CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 7, 2002

S. 1992
Protecting America's Pensions Act of 2002

As ordered reported by the Senate Committee on Health, Education, Labor, and Pensions on March 21, 2002

SUMMARY

S. 1992 would make numerous changes to the Employee Retirement Income Security Act of 1974 (ERISA) that would affect the operations of private pension plans. These include new diversification requirements, new reporting requirements, limitations on certain investments, and other changes.

CBO estimates that implementing the bill would cost $121 million over the 2003-2007 period, assuming appropriation of the necessary amounts. CBO also estimates that the bill would have a negligible effect on revenues. Since this bill would affect revenues, pay-as-you-go procedures would apply.

State, local, and tribal governments are exempt from the requirements of ERISA that S. 1992 would amend, and other provisions of the bill would impose no requirements on those governments. Consequently, the bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

The bill contains several private-sector mandates on sponsors, administrators, and fiduciaries of private pension plans. CBO estimates that the direct cost of those new requirements would exceed the annual threshold specified in UMRA ($115 million in 2002, adjusted annually for inflation), but we do not have sufficient information to provide a precise estimate of the aggregate cost.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1992 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	By Fiscal Year, in Millions of Dollars				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Office of Pension Participant Advocacy					
Estimated Authorization Level	25	26	26	27	28
Estimated Outlays	15	25	26	27	27
Studies by the Department of Labor					
Estimated Authorization Level	1	0	0	0	0
Estimated Outlays	*	*	*	0	0
Total Changes					
Estimated Authorization Level	26	26	26	27	28
Estimated Outlays	15	26	26	27	27

NOTE: * = Less than $500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted in fiscal year 2002 and that the necessary amounts will be appropriated for each year.

Spending Subject to Appropriation

Office of Pension Participant Advocacy. The bill would establish an office of pension participant advocacy within the Department of Labor (DOL). This new office would evaluate efforts aimed at protecting pension plan participants, promote the expansion of pension coverage, and, if appropriate, pursue claims on behalf of participants and beneficiaries. Based on a review of other federal programs that provide legal assistance, consumer advocacy, and technical information to the public, CBO estimates that providing this support would require appropriations of $132 million over the 2003-2007 period, including annual adjustments for anticipated inflation.

Studies by the Department of Labor. S. 1992 would direct DOL to undertake two studies: one regarding the feasibility of individual account plans and the other relating to fees charged by individual account plans. Based on the costs of studies with comparable requirements, CBO estimates these studies would cost $1 million over the 2003-2005 period.

Revenues

Title II would require administrators of individual account plans and pension plans to provide certain information to plan participants at various intervals. The title would authorize DOL to assess civil penalties of up to $1,000 a day for failure to comply with these requirements. Based on information from the Department of Labor, CBO expects that additional civil penalties resulting from title II would be less than $500,000 annually.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that the bill would have a negligible effect on governmental receipts.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

State, local, and tribal governments are exempt from the requirements of ERISA that S. 1992 would amend, and other provisions of the bill would impose no requirements on those governments. Consequently, the bill contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

With only limited exceptions, private employers who provide pension plans for their workers must follow rules specified in ERISA. Therefore, CBO considers changes in ERISA that expand those rules to be private-sector mandates under UMRA. S. 1992 would make several such changes to ERISA that would affect sponsors, administrators, and fiduciaries of pension plans. CBO estimates that the direct cost to affected entities of the new requirements in the bill would exceed the annual threshold specified in UMRA ($115 million in 2002, adjusted annually for inflation), but does not have sufficient information to provide a precise estimate of the aggregate cost. This section describes several of the mandates in the bill; CBO estimates that the direct cost of other mandates, if any, would be small.

Investment in Employers' Securities

Section 101 of S. 1992 would impose a number of restrictions on individual-account (defined contribution) pension plans regarding assets held in the plans in the form of securities issued by the plan's sponsor. The bill would require affected plans to allow participants to immediately sell those securities that have been acquired through the participants' own contributions, and to allow participants to sell certain securities acquired through the sponsor's contributions after three years of service with the firm. The bill also would require plans to offer at least three investment options in addition to securities issued by the sponsor, and to notify participants of their diversification rights and the importance of diversifying assets.

The main direct cost of these provisions would be the one-time cost of notifying participants of their new rights. CBO estimates that this cost would total about $5 million in 2003, the result of sending out approximately 10 million such notices to affected participants. While the requirement that plans allow participants to diversify their pension investments would be a mandate on affected plans, it would have only a minimal direct cost. An indirect cost could be imposed on company stockholders, however, if participants sold a sufficient number of shares of company stock so as to reduce its market price. Requiring plans to offer a range of investment options would probably add little to the plans' costs because many plans now abide by a safe harbor provision in ERISA that has similar requirements.

Benefit Statements

Section 201 would require administrators of individual-account plans to provide quarterly statements to participants. Those statements would have to contain several items, including the amount of accrued benefits, the amount of nonforfeitable benefits, the value of any assets held in the form of securities of the plan's sponsor, and an explanation of any limitations or restrictions on the right of the participant to direct an investment. In addition, if the percentage of assets held in the form of securities of the plan's sponsor exceeded 20 percent, the statement would have to include a warning that the account may be over-invested in those securities. Currently, plans must provide more limited statements to participants upon request.

CBO estimates that the direct cost of this new requirement on private plans would be about $100 million annually. According to industry sources, the majority of plans sponsored by large employers already provide pension statements on a quarterly basis, and it is becoming increasingly common for plans sponsored by smaller employers to do so as well. Thus, CBO estimates that about 30 million of the estimated 70 million participants in individual account plans in 2003 would newly receive statements four times per year under the bill. The average cost of providing each statement would be small because plans are now required to provide benefit statements on request. Thus, the bill would result in added costs largely for producing and delivering the new statements. Written statements would have to be provided to most participants, but the bill would allow statements to be provided electronically to participants with access to the Internet.

Section 201 also would require administrators of defined-benefit pension plans to provide participants with benefit statements at least once every three years. In addition, they would have to notify participants who are eligible to receive a distribution of their right to receive information describing how the amount of that distribution was calculated (and to provide that information on request). CBO estimates that the average annual cost of providing benefit statements would be about $10 million. Providing information on how distributions were calculated would add another $10 million in costs annually.

Provision of Material Investment Information

Currently, companies are required to disclose to the Securities and Exchange Commission (SEC) information on the sale or purchase of company stock by officers, directors, and certain other persons affiliated with the company. Section 203 would require the sponsors of individual-account plans that allow participants' contributions to be invested in company stock to also make such disclosures to participants in the plan. The information would have to be provided electronically within two business days to participants with access to the Internet, and in writing or another form to participants without such access.

According to the SEC, between 200,000 and 300,000 notices of changes in stock holdings are filed annually by officers, directors, and other persons affiliated with the publicly traded companies it oversees—an average of about 15 to 20 notices per company each year. While some of the pension participants who would have to be notified of such transactions under the bill could be contacted electronically, based on information from the Census Bureau, CBO estimates that the majority of them would not be reachable through the Internet and would have to be contacted in writing. Even at a low average cost per transaction, contacting the estimated 25 million pension participants that would have to receive each of the 15 to 20 notices annually could cost in excess of $150 million annually.

Notice of Restriction Periods

Currently, participants in individual-account plans occasionally experience time periods, called "lockdown" or "blackout" periods, when they are unable to direct the investment of assets in their accounts. Such periods may occur for administrative reasons—for example, when a plan changes recordkeepers. Section 301 of S. 1992 generally would require plan administrators to provide affected participants with 30 days notice before an anticipated suspension, restriction, or similar limitation on the ability of participants to direct investments in their accounts. Notice could be in written, electronic, or other appropriate form.

CBO estimates that the direct cost to private plans of providing advance notice of lockdown periods would be about $5 million annually. According to a survey conducted by the American Society for Pension Actuaries, lockdown periods typically occur for a plan about once every three to four years. Data from the Bureau of Labor Statistics indicate that most participants in individual-account plans are in plans that allow at least some direction of assets and, thus, are affected by those periods. (CBO estimated the direct costs of a similar provision in H.R. 3762 to be about $15 million. The $5 million estimate presented here—which would apply to both S. 1992 and H.R. 3762—is based on new information indicating that providing 30-day advance notice of lockdown periods is the current practice of many pension plans. For those plans, this provision would not add to their costs.)

Liability of Fiduciaries

Currently, plan fiduciaries generally are not liable for investment decisions made by participants, nor are they liable for the inability of participants to alter their investments during lockdown periods. Section 302 would suspend fiduciaries' relief from liability during lockdown periods, with the Secretary of Labor designated to issue guidance on how such relief could be preserved. Depending on the action of the Secretary, this provision could impose a direct cost on the affected entities by increasing their financial exposure during lockdowns. However, CBO does not have sufficient information to estimate the added cost.

Insurance for Fiduciaries

Section 303 would require each fiduciary of an individual account plan with 100 or more participants to be insured to provide reasonable coverage for failure to meet the requirements of ERISA. The Secretary of Labor would be designated to prescribe regulations to carry out this provision.

CBO estimates that the net cost of this provision to affected entities would be about $15 million annually. According to industry sources, fiduciaries in plans with 500 or more participants already generally have similar insurance coverage, limiting the effect of this provision primarily to fiduciaries in the approximately 40,000 plans with between 100 and 500 participants. While the annual cost of this insurance would be a direct cost for those affected entities, they would also receive direct savings from the insurance protection afforded by the policies, thus offsetting much of the direct cost.

PREVIOUS CBO ESTIMATE

On April 4, 2002, CBO transmitted a cost estimate for H.R. 3762, the Pension Security Act of 2002, as ordered reported by the House Committee on Education and the Workforce on March 20, 2002. Unlike S. 1992, H.R. 3762 would make several changes to ERISA affecting premium collections of the Pension Benefit Guarantee Corporation, resulting in an increase in direct spending of $185 million over the 2003-2012 period. H.R. 3762 also would require DOL to provide information and educational resources to pension plan fiduciaries. That bill did not include the authorization of a program like the Office of Pension Participation Advocacy contained in S. 1992.

CBO estimated that H.R. 3762 also would have imposed a mandate on sponsors of private pensions, but as in this estimate for S. 1992, CBO could not make precise estimates of the costs. As in the estimate for H.R. 3762, CBO has determined that the provisions of S. 1992 contain no intergovernmental mandates and would impose no other costs on state, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Christina Hawley Sadoti
Impact on State, Local, and Tribal Governments: Leo Lex
Impact on the Private Sector: Bruce Vavrichek

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis