

106TH CONGRESS
1ST SESSION

H. R. 633

To provide for investment in broad-based private equities indices of amounts held in trust for payment of benefits from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, the Department of Defense Military Retirement Fund, the Civil Service Retirement and Disability Fund, and the Railroad Retirement Account, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1999

Mr. BARTLETT of Maryland introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Armed Services, Government Reform, the Budget, Transportation and Infrastructure, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for investment in broad-based private equities indices of amounts held in trust for payment of benefits from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, the Department of Defense Military Retirement Fund, the Civil Service Retirement and Disability Fund, and the Railroad Retirement Account, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Retirement Trust
5 Fund Integrity Act of 1999”.

6 **SEC. 2. INVESTMENT OF SURPLUS IN RETIREMENT TRUST**
7 **FUNDS**

8 Notwithstanding any other provision of law, it shall
9 be the duty of the managing trustee of each participating
10 trust fund to transfer, from time to time, to the Retire-
11 ment Trust Fund Investment Board such portion of each
12 of the trust funds as is not, in his judgment, required to
13 meet current withdrawals.

14 **SEC. 3. RETIREMENT TRUST FUNDS INVESTMENT PRO-**
15 **GRAM.**

16 (a) IN GENERAL.—There is created in the Treasury
17 of the United States a trust fund to be known as the “Re-
18 tirement Investment Fund”. The Retirement Investment
19 Fund shall consist of such amounts as may be appro-
20 priated to, or deposited in, such fund as provided in this
21 Act. Such Fund shall be available—

- 22 (1) for investment in accordance with this Act,
23 (2) to be transferred to the managing trustees
24 of the participating trust funds, and

1 (3) to pay the operational and administrative
2 expenses of the Board.

3 (b) TRANSFERS FROM THE RETIREMENT INVEST-
4 MENT FUND.—Upon receipt by the Executive Director of
5 a written request from the managing trustee of any par-
6 ticipating trust fund that a transfer of a designated
7 amount of funds from the Retirement Investment Fund
8 to that fund is necessary to meet current withdrawals, the
9 Executive Director shall transfer such amount to the such
10 managing trustee, who shall deposit that amount in such
11 trust fund. In no event may the amount so transferred
12 to a participating trust fund exceed the current market
13 value of shares in the Common Stock Index Investment
14 Fund purchased with funds transferred to the Fund by
15 the managing trustee of that participating trust fund.

16 **SEC. 4. INVESTMENT OF TRUST FUNDS IN COMMON STOCK.**

17 (a) IN GENERAL.—(1) The Retirement Trust Fund
18 Investment Board shall establish for the Retirement In-
19 vestment Fund a Common Stock Index Investment Fund
20 under which sums shall be invested as provided in sub-
21 section (b).

22 (2) It shall be the duty of the Executive Director to
23 enter into such investments and to liquidate such invest-
24 ments in accordance with the investment policies which
25 shall be prescribed by the Board. Any interest earned on

1 such investments, and the proceeds from any liquidation
2 of such investments, including any income derived from
3 such liquidation, shall be credited to and form a part of
4 the Retirement Investment Fund.

5 (b) COMMON STOCK INVESTMENT FUND.—

6 (1) IN GENERAL.—The Common Stock Index
7 Investment Fund shall consist of amounts held in
8 the Retirement Investment Fund invested as pro-
9 vided in this subsection.

10 (2) SELECTION OF INDEX AND PORTFOLIO DE-
11 SIGN.—

12 (A) SELECTION OF INDEX.—The Board
13 shall select for purposes of this subsection an
14 index which is a commonly recognized index
15 comprised of common stock the aggregate mar-
16 ket value of which is a reasonably complete rep-
17 resentation of the United States equity mar-
18 kets. Common stock of companies may not be
19 included or excluded because of political, social,
20 or religious considerations.

21 (B) PORTFOLIO DESIGN.—Amounts held
22 in the Common Stock Index Investment Fund
23 shall be invested in a portfolio designed to rep-
24 licate the performance of the index selected
25 under subparagraph (A). The portfolio shall be

1 designed such that, to the extent practicable,
 2 the percentage of the Common Stock Index In-
 3 vestment Fund that is invested in each stock is
 4 the same as the percentage determined by di-
 5 viding the aggregate market value of all shares
 6 of that stock by the aggregate market value of
 7 all shares of all stocks included in such index.

8 (3) NO VOTING RIGHTS IN SECURITIES.—The
 9 Board and the Executive Director may not exercise
 10 voting rights associated with the ownership of secu-
 11 rities by Retirement Investment Fund.

12 **SEC. 5. ENGAGEMENT OF QUALIFIED PUBLIC ACCOUNT-**
 13 **ANT.**

14 (a) IN GENERAL.—The Board shall annually engage
 15 an independent qualified public accountant who shall con-
 16 duct an examination of all accounts and other books and
 17 records maintained in the administration of this section
 18 as the public accountant considers necessary to enable the
 19 public accountant to make the determination required by
 20 subsection (b). The examination shall be conducted in ac-
 21 cordance with generally accepted auditing standards and
 22 shall involve such tests of the accounts, books, and records
 23 as the public accountant considers necessary.

24 (b) EXAMINATION AND REPORT.—The public ac-
 25 countant conducting an examination under subsection (a)

1 shall determine whether the accounts, books, and records
2 referred to in such subsection have been maintained in
3 conformity with generally accepted accounting principles
4 applied on a basis consistent with the manner in which
5 such principles were applied during the examination con-
6 ducted under such paragraph during the preceding year.
7 The public accountant shall transmit to the Board and
8 the Comptroller General of the United States a report on
9 his examination, including his determination under this
10 subsection.

11 (c) RELIANCE ON ACTUARY'S CERTIFICATIONS.—In
12 making a determination under subsection (b), a public ac-
13 countant may rely on the correctness of any actuarial mat-
14 ter certified by an actuary enrolled under subtitle C of
15 title III of the Employee Retirement Income Security Act
16 of 1974 (29 U.S.C. 1241 et seq.), if the public accountant
17 states his reliance in the report transmitted to the Board
18 under such paragraph.

19 (d) DEFINITION.—As used in this section, the term
20 ‘qualified public accountant’ shall have the same meaning
21 as is provided in section 103(a)(3)(D) of the Employee
22 Retirement Income Security Act of 1974 (29 U.S.C.
23 1023(a)(3)(D)).

1 **SEC. 6. FIDUCIARY RESPONSIBILITIES.**

2 (a) IN GENERAL.—Under regulations of the Sec-
3 retary of Labor, sections 8477 and 8478 of title 5, United
4 States Code, shall apply in connection with the amounts
5 maintained in the Common Stock Investment Fund of the
6 Retirement Investment Fund in the same manner and to
7 the same extent as such provisions apply in connection
8 with the Thrift Savings Fund.

9 (b) INVESTIGATIVE AUTHORITY.—Any authority
10 available to the Secretary of Labor under section 504 of
11 the Employee Retirement Income Security Act of 1974 is
12 hereby made available to the Secretary of Labor, and any
13 officer designated by the Secretary of Labor, to determine
14 whether any person has violated, or is about to violate,
15 any provision applicable under subsection (a).

16 (c) EXCULPATORY PROVISIONS; INSURANCE.—

17 (1) IN GENERAL.—Any provision in an agree-
18 ment or instrument which purports to relieve a fidu-
19 ciary from responsibility or liability for any respon-
20 sibility, obligation, or duty under this part shall be
21 void.

22 (2) INSURANCE.—Amounts in the Retirement
23 Investment Fund available for administrative ex-
24 penses shall be available and may be used at the dis-
25 cretion of the Board to purchase insurance to cover
26 potential liability of persons who serve in a fiduciary

1 capacity with respect to amounts maintained in the
 2 Common Stock Investment Fund of Retirement In-
 3 vestment Fund, without regard to whether a policy
 4 of insurance permits recourse by the insurer against
 5 the fiduciary in the case of a breach of a fiduciary
 6 obligation.

7 **SEC. 7. ESTABLISHMENT OF THE RETIREMENT TRUST**
 8 **FUND INVESTMENT BOARD AND EXECUTIVE**
 9 **DIRECTOR.**

10 (a) RETIREMENT TRUST FUND INVESTMENT
 11 BOARD.—(1) There is established in the executive branch
 12 of the Government an independent agency to be known
 13 as the Retirement Trust Fund Investment Board.

14 (2) The Board shall be composed of—

15 (A) 3 members appointed by the President, of
 16 whom 1 shall be designated by the President as
 17 Chairman; and

18 (B) 2 members appointed by the President, of
 19 whom—

20 (i) 1 shall be appointed by the President
 21 after taking into consideration the recommenda-
 22 tion made by the Speaker of the House of Rep-
 23 resentatives in consultation with the minority
 24 leader of the House of Representatives; and

1 (ii) 1 shall be appointed by the President
2 after taking into consideration the recommenda-
3 tion made by the majority leader of the Senate
4 in consultation with the minority leader of the
5 Senate.

6 (3) Appointments under paragraph (2) shall be made
7 by and with the advice and consent of the Senate.

8 (4) Members of the Board shall have substantial ex-
9 perience, training, and expertise in the management of fi-
10 nancial investments and the exercise of fiduciary duties.

11 (5)(A) A member of the Board shall be appointed for
12 a term of 5 years, except that of the members first
13 appointed—

14 (i) the Chairman shall be appointed for a term
15 of 5 years;

16 (ii) the members appointed under paragraph
17 (2)(B) shall be appointed for a term of 4 years; and

18 (iii) the remaining members shall be appointed
19 for a term of 3 years.

20 (B)(i) A vacancy on the Board shall be filled in the
21 manner in which the original appointment was made and
22 shall be subject to any conditions which applied with re-
23 spect to the original appointment.

24 (ii) An individual chosen to fill a vacancy shall be ap-
25 pointed for the unexpired term of the member replaced.

1 (iii) The term of any member shall not expire before
2 the date on which the member's successor takes office.

3 (6) The Board shall—

4 (A) establish policies for the investment and
5 management of the Retirement Investment Fund;

6 (B) review the performance of investments
7 made for such fund; and

8 (C) review and approve the budget of the
9 Board.

10 (7)(A) The Board may—

11 (i) adopt, alter, and use a seal;

12 (ii) except as provided in subparagraph (B), es-
13 tablish policies with which the Executive Director is
14 required to comply; and

15 (iii) take such other actions as may be nec-
16 essary to carry out the functions of the Board.

17 (B) The policies of the Board may not require the
18 Executive Director to invest or to cause to be invested any
19 sums in the Trust Funds in a specific asset or to dispose
20 of or cause to be disposed of any specific asset of the Trust
21 Funds.

22 (8)(A) The Board shall meet—

23 (i) not less than once during each month; and

24 (ii) at additional times at the call of the Chair-
25 man.

1 (B)(i) The Board shall perform the functions and ex-
2 ercise the powers of the Board on a majority vote of a
3 quorum of the Board.

4 (ii) A vacancy on the Board shall not impair the au-
5 thority of a quorum of the Board to perform the functions
6 and exercise the powers of the Board.

7 (C) Three members of the Board shall constitute a
8 quorum for the transaction of business.

9 (D)(i) Each member of the Board who is not an offi-
10 cer or employee of the Federal Government shall be com-
11 pensated at the daily rate of basic pay for level IV of the
12 Executive Schedule for each day during which such mem-
13 ber is engaged in performing a function of the Board.

14 (ii) A member of the Board shall be paid travel, per
15 diem, and other necessary expenses under subchapter I of
16 chapter 57 of title 5, United States Code, while traveling
17 away from such member's home or regular place of busi-
18 ness in the performance of the duties of the Board.

19 (iii) Payments authorized under this paragraph shall
20 be paid from the Retirement Investment Fund.

21 (E) The accrued annual leave of any officer or em-
22 ployee of the Federal Government who is a member of the
23 Board shall not be charged for any time used in perform-
24 ing services for the Board.

1 (10) The members of the Board shall discharge their
2 responsibilities solely in the interest of the Retirement In-
3 vestment Fund.

4 (11) The Board shall prepare and submit to the
5 President, and, at the same time, to the appropriate com-
6 mittees of Congress, an annual budget of the expenses and
7 other items relating to the Board which shall be included
8 as a separate item in the budget required to be transmit-
9 ted to the Congress under section 1105 of title 31, United
10 States Code.

11 (12) The Board may submit to the President, and,
12 at the same time, shall submit to each House of Congress,
13 any legislative recommendations of the Board relating to
14 any of its functions under this Act.

15 (b) EXECUTIVE DIRECTOR.—(1) The Board shall ap-
16 point, without regard to the provisions of law governing
17 appointments in the competitive service, an Executive Di-
18 rector by action agreed to by a majority of the members
19 of the Board.

20 (2) The Executive Director shall have substantial ex-
21 perience, training, and expertise in the management of fi-
22 nancial investments and the exercise of fiduciary duties.

23 (2) The Executive Director shall—

24 (A) carry out the policies established by the
25 Board;

1 (B) invest and manage the amounts in the Re-
2 tirement Investment Fund in accordance with the
3 investment policies and other policies established by
4 the Board;

5 (C) prescribe such regulations (other than regu-
6 lations relating to fiduciary responsibilities) as may
7 be necessary for the administration of this Act; and

8 (D) meet from time to time with the board of
9 trustees of any participating trust funds upon re-
10 quest of the board of trustees of such fund regard-
11 ing matters relating to that fund.

12 (3) The Executive Director may—

13 (A) prescribe such regulations as may be nec-
14 essary to carry out the responsibilities of the Execu-
15 tive Director under this subsection, other than regu-
16 lations relating to fiduciary responsibilities;

17 (B) appoint such personnel as may be necessary
18 to carry out this Act;

19 (C) in accordance with the policies of the
20 Board, procure the services of experts and consult-
21 ants under section 3109 of title 5, United States
22 Code;

23 (D) secure directly from any agency or instru-
24 mentality of the Federal Government any informa-

1 tion necessary to carry out this Act and policies of
2 the Board;

3 (E) make such payments out of sums in the Re-
4 tirement Investment Fund as the Executive Director
5 determines are necessary to carry out this Act and
6 the policies of the Board;

7 (F) pay the compensation, per diem, and travel
8 expenses of individuals appointed under subpara-
9 graphs (B), (C), and (G) of this paragraph from
10 amounts otherwise available in the Retirement In-
11 vestment Fund;

12 (G) accept and use the services of individuals
13 employed intermittently in the Government service
14 and reimburse such individuals for travel expenses,
15 as authorized by section 5703 of title 5, United
16 States Code, including per diem as authorized by
17 section 5702 of such title; and

18 (H) take such other actions as are appropriate
19 to carry out the functions of the Executive Director
20 under this Act.

21 (4) The Executive Director shall discharge his or her
22 responsibilities solely in the interest of the Retirement In-
23 vestment Fund.

1 **SEC. 8. REPORTING REQUIREMENTS.**

2 The Executive Director shall transmit a report on the
3 state of the Retirement Investment Fund—

4 (1) to each House of Congress within 20 days
5 after the close of each calendar quarter; and

6 (2) to the Committee on Ways and Means of
7 the House of Representatives and the Committee on
8 Finance of the Senate not later than January 20
9 and July 20 of each calendar year.

10 **SEC. 9. DEFINITIONS.**

11 As used in this Act:

12 (1) The term “Board” refers to the Retirement
13 Trust Fund Investment Board.

14 (2) The term “Executive Director” refers to the
15 Executive Director of the Retirement Trust Fund
16 Investment Board.

17 (3) The term “managing trustee” refers to the
18 Secretary of Defense in the case of the Department
19 of Defense Military Retirement Fund and the Sec-
20 retary of the Treasury in the case of all other par-
21 ticipating trust funds.

22 (4) The term “participating trust fund” refers
23 to each of the following trust funds, as applicable:

24 (A) The Civil Service Retirement and Dis-
25 ability Fund.

1 (B) The Department of Defense Military
2 Retirement Fund.

3 (C) The Federal Disability Insurance
4 Trust Fund.

5 (D) The Federal Hospital Insurance Trust
6 Fund.

7 (E) The Federal Old-Age and Survivors
8 Insurance Trust Fund.

9 (F) The Federal Supplementary Medical
10 Insurance Trust Fund.

11 (G) The Railroad Retirement Account.

12 **SEC. 10. CONFORMING AMENDMENTS.**

13 (a) CIVIL SERVICE RETIREMENT AND DISABILITY
14 FUND.—Section 8348 of title 5 of the United States Code
15 is amended by adding at the end the following new sub-
16 section:

17 “(n) For additional provisions relating to the treat-
18 ment of funds not required to meet current withdrawals,
19 see section 2 of the Retirement Trust Fund Integrity Act
20 of 1999.”.

21 (b) DEPARTMENT OF DEFENSE MILITARY RETIRE-
22 MENT FUND.—Section 1467 of title 10 of the United
23 States Code is amended by inserting “(a)” before “The
24 Secretary” and by adding at the end the following new
25 subsection:

1 “(b) For additional provisions relating to the treat-
 2 ment of funds not required to meet current withdrawals,
 3 see section 2 of the Retirement Trust Fund Integrity Act
 4 of 1999.”.

5 (c) FEDERAL OLD-AGE AND SURVIVORS INSURANCE
 6 TRUST FUND AND FEDERAL DISABILITY INSURANCE
 7 TRUST FUND.—Section 201(d) of the Social Security Act
 8 is amended by adding at the end the following new sen-
 9 tence: “For additional provisions relating to the treatment
 10 of funds not required to meet current withdrawals, see sec-
 11 tion 2 of the Retirement Trust Fund Integrity Act of
 12 1999.”.

13 (d) FEDERAL HOSPITAL INSURANCE TRUST FUND
 14 AND FEDERAL SUPPLEMENTARY MEDICAL INSURANCE
 15 TRUST FUND.—Sections 1817(c) and 1842(c) of the So-
 16 cial Security Act (42 U.S.C. 1395i(c), 1395t(c)) are each
 17 amended—

18 (1) by striking “(1)” and “(2)” and inserting
 19 “(A)” and “(B)”, respectively;

20 (2) by inserting “(1)” after “(c)”; and

21 (3) by adding at the end the following:

22 “(2) For additional provisions relating to the treat-
 23 ment of funds not required to meet current withdrawals,
 24 see section 2 of the Retirement Trust Fund Integrity Act
 25 of 1999.”.

1 (e) RAILROAD RETIREMENT ACCOUNT.—Section
 2 15(e) of the Railroad Retirement Act (45 U.S.C. 231n(e))
 3 is amended by adding at the end the following new sen-
 4 tence: “For additional provisions relating to the treatment
 5 of funds not required to meet current withdrawals, see sec-
 6 tion 2 of the Retirement Trust Fund Integrity Act of
 7 1999.”.

8 **SEC. 11. OFF-BUDGET STATUS OF RETIREMENT INVEST-**
 9 **MENT FUND.**

10 Notwithstanding any other provision of law, the re-
 11 ceipts and disbursements of the Retirement Investment
 12 Fund shall not be counted as new budget authority, out-
 13 lays, receipts, or deficit or surplus for purposes of—

- 14 (1) the budget of the United States Govern-
 15 ment as submitted by the President,
 16 (2) the congressional budget, or
 17 (3) the Balanced Budget and Emergency Defi-
 18 cit Control Act of 1985.

19 **SEC. 12. CBO AND OMB REPORTING REQUIREMENTS.**

20 (a) CBO.—Section 202 of the Congressional Budget
 21 Act of 1974 is amended by adding at the end the following
 22 new subsection:

23 “(h) REPORTING REQUIREMENTS.—(1) Except as
 24 provided by paragraph (2), the Director shall not include

1 the assets of the Retirement Investment Fund in budg-
2 etary aggregates for the Government.

3 “(2) Whenever the Director prepares any report of
4 the financial status of the Retirement Investment Fund,
5 if he includes the assets of that fund in budgetary aggre-
6 gates for the Government, then that report shall also
7 clearly set forth the budgetary aggregates for the Govern-
8 ment excluding the assets of that fund.”.

9 (b) OMB.—Section 1105 of title 31, United States
10 Code, is amended by adding at the end the following new
11 subsection:

12 “(h)(1) Except as provided by paragraph (2), the Di-
13 rector of the Office of Management and Budget shall not
14 include the assets of the Retirement Investment Fund in
15 budgetary aggregates for the Government.

16 “(2) Whenever the Director of the Office of Manage-
17 ment and Budget prepares any report of the financial sta-
18 tus of the Retirement Investment Fund, if he includes the
19 assets of that fund in budgetary aggregates for the Gov-
20 ernment, then that report shall also clearly set forth the
21 budgetary aggregates for the Government excluding the
22 assets of that fund.”.

1 **SEC. 13. EFFECTIVE DATE.**

2 This Act and the amendments made by it shall apply
3 with respect to fiscal years beginning on or after October
4 1, 2000.

