised schedule shall apply only to plan years beginning more than thirty days after the date on which the Congress approves such revised schedule by a concurrent resolution originating in the House of Representatives.

Section 407. Cooperation and Assistance of Government Agencies

Section 408. Reports

The annual report required under sections 104 and 105 of this Act is to include such additional information as the Secretary deems necessary to carry out this part (including any reportable events under section 410).

Section 409. Coverage

Mandatory Coverage.—All qualified defined benefit pension plans subject to the minimum funding standards under the Act which have more than 25 participants over a five year period (10 of whom must be participants with nonforfeitable benefits) are covered and required to pay premiums under this part. In addition a plan must have assets equal to at least 10% of the present value of insured benefits (calculated without regard to section 409(f)) before coverage is made mandatory.

Voluntary Coverage.—The corporation may insure qualified defined benefit plans not insured under (a) if they meet the other requirements under the Act and such other underwriting standards as the corporation may deem necessary.

Benefits Covered.—The benefits insured for plans paying premiums with respect to the Single Employer Primary (or Optional) Trust Fund or the Multiemployer Trust Fund are (1) the normal retirement benefits under such plans to the extent they are made nonforfeitable according to the minimum vesting schedule chosen by the plan under section 203, and (2) benefits other than normal retirement benefits which are nonforfeitable (other than in the event of termination) and which were payable prior to plan termination.

Supplemental Insured Benefits.—As a result of a study, the corporation is to prescribe the terms and conditions under which benefits other than those described in (b) are to be covered.

Limitations on Insurance.—Benefits insured under the Single Employer and Multiemployer Trust Funds are limited to $20 per month per year of service payable in the form of a life annuity at age 65. The $20 limit is to be increased annually according to the increase in a Social Security "wage increase index".

The term "wage increase index" means an amount (not less than one) equal to average taxable wages for the first calendar quarter of the calendar year preceding the calendar year in which the determination is made, divided by average taxable wages for the first calendar quarter of 1975.

The term "average taxable wages" means the aggregate amount of wages (as defined in section 3121 (a) of the Internal Revenue Code of 1954) paid all employees (as defined in section 3121 (d) of such Code) in a calendar quarter, divided by the number of employees who received wages in such quarter.

The term "year of service" shall be defined in accordance with section 205 (c) (3) of this Act.

Insurance benefits are not payable with respect to rights created by a plan amendment adopted or which takes effect less than 5 years prior to plan termination.

Insurance benefits are not payable with respect to certain substantial owners.

The maximum insured benefit is graded in for plans covered for less than 5 years.

Insurance benefits are not payable with respect to benefits accrued after a plan becomes disqualified by the Secretary of Treasury or the Secretary of Labor.

Section 410. Reportable Events

The events to be reported include disqualification of a plan, a decrease in benefits as a result of a plan amendment, failure of a plan to meet the minimum funding requirements or to pay benefits, and certain other events. In regard to certain distributions to substantial owners required under subsection 410(b)(7), the Secretary may at his discretion choose to increase the value of the distribution stated therein or by regulation to prescribe under what conditions, where the potential for abuse is minimal, such events need not be reported.

Section 411. Termination of Plan

After a hearing on the record with notice to all interested parties, the Secretary of Labor may order a partial or complete termination of a plan. Such termination can be ordered only if the corporation is likely to have to pay insured benefits and the probable long-run loss of the corporation can be expected to increase unreasonably. Upon the showing of reasonable cause by a plan administrator, any participant or beneficiary, an employer, or other plan sponsor, the Secretary shall hold a hearing on the record with notice and opportunity to be heard by all interested parties.

Section 412. Management Functions

The Secretary is given broad authority to manage the assets of the fund and may retain outside financial advisors or consultants to manage such funds. The Secretary shall be mindful of and adopt such practices which are consistent with the objective of minimizing over the long run the premiums charged under this part.

Section 413. Functions of the Secretary

The Secretary of Labor shall transmit to the President and the Congress the annual financial statements and actuarial report of the corporation.

Section 414. Employer Liability

The corporation shall have the status of a general creditor with respect to the liability imposed upon employers under this section. The liability imposed upon employers shall not be considered an obligation to the Federal government.

With respect to the voluntary curtailment provision under this section, a pension plan may be amended to suspend the further accumulation of benefits based on service after the effective date of such amendment (whether or not such benefits would have been forfeitable or nonforfeitable). However, years of service earned by a participant after the effective date of such an amendment shall be considered in determining the extent to which a participant has obtained nonforfeitable rights (under Section 203) to benefits under the plan based on service prior to the effective date of such amendment.

In the case of a plan to which this section applies under which nonforfeitable benefits of plan participants on the date of plan termination were accrued by reason of service with two or more employers, such employers shall be liable to the Corporation in an amount which in the aggregate equals the amount for which a single employer would be liable under subsection (b). A portion of such amount shall be apportioned to each employer (in accordance with rules of the Corporation) in an equitable manner which shall take into account accruals of benefits by reason of service with such employer and contributions by such employer, but no employer shall be liable under this subsection for an amount in excess of 50 percent of his net worth.

Section 415. Allocation of Assets

For purposes of determining the employer liability under section 414 and the payments and distributions to be made under section 411, if any, the Secretary, the plan administrator, the Corporation, or the receiver, as the case may be, shall make such calculation or distribute such assets in accordance with section 112 (subject to any variance under section 501; the Secretary may at his discretion make the following exceptions) except that (1) such assets shall be first applied as provided in section 112(b)(1), (2) then such assets shall be applied pro rata (A) to benefits described in 112(b)(2) payable to participants or beneficiaries who have been receiving benefits under the plan for at least 3 years prior to plan termination; and (B) to insured benefits described in section 112(b)(2) payable to participants other than participants described in (A); (3) then such assets shall be applied to other insured benefits; and (4) then such assets shall be applied to payment of benefits (to the extent not paid under paragraphs (1), (2), and (3)) as provided in section 112.

Section 416. Effective Date

Premiums and benefits payable under this part as a result of plan terminations shall apply to plan years beginning after June 1, 1974.

SUPPLEMENTAL VIEWS OF HON. JOHN N. ERLENBORN, HON. ALBERT H. QUIE, HON. EDWIN D. ESHLEMAN, AND HON. ROBERT J. HUBER

When H.R. 2, the proposed Employee Benefit Security Act of 1973, was originally reported by our Committee, supplemental views were included in the Committee Report expressing endorsement of that bill with one exception. That was the employer liability feature of the plan termination insurance provision of that bill.

While still concerned about the probable detrimental effects of employer liability, we are faced with a dilemma. This contingent obligation is replete with risks from both the workers' and the employers' point of view. Without some controls, however, any employer could terminate his plan without a valid reason and walk away, leaving the Insurance Corporation to pay the benefits due.

The new version of H.R. 2 would allow any single-employer plan to take this route (and then to start a new plan for the same employees the next day) if it chooses coverage under the Single-employer Optional Trust Fund by paying a higher premium.

If termination insurance is to be enacted, certain safe-guards are essential.

Payment of a higher premium should not mean absolute relief from liability for an employer if he will be continuing in business and has no valid reason for terminating an underfunded plan. Unless an economic crisis is at hand, the terminating employer should share in bearing the cost of the benefits to be paid. If employers are not subject to liability on a conditional basis such as this, the premiums under the optional coverage would immediately go so high as to render the optional coverage impractical. In fact, since the Secretary of Labor is given discretion whether to set up an optional trust fund, it is highly doubtful that he would extend such coverage at all. We should not hold out hope for an insurance plan which on its face is unworkable. Either accept amendments to make it workable or drop it.

Additionally, we question whether the interests of participants in plans which are terminated can be responsibly served by a Corporation within the Department of Labor whose Board of Directors is composed solely of the Secretary of Labor and two of his employees. This concentration of power in one political appointee cannot by any measure be viewed as a reasonable approach.

A Board so composed would put the Secretary of Labor by himself in the position of making investment decisions involving billions of dollars in the private sector.

If the United States Steel Corporation were pondering a price increase, the Insurance Corporation could decide to sell its U.S. Steel Stock to influence the decision. What would be the Secretary's buy-sell-hold position on oil company common stock today?

As an alternative, the interests of *participants* should be the first concern of a Board of Directors composed not only of representatives from the department of labor but representatives from labor, from management, and from the public as well.

Under the new H.R. 2, if the Secretary did not invest in the private sector, he would be forced into the following scenario.

When a plan terminates (and the largest number of terminations occur in economic downturns and recessions), the assets of the plan would be liquidated. Usually, they would be liquidated at depressed values, due to the timing of the forced liquidation. To make up for the underfunding of the terminated plans, premiums would have to be increased for all other plans (when they can least afford added expenses). The proceeds from the liquidation would be used to purchase annuities from insurance companies, and this would generally be at a time when annuity rates are up. There is no economic justification for this costly approach.

Liquidation of assets at any time would not necessarily be beneficial to the employees covered by the plan. The Corporation should have alternatives to hasty liquidation.

One such alternative would be to allow the appointment of a receiver (trustee) to administer the plan. Another would be to allow the Corporation to assume the assets (and liabilities) of the plan and then to manage such assets as part of the total assets of the Corporation.

The Corporation also should be permitted to retain outside financial advisors and consultants concerning the investment of some or all of its funds. These steps would help to insure the most productive management of assets and to minimize over the long run the premiums charged by the Corporation.

These changes are imperative if investment decisions are to remain in the private sector, if termination insurance is to work, and if it is to work economically.

JOHN N. ERLENBORN.
ALBERT H. QUIE.
EDWIN D. ESHLEMAN.
ROBERT J. HUBER.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. PATMAN, for 30 minutes, today.

(The following Members (at the request of Mr. BAKER), to revise and extend their remarks, and to include extraneous matter:)

Mr. ROBISON of New York, today, for 30 minutes.

Mr. EDWARDS of Alabama, today, for 5 minutes.

(The following Members (at the request of Mr. OWENS), to revise and extend their remarks, and to include extraneous matter:)

Mr. GONZALEZ, today, for 5 minutes.
Mr. FRASER, today, for 5 minutes.
Mr. REUSS, today, for 10 minutes.
Mr. OWENS, today, for 20 minutes.
Mr. HUNGATE, today, for 60 minutes.
Mr. BADILLO, on February 27, for 30 minutes.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. RONCALIO of Wyoming and to include extraneous matter notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $574.75.

Mr. PERKINS, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the CONGRESSIONAL RECORD, and is estimated by the Public Printer to cost $5,225.

Mr. GROSS to insert his remarks in the extension of the RECORD and to include an editorial.

Mr. BURKE of Massachusetts.
Mr. PERKINS.

(The following Members (at the request of Mr. BAKER), and to include extraneous matter:)

Mr. RHODES in five instances.
Mr. SANDMAN.
Mr. ESCH.
Mr. KEMP in five instances.
Mr. ARENDS.
Mr. DERWINSKI in three instances.
Mr. ROBISON of New York.

(The following Members (at the request of Mr. OWENS), and to include extraneous matter:)

Mr. ANNUNZIO in six instances.
Mr. GONZALEZ in three instances.
Mr. RARICK in three instances.
Mr. DINGELL in two instances.
Mr. FRASER in five instances.
Mr. HOWARD.
Mr. CARNEY of Ohio in four instances.
Mr. MONTGOMERY in two instances.
Mr. FOLEY in five instances.
Mr. MCFALL.
Mr. RANGEL in five instances.
Mr. DENT.
Mr. SARBANES in five instances.
Mr. BINGHAM in five instances.
Mr. DANIELSON in five instances.
Mr. KAZEN.
Mr. STARK in 10 instances.
Mr. OWENS in five instances.
Mr. CULVER.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 2296. An act to provide for the Forest Service, Department of Agriculture, to protect, develop, and enhance the environment of certain of the Nation's lands and resources, and for other purposes; to the Committee on Agriculture.

ADJOURNMENT

Mr. OWENS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 22 minutes p.m.), the House adjourned until tomorrow, Tuesday, February 26, 1974, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 or rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1926. A letter from the President of the United States, transmitting a proposed amendment to the request for appropriations for fiscal year 1975 for the Judiciary (H. Doc. No. 93-221) to the Committee on Appropriations and ordered to be printed.

1927. A letter from the Assistant Secretary of Defense (Comptroller), transmitting a report on the value of property, supplies, and commodities provided by the Berlin Magistrate, and under German Offset Agreement for the quarter ended December 31, 1973, pursuant to section 720 of Public Law 93-238; to the Committee on Appropriations.

1928. A letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting a draft of proposed legislation to authorize supplemental appropriations for the Department of State; to the Committee on Foreign Affairs.

1929. A letter from the Acting Assistant Secretary of State for Congressional Relations, transmitting notice of intent to consent to a request by the British Government to transfer .50-caliber Browning machinegun spare parts to the Governments of Australia, Canada, and the Netherlands, pursuant to section 3(a) of the Foreign Military Sales Act of 1968, as amended [22 U.S.C. 2753(a)(2)]; to the Committee on Foreign Affairs.

1930. A letter from the Secretary of the Interior, transmitting the 1973-74 annual report of the Office of Coal Research, pursuant to 30 U.S.C. 667; to the Committee on Interior and Insular Affairs.

1931. A letter from the Acting Assistant Secretary of the Interior, transmitting a transportation study report for Arches, Canyonlands, and Capitol Reef National Parks, Utah, pursuant to Public Laws 92-154, 92-155, and 92-207, respectively; to the Committee on Interior and Insular Affairs.

1932. A letter from the Acting Deputy Assistant Secretary of the Interior, transmitting the annual report for calendar year 1973 on the anthracite mine water control and mine sealing and filling program, pursuant to 30 U.S.C. 575; to the Committee on Interior and Insular Affairs.

1933. A letter from the Chairman, Indian Claims Commission, transmitting the final determination of the Commission in docket No. 22-K, *Jicarilla Apache Tribe*, plaintiff, v. *The United States of America*, defendant, pursuant to 25 U.S.C. 70t; to the Committee on Interior and Insular Affairs.

1934. A letter from the Chairman, Federal Power Commission, transmitting copies of a set of maps entitled "Principal Electric Facilities, 1973"; to the Committee on Interstate and Foreign Commerce.

1935. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting a request for the withdrawal of a case involving the suspension of deportation, previously submitted pursuant to section 244(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1254(c)(1)); to the Committee on the Judiciary.

1936. A letter from the national executive director, American Veterans of World War II, transmitting the financial statement of Amvets as of August 31, 1973; to the Committee on the Judiciary.

1937. A letter from the Acting Assistant Attorney General for Administration, transmitting a report on positions in the Department of Justice in grades GS-16, 17, and 18 during calendar year 1973, pursuant to 5 U.S.C. 5114(a); to the Committee on Post Office and Civil Service.

RECEIVED FROM THE COMPTROLLER GENERAL

1938. A letter from the Comptroller General of the United States, transmitting a list of reports issued or released by the General Accountnig Office during January 1974, pursuant to 31 U.S.C. 1174; to the Committee on Government Operations.

1939. A letter from the Comptroller General of the United States, transmitting a report on the examination of financial statements of the Veterans Canteen Service for fiscal year 1973; to the Committee on Government Operations.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BURKE of Massachusetts (for himself and Mr. MOAKLEY):

H.R. 13008. A bill to extend through December 1974 the period during which benefits under the supplemental security income program on the basis of disability may be paid without interruption pending the required disability determination in the case of individuals who received public assistance under State plans on the basis of disability for December 1973 but not for any month before July 1973; to the Committee on Ways an Means.

By Mr. CONABLE:

H.R. 13009. A bill to amend section 582(c) of the Internal Revenue Code of 1954 with respect to the transitional rules for foreign banks; to the Committee on Ways and Means.

By Mr. DINGELL:

H.R. 13010. A bill to prohibit the dumping of spent oil shale on any Federal land other than Federal land leased for the operation of shale oil recovery facilities; to the Committee on Interior and Insular Affairs.

By Mr. EILBERG:

H.R. 13011. A bill to utilize the property at Phoenixville, Pa., previously used as the Valley Forge General Hospital, for the establishment of a national cemetery; to the Committee on Veterans' Affairs.

By Mr. FAUNTROY (by request):

H.R. 13012. A bill to authorize the District of Columbia to more fully utilize a police reserve corps, and for other purposes; to the Committee on the District of Columbia.

By Mr. FROEHLICH:

H.R. 13013. A bill to amend title XVIII of the Social Security Act to include drugs requiring a doctor's prescription among the medical expenses with respect to which payment may be made under the voluntary program of supplementary medical insurance benefits for the aged; to the Committee on Ways and Means.

By Mr. HÉBERT (for himself and Mr. BRAY) (by request):

H.R. 13014. A bill to amend section 2575 of title 10, United States Code, to provide for more efficient disposal of lost, abandoned or unclaimed personal property that comes into the custody or control of military departments; to the Committee on Armed Services.

By Mr. HUNGATE:

H.R. 13015. A bill to amend the Emergency Petroleum Allocation Act of 1973 to roll back the price of propane; to the Committee on Interstate and Foreign Commerce.

By Mr. KYROS:

H.R. 13016. A bill to amend the Federal Food, Drug, and Cosmetic Act to include a definition of food supplements, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. McFALL (for himself, Mr. MATHIAS of California, and Mr. JOHNSON of California):

H.R. 13017. A bill to amend the Wild and Scenic Rivers Act of 1968 by designating a portion of the Tuolumne River, Calif., for potential addition to the National Wild and Scenic Rivers System; to the Committee on Interior and Insular Affairs.

By Mr. OWENS:

H.R. 13018. A bill to provide for congressional reforms and to strengthen the role of Congress as a coequal branch of Government, and for other purposes; to the Committee on Rules.

By Mr. REUSS:

H.R. 13019. A bill to amend the Internal Revenue Code of 1954 and the Social Security Act to provide income and payroll tax relief to low- and moderate-income taxpayers; to the Committee on Ways and Means.

By Mr. ROONEY of New York:

H.R. 13020. A bill to permit officers and employees of the Federal Government to elect coverage under the old-age, survivors, and disability insurance system; to the Committee on Ways and Means.

By Mr. ROUSSELOT:

H.R. 13021. A bill to repeal the Emergency Petroleum Allocation Act; to the Committee on Interstate and Foreign Commerce.

By Mr. SISK:

H.R. 13022. A bill to amend the act of September 2, 1960, as amended, so as to authorize different minimum grade standards for packages of grapes and plums exported to different destinations; to the Committee on Agriculture.

By Mr. THORNTON (for himself, Mr. MILLS, Mr. HAMMERSCHMIDT, Mr. KUYKENDALL, Mr. GUYER, Mr. ALEXANDER, Mr. PEYSER, Mr. TIERNAN, Mr. DUNCAN, Mr. HASTINGS, Mr. CEDERBERG, Mr. RONCALIO of Wyoming, Mr. WON PAT, Mr. ROSE, Ms. CHISHOLM, Mr. HUNGATE, Mr. BAUMAN, Mr. McCLOSKEY, Mr. ROE, Mr. FASCELL, Mr. HAWKINS, Ms. COLLINS of Illinois, Mr. BADILLO, Mr. HARRINGTON, and Mr. HEINZ):

H.R. 13023. A bill to amend the Small Business Act to provide for loans to small business concerns seriously affected by shortages of energy-producing materials, and for other purposes; to the Committee on Banking and Currency.

By Mr. THORNTON (for himself, Ms. SCHROEDER, Ms. HOLTZMAN, Mr. PARRIS, Mr. BURKE of Massachusetts, and Mr. RIEGLE):

H.R. 13024. A bill to amend the Small Business Act to provide for loans to small business concerns seriously affected by shortages of energy-producing materials, and for other purposes; to the Committee on Banking and Currency.

By Mr. ULLMAN (for himself and Mr. SCHNEEBELI):

H.R. 13025. A bill to increase the period during which benefits may be paid under title XVI of the Social Security Act on the basis of presumptive disability to certain individuals who received aid, on the basis of disability, for December 1973, under a State plan approved under title XIV or XVI of that act; to the Committee on Ways and Means.

By Mr. DINGELL:

H.J. Res. 915. Joint resolution proposing an amendment to the Constitution of the United States relative to a congressional vote of no confidence in the President; to the Committee on the Judiciary.

By Mr. DANIELSON (for himself, Mr. BRASCO, Mr. BROWN of Michigan, Mr. BUCHANAN, Mrs. COLLINS of Illinois, Mr. CONYERS, Mr. CULVER, Mr. DAVIS of South Carolina, Mr. FORD, Mr. MACDONALD, Mr. MATHIS of Georgia, Mr. MEEDS, Mr. MOSS, Mr. ROSE, Mr. ST GERMAIN, Mr. STOKES, Mr. THOMPSON of New Jersey, and Mr. YATRON):

H. Con. Res. 435. Concurrent resolution to express the sense of the Congress that the President should evaluate the commodity requirements of the domestic economy to determine which commodities should be designated as in short supply for purposes of taxation of domestic international sales corporations; to the Committee on Ways and Means.

By Mr. HANRAHAN (for himself, Mr. BENITEZ, Mr. GREEN of Pennsylvania, Mr. STUDDS, Mr. HANLEY, Mr. ROE, Mr. ADDABBO, Mr. KEMP, Mr. GUYER, Mr. KOCH, Mr. WYMAN, Mr. WALSH, Mr. MATHIS of Georgia, Mr. BURKE of Massachusetts, Mr. HOGAN, Mr. YATES, Mr. SEBELIUS, Mr. MADDEN, Mr. SCHERLE, and Mr. REGULA):

H. Con. Res. 436. Concurrent resolution expressing the sense of the Congress with respect to the imprisonment in the Soviet Union of a Lithuanian seaman who unsuccessfully sought asylum aboard a U.S. Coast Guard ship; to the Committee on Foreign Affairs.

By Mr. LONG of Maryland (for himself, Mr. McFALL, Mr. MURPHY of New York, Mr. ANDERSON of California, Mr. HECHLER of West Virginia, Mr. DOMINICK V. DANIELS, Mr. BINGHAM, Mr. RANGEL, and Mr. MITCHELL of Maryland):

H. Res. 917. Resolution to authorize the Committee on Interstate and Foreign Commerce to conduct an investigation and study of the importing, inventorying, and disposition of crude oil, residual fuel oil, and refined petroleum products; to the Committee on Rules.

By Mr. RONCALIO of Wyoming:

H. Res. 918. Resolution to express the sense of the House with respect to the allocation of necessary energy sources to the tourism industry; to the Committee on Interstate and Foreign Commerce.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

353. By the SPEAKER: Memorial of the House of Representatives of the State of Oklahoma, relative to experimenting with a price rollback on lumber produced in the State of Washington; to the Committee on Banking and Currency.

354. Also, memorial of the Legislature of the State of Oklahoma, relative to application for exemption from the provisions of the Emergency Daylight Saving Time Energy Conservation Act of 1973; to the Committee on Interstate and Foreign Commerce.

355. Also, memorial of the Legislature of the State of Idaho, relative to allocation of fuel made to individual dealers; to the Committee on Interstate and Foreign Commerce.

356. Also, memorial of the Legislature of the State of Idaho, relative to operating railroad passenger service in southern Idaho; to the Committee on Interstate and Foreign Commerce.

357. Also, memorial of the Legislature of the State of South Carolina, relative to the observance of National Veterans Day on November 11; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. CULVER:

H.R. 13026. A bill to confer honorary U.S. citizenship upon Alexander Solzhenitsyn; to the Committee on the Judiciary.

H.R. 13027. A bill to permit Alexander Solzhenitsyn and his family to become permanent residents of the United States if Mr. Solzhenitsyn wants to immigrate to the United States; to the Committee on the Judiciary.

By Mr. HUNGATE:

H.R. 13028. A bill for the relief of Manfred Geyer; to the Committee on the Judiciary.

By Mr. WIGGINS:

H.R. 13029. A bill for the relief of Mrs. Kozoka Scillion; to the Committee on the Judiciary.