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UNITED STATES GENERAL ACCOUNTING OFFICE
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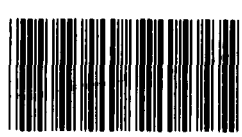
STATEMENT OF
GREGORY J. AHART, DIRECTOR
HUMAN RESOURCES DIVISION
UNITED STATES GENERAL ACCOUNTING OFFICE
BEFORE THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ON
THE GOVERNMENT'S INVESTIGATION OF THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS'
CENTRAL STATES, SOUTHEAST AND SOUTHWEST
AREAS PENSION FUND



Mr. Chairman and
Members of the Subcommittee

We are pleased to appear here today to discuss our review of the Government's investigation of the International Brotherhood of Teamsters' Central States, Southeast and Southwest Areas Pension Fund (the Fund)--one of the largest private pension funds in the nation.

At December 31, 1980, the Fund had about $2.9 billion in assets. The Fund's membership was almost 511,000 active participants and retirees receiving benefits at December 31, 1979. Employer contributions totaled almost $607 million and pension payments totaled about $349 million in 1979. The Fund has an unfunded liability, for current and future plan benefits, of $7.6 billion at January 1, 1979. 1/

For many years the Fund's trustees have been a subject of controversy and allegations of misusing and abusing the Fund's assets, and making questionable loans to people linked to organized crime. Consequently, in mid-1975 the Department of Labor initiated an investigation to determine whether the Fund was being administered in a manner consistent with the fiduciary and other requirements of the Employee Retirement Income Security Act (ERISA). At that time, the Internal Revenue Service (IRS) had an investigation of the Fund in process which it had started in 1968.

1/The unfunded accrued liability represents a pension plan's liability for pension benefits for all present members, active and retired (and their beneficiaries) and future administrative expenses in excess of the value of the plan's assets.

At the time Labor initiated its investigation, the Senate Permanent Subcommittee on Investigations was considering starting its own investigation of the Fund. But, to avoid duplicating and possibly complicating Labor's work, the Subcommittee deferred its investigation. However, as the investigation proceeded the Subcommittee was not satisfied with the information Labor provided or the progress of the investigation. The Subcommittee, therefore, requested the General Accounting Office (GAO) on June 13, 1978, to undertake a comprehensive review of the adequacy and effectiveness of Labor's investigation including its coordination with IRS and the Department of Justice.

HIGHLIGHTS OF GAO REVIEW

Labor's investigation of the Fund is over 6 years old and to September 30, 1981, has cost about $8.5 million. IRS' and Justice's investigations are older, but the cost figures are not available.

Labor's and IRS' investigations disclosed that former Fund trustees and officials mismanaged Fund assets and failed to prudently carry out their fiduciary responsibilities and had not operated the Fund for the exclusive benefit of plan participants and beneficiaries--as required by ERISA. On June 25, 1976, IRS revoked the Fund's tax-exempt status.

Before restoring the Fund's tax-exempt status, Labor and IRS in April 1977 imposed several demands on the trustees to reform the Fund's operations. The trustees agreed to the demands and made several significant changes. The most significant were the trustees' (1) appointment of independent investment managers to manage most of the Funds' assets and investments,

and (2) adoption of amendments to have the Fund conform to ERISA and the Internal Revenue Code.

Also, Labor's investigation resulted in the Secretary of Labor filing a civil suit in February 1978 against 17 former trustees and two former officials to recover losses that resulted from alleged mismanagement, imprudent actions, and breaches of fiduciary duties. 1/

Our review disclosed that despite apparent benefits, Labor's investigation and subsequent Labor and IRS dealings with Fund trustees had significant shortcomings and left unresolved problems. We found shortcomings and deficiencies in (1) Labor's investigative efforts, (2) Labor's coordination with IRS and Justice, (3) Labor's and IRS' dealings and agreements with the trustees in reforming the Fund, and (4) Labor's and IRS' monitoring of the current trustees' operations and compliance with the conditions for requalification imposed by the Government.

Thus, we question whether the benefits obtained and improvements imposed by the Government will result in lasting reforms without the the continued diligent efforts of Labor and IRS. In fact, as a result of the curent trustees' failure to comply with the conditions for requalification, Labor renewed its investigation of the Fund on April 28, 1980. IRS, after obtaining a court order requiring the Fund to comply with its summonses, also resumed its onsite investigation in about July 1980.

1/Donovan v. Fitzsimmons et. al., C.A. 78-C-342, USDC, N-D-ILL.

At the Subcommittee's request, the former Comptroller General, Elmer B. Staats, and other GAO representatives, in August and September 1980, testified before the Permanent Subcommittee on our preliminary findings and conclusions. Subsequently, the Permanent Subcommittee on August 3, 1981, issued a report on its "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund." 1/ The Subcommittee's report discussed inadequate staffing and coordination, and management problems, similar to those noted in our review, in Labor's and IRS' investigation.

Since the hearings and the Subcommittee's report, we have up-dated our findings and conclusions, and developed recommendations. We have prepared a draft report and on October 7, 1981, we provided a copy of the draft to you and Senator Nunn, Ranking Minority Member, pursuant to your requests. Also, on October 8, we sent copies of our draft report to the Secretary of Labor, the Commissioner of Internal Revenue and the Attorney General for comment. We have also sent a copy of the draft to the Fund.

Our draft report has not been fully reviewed within GAO and we have not yet received the agencies' formal comments. Therefore, I would like to caution that the draft, including the recommendations which are discussed below, are subject to revision.

1/See Senate Report 97-177, 97th Cong. 1st Sess., August 1981.

UNSUCCESSFUL ATTEMPT TO HAVE GOVERNMENT-WIDE COORDINATED INVESTIGATION

Labor's objective of having a Government-wide coordinated investigation did not succeed because IRS refused to participate in a joint investigation. IRS' "go it alone" attitude and unwillingness to join the investigation did not adversely affect Labor's investigation until IRS decided on June 25, 1976, without prior notice to the Fund or Labor, to revoke the Fund's tax-exempt status.

IRS' action disrupted Labor's investigation and according to Labor officials created a "chaotic situation". IRS' action also adversely affected the Fund's cooperation with Government investigators. Labor officials said they had to spend more time trying to resolve their coordination and cooperation problems with IRS and the Fund than on the investigation.

IRS' explanation that it was pursuing a different course than Labor is not borne out by the facts. For example the Chicago district director's June 25, 1976, letter disqualifying the Fund was based, in part, on alleged imprudent practices by the trustees or fiduciary violations, the very same area Labor was investigating.

LABOR'S INVESTIGATION NARROWLY FOCUSED ON REAL ESTATE LOANS AT THE EXPENSE OF OTHER AREAS OF ALLEGED ABUSE

Labor's investigation disclosed many significant problems in the former trustees' management of the Fund's operations. However, Labor narrowly focused on the Fund's real estate mortgage and collateral loans because of the significant dollar amounts involved and Labor's primary goal of protecting and

preserving the Fund's assets. This single purpose, in Labor's opinion, may have been justified; however, in our view, this approach ignored other areas of alleged abuse and mismanagement of the Fund's operations by the former trustees and left unresolved questions of potential civil and criminal violations and alleged mismanagement raised by Labor's own investigators.

Labor's investigation was also incomplete. Labor targeted for investigation 82 of the Fund's 500 loans. Labor's investigation found apparent significant fiduciary violations and imprudent practices by the former trustees on many of the 82 loans. Labor terminated its investigation of the asset management procedures at the Fund even though the investigators did not complete planned third-party investigations on many of the 82 loans.

We believe that Labor lost an opportunity during its investigation when it failed to complete the third-party investigations. This omission may have precluded Labor from obtaining valuable information needed for its investigation as well as information on potential criminal violations. In our opinion, the fact that Labor had to resume an on-site investigation at the Fund is persuasive evidence of the inadequacies and shortcomings in Labor's original investigation.

LABOR'S INVESTIGATION HAMPERED BY POOR MANAGEMENT, INEFFECTIVE INTERNAL COORDINATION, AND STAFFING PROBLEMS

Until Labor abolished the Special Investigations Staff (SIS) in May 1980, SIS was responsible for the investigation of the Fund. Although the Congress gave Labor the 45 staff positions it stated was needed by SIS to make the investigation of the

Fund's pension and health and welfare funds in an adequate and timely manner, Labor later reduced the SIS staff allocation to 34. Further, SIS never filled all of its positions. Had SIS filled the 45 authorized permanent positions, we believe it would have been able to review some of the unresolved areas and complete more third-party investigations.

SIS' professional staff for the most part appeared experienced. However, Labor failed to (1) adequately train SIS personnel in areas related to the investigation, (2) maintain an effective work environment which adversely affected the morale of SIS personnel, and (3) ensure effective coordination between SIS and the Solicitor's Office. Consequently, we believe that these shortcomings significantly weakened and adversely affected SIS' ability to conduct an effective investigation. Labor's shortcomings also contributed significantly to the problems SIS experienced in managing the investigation, and to the ineffective coordination, and poor working relationship with the Solicitor's office.

An internal Labor management report of May 1979--the so called Kotch-Crino report--confirmed the significant management problems and concluded that SIS was seriously hampered by a lack of leadership and supervision, by mismanagement and by poor administration. The report stated "future SIS effectiveness is doubtful." SIS was abolished in May 1980.

LABOR FAILED TO ADEQUATELY COORDINATE WITH JUSTICE

Notwithstanding memorandums of agreement to coordinate their efforts at the Fund, Labor and Justice had continuing coordination

problems which restricted the flow of investigative information from Labor to Justice. Also under the agreements, Labor was to refer to Justice all information relating to potential criminal violations for use in Justice's criminal investigation activities. In 5 years of investigative activity, Labor made 11 formal referrals of loan information to Justice which had potential for criminal investigation. Labor and Justice officials stated that much other loan transaction information was discussed informally during meetings.

Justice officials told us, however, that overall Labor's information was not useful in its criminal investigation efforts. In fact, as of June 23, 1981, Justice officials stated that since Labor's investigation started in 1975 only one case resulted in a criminal indictment and conviction. The other cases were closed primarily because of the Government's inability to substantiate a criminal violation.

The Kotch-Crino report also cited coordination problems similar to those we found, such as Labor (1) restricting the flow of information to Justice and (2) denying Justice officials summaries prepared by Labor's attorneys. The report characterized the latter point as a significant problem area and a "major" irritant to Justice.

Labor and Justice officials testified in Congressional hearings in March 1/ and August 2/ 1980 that coordination problems existed in the past but that cooperation between the two departments is now more effective. However, as indicated by our review--and the Kotch-Crino report--Labor and Justice experienced continuing coordination problems despite several agreements and despite working group committees.

Recommendations to the Secretary of Labor and the Attorney General

Accordingly, we are recommending that the Secretary and Attorney General take action to have their December 1978 coordination agreement revised to define the "higher officials" who should or would resolve the litigation strategy problems the working group members cannot resolve, or in lieu of this, consider reestablishing an Interdepartmental Policy Committee similar to the one established in 1975. To ease another continuing coordination problem, we are recommending that the (1) Secretary emphasize to the Solicitor's Office the need for Labor to fully cooperate with Justice's Criminal Division by providing attorney analyses on various Fund transactions which indicate potential criminal violations and (2) Attorney General caution

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1/Hearings on Review of progress on Teamsters' Central States Pension Fund Reform before the Subcommittee on Oversight, House Comittee on Ways and Means, 96th Cong., 2nd Sess. (March 24, 1980).

2/Hearings on Oversight of Labor Department's Investigation of Teamsters Central States Pension Fund before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, 96th Cong., 2nd Sess. (August 25, 26, September 29 and 30, 1980).

the Justice attorneys that these are internal drafts and should be treated as such.

We are also recommending that the Secretary direct the Solicitor's Office to carry out the recommendations in the Kotch-Crino report to honor the memorandum of understanding (agreements) with Justice, by (1) establishing a formal written system of referring potential criminal violations to Justice, (2) suggesting a single Justice coordinator for all Fund activities, (3) establishing procedures wherein Justice periodically orients and briefs Solicitor Office officials, (4) suggesting one designated person in Justice to receive all Fund records, and (5) establishing a system wherein the Solicitor's Office forwards to Justice pertinent additional records regarding any matter previously referred.

LABOR AND IRS DID NOT REQUIRE A WRITTEN AGREEMENT IN RESTORING THE FUND'S TAX-EXEMPT STATUS AND DID NOT PLAY A ROLE IN SELECTING FUND'S NEW TRUSTEES

IRS, on June 25, 1976, without prior notice to Labor, revoked the Fund's tax-exempt status. However, IRS after reconsidering the impact of its unilateral action on the Government's investigation agreed to fully coordinate with Labor in August 1976. The agencies had extensive discussions and considered many options--from a court-enforced "consent decree" 1/ to requiring a neutral

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1/A consent decree is an order of preliminary or permanent injunction entered by a court of competent jurisdiction on the basis of the Government's complaint, the consent of the defendent to the entry of a decree embodying certain relief (usually without admitting or denying the allegations of the complaint), and an agreed form of judgment.

board of trustees--in reforming the Fund and having IRS restore its tax-exempt status.

IRS restored the Fund's tax-exempt status in April 1977. But, rather than have the trustees enter into a written agreement, IRS--with Labor's approval--based the requalification on the trustees' oral agreement to operate the Fund in accordance with ERISA and to comply with eight specific conditions prescribed by Labor and IRS. (See the appendix for the eight conditions.)

Early in the investigation, Labor proposed reforming the Fund's operations through a legal undertaking, such as having the Fund operated pursuant to a court-enforced "consent decree". However, Labor officials dropped this approach after the trustees agreed to restructure the board of trustees from 16 to 10 members and 12 of 16 trustees resigned.

The four remaining trustees later resigned as a condition for requalification of the Fund's tax-exempt status. However, Labor and IRS did not play an active role in the selection of the four new trustees even though they had developed qualifications the new trustees should meet, and Labor knew that some of the former trustees--who allegedly mismanaged the Fund--were members of the Teamsters' union organizations that apparently selected some of the new trustees.

We question whether the reforms and changes that Labor and IRS required the trustees to make in the Fund's operations were the best the Government could have achieved and the most advantageous for the Fund and its plan participants. In our opinion, Labor and IRS' findings of mismanagement and abuse by the former trustees and IRS' action of removing the Fund's

tax-exempt status gave the Government a strong bargaining position and advantage in its dealings with Fund officials. However, Labor and IRS in the final negotiations with the trustees may not have gained lasting reforms and improvements to the Fund's operations or removed the influence and control exercised by the former trustees.

We believe also that Labor's and IRS' decision not to require the trustees to enter into a written agreement may not have been prudent. Without such an arrangement or a court enforceable consent decree, Labor and IRS did not have the leverage they might have had to require the trustees to adhere to the conditions. As the record shows, the current trustees did not satisfy all of the conditions the Government imposed when IRS requalified the Fund, and another investigation was needed.

Further, we believe that Labor's and IRS' decision not to play an active role in selection of successor trustees was shortsighted, particularly in view of the Fund's history of controversy and dissatisfaction expressed with the trustees, both within and outside the Teamsters' organization. Concern was expressed about the influence of the former trustees over selection of the current trustees, which Labor dismissed as being unimportant. However, Labor belatedly recognized, and became sufficiently concerned over, the former trustees' influence and actions of the current trustees, to resume its investigation.

Recommendation to the Secretary of Labor and the Commissioner of Internal Revenue

In view of the continuing concern over the influence and control of the current trustees and the Fund's operations by

the former trustees, we are recommending that the Secretary and Commissioner (1) establish criteria and qualifications requiring that future Fund trustees be independent, professional, neutral, etc.; (2) closely monitor the selection of future trustees; and (3) veto the selection of a trustee not meeting the criteria.

TRUSTEES TRYING TO REASSERT CONTROL OVER FUND'S ASSETS AND INVESTMENTS

As another condition for requalification, in June 1977, the trustees, appointed independent investment managers--the Equitable Life Assurance Society of the United States and the Victor Palmieri Company--to handle most of the Fund's assets. Both Equitable and Palmieri appear to be successfully managing the assets and investments. As a result, at the end of calendar year 1980, the Fund's (1) investment portfolio had been shifted from principally real estate mortgage and collateral loans to principally stocks and other securities, (2) assets grew from $1.6 billion to $2.9 billion, and (3) investment income grew from $73 million to $151 million annually.

Despite Equitable's and Palmieri's performances, the trustees have attempted to reassert control over the Fund's assets by (1) trying to compromise the managers' independence, (2) hiring their own staff of real estate analysts, and (3) trying to terminate the services of Palmieri because the firm refused to renegotiate the fixed management fees.

Although Equitable handles the Fund's assets and investments, the Fund's trustees still control all of the moneys the Fund receives, and decide how much should be retained in the

Benefits and Administration Account (B & A account). The trustees were supposed to use the B & A account to (1) record the employers' contributions, (2) pay the employees' benefits and the Fund's administrative expenses, and (3) maintain an appropriate reserve for the Fund. The remaining moneys were to be given to the independent managers for investments.

However, the trustees have retained a significant amount of moneys in the B & A account. For example, there was $142 million in the account at December 31, 1979. According to Labor, the trustees have imprudently attempted to use the moneys in the B & A account to make a $91 million questionable loan to settle a court suit.

Congressional committees, including the Permanent Subcommittee, have expressed concern about the funds still controlled by the trustees. The Secretary of Labor and other Labor officials testified that Labor would continually monitor and review the trustees' handling of the account. We found, however, that Labor and IRS have not adequately monitored the trustees' control over the B & A account.

We believe that Labor and IRS need to take action above and beyond the conditions required by the April 1977 agreement to remove the trustees' control over, and influence on, all the moneys the Fund receives. Labor and IRS should consider proposing a reorganization of the way the Fund handles and controls the employers' contributions and other monies, to remove the trustees' control over any of these funds.

We believe that any agreement that Labor and IRS negotiate with the Fund's trustees should be in a formal written document

document, agreed to and signed by Labor and IRS and the Fund's trustees. Such a document would insure that the Government's position is clear and unequivocal, and would, in our opinion, help assure that further reforms are lasting.

Recommendations to the Secretary of Labor and the Commissioner of Internal Revenue

To help assure that the Fund is operated and managed prudently and for the exclusive benefit of the plan participants and beneficiaries, as required by ERISA, we are recommending that the Secretary and Commissioner obtain a commitment from the trustees that the Fund will (1) continue to have an independent investment manager to control and manage the Fund's assets and investments after the present managers' contracts expire in October 1982, and (2) use the same selection criteria and qualifications as in the past--independent, professional expertise and national stature--should the trustees decide to replace the present investment managers after October 1982.

We are further recommending that the Secretary and Commissioner consider obtaining a further commitment from the trustees to reorganize the way the Fund handles and controls the employer contributions and its other moneys to remove the trustees' control over these funds. The proposed reorganization should provide for

--the Fund to employ a financial custodian--and independent bank or other financial institution--with professional expertise and national stature, to receive and control all moneys due the Fund, pay the Fund's administrative expenses and pension benefits, retain an appropriate reserve, and turn over the remainder to the investment managers;

--IRS and Labor to have a veto power over the selection of the independent investment manager and financial custodian, if the trustees selections do not meet the Government's qualifications; and

--limiting the trustees' role and responsibilities to establishing overall investment objectives, determining eligibility requirements for pension benefits and employers' contributions, monitoring the investment managers' and custodian's activities, and administering relevant collective bargaining requirements.

We are recommending that the Secretary and Commissioner take action to assure that the above proposed reorganization, and any other reforms imposed on the Fund, be included in a formal written, agreement signed and agreed to by Labor and IRS and the Fund's trustees.

Should the Fund trustees refuse to voluntarily conform with the above reforms, we are recommending that the Secretary and Commissioner consider whether such a decision, along with any evidence of misconduct that may be developed during the current investigation, warrants speedy and appropriate litigative action, as authorized by ERISA, against the trustees to require retention of an independent professional manager beyond the October 1982 contract terminations date, and the other, or similar, reforms suggested above.

LABOR AND IRS NEED TO INVESTIGATE UNRESOLVED PROBLEM AREAS OF ALLEGED MISMANAGEMENT

During its original onsite work at Fund headquarters--from January 1976 to May 1977--Labor decided to concentrate its investigation on the practices of Fund fiduciaries to make real estate mortgage and collateral loans. Labor's investigation also identified patterns of apparent abuse of the Fund by former trustees and raised questions of potential criminal violations

in the Fund's other operations. However, because of Labor's decision to concentrate on reviewing the Fund's loan activities, these other problem areas went uninvestigated.

IRS has responsibility to assure that the Fund complies with the eight conditions of the April 1977 requalification letter. (See the appendix.) However, IRS was not able to adequately investigate the Fund's activities or compliance after August 1979 because Fund officials notified IRS on August 24, 1979, that they would no longer submit the required progress reports--because they considered the eight conditions substantially satisfied--and the Fund, in effect, barred IRS from conducting audit activities at the Fund's premises. IRS disagreed, and as of August 1980, IRS believed the Fund had satisfied only four conditions--1, 3, 5, and 6. Thus, nearly 3-1/2 years after the requalification, the Fund had complied with only four of the conditions to IRS' satisfaction.

As a result, in April 1980 Labor renewed its investigation at the Fund and IRS, after securing a court order requiring the Fund to comply with the Service's summons and allow it access to Fund records, renewed its investigation in July 1980. We found, however, that the investigations will not cover all of the potential areas of abuse and mismanagement by the former trustees. Also, IRS and Labor said they are coordinating their efforts. But we noted that both agencies issued subpoenas or summonses for the same records and are reviewing the same activities and operations.

Neither Labor nor IRS officials would discuss with us the status of their current investigations. However,

on August 18, 1981, Labor filed a civil suit against 1/ 17 defendants who are present trustees and certain attorneys, agents and other Fund fiduciaries, concerning the forceclosure actions on two loans totaling $7 million made to the Indico Corporation, which was secured by certain real estate located in Bay County, Florida. These loans are one of the areas covered in Labor's second investigation. The suit charges that the defendants imprudently caused the Fund to purchase the property, at the foreclosure sale, for $6.7 million, a price far in excess of its fair market value, thereby diminishing possible recovery by the Fund against the debtors and guarantors.

We believe that both Labor and IRS need to take heed of the coordination problems and shortcomings in negotiations with the Fund in the original investigation to assure that these mistakes are not repeated in their current investigations, and in future dealings with the trustees.

Recomemndations to the Secretary of Labor and the Commissioner of Internal Revenue

We are recommending that the Secretary and the Commissioner direct their respective investigative staffs to more closely cooperate to prevent coordination problems, duplication between the investigators and giving the Fund an excuse not to cooperate because the Government is not speaking with one voice. Further, in view of the past controversy over the size and use of the B & A account, we are recommending that the Secretary and

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1/Donovan v. William J. Nellis et. al. C.A., MCA 81-0245, USDC, N-D, Fla.

Commissioner direct their investigation staffs to review the trustees' management and use of the B & A account to determine the appropriate reserve the Fund should maintain in the account.

We are recommending also that during its current investigation at the Fund, the Secretary direct the Labor-Management Services Administration (LMSA)--which is responsible for the investigation--to

--Assure that the unresolved matters from the initial investigation are thoroughly investigated and resolved.

  In particular, LMSA should review questions of possible improprieties of payments made to former and current Fund trustees and officials and to service providers, including those made prior to January 1977, and coordinate this work with Justice because of the potential criminal nature of certain transactions.

--Assure that the LMSA Chicago staff performing the investigation receive proper training, and use all investigative techniques and procedures, in particular third party interviews, to detect and develop potential criminal violations for referrals to Justice.

--Coordinate its investigation efforts with the Solicitor's Office.

THE FUND'S FINANCIAL SOUNDNESS STILL QUESTIONABLE

ERISA requires that employee pension plans satisfy minimum funding standards each year and that each plan submit an actuarial report. IRS is to use the actuarial reports to enforce ERISA's minimum funding standards and to determine the plan's actuarial soundness. IRS, when it requalified the Fund's tax-exempt status, did not consider the Fund's financial soundness. In fact, IRS' April 1977 requalification letter stated that its determination on the Fund's tax-exempt status is not an indication that IRS was in any way passing on the actuarial soundness of the plan or on the reasonableness of the actuarial computations.

Since 1975, the trustees have had four actuarial valuations of the Fund's financial soundness. The last actuary's report issued on March 3, 1980, stated that the current funding should satisfy ERISA's requirements. However, the actuary said that the funding policy allowed very little margin for error, and if actual experience differed, funding problems would occur after the ERISA standards become effective for the Fund in 1981. The actuary also recommended that the Fund's trustees adopt certain funding positions to assure compliance in future years with ERISA.

Moreover, the actuarial report showed that the Fund's unfunded liability, for current and future pension benefits, had increased to "$7.6 billion."

In our opinion, IRS needs to closely monitor the financial status of the Fund to assure that it meets ERISA's funding standards in 1981 and in future years. IRS' officials testified in 1980 that they intend to monitor the Fund's compliance with ERISA's minimum funding standards when they become applicable in 1981. As part of its monitoring, IRS should review the latest actuarial report on the Fund, ascertain whether the Fund should adopt the actuary's proposal on revising the funding policy, and if so, consider what appropriate action should be taken and is available under ERISA to assure the Fund implements the proposal.

Recommendations to the Commissioner of Internal Revenue

To assure the financial soundness of the Fund and its ability to meet commitments for paying current as well as future pension benefits, we are recommending that the Commissioner direct

IRS officials to closely monitor the Fund's financial operations to ascertain that the Fund (1) meets the minimum funding standards of ERISA in 1981 and future years, and if not, take whatever action is needed to assure that the Fund meets the act's requirements, and (2) remains actuarially sound.

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Mr. Chairman, this completes my statement. We would be happy to respond to any questions you or members of the Subcommittee may have.

EIGHT CONDITIONS IMPOSED ON THE FUND BY IRS AND LABOR ON APRIL 26, 1977 TO RESTORE THE FUND'S TAX-EXEMPT STATUS

1. The trustees amend the trust agreement to have the Fund conform to ERISA and the Internal Revenue Code.

2. The Fund have in operation, not later than December 31, 1977, a data base management system that would be sufficient to determine "credited service" in accordance with the pension plan's requirements for all participants from 1955 to April 26, 1977, inclusive.

3. The Fund review all benefit applications that were originally rejected but subsequently approved to insure that the effective date and amount of benefit payments were in accordance with the plan provisions in effect at the appropriate governing dates.

4. The Fund complete by May 1, 1978, an examination of all Fund loans and related financial transactions from February 1, 1965, to April 30, 1977, to determine whether the Fund has any enforceable causes of actions or other recourse as a result of the transactions.

5. The trustees amend the trust to provide a statement of investment policies and, annually, the trustees provide written investment objectives to the investment manager retained by the Fund.

6. The trustees amend the trust to establish a qualified Internal Audit staff to monitor Fund affairs.

7. The trustees amend the trust to publish annually, in at least one newspaper of general circulation in each State, the annual financial statements, certified by the Fund's Certified Public Accountant.

8. The trustees place all Fund assets and receipts, including moneys derived from liquidation of existing investments (except funds reasonably retained by the Fund for payment of plan benefits and administrative expenses), under direct, continuing control of independent professional investment managers as defined by section 3(38) of ERISA. 1/

1/ERISA defines an investment manager as any fiduciary (other than a trustee or fiduciary of the Fund) who (a) has the power to manage, acquire or dispose of plan assets, (b) is a registered investment adviser under the Investment Adviser Act of 1940, a bank or a qualified insurance company under the laws of more than one state, and (c) has acknowledged in writing that he (it) is a fiduciary of the plan.