

Public Law 85-836

AN ACT

To provide for registration, reporting, and disclosure of employee welfare and pension benefit plans.

August 28, 1958
[S. 2888]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Welfare and Pension Plans Disclosure Act".

Welfare and Pension
Plans Disclosure Act.

TABLE OF CONTENTS

WELFARE AND PENSION PLANS DISCLOSURE ACT

- Sec. 2. Findings and policy.
- Sec. 3. Definitions.
- Sec. 4. Coverage.
- Sec. 5. Duty of disclosure and reporting.
- Sec. 6. Description of the plan.
- Sec. 7. Annual reports.
- Sec. 8. Publication.
- Sec. 9. Enforcement.
- Sec. 10. Effect of other laws.
- Sec. 11. Separability of provisions.
- Sec. 12. Effective date.

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee welfare and pension benefit plans in recent years has been rapid and substantial; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that owing to the lack of employee information concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made with respect to the operation and administration of such plans.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee welfare and pension benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto.

DEFINITIONS

SEC. 3. (a) When used in this Act—

(1) The term "employee welfare benefit plan" means any plan, fund, or program which is communicated to or its benefits described in writing to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment.

(2) The term "employee pension benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established

by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.

(3) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee welfare or pension benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee welfare or pension benefit plan, and includes a group or association of employers acting for an employer in such capacity.

(5) The term "employee" means any individual employed by an employer.

(6) The term "participant" means any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee welfare or pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit.

(7) The term "beneficiary" means a person designated by a participant or by the terms of an employee welfare or pension benefit plan who is or may become entitled to a benefit thereunder.

(8) The term "person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

(9) The term "State" means any State of the United States, the District of Columbia, Hawaii, Puerto Rico, the Virgin Islands, and the Canal Zone.

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

(11) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce.

COVERAGE

SEC. 4. (a) Except as provided in subsection (b), this Act shall apply to any employee welfare or pension benefit plan if it is established or maintained by any employer or employers engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce or by both.

(b) This Act shall not apply to an employee welfare or pension benefit plan if—

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

(2) such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws;

(3) such plan is exempt from taxation under section 501 (a) of the Internal Revenue Code of 1954 and is administered as a corol-

lary to membership in a fraternal benefit society described in section 501 (c) (8) of such Code or by organizations described in sections 501 (c) (3) and 501 (c) (4) of such Code; or (4) such plan covers not more than twenty-five employees.

68A Stat. 164,
163.

DUTY OF DISCLOSURE AND REPORTING

SEC. 5. (a) The administrator of an employee welfare benefit plan or an employee pension benefit plan shall publish in accordance with section 8 to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain information required by sections 6 and 7 of this Act and shall be published in accordance with the provisions of this Act.

(b) The term "administrator" whenever used in this Act, refers to—

(1) the person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed; or

(2) in the absence of such designation, the person or persons actually responsible for the control, disposition, or management of the money received or contributed, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.

DESCRIPTION OF THE PLAN

SEC. 6. (a) Except as provided in section 4, the description of any employee welfare or pension benefit plan shall be published as required herein within ninety days of the effective date of this Act or within ninety days after the establishment of such plan, whichever is later.

(b) The description of the plan shall be published, signed, and sworn to by the person or persons defined as the "administrator" in section 5, and shall include their names and addresses, their official positions with respect to the plan, and their relationship, if any, to the employer or to any employee organizations, and any other offices, positions, or employment held by them; the name, address, and description of the plan and the type of administration; the schedule of benefits; the names, titles, and addresses of any trustee or trustees (if such persons are different from those persons defined as the "administrator"); whether the plan is mentioned in a collective bargaining agreement; copies of the plan or of the bargaining agreement, trust agreement, contract, or other instrument, if any, under which the plan was established and is operated; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments.

ANNUAL REPORTS

SEC. 7. (a) The administrator of any employee welfare or pension benefit plan, a description of which is required to be published under section 6, shall also publish an annual report with respect to such plan. Such report shall be published as required under section 8, within one hundred and twenty days after the end of the calendar year (or, if the records of the plan are kept on a policy or other fiscal year basis, within one hundred and twenty days after the end of such policy or fiscal year).

(b) A report under this section shall be signed by the administrator and such report shall include the following:

The amount contributed by the employer or employers; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a summary statement of assets, liabilities, receipts and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes. The information required by this section shall be sworn to by the administrator, or certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to examination by any agency of the Federal Government or the government of any State.

(c) If the plan is unfunded, the report shall include only the total benefits paid and the average number of employees eligible for participation, during the past five years, broken down by years; and a statement, if applicable, that the only assets from which claims against the plan may be paid are the general assets of the employer.

(d) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization such report shall include with respect to such plan (in addition to the information required by subsection (b)) the following:

(1) The premium rate or subscription charge and the total premium or subscription charges paid to each such carrier or organization and the approximate number of persons covered by each class of such benefits.

(2) The total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carrier or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs, paid by such carrier or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose: *Provided*, That if any such carrier or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the carrier or other organization and (B), if such carrier or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

(e) Details relative to the manner in which any funds held by an employee welfare benefit plan are held or invested shall be reported as provided under paragraphs (B), (C), and (D) of subsection (f) (1).

(f) Reports on employee pension benefit plans shall include, in addition to the applicable information required by the foregoing provisions of this section, the following:

(1) If the plan is funded through the medium of a trust, the report shall include—

Plan funded
through trust.

(A) the type and basis of funding, actuarial assumptions used, the amount of current and past service liabilities, and the number of employees, both retired and nonretired covered by the plan;

(B) a summary statement showing the assets of the fund broken down by types, such as cash investments in governmental obligations, investments in nongovernmental bonds, and investments in corporate stocks. Such assets shall be valued on the basis regularly used in valuing investments held in the fund and reported to the United States Treasury Department, or shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the United States Treasury Department;

(C) a detailed list, including information as to cost, present value, and percentage of total fund, of all investments in securities or properties of the employer or employee organization, or any other party in interest by reason of being an officer, trustee, or employee of such fund, but the identity of all securities and the detail of brokerage fees and commissions incidental to the purchase or sale of such securities need not be revealed if such securities are listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or securities in an investment company registered under the Investment Company Act of 1940, or securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, and the statement of assets contains a statement of the total investments in common stock, preferred stock, bonds and debentures, respectively, listed at their aggregate cost or present value, whichever is lower.

54 Stat. 789.
15 USC 80a-51.

49 Stat. 838.
15 USC 79.

(D) a detailed list of all loans made to the employer, employee organization, or other party in interest by reason of being an officer, trustee, or employee of such fund, including the terms and conditions of the loan and the name and address of the borrower: *Provided*, That if the plan is funded through the medium of a trust invested, in whole or in part, in one or more insurance or annuity contracts with an insurance carrier, the report shall include, as to the portion of the funds so invested, only the information required by paragraph (2) below.

(2) If the plan is funded through the medium of a contract with an insurance carrier, the report shall include—

Plan funded
through contract.

(A) the type and basis of funding, actuarial assumptions used in determining the payments under the contract, and the number of employees, both retired and nonretired, covered by the contract; and

(B) except for benefits completely guaranteed by the carrier, the amount of current and past service liabilities, based on those assumptions, and the amount of all reserves accumulated under the plan.

(3) If the plan is unfunded, the report shall include the total benefits paid to retired employees for the past five years, broken down by year.

PUBLICATION

SEC. 8. (a) Publication of the description of the plan and the latest annual report required under this Act shall be made to the participants and to the beneficiaries covered by the particular plan as follows:

(1) The administrator shall make copies of such description of the plan (including all amendments or modifications thereto upon their effective date) and of the latest annual report available for examination by any participant or beneficiary in the principal office of the plan.

(2) The administrator shall deliver upon written request to such participant or beneficiary a copy of the description of the plan (including all amendments or modifications thereto upon their effective date) and a summary of the latest annual report, by mailing such documents to the last known address of the participant or beneficiary making such request.

(b) The administrator of any plan subject to the provisions of this Act shall file with the Secretary of Labor two copies of the description of the plan and each annual report thereon. The Secretary of Labor shall make available for examination in the public document room of the Department of Labor copies of descriptions of plans and annual reports filed under this subsection.

(c) The Secretary of Labor shall prepare forms for the descriptions of plans and the annual reports required by the provisions of this Act, and shall make such forms available to the administrators of such plans on request.

ENFORCEMENT

SEC. 9. (a) Any person who willfully violates any provision of sections 5 or 8 of this Act shall be fined not more than \$1,000, or imprisoned not more than six months.

(b) Any administrator of a plan who fails or refuses, upon the written request of a participant or beneficiary covered by such plan, to make publication to him within thirty days of such request, in accordance with the provisions of section 8, of a description of the plan or an annual report containing the information required by sections 6 and 7, may in the court's discretion become liable to any such participant or beneficiary making such request in the amount of \$50 a day from the date of such failure or refusal.

(c) Action to recover such liability may be maintained in any court of competent jurisdiction by any participant or beneficiary. The court in such action may in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(d) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of Rule 65 (relating to notice to adverse party) of the rules of civil procedure for the United States district courts, as amended (U. S. C., 1952 edition, title 28, section 2072), to restrain violations of section 8.

(e) The provisions of section 1001 of title 18 of the United States Code shall be applicable to any description of a plan or any annual report which is sworn to under this Act.

EFFECT OF OTHER LAWS

SEC. 10. (a) In the case of an employee welfare or pension benefit plan providing benefits to employees employed in two or more States, no person shall be required by reason of any law of any such State to file with any State agency (other than an agency of the State in

which such plan has its principal office) any information included within a description of the plan or an annual report published and filed pursuant to the provisions of this Act if copies of such description of the plan and of such annual report are filed with the State agency, and if copies of such portion of the description of the plan and annual report, as may be required by the State agency, are distributed to participants and beneficiaries in accordance with the requirements of such State law with respect to scope of distribution. Nothing contained in this subsection shall be construed to prevent any State from obtaining such additional information relating to any such plan as it may desire, or from otherwise regulating such plan.

(b) The provisions of this Act, except subsection (a) of this section, and any action taken thereunder, shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee welfare or pension benefit plans, or in any manner to authorize the operation or administration of any such plan contrary to any such law.

SEPARABILITY OF PROVISIONS

SEC. 11. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

EFFECTIVE DATE

SEC. 12. The provisions of this Act shall become effective January 1, 1959.

Approved August 28, 1958.

Public Law 85-837

AN ACT

To provide for the disposal of federally owned property of the Hanson, Company, and Houma Canals, Louisiana, and for other purposes.

August 28, 1958
[H. R. 13500]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, whenever the Secretary of the Army, upon recommendation of the Chief of Engineers, determines that any of the federally owned property of Hanson Canal and Lock in Saint Mary Parish, Louisiana, and the Company and Houma Canals in Lafourche and Terrebonne Parishes, Louisiana, no longer economically serve the purposes for which they were constructed or acquired, the structures and appurtenances including real property acquired in connection therewith may be eliminated as features of existing Federal navigation projects.

Hanson, Com-
pany, and Houma
Canals, La.
Disposal of prop-
erty.

SEC. 2. The Secretary of the Army is authorized to transfer or convey the property described above to the State of Louisiana or any of its political subdivisions, any local interests, or others, upon such terms and conditions as the Secretary may determine to be in the public interest: *Provided*, That the foregoing shall not be construed to preclude action under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) if the Secretary of the Army reports the property to the Administrator of General Services for reassignment or disposal as excess real property.

40 Stat. 471 note.

Approved August 28, 1958.