NEWS
U. S. DEPARTMENT OF LABOR
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EMBARGOED
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NOON, Monday, September 2, 1974

NEW PENSION BENEFITS LAW PROVIDES MANY PROTECTIONS FOR WORKERS COVERED BY PRIVATE INDUSTRY PLANS

New protections and guarantees for employees covered by private pension and welfare plans and for their beneficiaries are provided in the Employee Retirement Income Security Act of 1974 just enacted.

About 35 million persons covered by private employee benefit plans are affected by the new law. Responsibilities for carrying out the law's provisions are assigned to the U. S. Department of Labor and the Internal Revenue Service of the U. S. Treasury Department, and a new Government Corporation named the Pension Benefit Guaranty Corporation.

The law affects two different types of employee benefit plans -- pension plans, which provide retirement benefits, and welfare plans, which provide other kinds of benefits - such as health, accident, etc. The law applies both to employee benefit plans now in existence and to new ones which are instituted after enactment. It does not require any employer to establish a plan.

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It is estimated a total of about 1.8 million pension and welfare plans are in operation in the United States. Of that number, about 350,000 are pension plans (excluding Keogh plans, which are plans for the benefit of the self-employed and their employees). The rest are welfare plans.

Basic provisions of the new law are:

ELIGIBILITY TO PARTICIPATE -- In general, the law requires that a person be eligible to participate in a pension plan after that person is 25 years old and has worked for the employer for one year. The act permits a plan to exclude from participation a person who starts a job within 5 years of the normal retirement age under the plan.

VESTING -- There are three alternative formulas for achieving vested pension rights under the new law. Once vesting is achieved by an employee under the formula chosen by the plan, that individual has a right to receive a pension at retirement age, wherever he or she may be working at the time. The amount of the pension will depend, generally, on the amount of benefits earned by the employee during his or her service under the plan.

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FUNDING -- This is the system by which assets are set aside to cover the cost of benefit rights earned by employees. Funding helps assure that sufficient money will be available to pay benefits on retirement. The law requires employers to fund pension credits for current service as employees earn them. Mandatory formulas are also established for funding past service liabilities (costs of pension benefits earned in the past for which monies have not yet been set aside) over a specific period of time.

FIDUCIARY STANDARDS -- Funds set aside to provide benefits must be held in trust and used only to provide benefits and pay the necessary costs of running the plan. With very limited exceptions, the new law requires that both pension and welfare plans meet new strict standards governing plan administration by "fiduciaries." A fiduciary is a person who holds or controls property for the benefit of another person. He is the man who handles the money. The law says plan fiduciaries must perform their duties solely in the interest of those covered by the plan "with the care, skill, prudence, and diligence ... that a prudent man ... would use." A fiduciary may not deal with the plan assets for his own account nor may he benefit personally from any transaction involving plan assets. These provisions generally go into effect on January 1, 1975.

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REPORTING AND DISCLOSURE -- The Act calls for extensive reporting and disclosure of information about pension and welfare plans, their operations and their financial condition to the Secretary of Labor and to those covered by the plans and their beneficiaries. These provisions will apply on January 1, 1975. They apply to all pension and welfare plans, regardless of size, maintained by employers or employee organizations whose employees are engaged in or affecting interstate commerce, except those specifically exempted. The Secretary of Labor administers these provisions and has the authority to modify some of the requirements for a particular plan.

PLAN TERMINATION INSURANCE -- The Act establishes a federally chartered insurance corporation, to be known as the Pension Benefit Guaranty Corporation, in the Department of Labor. PBGC is to be administered by the Secretary of Labor in his capacity as Chairman of the Board of Directors of the Corporation, in accordance with policies established by the Board of Directors, which is to be composed of the Secretaries of Labor, Commerce and the Treasury. When a certain type of plan terminates, PBGC will guarantee that participants will receive their vested benefits subject to certain limitations. The Corporation is authorized to borrow from the Treasury but is expected to become wholly self financing through premiums paid by insured plans.

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ENFORCEMENT -- The Department of Labor has principal enforcement responsibilities in the areas of reporting and disclosure and fiduciary standards. Civil penalties are authorized for violations in either area, and, in addition, criminal penalties are available for violations of the reporting and disclosure requirements. The Department will emphasize voluntary compliance and seek court action when technical assistance and explanation do not achieve compliance. The Internal Revenue Service has principal enforcement responsibilities concerning the vesting, funding and participation standards, but the Secretary of Labor has some responsibilities in these areas to protect employee pension rights.

Attachments

COVERAGE

The Employee Retirement Income Security Act of 1974 affects some 35 million working Americans enrolled in 1.8 million private pension and employee welfare plans. Many of the 35 million covered under the new law are enrolled simultaneously in both welfare and pension plans. The Act establishes a program which covers six basic areas. These areas are: fiduciary standards (including office-holding prohibitions and bonding provisions), reporting and disclosure, participation, vesting, funding, and plan termination insurance. It also makes some related miscellaneous changes in the Internal Revenue Code.

The Labor-Management Services Administration (LMSA) has been given major enforcement responsibilities within the Labor Department. (The Welfare and Pension Plans Disclosure Act is supplanted by the new law.) The plan termination insurance will be provided through a government corporation established within the Labor Department.

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Welfare Plans

Welfare plans are established to provide to participants and beneficiaries certain benefits, such as sickness, accident, disability, death, unemployment or vacation benefit; apprenticeship and other training programs; day care centers; scholarship funds; and prepaid legal services.

Welfare plans are not insured by the PBGC, nor are they subject to the participation, vesting and funding provisions of the new law. However, welfare plans must meet certain reporting and disclosure requirements, and are subject to the fiduciary standards.

Pension Plans

The new law will affect most types of pension and deferred compensation plans including defined benefit plans, defined contribution plans, target benefit plans, profit sharing and similar plans; and others. It also affects H.R. 10 or "Keogh" plans (plans for the self-employed and their employees). Defined benefit pension plans will be considerably affected by the Act. There are 100,000 such plans covering some 23 million persons which will generally be covered by the plan termination insurance provisions.

Some types of pension plans are exempted from coverage under the Act. They include:

* government plans, Federal, State and local;
* plans maintained outside the United States for the benefit of non-resident aliens;
* excess benefit plans, which provide benefits in excess of the limitations allowed for tax deductions by the Internal Revenue Code;
* plans maintained solely for the purpose of complying with workers' compensation laws.

Church plans are also exempted but can elect to come under the participation, vesting, and the funding standards. Such plans can also elect to come under the insurance coverage, and fiduciary and disclosure rules.

Plan Termination Insurance

About 23 million of the 30 million persons in pension plans will be covered by the insurance provisions. The 23 million belong to defined benefit plans which use formulas to determine future, fixed benefits. Participants in those plans vest -- acquire a legal right to pension credit -- when they meet certain time-in-service and other requirements specified in their plans. Even when participants take other jobs, they would still be entitled to benefits to the extent they have vested rights.

In the past, participants - even vested participants - sometimes lost benefits because the employer maintaining their plan went bankrupt or the plan's total assets proved insufficient to pay due benefits. The new Pension Benefit Guaranty Corporation (PBGC) now insures against that contingency.

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FIDUCIARY STANDARDS

The new law recognizes that when funds are set aside to provide benefits to employees, the money is to be held in trust to be used only for the purpose of providing specified benefits. Accordingly, with very limited exceptions, the law requires that pension and welfare plans must meet new, strict federal standards for responsible administration of the plan by fiduciaries. A fiduciary is a person who holds or controls property for the benefit of another person.

Fiduciaries are required to perform their duties solely in the interest of the plan participants and their beneficiaries and according to a "prudent man" rule. This rule, as stated in the Act, provides that a fiduciary shall discharge his duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use....."

In addition to the overall standards imposed on fiduciaries, certain types of conduct and transactions are expressly prohibited. A fiduciary may not deal with the plan assets for his own account nor may he benefit personally from any transaction involving assets of the plan.

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To protect a plan against "kickbacks" to fiduciaries or conflict of interest transactions, a plan administrator is generally prohibited from engaging in business with a party-in-interest to the plan such as the employer, a fiduciary of the plan, or other parties who have an interest in, or relationship with the plan, or with a union any of whose members are covered by the plan. Between a plan and a party-in-interest such prohibited transactions include the selling or leasing of property, the lending of money or other extension of credit, and the furnishing of goods, services or facilities. However, in most cases, a plan may invest up to 10 percent of its assets in qualifying securities of the employer who maintains the plan. As an exception to this 10 percent restriction, profit-sharing, stock bonus and employee stock purchase plans are permitted to invest more heavily in the employer's securities.

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The Act contains several exceptions from the prohibited fiduciary transactions. Under strict safeguards, the Act permits a fiduciary: (1) as a participant or beneficiary, to receive benefits or loans which are available to all participants or beneficiaries on a non-discriminatory basis; (2) to receive reimbursement of reasonable expenses incurred; and (3) to receive reasonable compensation for services performed, except for full-time employees of the employer or of the employee organization whose members are participants of the plan.

A plan also is permitted to make reasonable arrangements with a party-in-interest for office space, or legal, accounting, or other services necessary for establishment or operation of the plan. In addition, banks and other financial institutions, notwithstanding their role as fiduciaries to a plan, are permitted to furnish their customary services, subject to specified safeguards and guidelines, provided they receive no more than adequate compensation from the plan.

The Secretary of Labor, after consultation and coordination with the Secretary of the Treasury, may exempt any fiduciary or transaction from these restrictions, provided, among other things, that such an exemption is in the interests of the plan and its participants.

Fiduciaries are personally liable to the plan for losses due to a breach of their duty. They may be removed for improper conduct and may be subject to other equitable remedies. Fiduciaries and all other persons who handle funds of the plan must be bonded.

Most of the fiduciary standards take effect on January 1, 1975. However, certain party-in-interest transactions which were already in effect on July 1, 1974, and otherwise would be prohibited by the Act, are not subject to the Act for a period of 10 years, provided they are at least as favorable to the plan as an arm's length transaction with an unrelated party would be. In addition, plans which now hold more than the permissible 10 percent of their assets in employer stock will have up to 10 years to divest.

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REPORTING AND DISCLOSURE

The Act requires extensive reporting and disclosure of information about employee pension and welfare plans, their operations, and their financial condition to the Secretary of Labor and to plan participants and beneficiaries. These provisions apply January 1, 1975.

The provisions apply to all pension and welfare plans, regardless of size, maintained by employers or employee organizations whose employees are engaged in or affecting interstate commerce, except those specifically exempt from the law.

The Secretary of Labor administers these provisions. He has authority to modify or eliminate some requirements for certain plans.

Principal information vehicles are a detailed plan description, a summary plan description and an annual report. Plan descriptions must include eligibility requirements, a description of plan provisions regarding nonforfeitable (vested) pension benefits, circumstances which may result in disqualification or ineligibility, provisions which could result in the denial or loss of benefits, procedures for presenting claims for benefits, and remedies for redress of claims denied.

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The detailed plan description must be filed with the Secretary of Labor on a form to be prescribed by him within 120 days after the plan is subject to the reporting and disclosure provisions of the Act.

The summary plan description must be written to be understood by the average plan participant. It must be furnished to participants and to the Secretary of Labor within 120 days after the plan is subject to the reporting and disclosure provisions of the Act, and to new participants within 90 days after they join the plan. This summary description must clearly inform participants of their rights and obligations under the plan.

The annual report must be filed with the Secretary of Labor on a form prescribed by him within 210 days after the end of the plan year. If there is a substantial change in a plan, a summary description of such change must be furnished to each participant and beneficiary receiving benefits within 210 days after the end of the plan year in which the change takes place. Certain portions of the annual report must be furnished to participants, along with other information necessary to fairly summarize the annual report.

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The annual report will include financial statements and schedules, party-in-interest transactions and with respect to pension plans, certain actuarial information.

The financial statements and schedules must include the current value of plan assets and liabilities, receipts and disbursements, and employer contributions. Also to be included are schedules of assets held for investment purposes, uncollectable or defaulted loans and leases, and other transactions. Detailed information is required on transactions with parties-in-interest and on those that exceed 3 percent of the value of the plan's assets.

Insurance companies which provide benefits under the plan, or hold assets of the plan, and banks which hold assets of the plan in trust must transmit and certify the accuracy of certain information to the plan administrator within 120 days after the end of the plan year.

The plan administrator must retain an independent qualified public accountant to prepare or examine the plan financial statements and to state an opinion on whether they conform with generally accepted accounting principles. The financial statements and accountant's opinion must be made a part of the annual report.

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A pension plan administrator must also engage an enrolled actuary who will be responsible for the preparation of an actuarial statement and an opinion relating to the relevant actuarial information. This information must include a detailed account of the plan's normal costs, accrued liabilities, and contributions, and the actuarial assumptions and methods used to determine costs and contributions. The actuary's statement and opinion must be made part of the annual report. An actuarial valuation of the plan must be made every third plan year unless the actuary determines that a more frequent valuation is necessary. Actuarial information is not required for profit-sharing, savings, individual account plans, and certain other plans.

Plan administrators need not engage accountants and actuaries for plans exempted from the reporting requirements and their services may be waived by the Secretary for plans using simplified reporting forms.

The Secretary may reject any filing if it is incomplete or if there is any significant qualification in the accountant's or actuary's opinion. If an annual report is rejected and a revised report is not submitted within 45 days of rejection, the Secretary may retain an accountant to perform an audit, retain an actuary to make an actuarial report, or bring civil action to compel compliance. The plan is liable for the expenses of such an audit or report.

Documents relating to the plan (such as a trust agreement) are to be furnished to the Secretary of Labor upon his request. Terminal reports are required to be filed with the Secretary for plans winding up their affairs.

The latest annual report and the documents under which the plan is established or operated must be available for examination by plan participants and beneficiaries at the principal office of the plan administrator or at other places convenient for participants as the Secretary prescribes by regulation. Upon written request, these documents, as well as the latest updated summary plan description, the plan description, and any terminal reports, must be furnished to them at no more than a reasonable charge.

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Plan descriptions and annual reports filed with the Secretary are public information and will be available for inspection in a public document room at the Department of Labor.

Every person required to file a report or certify information and certain persons subject to the Act, but exempted from the reporting requirements, must maintain records which will provide the necessary information from which the reports may be verified, explained, or clarified for six years after the date the documents are or would have been due for filing.

Each plan administrator must furnish, upon written request of a plan participant or beneficiary, a statement of total benefits accrued, vested pension benefits accrued, if any, or the earliest date on which such benefits will become vested. The administrator must also furnish, [redacted] a copy of the information which must be contained in the registration statement required by section 6057(a)(2) of the Internal Revenue Code relating to the nature, amount and form of deferred vested benefits to which the participant is entitled.

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PENSION BENEFIT GUARANTY CORPORATION (PBGC)

The Pension Benefit Guaranty Corporation will insure the pensions of approximately 23 million of the 30 million workers who participate in pension plans covered by the Employee Retirement Income Security Act. Generally, pension plans which provide defined benefits and which are covered by the Act are required to obtain the insurance offered by PBGC. These plans account for some 100,000 of the 350,000 employee retirement plans covered by the Act. Profit sharing, stock bonus, money purchase and other types of defined contribution plans do not qualify for the insurance provided by PBGC though covered by the Act.

PBGC will be administered by the Secretary of Labor in his capacity as Chairman of the Board of Directors of PBGC. The Board of Directors, to be composed of the Secretaries of Labor, Commerce and the Treasury, will establish policy for the Corporation. A seven-member Advisory Committee to PBGC, to be appointed by the President, will consist of two representatives of management, two of labor and three of the public.

PBGC is authorized to borrow funds from the Treasury but the Corporation is expected to be wholly self-financing from premiums

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paid by covered plans. The initial premium rate will be $1 per participant per plan year for single-employer plans and $0.50 for multi-employer plans.

Generally, PBGC will guarantee that when a plan covered by its insurance terminates without having sufficient assets to provide promised benefits, participants will not lose vested benefits. A participant's benefits are said to become vested under a pension plan on the day when the participant is given an irrevocable right to a future pension even if he leaves his job before retirement age. There is a maximum limit, however, on the amount of benefits guaranteed by PBGC. Generally, for plans which have been in effect for 5 years when they terminate the Corporation will provide benefits up to a maximum of $750 per month, or the average monthly income of the participant for the five years during which his income from the employer maintaining the plan was at its greatest, whichever is less, payable at age 65. For plans in effect less than five years upon termination, insurance coverage is to be phased in at a rate of 20% per year of the maximum limit.

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Since PBGC may be financially liable when a plan terminates, it must be notified in advance by a plan administrator of his intention to terminate. The Corporation then must determine if plan assets are sufficient to pay insured benefits. In many cases, terminating plans are expected to have sufficient assets. In such cases, after verification by PBGC, the plan administrator will be allowed to liquidate the plan and distribute the assets in accordance with priorities established by law. In cases where assets are insufficient to pay insured benefits, the Corporation may ask a U.S. District Court for an order appointing a trustee to administer the plan. The Corporation may also seek appointment of a trustee for a plan which appears to be financially unsound, even though the plan administrator has not given notice of an intention to terminate. After a trustee has been appointed, a plan may be either liquidated and its assets distributed to participants, or it may be continued in existence under the administration of the trustee.

Finally, in order to alert PBGC as soon as possible to potential losses, the law requires administrators of all plans covered by insurance to report events which might indicate financial instability, such as loss of tax qualification, benefit cuts, sharp drops in the number of participants, etc. Should these events warrant, the Corporation may take appropriate action.

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ENFORCEMENT

Under Title I of the Act, the Department of Labor has principal enforcement responsibilities in the areas of reporting and disclosure and fiduciary standards. The Department will emphasize voluntary compliance. When technical assistance and explanations do not achieve compliance, enforcement action will be sought in the following ways:

Reporting and Disclosure

Plan descriptions and annual financial statements are the principal reports required by the Act. The Secretary may reject any filing that is incomplete or if there is any significant question raised by an accountant's or actuary's opinion accompanying an annual report. If an annual report is rejected and a revised report is not submitted within 45 days of the rejection, the Secretary may retain an accountant to perform an audit, or an actuary to make an actuarial report, or bring civil action in a U. S. District Court to compel compliance.

A wilful violation of the reporting and disclosure provisions of the Act can bring criminal penalties -- up to one year in jail or a $5000 fine or both, for individuals, and up to $100, 000 for a defendant which is not an individual.

Cases involving embezzlement, kickbacks or related violations will be referred to the Justice Department for prosecution under the U. S. Criminal Code.

A participant or a beneficiary may bring a civil action against a plan administrator if he refuses to respond to certain requests. If the administrator fails to supply certain documents within 30 days of a written request, he could be ordered by a U. S. District Court to pay the participant or beneficiary up to $100 per day from the date of failure to respond. If a participant or beneficiary has been denied benefits due or other rights under a plan, or has been unable to ascertain future benefit rights from a plan, the participant or beneficiary can sue the plan for relief.

Fiduciary Standards

Fiduciary violations may be brought to light by failure to report, by review of annual reports, or by complaints.

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Participants, beneficiaries, fiduciaries or the Secretary of Labor may bring civil actions for breach of fiduciary responsibility. Any fiduciary who improperly handles plan assets entrusted to him or who breaches his responsibility in any other way under the new law, is personally liable to make up any resulting losses to the plan. He must also restore any profits he may have made through the use of plan assets. A fiduciary could also be subject to other equitable remedies -- including removal from his position. Also, civil penalties are authorized against parties-in-interest who engage in a "prohibited transaction" with a plan, such as a welfare plan which is not qualified under the Internal Revenue Code (tax penalties are authorized for such violations in the case of qualified plans).

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Criminal Conviction

A person convicted or imprisoned for specified federal or state crimes may not serve as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee of or consultant to any employee welfare or pension benefit plan for five years after such conviction or the end of such imprisonment, whichever is later, unless, prior to the end of that five-year period, his citizenship rights are fully restored or the Justice Department's Parole Board clears the person to serve the plan.

Anyone intentionally violating the office-holding prohibition is subject to criminal prosecution and penalties up to a year in jail or a $10,000 fine or both.

Bonding

Every fiduciary and person "handling" funds or other property of an employee benefit plan must be bonded. Those engaged in such activities who are not bonded, or who permit such actions by persons not bonded, or who obtain a bond from a party-in-interest or from a company or broker who has a significant interest in the plan involved, would be in violation of the fiduciary standards of the Act.

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Participation, Vesting and Funding

Enforcement of these minimum standard provisions will be the principal responsibility of the U. S. Treasury Department. The Secretary of Labor is responsible for enforcing these standards as they apply to non-tax-qualified benefit plans and qualified plans in cases referred to him by the Treasury Department.

In any event, any plan which fails to meet these minimum standards may be subject to civil action by the Secretary of Labor if he is requested to take such action by participants to protect their benefit claims, and if certain statutory findings are made.

Other Enforcement Provisions under Title I include:

Investigation Powers

The Secretary of Labor is authorized to investigate all Title I violations. He may enter plan premises to conduct his investigation where he has reasonable cause to believe such a violation may exist, or pursuant to an agreement with a plan. He also has subpoena powers identical with those of the Federal Trade Commission.

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Claims and Courts

Denial of benefit claims must be explained to participants or beneficiaries in writing. They can bring a civil action to require full and fair review of their claim.

U. S. District Courts have exclusive jurisdiction over civil and criminal actions brought under Title I, except that cases pertaining to benefit recovery or clarification of future benefit rights brought by participants or beneficiaries may also be brought in State courts.

In cases brought in the Federal courts by a participant or beneficiary, the $10,000 "amount in controversy" requirement is waived.

State laws concerning employee benefit plans covered by the new law are superseded by Title I of the Act, effective January 1, 1975.

Interference with Rights

Civil actions are authorized against anyone disciplining or discriminating against a participant or beneficiary for exercising the rights granted to him under the Act or under the plan. Any person who wilfully interferes with these rights by means of fraud, violence or other coercion will be subject to criminal penalties of a fine of $10,000 or imprisonment for not more than one year, or both.

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EFFECTIVE DATES
(Employee Retirement Income Security Act of 1974)

REPORTING AND DISCLOSURE (Title I, Subtitle B, Part 1)

Plans are subject to these provisions January 1, 1975. The Secretary of Labor is authorized to delay the effective date of the annual report provisions for plans which do not keep their records on a calendar year basis until the first plan year beginning after January 1, 1975.

FIDUCIARY STANDARDS

Effective January 1, 1975, (with some delays to avoid disrupting certain common business practices).

PARTICIPATION, VESTING AND FUNDING

Generally, for plans in existence January 1, 1974, these provisions are effective for plan years beginning after December 31, 1975.... for new plans, on enactment. The funding requirements for existing collectively bargained plans are delayed until the expiration date of the bargaining agreement in effect on January 1, 1974, but not later than the first plan year beginning after December 31, 1980.

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PENSION BENEFIT GUARANTY CORPORATION

PBGC is established on enactment. Insurance for "basic" benefits (up to $750 per month) will apply to......

-- Any single employer plan terminating between July 1, 1974 and enactment date if notice is sent Secretary of Labor within 10 days after enactment (or, for reasonable cause shown, the notice may be accepted not later than October 31, 1974.

-- Any single employer plan terminating after enactment date.

-- Any multi-employer plan terminating on or after January 1, 1978. Multi-employer plan terminations occurring between the enactment date and December 31, 1977 may be covered, in the PBGC's discretion, if certain statutory conditions are met.

-- Premiums from all covered plans are due within 30 days of enactment.

(Notice of intention to terminate a plan after enactment must be sent to PBGC, P.O. Box 7119, Washington, D. C. 20044, at least 10 days before the proposed termination date.)

ENFORCEMENT PROVISIONS

Effective January 1, 1975. (Criminal provisions under Title 18 U. S. Criminal Code continue in effect on enactment.)

Attachment G

WHERE TO ASK......about the Employee Retirement Income Security Act of 1974

All general informational inquiries relating to plan termination insurance (other than notices of termination) or relating to matters under the law for which the Secretary of Labor has primary responsibility (reporting and disclosure and fiduciary responsibility) should be addressed to:

ERISA (LMSA)
P.O. Box 176
Washington, D. C. 20044