THE DEATH IN CUSTODY REPORTING ACT OF 2000

HON. ASA HUTCHINSON

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 25, 2000

Mr. HUTCHINSON. Mr. Speaker, I rise to commend the work of this Congress in passing H.R. 1800, the "Death in Custody Reporting Act of 2000." This bipartisan legislation was passed unanimously by both the House and the Senate and will bring much-needed accountability to the operation of our nation's prisons and jails. Passage of this legislation brings to an end a seven year effort to increase public trust in our criminal justice system.

Each year, an estimated 1,000 men and women die questionable deaths while in police custody or in jail. Many of these deaths are listed as suicides, but such conclusions are often tainted by inadequate recordkeeping, investigative incompetence, and contradictory physical evidence. In addition, many of these individuals have been arrested for relatively minor offenses—reducing the likelihood that they would take their own lives.

Suspicious deaths occur throughout the country and require our immediate attention. One teenage boy who was found dead by hanging in an Arkansas jail had been arrested for failing to pay a fine for underage drinking. Another individual in an Arkansas jail was found suffocated by toilet paper that had been stuffed down his throat. According to press reports, no records existed as to why he was in custody.

In any other atmosphere, unnatural deaths under questionable circumstances would not only be reported, but would raise serious concerns. State and local jails and lockups should be no different. This legislation will provide openness in government and will bolster public confidence and trust in our judicial system. In addition, it will serve as a deterrent to future misconduct as wrong-doers will know that their actions will be monitored.

Mr. Speaker, I also want to acknowledge the work of Mr. Mike Masterson, a veteran reporter and editor, who began investigating suspicious prison deaths some 5 years ago as the investigative projects editor at the Asbury Park Press. His comprehensive review of these cases, which was published by the Asbury Park Press in February 1995, led to increased public awareness of this issue and prompted my support for the idea of collecting better data on these deaths. While Mr. Masterson served only briefly at the Asbury Park Press, he continued writing about this issue during his tenure as editor of the Northwest Arkansas Times in Fayetteville, Arkansas. I am grateful indeed for Mr. Masterson's long-time support and dedication to this issue.

Finally, I want to thank my colleagues, Representative BOBBY SCOTT and Senator TIM HUTCHINSON for their support. These gentlemen began this debate many years ago and I am grateful for their foundational work on this issue.

PERSONAL EXPLANATION

HON. MICHAEL K. SIMPSON

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 25, 2000

Mr. SIMPSON. Mr. Speaker, on rollcall No. 534, final passage of S. 2796, the Water Resources Development Act of 2000; I was inadvertently detained. Had I been present, I would have voted "yea."

INTRODUCTION OF THE RETIREMENT ENHANCEMENT ACT OF 2000

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 25, 2000

Mr. ANDREWS. Mr. Speaker, today I introduce the Retirement Enhancement Act of 2000. The Retirement Enhancement Act of 2000 consist of two bills one amending the Employee Retirement Income Security Act (ERISA) and the other amending the Internal Revenue Code (IRC). These bills are the product of my work as the Ranking Member of the Subcommittee on Employer-Employee Relations, which earlier this year held a number of bipartisan hearings to consider updating ERISA. Throughout the hearings, the Subcommittee Chairman, Representative JOHN BOEHNER, and I, maintained a common agenda of seeking to strengthen a private pension system that is already very strong as a result of ERISA. We both recognized ERISA's achievement in moving from a system where insecure pensions were somewhat common, to a situation where insecure pensions are exceedingly rare. Witnesses were selected to testify at the hearing that could assist us in looking for ways the Congress could make the pension holdings of Americans expand and grow even more secure.

The subcommittee heard from representatives of pension participants, employers, and financial advisors. They presented us with a variety of proposals to improve the retirement security of American workers. Taking the best of these contributions, and coupling them with other pension provisions that I have either advocated or supported in the past, I drafted this comprehensive pension reform legislation.

Joining with me as cosponsors of the Retirement Enhancement Act of 2000 are numerous members of the Committee on Education and the Workforce, including Representatives CLAY, KILDEE, OWENS, PAYNE, MINK, WOOLSEY, ROMERO-BARCELO, FATTAH, TIERNEY, KIND, SANCHEZ, FORD, KUCINICH and HOLT. They share my belief that enactment of these bills will ensure that all workers and retirees receive their promised benefits.

Since the enactment of ERISA, the number of Americans who participate in a pension plan has grown from 38.4 million in 1975 to almost double that today. While this growth is considerable, it still leaves about half the workforce without access to a pension plan through their employer. Both the General Accounting Office and Congressional Research Service have recently completed studies analyzing pension coverage in the United States. The studies found that about 53 percent of workers, roughly 68 million people, lacked a pension without coverage worked for an employer that did not sponsor a plan, while 14 percent lacked coverage because their company's plan did not include them.

These bills seek to eliminate the remaining weaknesses in ERISA and lay the groundwork to help those not covered by an employer pension. These bills seek to improve pension coverage and adequacy. Pension coverage for all workers is very important and we should all support the effort to achieve this goal. Under these bills, employers that sponsor plans would be required to offer pension coverage to all employees who meet current minimum eligibility requirements such as completion of one year of employment. These bills also improve coverage for part-time workers who represent one of the largest groups without pension coverage. As the workforce changes to include many temporary and contract workers, Congress must also help to improve pension coverage for this part of America's workforce. With the ever-changing workforce it is also important that we decrease the vesting period for workers in defined contribution plans. For workers who will have many employers during their working lives, we need to ensure that they will earn pension benefits that will benefit them in retirement.

The Retirement Enhancement Act seeks to expand pension availability to those workers without it. One of the innovative ways in which it would do so is to create a model small employer group pension plan into which small employers could buy in with minimal administrative responsibilities. The Departments of Labor and Treasury would work with associations or financial institutions to advertise these model plans so that employers would know that easy and accessible pension options exist.

The Retirement Enhancement Act of 2000 includes important pension protections for women. These bills establish a 75 percent joint and survivor annuity option that would provide surviving spouses greater benefits in retirement. It protects divorced spouses' pension rights and improves spousal information rights. These bills would also allow for time taken off from work under the Family and Medical Leave Act to count toward pension participation and vesting requirements.

The act improves ERISA's safeguards for the investment of pension plan monies. It creates an expedited prohibited transaction exemption approval process under which plans would be able to more easily and quickly provide participants with new investment products. It does so, however, without weakening participant protections. These bills also make clear that employers may offer access to investment advice to participants with limited liability provided such advice is by qualified advisors and they are subject to the fiduciary responsibility requirements. This will be extremely helpful to those workers in defined contribution pension plans who bear the primary responsibility for their pension plan investment decisions.

The Retirement Enhancement Act of 2000 improves access to pension information and strengthens enforcement mechanisms. It would require that plan participants regularly receive statements apprising them of the status of their earned pension benefits. Pension plans would also have to provide more detailed financial information about their earnings and investments. These bills would improve the current pension auditing system by requiring accountants to conduct full scope audits and report irregularities to the Department of Labor.

The bills create an alternate dispute resolution system to resolve benefit disputes. The Department of Labor, along with dispute resolution organizations, would develop an early neutral evaluation program. This would allow for participants to receive benefits in a timely manner instead of after years of litigation. The bills also strengthen ERISA's remedies to ensure that participants have meaningful access to court, and that the courts can remedy violations of the law.

Finally, the Retirement Enhancement Act of 2000 requires the timely distribution of defined contribution cash-out amounts, which would have to be made within 60 days of an employee's termination. It permits employees to work longer without being required to start pension receipt by delaying the minimum distribution of benefits from age 70½ to 75. Furthermore, for workers who are involuntarily terminated, it permits them to borrow against their pension earnings in order pay for health or job training expenses.

Mr. Speaker, it is now time for the Congress to build on what was started with the enactment of ERISA in 1974, and take additional steps to ensure retirement security for our workforce. Advances in medical technology, environmental protection, nutrition, and improved living standards give us reason to believe that Americans are going to live longer lives. Whether the quality of these lives, after retirement, is good or not, will depend upon the existence, nature, and security of each person's pension plan. Because employers are rapidly shifting to the use of employee-directed pension accounts, more and more workers will be making decisions that are critical to their future financial health. I believe that the Retirement Enhancement Act of 2000 will help make those decisions easier, and make the benefits of those decisions more secure. I look forward to working with my colleagues and the pension community to continue to improve these bills and advance their consideration during the next Congress.

Mr. Speaker, I submit the following summary and letters of support from AARP, AFL–CIO, the Pension Rights Center, and the Women's Institute for A Secure Retirement to be included in the RECORD.

SUMMARY OF THE RETIREMENT ENHANCEMENT ACT OF 2000 SPONSORED BY CONGRESSMAN ROBERT E. ANDREWS

EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) AMENDMENTS

TITLE I. IMPROVED PENSION VESTING AND PARTICIPATION:

(1) PENSION COVERAGE FOR ALL EMPLOYEES—Employers that sponsor plans would be required to offer pension coverage to all employees who meet minimum eligibility requirements in a single line of business (age 21 or older, one year of service).

(2) IMPROVE COVERAGE FOR PART-TIME WORKERS—Reduce from 1000 to 750 or more hours a year the minimum service requirement and provide pro-rata credit for part-time workers.

(3) 3 YEAR VESTING FOR DEFINED CONTRIBUTION PLANS—The maximum pension vesting period for defined contribution plans would be reduced to 100% after 3 years or 20% a year phased in over 5 years.

(4) ENCOURAGE CREATION OF SMALL EMPLOYER GROUP PENSION PLANS—Model small employer group pension plans would be created in which small employers could buy in with minimal administrative responsibilities. The Departments of Labor and Treasury would contract with associations or financial institutions to advertise the model plans.

TITLE II. IMPROVED PENSION PROTECTIONS FOR WOMEN

(1) ELIMINATE INTEGRATION WITH SOCIAL SECURITY AND OTHER BENEFITS—Prospectively prohibit the reduction of pension benefits by integrating them with Social Security or workers' compensation benefits and adjust pre-1989 benefits for current employees.

(2) EXTEND SPOUSAL CONSENT TO DEFINED CONTRIBUTION PLANS—Provide spouses in defined contribution plans with the right to consent to plan distributions.

(3) PROVIDE A 75% JOINT AND SURVIVOR ANNUITY OPTION—Provide a 75% joint and survivor annuity option to participants in plans which currently offer a 50% annuity and other annuity forms (survivor would receive 75% of joint spousal benefit).

(4) PROTECT DIVORCED SPOUSES' PENSION RIGHTS—Divorce decrees would be required to specify how pension benefits are to be allocated or if allocation waived.

(5) COUNT FAMILY AND MEDICAL LEAVE FOR VESTING—Family and medical leave would count towards pension participation and vesting.

(6) IMPROVE SPOUSAL INFORMATION RIGHTS—Provides spouses with information about survivor annuities and elective contributions.

(7) EXTEND PRIVATE SECTOR PROTECTIONS TO CIVIL SERVICE AND MILITARY RETIREMENT—Extend private sector spouse and divorce protections to civil service and military retirement systems (i.e. civil service—presume spouse is beneficiary, and military—permit surviving spouses to receive higher benefits if they delay retiring until Social Security eligibility age.)

TITLE III. IMPROVED INVESTMENT STANDARDS

(1) CREATE AN EXPEDITED PROHIBITED TRANSACTION APPROVAL PROCESS—Create an expedited interim DOL approval process under which plans would be able to engage in financial transactions that require prohibited transaction exemption if the financial entity provides the plan with a letter of credit and meets other fairness requirements.

(2) CLARIFY INVESTMENT ADVICE RULES—Codify Department of Labor interpretive bulletin provisions in order to make clear that employer liability is limited to selection and oversight of advisor and provide standards for qualified investment advisors.

(3) PERMIT EMPLOYEE INVOLVEMENT IN PENSION INVESTMENTS—Permit participants in defined contribution plans in which employees make contributions to participate in investment and other plan decisions.

(4) ENCOURAGE DIVERSIFICATION OF PENSION ASSETS—Permit employees to request diversification of employer contributions. Plans may phase in over a reasonable period of time not to exceed 3 years. ESOPs and stock bonus plans exempted.

(5) IMPROVE PARTICIPANT ACCESS TO INVESTMENT INFORMATION—Participants may, upon written request, receive information on specific plan investment transactions and proxy votes.

(6) PROVIDE INVESTMENT RETURN INFORMATION—Plans would be required to include reporting of net return and administrative fees in benefit reports to participants.

TITLE IV. IMPROVE PENSION INFORMATION AND ENFORCEMENT

(1) PROVIDE PARTICIPANTS WITH PERIODIC BENEFIT STATEMENTS—Participants in single employer defined benefit plans every 3 years and participants in defined contribution plans annually would receive a statement of their expected benefits. Multi-employer plan participants would receive statements on request.

(2) PROVIDE ACCURATE FINANCIAL STATUS INFORMATION—Pension plan sponsors would be required to accurately report their financial status to participants in order to correct misinformation generated by Financial Accounting Standards Board (FASB) requirements.

(3) IMPROVE PENSION PLAN AUDITING—Accountants would be required to conduct full scope audits and report financial irregularities to the Department of Labor.

(4) IMPROVE PENSION PLAN DATA COLLECTION—The Department of Labor would be directed to collect sufficient statistical and survey information and biennially report to Congress and the public on pension coverage and adequacy.

(5) PROVIDE ACCESS TO ALTERNATIVE DISPUTE RESOLUTION—The Department of Labor, in consultation with dispute resolution organizations, would develop an early neutral evaluation program to aid resolution of pension grievances.

(6) IMPROVE COURT ENFORCEMENT OR WRONGFUL BENEFIT DENIALS—Permit courts to review benefit denials de novo and award prevailing plaintiff's attorneys' fee and costs (including expert witness costs) and appropriate relief.

(7) PERMIT PBGC TO TRACK LOST PENSIONS—Authorizes the PBGC to assist defined contribution plans in locating missing participants.

TITLE V. IMPROVING PENSION PROTECTIONS FOR THE CHANGING WORKFORCE

(1) PERMIT LOANS TO PAY HEALTH OR JOB TRAINING EXPENSES—Involuntarily terminated employees would be able to borrow against some of the pension benefits and IRA fund to pay health care expenses, including COBRA premiums, and job training expenses.

(2) AUTOMATIC ROLL-OVER OF PENSION MONIES—Provides that lump sum pension cash-out prior to retirement will be automatically rolled over to another qualified pension plan unless the participant elects to receive a lump sum cash-out.

(3) TIMELY DISTRIBUTION OF BENEFITS—Defined contributions plans which are immediately valuable would be required to pay lump sum distributions within 60 days of employee termination.

(4) PHASE-IN BENEFIT REPAYMENTS—permit participants who have received benefit overpayments to request repayment over a phased in period, up to 5 years, and permit fiduciaries to waive repayment in hardship cases.

INTERNAL REVENUE CODE AMENDMENTS

(1) EXPAND PARTICIPANT PROTECTIONS IN STATE AND LOCAL PLANS.—Create reporting and disclosure and enforcement requirements for public plans, including review boards to oversee plan changes.

(2) NARROW 401(K) PLAN EXEMPTIONS—The 401(k) non-discrimination safe harbor exemption would be narrowed so that the exemption only applies if an employer enrolls all eligible employees in the plan.

(3) SIMPLIFY SIMPLE EMPLOYEE PENSIONS (SEPs)—Make SEPs simpler by permitting 3 year vesting, increasing contribution limits, and eliminating other administrative requirements.

(4) INCREASE MINIMUM DISTRIBUTION AGE—Permit retirees to delay pension receipt from 70½ to 75.

(5) IMPROVE MULTI—EMPLOYER PLAN PROTECTIONS—Eliminate unfair restrictions on multi-employer plan pension benefits and increase PBGC guaranteed benefit levels for multi-employer plans.

(6) HARMONIZE STATE AND LOCAL PENSION PLAN TREATMENT—Provide comparable benefit rollover treatment for 457 state and local plans as is provided to private section plans.

(7) PROHIBIT ANTI—UNION EXCLUSIONS-Prohibit employers from excluding unionized employees from 401(k) plan participation if the employees have no other plan.

AARP

Washington, DC, October 24, 2000.

Hon. ROBERT ANDREWS,
U.S. House of Representatives, Washington, DC.

DEAR REPRESENTATIVE ANDREWS: AARP applauds your leadership in introducing the Retirement Enhancement Act of 2000. Your bill would build upon efforts to improve coverage and benefit adequacy in our pension system.

While Social Security and Medicare remain the foundation of retirement security, other components of the retirement framework must be improved. In particular, we must begin to address the continued holes in pension coverage, adequacy and portability. Pension coverage rates have been stagnant for the last twenty-five years, with just under half the workforce covered by a pension. In addition, the shift to defined contribution plans, such as 401(k) plans, has created new challenges for achieving equity and adequacy.

Under current law, employers are permitted to exclude a large percentage of workers for coverage under any plan the employer offers. Your bill would help address the need for greater pension coverage by improving the minimum coverage rules. In addition, your bill would encourage the creation of plans in the small business sector, which is especially important given the lack of coverage in this part of the workforce.

Your bill would also attempt to improve benefit adequacy by eliminating integration of pensions and Social Security, a practice which disproportionately reduces benefits for lower wage workers. Your bill would also seek to improve equity for women by improving spousal rights and benefits. Given that the average benefit for women is only about half the amount of the average benefit for men, as well as women's longer life expectancy, improvements are essential if we are to improve the economic security of women as they age.

AARP supports your effort to improve the information available to plan participants by requiring that plans provide periodic benefit statements. While many employers routinely provide such statements, participants should be automatically entitled to information about the amount and security of their benefits. Your bill would also attempt to address some of the problems associated with plan distributions by providing for automatic rollovers of benefit amounts from a plan to another retirement vehicle. This change is crucial to helping ensure that retirement money is actually preserved for retirement.

AARP commends you for your efforts to address some of the shortcomings in the current pension system. If pensions are to become a more universal and more adequate source of retirement income security, then changes are needed. AARP looks forward to working with you and others in Congress to further improve the pension system. If you have any further questions, please feel free to call me, or have your staff call David Certner of our Federal Affairs staff at 202–434–3760.

Sincerely,

MARTIN A. CORRY,
Director, Federal Affairs.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Washington, DC, October 2, 2000.

Hon. ROBERT E. ANDREWS,
U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE ANDREWS: The AFL–CIO commends your efforts to improve the retirement security of America's working families by introducing the Retirement Enhancement Act of 2000. This important legislation will expand coverage, strengthen workers' rights, and improve benefit security at a time when too many workers lack adequate pension benefits on their jobs and those who are fortunate enough to have pensions, increasingly find them at risk.

Among the bill's many provisions that will mean a better retirement future for working families are important worker protections that would:

Limit an employer's ability to unfairly divide its workforce and deny workers pension coverage;

Ensure that workers will have a real voice in the management of their 401(k) and other defined contribution pensions;

Extend important disclosure and enforcement protections to workers who participate in pension plans sponsored by state and local government employers;

Make critical improvements to the insurance protections for workers participating in multiemployer plans, bringing them more in line with corporate single employer plans.

The AFL–CIO supports the Retirement Enhancement Act of 2000 and thanks you for raising this vitally important issue.

Sincerely,

PEGGY TAYLOR,
Director, Department of Legislation.

PENSION RIGHTS CENTER,

Washington, DC, October 12, 2000.

Hon. ROBERT E. ANDREWS,
Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN ANDREWS: The Pension Rights Center is pleased to express our strong support for the Retirement Enhancement Act of 2000.

Your legislation would encourage the creation of new private retirement plans that would provide pensions fairly for workers, and would end many of the inequities that affect so many employees who are now participating in plans. The Retirement Enhancement Act would also address too-long-overlooked problems affecting homemakers in both the private and federal retirement systems, and would help even the playing field for private sector participants and beneficiaries seeking to enforce their pension rights.

The Pension Rights Center is a nonprofit consumer organization dedicated to promoting retirement income security. For the past 24 years, the Center has worked with retiree, women's and employee organizations to secure a wide range of reforms to improve the nation's pension programs. We commend you for introducing this critically important legislation, which holds the promise of assuring millions of working Americans that they will have enough money to pay their bills when they are too old to work.

Sincerely yours,

KAREN W. FERGUSON,
Director.

WOMEN'S INSTITUTE FOR A SECURE RETIREMENT,

Washington, DC, October 6, 2000.

Hon. ROBERT ANDREWS,
U.S. House of Representatives,
House Education and Workforce Committee, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE ANDREWS: We applaud the introduction of the Retirement Enhancement Act of 2000 (REA 2000) because it addresses the current alarming situation—a situation where millions of women are retiring into eventual poverty, despite a lifetime of work. This bill will improve the long-term economic security of women, by removing many of the barriers that have made it impossible for many women (and men) to achieve a secure retirement without the benefit of an employer-sponsored pension plan. In addition, this legislation increases protection for women during the times when they are most economically vulnerable—during divorce and widowhood.

The Women's Institute for a Secure Retirement (WISER) is a nonprofit organization that seeks to ensure that poverty among older women will be reduced by improving the opportunities for women to secure retirement benefits. WISER works with community based organizations, advocates and policymakers to provide a key link between federal policy and individual women.

Although women are entering the workforce in record numbers, their access to retirement benefits has not followed at the same level. A recent report indicates that women comprise 69% of retired persons living below the poverty threshold without pension income. In addition, because women earn less than men—75% of working women earn $30,000 a year or less—which impacts the amount they can save for their own retirement.

Again, we support REA 2000, which reflects many of the provisions contained in WISER's Pension Action Agenda to improve pension and healthcare benefits for women.

Sincerely,

M. CINDY HOUNSELL,
Executive Director.