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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Dear Mr. Chairman:

In your letter of July 19, 1971, you requested that we provide you with a summary of the legal authority and responsibility of each Federal agency exercising jursidiction over the regulation and monitoring of private pension plans. You also asked that the summary include such information as is readily available on the agencies' implementation of pertinent laws. The enclosure to this letter contains that summary.

We queried the following 11 Federal departments and agencies as to their authority and responsibilities over private pension plans, their administrative procedures and requirements, and the availability of other information on their pension plan activities.

Department of Labor
Department of Justice
Securities and Exchange Commission
Department of the Treasury
Equal Employment Opportunity Commission
Department of Housing and Urban Development
Department of Defense
National Labor Relations Board
Department of Health, Education, and Welfare
Department of Transportation
General Services Administration

From discussions with Committee staff members and Department of Labor officials, we noted indications that these 11 departments and agencies might have some jurisdiction over private pension plans. Three of these departments and agencies--the Departments of Transportation and Health, Education, and Welfare and the General Services Administration--advised us that they had no responsibility or authority whatever regarding private pension plans. The Department of Labor's reply included an explanation of the Cost of Living Council's relationship to private pension plans, and we have included that explanation in our summary.

Although we have verified the accuracy of the legal and regulatory authority and responsibilities cited by the various departments and agencies responding to our requests, we have not determined whether these are the only agencies having such responsibilities or whether the cited legislative provisions

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encompass all the legislation relating to private pension plans. We did not test the accuracy of the other information provided to us and included in the enclosure.

We hope that the data which we have compiled will be helpful to your Committee.

Sincerely yours,

Deputy Comptroller General
of the United States

Enclosure

The Honorable Harrison A. Williams, Jr.
Chairman, Committee on Labor
and Public Welfare
United States Senate

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ENCLOSURE

SUMMARY OF FEDERAL JURISDICTION OVER PRIVATE PENSION PLANS

DEPARTMENT OF LABOR

Among the various agencies exercising legal authority and responsibility over private pension plans, the Department of Labor has the most significant role. Under the authority of seven different laws, Labor's responsibilities in the private pension plan area range from requiring disclosure of pertinent information on plans to preventing discrimination against various classes of workers. The Secretary of Labor does not have authority, however, to prescribe or interpret plan provisions, help collect benefits, or otherwise interfere in the internal management of any pension plan.

Welfare and Pension Plans Disclosure Act

The law dealing most directly with pension plans is the Welfare and Pension Plans Disclosure Act (WPPDA) of 1958 and the amendments of 1962 (29 U.S.C. 301-309). Its major provisions are discussed below.

WPPDA (29 U.S.C. 304) requires the administrators of welfare and pension benefit plans to publish a description of the plan and an annual report showing such information as the amount and type of the plan's income, benefits, receipts, and disbursements; the plan's assets and liabilities; and the number of employees covered. Unless otherwise specified by the Secretary, the annual report is required only from plans covering more than 100 people. In calendar year 1970, 7,420 plan descriptions and 124,430 annual reports were filed with Labor pursuant to this section.

WPPDA (29 U.S.C. 308(d)) gives the Secretary limited investigatory power to ensure the accuracy of the published information. He may investigate the operations of a plan only if he has reasonable cause to believe that investigation may disclose violations of the act, such as failure to disclose plan information to participants or failure to comply with the bonding requirements of the act. He has no authority to perform an annual audit or to perform other reviews of plan activities to routinely check on the accuracy of published information. In calendar year 1970, 785 investigations were opened and 619 were closed.

Labor is responsible for enforcing the provisions of WPPDA except for three sections added to title 18 of the United States Code by the 1962 amendments. These sections are administered by the Department of Justice and deal with embezzlement

(18 U.S.C. 664), false statements and concealment (18 U.S.C. 1027), and bribery or kickbacks (18 U.S.C. 1954).

WPPDA (29 U.S.C. 308d) requires administrators, officers, and employees of plans subject to the act, who handle funds or property of the plans, to be bonded up to a maximum of $500,000 each. The bonds are required to protect the plan against loss resulting from dishonest or fraudulent acts of the bonded persons. A 1965 amendment (29 U.S.C. 441) to the Labor-Management Reporting and Disclosure Act (LMRDA) added a provision requiring surety companies to file with the Secretary annual reports describing their premium and loss experience on bonds required under LMRDA and WPPDA.

For calendar 1969 data filed by surety companies showed that 8 percent of direct premiums earned were allocated to net losses. In general net losses refer to the amount paid by a surety company resulting from claims against the bonds.

WPPDA (29 U.S.C. 308e(a)) provides for an Advisory Council on Employee Welfare and Pension Benefit Plans to advise the Secretary with respect to the carrying out of his functions under the act. The Council meets twice a year. The act (29 U.S.C. 308e(b)) requires the Secretary to report to the Congress, at the beginning of each session, on the activities of the Council and his other activities under the act during the preceding year.

Labor-Management Reporting and Disclosure Act

LMRDA (29 U.S.C. 401 et seq.) affects private pension plans through its provisions requiring the reporting of information and the bonding of persons handling the plans' assets. The act (29 U.S.C. 431(a)) requires every labor organization to file a copy of its constitution and bylaws and a detailed statement (or references to specific provisions of other documents filed) showing the provisions made and procedures followed with respect to participation in insurance or other benefit plans.

The act (29 U.S.C. 431(b)) requires every labor organization to file an annual report with Labor. The Secretary requires the labor organization to indicate in the report whether it has a pension trust. If it has, the trust's administrator must file an annual report for the trust, in accordance with the provisions of WPPDA. The trust's WPPDA file identification number is required to be included in the annual report required of the labor union under LMRDA.

The bonding requirements (29 U.S.C. 502(a)) of LMRDA are satisfied by the bonds obtained to satisfy the requirements of WPPDA.

LMRDA (29 U.S.C. 521(a)), to enable him to investigate violations, gives the Secretary power to enter such places and inspect such records and accounts and question such persons as he may deem necessary.

Labor was unable to provide us with any investigation or enforcement statistics specifically relevant to pension plan administration under LMRDA.

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) (29 U.S.C. 201 et seq.) has two significant provisions affecting private pension plans. The overtime pay provision provides that contributions to profit-sharing plans (29 U.S.C. 207(e)(3)(b)) and to plans for providing old-age benefits for employees (29 U.S.C. 207(e)(4)) are not to be included in the regular rate of pay on which the overtime pay is based.

The equal pay provision of FLSA prohibits an employer from paying employees of one sex at lower rates of pay than he pays employees of the opposite sex for equal work (29 U.S.C. 206(d)). FLSA requires that the employer's contributions to pension plans be considered in determining rates of pay.

The Wage and Hour Division of the Department of Labor administers FLSA, and its authorized representatives may enter establishments, inspect records, interview employees, and investigate any facts necessary to determine whether the law has been violated.

Age Discrimination in Employment Act of 1967

The Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. 621-634) applies to private pension plans insofar as contributions to such plans are part of an employee's total compensation. ADEA (29 U.S.C. 623(a)(1)) prohibits employers from discriminating against any employee with respect to his compensation, terms, conditions, or privileges of employment because of his age.

The act provides, however, that an employer not be required to provide older workers who are otherwise protected by the law with the same pension benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. The act (29 U.S.C. 623(f)(2)) provides also that no such benefit plan excuse the failure to hire any person. ADEA also is administered by the Wage and Hour Division.

Military Selective Service Act of 1967

The Military Selective Service Act of 1967 (50 U.S.C. 451 et seq.) protects a returning serviceman's pension rights by providing that any person who is restored to a position in accordance with the reemployment rights of the act is to be considered as having continued in such employment during his period of service or training in the Armed Forces. He is entitled to like seniority, status, and pay upon his return to employment and to participation in insurance and other benefits offered by the employer, provided that his period of active duty did not exceed 5 years.

The protective functions assigned to the Secretary under this act are performed through the Office of Veterans Reemployment Rights (OVRR). Where disagreements exist as to the existence or extent of a person's rights under the statute, OVRR attempts to resolve the differences through investigation, negotiation, and mediation.

OVRR does not have power to issue rulings or decisions that are binding upon either the employee or the employer. Instead, it seeks to obtain voluntary compliance with the statute. Where these procedures fail, the controversy, at the request of the person claiming rights under the statute, is referred to the Department of Justice for evaluation and possible litigation. A pension question was involved in only 32 of the almost 7,000 cases handled by OVRR in fiscal year 1971.

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a) affects private pension plans in that, when the Secretary determines the prevailing wage to be paid to employees working under construction contracts in excess of $2,000 to which the United States or the District of Columbia is a party, he must consider payments for pension plans and other fringe benefits as well as the basic hourly rate of pay. The Solicitor of Labor provides wage rate determinations when requested by Federal agencies. The contracting Federal agency is responsible for ensuring that these determinations are complied with.

If a contractor violates the act, the contract can be terminated, payments can be made directly to the workers from amounts due the contractor, and the contractor can be prevented from receiving Government contracts for 3 years.

Service Contract Act

The Service Contract Act of 1965 (41 U.S.C. 351 et seq.) provides that any contract for services entered into by the

United States or the District of Columbia shall contain, among other things, a provision specifying the minimum wage and the fringe benefits, as determined by the Secretary, to be furnished to various employees engaged in the performance of the contract. The act affects private pension plans in that pension benefits are a part of the fringe benefits specified by the Secretary.

The Wage and Hour Division investigates for compliance with this act. Any person can request assistance if he thinks a firm is violating the act.

DEPARTMENT OF JUSTICE

The Department of Justice is involved in the area of private pension plans through its investigations and prosecutions of violations of the laws regulating these plans. The Department exercises exclusive jurisdiction over the prosecution of criminal violations under the WPPDA Amendments of 1962 (29 U.S.C. 309).

The Department also investigates violations relating to theft or embezzlement from employee benefit plans (18 U.S.C. 664); false statements and concealment of facts in relation to documents required by WPPDA (18 U.S.C. 1027); and offers, acceptances, or solicitions to influence the operation of an employee benefit plan (18 U.S.C. 1954).

Enforcement statistics for fiscal year 1971 show that nine persons were indicted and six were convicted for violations of section 664 and that 10 persons were indicted and 16 were convicted for violations of section 1954. There were neither indictments nor convictions under section 1027.

The Department further prosecutes reporting and other violations connected with pension plans after such violations have been investigated by the Department of Labor.

SECURITIES AND EXCHANGE COMMISSION

Although the Securities and Exchange Commission (SEC) does not have direct regulatory authority over private pension plans, certain provisions of the federal securities laws which it administers do apply to such plans. These provisions relate primarily to registration of securities and to annual and other periodic reports required to be filed with SEC.

Pension and profit-sharing plans are exempt from coverage under the Securities Act of 1933 (15 U.S.C. 77 et seq.), unless the plan is a voluntary contributory pension plan and invests in the securities of the employer company an amount

greater than that paid into the plan by the employer. A voluntary contributory plan is one to which both the employee and employer contribute and in which employees voluntarily participate. If the plan's investment in the employer's securities exceeds the employer's contribution, both the employer's securities and the interests in the plan must be registered under the Securities Act with SEC.

Where interests in a private pension plan are registered under the Securities Act, as indicated above, the administrator of the plan must file annual and other periodic reports with SEC pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), unless the plan covers fewer than 300 persons.

Although private pension plans generally fall under the definition of investment companies under the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) which subjects such companies to SEC regulation, sections 3(c)(3) and 3(c)(11) of the act generally exempt pension plans from the act's provisions.

Since 1955 SEC has been collecting statistical data with respect to pension funds. Since most pension plans are exempt from coverage under the securities laws, these data are gathered voluntarily under the general statistical program of the Government.

These data are published as follows.

1. Assets of private pension funds not administered by insurance companies are published quarterly in SEC's Statistical Bulletin.

2. Stock activity of pension funds is summarized quarterly in SEC's releases entitled "Stock Transactions of Financial Institutions."

3. A survey of pension funds' mortgage-lending activities and commitments is conducted by SEC and the results are published monthly by the Department of Housing and Urban Development.

DEPARTMENT OF THE TREASURY

The Internal Revenue Service (IRS) is the Treasury Department agency having responsibility in the area of private pension funds. IRS determines whether the sponsoring employer and the participating employees of a private pension or

profit-sharing plan are entitled to certain tax benefits because their plan satisfies certain requirements of the Internal Revenue Code of 1954 (26 U.S.C. 72,101(b),381(c)(11), 381(c)(20),401-407,1379,2039(c), and 2517). These sections of the act deal with the requirements for qualification of a plan, the tax treatment of an employer who maintains a qualified plan, the tax treatment of participating employees and other beneficiaries of a qualified plan, the tax status of a trust or other funding medium forming part of a qualified plan, and procedural matters.

Generally a plan qualifies if it is exclusively for the benefit of employees and their beneficiaries, if it benefits 80 percent or more of the eligible employees, and if the contributions or benefits do not discriminate in favor of certain high-level employees.

IRS has conducted little investigative or audit activity to ensure that private pension plans are operated in compliance with the tax laws or IRS regulations. This has been due, in part, to the large number of requests for IRS to make advance determinations of the tax status of proposed pension plans. According to an IRS official, these determinations have taken so much time that they have prevented IRS from establishing an effective audit program. In 1969 a total of 156,779 determinations were made.

IRS no longer issues advance determination letters to self-employed persons who adopt previously approved master or prototype plans. As a result of this policy change, the number of determination letters issued by IRS dropped from 156,779 in 1969 to 55,050 in 1970. IRS is considering increasing its audit activities in the area of private pension plans.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which the Equal Employment Opportunity Commission administers, prohibits discrimination by employers, employment agencies, and unions based on race, color, religion, sex, and national origin with regard to compensation, terms, conditions, or privileges of employment. Pension and retirement plans available in connection with employment are privileges and conditions of employment.

Relief under title VII can be sought through both the Commission and the Department of Justice. The Commission processes charges through informal methods of conference, conciliation, and persuasion, but the Attorney General is authorized to institute a lawsuit whenever he has reasonable cause to believe

that any person or group of persons is engaged in a pattern or practice or resistance to the full enjoyment of any of the rights secured by title VII.

The Commission has decided (29 CFR 1604.31), with regard to pension and retirement plans, that a difference in optional or compulsory retirement ages based on sex violates title VII and that other differences based on sex, such as differences in benefits for survivors, will be decided by the Commission as such differences arise.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The regulations of the Department of Housing and Urban Development (HUD) affect private pension plans by specifying the costs for which local housing authorities, local planning agencies, model cities, and community development agencies may receive Federal assistance. HUD provides Federal assistance to the various local housing agencies under provisions of the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.), title I of the Housing Act of 1949 (42 U.S.C. 1450 et seq., 1468, and 1468a), and the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3301 et seq.).

Contributions to private pension plans are acceptable costs under the provisions of these acts if certain criteria are met. For example, local housing agencies may not participate in a plan until there is assurance that the HUD-aided program can be expected to continue on an active basis. For low-rent public housing activities, this expectation is met when the initial annual contributions contract is executed by the parties.

After a local agency is authorized to participate in a pension plan, it must enter a plan chosen from among the various public and private plans available. If the agency chooses a public plan, it must accept the provisions of the plan as established by the State or city which created it. Some States require the selection of a public plan. If the agency selects a private plan, the agency can specify the provisons of the plan but the provisions must comply with HUD guidelines on private pension plans. These guidelines are very detailed and cover nearly every aspect of a pension plan's operation.

DEPARTMENT OF DEFENSE

The scope of the Department of Defense (DOD) responsibility in the private pension fund area is limited to determining whether DOD contractors' contributions to private pension plans are allowable costs under the DOD procurement regulations. The allowability of employer contributions to private pension plans

and the criteria which these contributions and plans must meet are provided for in the Armed Services Procurement Regulation (ASPR) 15-205.6. The general criteria provide that the contributions to the plan must be part of a compensation package which has reasonable total value compared with the service rendered, the contribution be made pursuant to a plan or an agreement, and the contributions be tax deductible under the Internal Revenue Code of 1954 (26 U.S.C. 404).

The specific criteria provided in other sections of ASPR cover the allowability of a plan's particular costs, as well as the costs of specific types of plans. For example, ASPR 15.205.6(f)(2) covers the cost of contributions for past service and ASPR 15-711.13(b) covers contracts with State and local governments.

Following is a list of all ASPRs which govern the allowability of employer contributions to private pension plans.

15-205.6	15-309.7	15-711-13
15-205.42(f)(3)	15-309.23	15-804.1

Although we did not solicit formal comments from the National Aeronautics and Space Administration, our review of the Administration's procurement regulations showed that its responsibilities for private pension plans were similar to those of DOD under ASPR. The Federal Procurement Regulations, which affect most Federal procurement by civil agencies, also contain provisions regarding pension plans that are similar to those in ASPR.

NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board has no specific statutory authority or responsibility with respect to private pension plans. The Board is empowered to prevent any person from engaging in any unfair labor practice affecting commerce. The Board becomes involved in pension plan questions when hearing unfair labor practice cases which require determinations as to whether pension plans are appropriate or mandatory subjects of bargaining.

The following two leading decisions of the Board illustrate the extent to which pension plans are appropriate subjects of bargaining.

In the Inland Steel Company case (77 NLRB 1, enfd. 170 F.2d 247 (C.A. 7), Cert. denied, 336 U.S. 960), the Board decided that pension and retirement programs were included in the

board interpretation of "wages" and "conditions of employment" under the National Labor Relations Act and are therefore mandatory subjects of collective bargaining.

In the recent Pittsburgh Plate Glass Company case (177 NLRB 114, 427 F.2d 936), the Board held that retired employees were "employees" within the meaning of the National Labor Relations Act and that changes in their benefits were encompassed within the bargaining obligations of the act. On June 10, 1970, the United States Court of Appeals for the Sixth Circuit disagreed and denied enforcement of the Board's order. Because of the importance of the issue, the Board asked the Supreme Court of the United States to consider the case, and the request was granted (401 U.S. 907) on February 22, 1971. The case was argued before the Supreme Court on October 20, 1971, but a decision is not expected until January 1972.

COST OF LIVING COUNCIL

The Economic Stabilization Act of 1970 (12 U.S.C. 1904 note) as amended by the act of March 31, 1971 (85 Stat. 13), and the act of May 18, 1971 (85 Stat. 38), authorizes the President to issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970. Executive Order No. 11615 of August 15, 1971, provides for a freeze on prices, rents, wages, and salaries.

The act and Executive order apply to pension funds in that the freeze includes employers' contributions to fringe benefits as a part of wages. The freeze has been interpreted by the Cost of Living Council as affecting pension plans in some respects.

The freeze is under the overall guidance of the Cost of Living Council in the Executive Office of the President. The Council can enforce the provisions of the freeze by obtaining injunctions from the courts. Violators of the freeze are subject to fines as much as $5,000 each.