

[COMMITTEE PRINT]

DIGEST OF TESTIMONY ON
PROPOSALS FOR PRIVATE PENSION
PLAN REFORM

BEFORE THE
SUBCOMMITTEE ON PRIVATE PENSION
PLANS

PREPARED FOR THE USE OF THE
COMMITTEE ON FINANCE

BY
THE STAFF
OF THE
JOINT COMMITTEE ON INTERNAL
REVENUE TAXATION



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DIGEST OF TESTIMONY ON PROPOSALS FOR PRIVATE PENSION PLAN REFORM

The Subcommittee on Private Pension Plan of the Committee on Finance held public hearings on the subject of private pension plan reform on May 21-23 and 31, and June 4 and 12, 1973. The hearings covered S. 4 (as reported by the Committee on Labor and Public Welfare), S. 1179 (Senator Bentsen), S. 1631 (Senator Curtis for the Administration), S. 1858 (Senator Hartke), and other proposals.

Summarized below are the comments of witnesses at the public hearings on the subject of private pension plan reform.

A. GENERAL

Hon. George P. Shultz, Secretary of the Treasury (May 22).—Supports S. 1631, the "Retirement Benefits Tax Act." Maintains that private pension plans and individual retirement savings are vital as a supplement to the social security system in providing retirement income. Indicated that abuses do exist in the private pension system. Notes that as only about half of the work force is covered and sometimes expectations of retirement benefits are not met.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Feels that workers in many cases have lost expected pension benefits because of the limited vesting rules, lack of adequate funding, or no termination insurance where a company goes out of business. Maintains that efforts must be made soon to insure adequate pension plan protection as well as encouraging more coverage of workers not covered. Believes that his bill, S. 1179, would achieve these goals.

Hon. Vance Hartke, U.S. Senator, Indiana (May 23).—Believes that the need for pension reform has never been greater. Indicates that assets controlled by private pension plans are the largest concentration of unregulated wealth. Estimates that only one out of ten pension plan participants actually receive benefits because of the structuring of vesting and funding provisions and lack of plan termination insurance. Points out that in 1971, 3335 plans folded affecting 125,000 workers. Feels that those between ages 40 and 60 are the ones most adversely affected.

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob K. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—State that the progress toward achieving enactment of meaningful private pension reform, while substantial, has been slow and painful; and there is still no law which safeguards adequately the pension rights of workers. Point out the example of an employee, who after working 47 years for the same company, received no retirement benefits when the company's pension plan terminated three months before his 65th birthday.

Maintain that the Williams-Javits bill, S. 4, is a realistic, workable, and effective means of reforming private pensions. Contend that there can be no justification for further delay in enacting pension reform.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Bert Seidman, Director, Department of Social Security (May 22).—Supports the goal of increasing the probability of employees receiving promised pensions. Points out that collective bargaining has greatly improved the vesting and funding provisions of pension plans, and that vesting provisions of most negotiated plans are more liberal than the minimum standards proposed in any of the bills before the Committee. Believes, however, that the time has come to establish minimum Federal standards of vesting and funding.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Believes there is an urgent need for speedy enactment of legislation incorporating fiduciary standards, meaningful disclosure, early vesting, individual retirement tax deductions, and some additional IRS requirements for the funding of unvested liabilities.

Strongly opposes S. 4, as it contains, among other things, provisions establishing portability and plan termination insurance.

Daniel Halperin, Professor of Law, University of Pennsylvania (May 31).—States that the tax expenditure budget shows that the cost of the tax benefits to qualified plans is nearly \$4 billion per year, and this helps finance retirement benefits for only about half of the work force. Comments that many get no aid from the tax system for retirement and some take advantage of it in excess of \$1 million. Believes that the fairness of the tax law is severely compromised by this situation and in particular by the lack of limits on benefits under qualified plans.

Tax benefits to qualified plans.—Discusses the tax benefits from qualified plans, emphasizing deferral of taxation and pointing out the consequent increase of money in private hands. Declares that the deferral of tax amounts to an interest free loan from the Treasury and adds that the higher the tax bracket the greater the "loan." Says there is no limit on the size of the "loan" as long as the ratio of pension benefit to pay is maintained.

Justification for tax benefits.—Feels that the purpose of the tax subsidy is to encourage retirement plans for lower paid individuals who are unlikely to save on their own. Comments that higher paid individuals are encouraged to provide for their own retirement under tax-favored arrangements that benefit employees in general to gain additional coverage of the low paid.

Method of increasing coverage.—Recommends prohibiting exclusion of employees from plans merely because they are paid on an hourly basis as opposed to a weekly salary. Comments on administration recommendation that employees in a bargaining unit be disregarded in determining whether a plan discriminates in favor of highly paid, and recommends that more be known about the effect of this rule on the collective bargaining process before it be adopted. Additionally, suggests that such a rule be limited to cases where significant numbers of lower paid people will be in the plan.

Recommends prohibiting plans that exclude employees by requiring them to make contributions as a pre-condition to coverage or that deny employer financed benefits if the employee withdraws his own contribution on termination of employment. Suggests that the burden of proof should be on those who advocate contributory plans and that assurance is needed that employees at all income levels participate.

Proposes limiting integration with Social Security to insuring that the total retirement benefits from Social Security and the private plan do not exceed pre-retirement earnings. States that it is not possible to justify special tax benefits for a plan that covers only employees earning in excess of the Social Security wage base.

United Steelworkers of America, Bernard Greenberg, Assistant Director, Insurance, Pensions and Unemployment Benefits Department (May 21).—Recalls that protection of the private pension plan system became a major legislative issue after a steelworkers' strike and a Supreme Court decision upholding the union's right under Taft-Hartley to negotiate on matters pertaining to pension plans. Suggests that Federal law should mandate principles for pension plans, rather than have them established through industrial strife.

Feels that the question before Congress is not whether additional pension plan legislation is needed, but rather what the nature and scope of the legislation should be.

Argues that acceptance of the principle of retirement on a pension as a payment for working (as deferred compensation, in other words) necessitates the conclusion that workers must not be deprived of pension benefits by improper vesting or funding, or by plan terminations.

Requests quick enactment of S. 4, the Williams-Javits bill. Questions need for new hearings by another committee that is the same committee which without any study removed the union pension protection provisions from last year's Williams-Javits bill, which had been voted out unanimously by the Labor and Public Welfare Committee.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Announces that the American Life Insurance Association generally supports all reasonable measures to promote growth and expansion of private retirement plans and to increase their effectiveness.

National Small Business Association, Represented by Joseph L. Seligman, Jr., Attorney, San Francisco, and Robert C. Ware, President, Trustee Life Insurance Co. (May 21).—Endorse S. 1631, since it would allow pension coverage of white-collar workers in plans that would not now qualify because the inclusion of salaried employees, with the exclusion of hourly employees covered under collective bargaining, is considered to create a classification discriminating in favor of highly compensated or supervisory employees or shareholders.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Stresses that the most pressing need in the pension area is the expansion of the private pension plan system to the half of the working force in this country not covered by a private pension plan.

Converse Murdock, President, Murdock, Longobardi, Schwartz, and

and Walsh (May 31).—Asserts that the Federal tax laws have become much too complex; and complexity can be traced to the tendency to use tax laws for the purpose of achieving economic, social, and criminal law purposes and not for the purpose of raising revenue to support the government. Indicates that most of what has been said in the area of private pension plan reform has little to do with the Government's need for revenue. Wholeheartedly approves of the basic approach of S. 4 to accomplish pension reform through labor laws.

Carroll J. Savage, Attorney, Washington, D.C. (May 31).—States the institution of the private pension plan has grown in a remarkably short time to staggering proportions with relatively little regulation. Believes regulation of the design and behavior of plans which today fall short of acceptable standards must be carried out in a way which does not have a tendency to discourage the continued improvement and expansion of private plan coverage.

Paul S. Berger, Attorney, Washington, D.C. (May 31).—States that despite Social Security and the explosive growth of private pension plans, the American working people are not yet assured of the basic economic security that should be their birthright. Believes the pension reform statute which emerges from this Congress will contribute importantly to securing this goal—if effective machinery is provided for its administration and enforcement.

Merton Bernstein, Professor of Law, Ohio State University (June 4).—Considers private pension plans to have several serious shortcomings:

- (1) length of service eligibility conditions—supposedly justified as a means of retaining valuable employees—frequently defeat pension eligibility for employees who are denied the opportunity to comply;
- (2) employer control of pension trustees (in other situations union or unions and management may be in this position);
- (3) employer domination of crucial decisions adversely affecting employees and favoring management;
- (4) although section 401(a)(7) of the Internal Revenue Code mandates vesting of all pension credits when a plan terminates, IRS regulations and procedures do not protect employee interests;
- (5) the courts fail to protect employee interests against employer self-serving plan language and actions.

States that although only a minority of plans now use the insurance vehicle, the basic principle of plans is that of insurance. Notes that under the insurance principle, members of a sizeable group subject to a common hazard each pay relatively small premiums to form a fund from which the few who actually experience a particular misfortune will receive relatively large payments to compensate for the loss. Points out, however, the hazards against which pension plans now purportedly provide protection—retirement from work because of age or disability, and even death, after and before retirement—do not affect a small minority but will happen to every plan participant and affect their survivors. Concludes that this aspect of plans, coupled with their spotty coverage, means that private pensions will provide only a minority of citizens with benefits in old age despite the fact that all need such benefits.

Estimates private plan reserves at \$150 billion and, assuming earnings of 5 percent, such reserves would yield \$7.5 billion in interest. States if this interest earning were taxable at average corporate rates of 50 percent it would generate \$3¾ billion a year in taxes.

Edwin S. Cohen, Attorney, Washington, D.C. (June 4).—Believes that an important feature of our private pension system is the flexibility that it permits to meet the special needs and desires of employers and employees in different industries. Indicates that experience shows the need for increased minimum pension plan standards in a number of respects. Cautions against setting minimum standards too high, as it would tend to limit the desirable flexibility of the private pension system because cost considerations would force reductions in benefits that would be beyond the required minimum. Suggests avoiding requiring by law what might be thought reasonable for the average plan, but confining the law to a minimum standard of fairness for all employees. Urges reasonable legislation so that the costs of private pension plans are not driven so high as to impair the prospects of legislation for increased health insurance for employees.

Suggests that care be exercised so that the needed statutory changes are not so extensive that they exceed the capacity of government and private personnel to institute and administer the changes.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Feels that private pension plans have not lived up to their promise due to late or inadequate vesting, weak funding, ineffective fiduciary standards, and lack of plan termination insurance. Urges a comprehensive rethinking of the pension system. Notes that private pension reserves, now in excess of \$166 billion, represent the largest aggregate of essentially unregulated capital in the U.S.

B. Plan Coverage and Participation

Hon. George P. Shultz, Secretary of the Treasury (May 22).—Notes that S. 1631 would cover all qualified pension and profit-sharing plans, as does present law. For employer plans, the bill requires 3 years of continuous service and an age of 30; plans could exclude employees who are within 5 years of retirement age when they would otherwise become eligible. For self-employed plans, the bill would cover all employees with 3 years of continuous service, all those age 30 and 2 years of service, and all those age 35 or older and one year or more of service.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Points out that S. 1179 would cover employer plans where the employee had one year of service and age 30. For self-employed plans, present law coverage of all employees with 3 or more years of service would continue.

Hon. Vance Hartke, U.S. Senator, Indiana (May 23).—Indicates that S. 1858 would cover all qualified pension plans and other qualified retirement programs. Supports a rule requiring participation after two years service, or age 25, whichever occurs later.

United Steelworkers of America, Bernard Greenberg, Assistant Director, Insurance, Pensions and Unemployment Benefits Department (May 21).—Indicates that a five-year service requirement prior to the beginning of vesting is justifiable to prevent unduly burdensome book-keeping, but would waive even this if service is broken through no fault of the employee. Maintains that proposals to count only service after the enactment of the proposed legislation as subject to the new requirements would contribute nothing to the protection of present pension plan rights.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Believes that measures applicable to private pension plans to increase their effectiveness should generally, where appropriate to the nature of the plans, apply also to public employee pension plans.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Asks that all employers be permitted to exclude all employees below the minimum age or above the maximum age adopted for eligibility purposes, as well as union employers who do not desire a qualified plan, in order to provide uniformity in treatment of qualified plans for small and large employers.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Bert Seidman, Director, Department of Social Security (May 22).—Expresses concern that covering small employers (less than 25 employees, which are exempt under S. 4) would further burden small businesses with reporting requirements and tend to discourage them from providing pension plans. Favors exempting employers with less than 25 employees from the bill. Endorses the S. 4 provision that excludes employee-administered plans, but recommends coverage for State and local government employees because many of these plans are not adequately funded.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 22).—Feels that "three-two-one" service and age eligibility tests proposed for plans covering self-employed individuals who are "owner-employees" should be eliminated. Believes there is no basic justification for imposing more restrictive requirements for such plans than for employee benefits generally.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Supports coverage proposal of S. 1631—full-time employees with three years of full-time service with the employer, who have attained age 30.

Eldon H. Nyhart, President of Nyhart (May 23).—Favors coverage of all employees who are age 25 with three years of service.

Marine Engineers Beneficial Association, Leon Shapiro, Counsel (May 23).—Maintains that exemption of Federal Government plans from current legislation would mean that Federal employees could not enjoy the benefits and protections the legislation is intended to provide. Notes that, for example, portability provisions apparently would not apply with regard to transferees from Federal employment; also, that multi-employer plans provide opportunity to transfer service credits, not merely vested benefits. Asks why transferees from Federal agencies should not be able to receive similar benefits when continuing in the same industry especially where much of the industry (apart from Federal employees) participates in multi-employer plans.

Carroll J. Savage, Attorney, Washington, D.C. (May 31).—Points out that S. 4 does not deal at all with small plans (25 participants and under) and does not contain any rules on such matters as coverage and integration with Social Security benefits. Believes the approach of S. 4, given the same substantive content of the proposed new rules, would have a greater tendency than S. 1179 or S. 1631 to place un-

necessary burdens on the many plans which to date have exhibited no need for additional government regulation and would also have a greater tendency to discourage the creation of new plans.

Merton Bernstein, Professor of Law, Ohio State University (June 4).—Urges the elimination of the long and discriminatory pre-participation exclusions included in the pension reform bills studied by the committee. Asserts that if excluding a year or so can be justified by administrative convenience once that period is past the suggested excludable years should be included—much as waiting periods in Workmen's and Employment Compensation are included for benefits once the waiting period is satisfied.

States that present pension plans discriminate against women and that the bills before the committee do little to remedy that discrimination. Claims conventional vesting would not help them, although vested clearinghouse credits could.

Edwin S. Cohen, Attorney, Washington, D.C. (June 4).—Favors the administration proposal where an employee would have to reach age 30 and have three years of service in order to be eligible for participation in a plan.

Leonard Lesser, General Counsel, Center for Community Change, Washington, D.C. (June 4).—Recommends that all employers be covered, rather than the provision in S. 4 for coverage of employers with 25 or more employees. Believes that the extension to small employers will not be a serious deterrent to plan establishment by small employers.

C. Vesting

Hon. George P. Shultz, Secretary of the Treasury (May 22).—Proposes that for employer plans, a "rule of 50" would apply under which there would be 50-percent vesting when an employee's age and years of participation in the plan totalled 50 (if the employee also had at least 3 years of continuous service). Remaining benefits would vest, at least on a ratable basis, over the next 5 years. Generally, vesting requirements would not apply to benefits accrued before enactment (but pre-enactment years of participation would be considered in determining if the employee was entitled to vesting). For self-employed plans covering owner-employees, a "rule of 35" would apply, if the employee has had at least 3 years continuous service in the plan. Notes that existing law provides for immediate vesting after 3 years.

Believes that these proposals will protect primarily the older worker without increasing costs unduly. Explains the definition of "accrued benefit" as being a straightline accrual, based upon the number of years of service in relation to normal retirement age and the retirement benefit that would be accrued, at the current rate of compensation, as of retirement age.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Considers many vesting requirements to be unreasonably long and strict. Suggests a graded vesting formula based solely on the number of years of plan participation. For employer plans, would provide 25-percent vesting after 5 years of participation, with additional vesting at a rate of 5 percent per year.

Feels that a non-graded formula which provides full vesting after a number of years might encourage employers to discharge workers

just prior to the specified time. Considers a formula such as "rule of 50" to discriminate against older workers.

Hon. Vance Hartke, U.S. Senator, Indiana (May 23).—For employer plans, advocates 100-percent vesting after 5 years of participation. Contends that this would create a more mobile work force and increase work satisfaction.

For the first 3 years after enactment, a plan could require 10 years of participation; then 8 years could be required for 2 additional years. Vesting would apply to benefits accrued before and after the effective date of the provision (3 years after enactment). The Secretary of Labor could postpone required vesting for 5 years to prevent "substantial economic injury."

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob K. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—State that S. 4 provides a vesting formula which gives a worker a 30-percent vested right after eight years of service, increasing by 10 percent each year thereafter, until 100 percent vesting is reached with the completion of 15 years of service. Add that the bill gives workers vested benefit credit for all service performed prior to the effective date of the law.

Note that the Bentsen bill (S. 1179) provides a vesting formula which gives a worker a 25-percent vested right after five years of service, increasing by 5 percent each year thereafter, until 100 percent vesting is reached with the completion of 20 years of service. State that the Bentsen bill gives workers who are 45 years old, vested benefit credit for service prior to the law.

Point out that the Griffin bill (S. 75) provides vesting of 100 percent after ten years of service with credit for service prior to enactment of the legislation.

Indicate that the Curtis bill (S. 1631) provides for a 50-percent vesting when a plan participant's age and service add up to 50 and 100 percent vesting withing five years thereafter. Note that the so-called "rule of 50" is prospective only in application: no credit is given for service performed for the employer prior to the law.

Point out that of these four proposals, all but the administration's (S. 1631) incorporates the two principles regarded as indispensable to an effective and meaningful vesting standard: First, a Federal vesting standard should be based on length of service only (*i.e.*, the standard should be age-neutral); second, some form of credit should be given for service rendered prior to the law in order to protect adequately the interests of this generation of older workers.

Feel that the administration's "rule of 50" is the least acceptable, and believes it will exacerbate age discrimination in hiring. State that the "rule of 50" also deprives a worker of credit for his early years of hard work, leaving an inequitable situation.

Prefer the graded approach to vesting used in the Williams-Javits bill and the Bentsen bill since attempts to avoid the "all or nothing" result for the worker who has been severed from employment just prior to the year when vesting is applicable. Add, however, where the Williams-Javits bill permits 100 percent vesting at the end of ten years, the Bentsen bill does not provide such an alternative.

Strongly oppose the idea that has been advanced that the law ought to permit employers to choose between the four vesting alternatives that have been advanced. Believe there should be, as nearly as possible, a single basic standard.

American Telephone and Telegraph Co., William G. Burnes, Assistant Treasurer and Stanley L. King, Jr., Assistant Vice President (May 21).—Support adequate reasonable vesting of well defined pension benefits payable at age 65. Prefer, of the current legislative proposals, the "Rule of 50" in S. 1631 for the reason that it is most equitable because it gets benefits to those who need them most—older employees. Oppose determining vested benefits on the basis of only the final year's pay, rather than, for example, averaging five years' pay.

Preston C. Bassett, Vice President and Actuary, and John W. Fisher, Vice President, Towers, Perin, Forster & Crosby, Inc. (May 21).—Support the "rule of 50," but believe a minimum service requirement of 5 years should be allowed.

American Bar Association, Sheldon S. Cohen, Chairman, Special Committee on Retirement Benefits Legislation (May 21).—Favors the "rule of 50" proposed by the administration but believes the minimum period of service before vesting is required should be increased from 3 years to 5 years.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Urges that, to increase the effectiveness of private retirement plans, minimal vesting standards should be adopted, together with transitional rules. Proposes, however, that, if the required period of service for vesting is measured by service, with the employer rather than by plan participation, only service after the establishment of the plan should be counted. Opposes definition of vested benefits by a rigid pro rata share method. Suggests a waiting period of three years and a minimum age requirement of at least 25 prior to vesting.

American Bankers Association, Fred E. Seibert, Chairman, Employee Trusts Committee (May 21).—Prefers the "rule of 50," which provides early vesting for the older employee. Recommends that vesting apply to benefits accrued before enactment of pension legislation.

Recommends 100-percent vesting after five years in the case of class-year plan contributions. Urges that shutdowns of plants or operating divisions of companies be treated as partial terminations of pension plans, so that employees who lose their jobs in such situations will receive immediate vesting of their pension rights.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Favors reasonable vesting requirements, but prefers a formula which permits an employer to defer any vesting for a short minimum period of time, with graduated vesting thereafter (e.g., no vesting for the first five years, with graduated vesting at 10 percent for each year thereafter and full vesting after fifteen years).

Engineers Joint Committee on Pensions, Richard Backe, Chairman (May 21).—Indicates that engineers generally change jobs on an average of every five years. Argues that current vesting proposals will not benefit employees who change jobs this often. States that current IRS interpretation of the tax law is that engineers and other highly com-

pensated employees cannot have plans which provide immediate vesting, unless other employees are also covered under such plans because of the nondiscrimination rules. Urges that action be taken to allow engineers to have separate plans with immediate vesting, which would achieve nondiscrimination by providing lower benefits than plans without immediate vesting covering other employees.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Bert Seidman, Director, Department of Social Security (May 22).—Maintains that the vesting requirements in S. 4, S. 1179, and S. 1631 are not strict enough for single-employer plans. Feels that tougher standards need to apply to single-employer plans than to multi-employer plans.

Proposes that for single-employer plans a minimum standard of 100 percent of the accrued benefit be vested after 10 years of service. Pension plans should have 5 years after enactment to meet the standard. Recommends that multi-employer plans be required to submit within 5 years appropriate data to the Secretary of Labor. The Secretary could then set allowable variances from the vesting standard. Suggests that legislation include language to define what proportion of the fixed benefit would be vested where the mandated standard is less than provided by the plan, such as pro rating the fixed benefit from the age of entry into the plan to age 65.

Urges that credit for past service also be allowed for computation of benefits as well as for vesting.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Urges that any mandatory vesting requirement permit substantially equivalent vesting forms to avoid complexities and confusion.

Profit Sharing Council of American, John R. Lindquist, Counsel (May 22).—States that profit sharing plans generally vest more rapidly than pension plans and as fast as, or faster than, proposals presently under consideration by the Committee. Questions the necessity of any minimum vesting standard in connection with the profit sharing plans.

Indicates that a statutory minimum standard of vesting would not be objectionable if certain considerations which are peculiarly applicable to profit sharing plans are taken into account. Does not believe that there should be a single standard which all qualified plans must meet.

Recommends that there be an alternative vesting standard, based upon participation (rather than age or a combination of age and length of service) specifically applicable to profit sharing plans. Feels that recognition should be given to certain types of profit sharing plans referred to as "class year" plans under which a relatively rapid rate of vesting applies, but is applied separately with respect to the funds that accumulated under the plan which are attributable to each class year.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 22).—Approves establishment of a uniform vesting standard, but opposes other variations which result in a two-tier standard. States that the vesting standard should be keyed primarily to an employee's length of service with his employer. Contends that if a two-tier standard is to be adopted, with age as a factor in this connection, there should be

a more rational basis for the more restrictive standard applicable, irrespective of the form of business entity. Proposes that the more restrictive standard for vesting should apply in any case, where the controlling ownership interests of those who participate in the plan aggregate more than 50 percent of the value (or vote) of the business entity (partnership or corporation), and the present value of their aggregate interests in accrued benefits exceeds 50 percent of the total present value of accrued benefits under the plan.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Leonard Woodcock, President (May 23).—Urges requirement of full vesting after 10 years of employment; recognition of all service with an employer or covered group, including service prior to enactment of legislation; and limitation of mandatory vesting to those types of lifetime benefits generally provided at a plan's normal retirement age. Maintains that "rule of 50" is not an acceptable alternative. Prefers S. 4 vesting schedule to that of S. 1179, but notes that proposal to begin vesting after five years of service is a progressive step.

Chamber of Commerce of the United States, Robert T. Thompson, Member, Board of Directors (May 23).—Favors the concept of a Federal vesting standard, imposed through an amendment to the tax laws, but believes more cost information should be obtained before writing a standard.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Opposes uniform vesting formula as unnecessary and unwise. However, if uniform vesting standard is mandated, stresses that formula should be entirely service-related and not include age factor, since age factor tends to discriminate against hiring of older employees. Indicates that it would be acceptable to have a vesting formula that would be nonretroactive and would require 50-percent vesting of a plan participant's normal retirement benefit after 15 years of participation plus 10 percent for each additional year of participation. Notes that most estimates of costs of vesting proposals are in terms of "average employers"; maintains that retailers' costs are apt to be higher because retailers' "new hires" are older than national average. Urges industry flexibility to choose vesting formulae appropriate to different employee profiles.

American Society of Pension Actuaries, William W. Hand, President (May 23).—Supports S. 1179 proposal. Opposes "rule of 50" because it could result in job discrimination against older applicants.

Eldon H. Nyhart, President of Nyhart (May 23).—Supports a "rule of 50."

Marine Engineers Beneficial Association, Leon Shapiro, Counsel (May 23).—Does not object to proposed vesting provisions. Notes that the Marine Engineers Beneficial Association plans provide 15-year vesting and that many participants are fully vested.

Daniel Halperin, Professor of Law, University of Pennsylvania (May 31).—Emphasizes the similarity in the vesting standards of S. 4 and S. 1631. Suggests, as a compromise, that 50-percent vesting be required at whichever of the following occurs first: 10 years of participation or 5 years of participation and age 45.

Harold T. Schwartz, CPA (May 31).—States that the Internal Revenue Service has required vast vesting in many plans seeking qualification under section 401, particularly with respect to profit sharing

and stock bonus plans. Explains that such plans usually provide that the nonvested portion of the credits in an employee's account are forfeited when an employee leaves the employer before retirement, these forfeited amounts being allocated among the accounts of the remaining participants. Contends that since officers and highly compensated employees tend to remain with the employer until retirement, these allocations of nonvested forfeitures often result in final benefits discriminating in their favor. Indicates that it has been the practice of the Service to insist that in order to qualify, such plans contain vesting provisions adequate enough to prevent this discrimination.

Points out that with respect to pension and annuity plans, the Service has held that a plan, in certain instances, may not qualify under section 401 unless satisfactory vesting provisions are incorporated in the plan to prevent contributions or benefits from discriminating in favor of officers, shareholders, supervisors, or highly-compensated employees.

Merton Bernstein, Professor of Law, Ohio State University (June 4).—Contends that all of the major pension bills proposed grant very little protection to employees with ten or fewer years of service and they would vest benefits fully only at about 15 years of service.

Believes that the S. 4 provision, which would make it unlawful for an employer to discharge a person to prevent that employee from the attainment of vesting, is an inadequate protection for the employee. Maintains that only immediate vesting will work.

Herman C. Biegel, Attorney (June 4).—Feels that any vesting legislation should set minimum standards to require improvement of plans that fall below a reasonable norm, but that the standards must be flexible. States that as long as a plan's vesting schedule is designed to achieve substantially the same degree of vesting as the legislative standard, no change should be required in the plan.

Considers the William-Javits bill to recognize this problem. Finds this approach helpful, but believes that alternative standards should be set forth directly in the Act, with additional power for administrative waiver of these standards. Notes that the Williams-Javits bill also contains a special standard for thrift and savings plans, which contain vesting on a "class year" basis. Points out that this standard would permit "class year" vesting schedules under which the employer contribution for a year would become vested after a period not exceeding five years. Asserts that it is essential that flexibility of this kind be included in any final legislative product.

Notes that the proposed bills reflect a proper concern for easing the transitional period, setting reasonable effective dates, and granting appropriate waivers with respect to those dates.

Suggests that it would be appropriate to limit the statutorily imposed vesting standard to a benefit which, when added to Social Security, would equal 50 percent of final average salary up to the Social Security wage base. Feels that if such a limit is not imposed, vesting should not extend to pre-retirement death benefits, or require immediate payments upon early retirement. Asserts that the legislation should clearly define the protected pension benefit as a life annuity payable at age 65.

Edwin S. Cohen, Attorney, Washington, D.C. (June 4).—Points out that while studies indicate that there has been a general upgrading

of vesting provisions in recent years, only about 32 percent of participants in corporate pension plans now have vested benefits. Notes that many of these participants without vesting are young persons without substantial periods of service with their employer, and that large number of these employees will later qualify for vested benefits, either with their present or a future employer. But asserts there is a large proportion of older workers who do not have vested rights and who, because they have fewer years remaining until retirement, are especially deserving of increased vesting protection.

Calls attention to the fact that only some 40 percent of participants over the age of 40 have vested benefits, and only some 46 percent of those over age 60 have vested benefits.

Concludes that the so-called "rule of 50," proposed by the administration, is the most satisfactory minimum vesting standard. Favors the "rule of 50" not because it involves less additional costs than other similar proposals, but because it concentrates protection on the older workers.

Does not think it wise for legislation to rule out age entirely as a proper consideration in a vesting standard minimum for pension plans. Believes the "rule of 50" would add relatively little to the annual cost of the pension of the older worker, either proportionately or in absolute amounts, and does not believe it would be a material factor in the choice between hiring of an older or younger employee.

Favors the administration recommendation that service prior to the effective date of law be counted with future service in determining when the employee satisfies the vesting requirements, but that the vesting apply only to benefits accruing in the future.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Points out that the Internal Revenue Code does not require vesting in order for pension plans to remain qualified.

Maintains that there are two keys to decent pensions: early vesting and lifetime accruals. Favors basing service on the aggregate years rather than on continuous years as used by most plans. Proposes adopting the S. 4 provision to cover service before and after the effective date, if it could be done constitutionally (that is, amend contracts retroactively).

Maintains that the "Rule of 50" would discriminate against hiring older workers because a 20-year old would vest nothing for 15 years, whereas a 45-year old would vest 50 percent in a few years. Considers the vesting standards in S. 1179 and S. 1631 to be weak because of being tied only to the tax qualification. With regard to the vesting schedule in S. 1179, feels that 5 years to begin vesting is reasonable but that 20 years for complete vesting is not. Also objects to the exclusion of all years under age 30.

Leonard Lesser, General Counsel, Center for Community Change, Washington, D.C. (June 4).—Prefers the S. 4 provision that makes no distinction between service performed for an employer before or after the time a pension plan was established. Considers proposals which disregard prior service to give little protection to those who are closest to retirement age and are least able to accrue adequate benefits in the future. Disagrees that service performed prior to a given age be excluded. Feels that the "Rule of 50" is unsound because it would permit the exclusion of significant periods of service before age 40.

Considers 10 years to be long enough period of service to acquire full vesting, and that it would not lead to excessive increases in costs. Urges that the effective date of vesting not be delayed because of cost considerations, since workers in the meantime will not be protected. Suggests, alternatively, that consideration be given to treating the additional cost applicable to the vesting requirement during the transition period as a deferral for the period by considering such cost as a "post service" cost at the end of the transition period which could be funded over a future period.

D. Funding

Hon. George P. Shultz, Secretary of the Treasury (May 22).—States that under S. 1631, minimum contributions would equal normal costs, interest on past service costs, and 5 percent of vested unfunded liabilities. The Secretary of Treasury could permit an alternative funding schedule which results in a satisfactory rate of funding.

Objects to proposals for the funding of all liabilities in view of the much larger costs involved, which may be reflected in lower pensions.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Recommends that minimum funding requirements be a condition for qualifying the plan under the Internal Revenue Code. Experience deficiencies would have to be made up at least ratably over a period no longer than the average remaining working life of covered employees. The Secretary of the Treasury could grant waivers of the requirements. The IRS could terminate a plan for violation of funding requirements, as well as disallow the deductions for contributions made to the plan for the 5 preceding years.

Hon. Vance Hartke, U.S. Senator, Indiana (May 23).—Believes adequate funding is crucial to prevent tragedy which can result when pension expectations are disappointed. Supports rule to require funding of current costs and amortize any unfunded liability for past service over a period not to exceed 25 years. Under S. 1858, experience deficiencies would generally have to be funded over a 5-year period.

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob K. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—State that both the Williams-Javits bill and the Bentsen bill provide for the funding of all unfunded pension liabilities over a 30-year period. Point out that under the administration's bill, there is no target period during which all unfunded vested liabilities must be fully funded.

Explain that the major difference between the Williams-Javits bill and the Bentsen bill, in connection with funding, is a difference in treatment for "experience deficiencies" caused by actuarial error. Note that under the Williams-Javits bill, experience deficiencies must be funded over a five-year period unless the employer is not financially able to make the payments, in which event he may obtain an additional five-year period to fund a deficiency. State that under the Bentsen bill, on the other hand, experience deficiencies can be funded for the remaining working period of the workers—which could be as long as another 30 years.

Consider the Williams-Javits approach on experience deficiencies to be preferable because it protects more adequately the Federal rein-

insurance program against the possibility of pension plan liabilities being shifted unnecessarily to the insurance program due to actuarial mistake.

Find the administration's formula for funding to be the least preferable because it has no fixed target date when full funding of vested liabilities must be completed—and also because it is unenforceable.

American Telephone and Telegraph Co., William G. Burns, Assistant Treasurer and Stanley L. King, Jr., Assistant Vice President (May 21).—Explain that in the Bell System funding seeks to spread pension costs fairly among telephone users of each year. Claim that Bell pensions have been progressively improved since its pension plans were adopted in 1913. Recount that advance funding for pensions began in 1927 and was augmented later to include, after 1946, all growth resulting from pension plan improvements. Indicate that amortization of remaining unfunded portion of prospective pension costs was begun in 1959 and subsequently substantially completed.

State that the present Bell System funds full prospective pension costs over service lifetime of employees, without any separate program to amortize new prospective costs which might be said to be allocable to "past service" (and which arise from wage scale increases and pension improvement amendments)—the kind of programs called for in the proposed legislation. Add that the Bell System's vested benefits are fully funded.

Argue that although present Bell System funding allocates costs fairly to customers of different years, past evolution shows need of flexibility to exercise discretion in timing funding, so that the burden can continue to be fairly spread and employers are not discouraged from inaugurating pension plans.

Contend that new legislative compulsory minimum funding requirements should be related to vested liabilities only. Maintains that funding programs should be stable, rational, and systematic, as would be the case with S. 1631 and S. 1179, but not with S. 4. Support S. 1631 because it meets the dual objective of providing for pension benefits when they become due and of requiring additional contributions when the employee vested equity to date is not covered by pension fund assets.

Assert that S. 4 requires overreaction to fluctuations (as in wages) by classifying them as "experience deficiencies" or "surpluses" and by forcing or relaxing special payments as if they were fixed debts or secure windfalls. Note that S. 4 would require funding such increases over a five-year period, instead of over the general 30-year period. Charge that this could have erroneously classified up to \$600 million annually of funding payments as "deficiencies" and forced up to \$360 million in additional annual costs in the Bell System. State that there would have been no such effect if Bell pension plans did not automatically increase pensions with wage escalations, but instead were the less progressive type limiting increases to plan amendments. Propose that "minimal funding" (e.g., the payment of interest on unfunded vested liabilities) is generally more than adequate when the ratio of pension payments to current payrolls is small.

Point out that temporarily declining industries can sometimes afford to keep up pension payments if not also forced into advance

fundings. Contend that this possibility should not be foreclosed by compulsory funding. Believe that this point is only an illustration of funding mandates that may not accommodate the varieties of individual pension plan needs.

Preston C. Bassett, Vice President and Actuary, and John W. Fisher, Vice President, Towers, Perin, Forster & Crosby, Inc. (May 21).—Believe funding requirements should apply only to vested benefits accrued after the effective date of the legislation and that required funding should not exceed three-fourths of one percent of each participant's wages which are subject to social security tax.

United Steelworkers of America, Bernard Greenberg, Assistant Director, Insurance, Pensions and Unemployment Benefits Department (May 21).—Asserts that guaranteeing necessary plan funding cannot be replaced by providing income-tax incentives to employers. States that the goal of the Internal Revenue Code is to protect the Treasury, not plan participants.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Advocates a reasonable mandatory funding standard for all plans, including multi-employer plans. Urges the inclusion of the following in any funding standard:

- (1) Appropriate transitional devices to allow present plans to reach the mandated standard;
- (2) Funding assumptions and methods should be left to the discretion of each sponsor, subject to certification by a qualified actuary, since each plan presents its own considerations relative to plan provisions, participants, and financial situations of the employer and employees;
- (3) Flexibility for handling experience gains or losses, such as spreading them over a period not to exceed five years, should be allowed, based upon the guidance of an actuary, because actual plan experience differs from the actuarial assumptions used in determining plan contributions;
- (4) Plans funded exclusively through the purchase of level premium individual insurance or annuity contracts, profit-sharing plans, and money purchase pension plans should be exempt from minimum funding requirements;
- (5) Minimum funding requirements should be determined and reported periodically by an actuary certified as qualified; and
- (6) The existing tax restraints on funding should be removed, recognizing that present IRS rules provide adequate protection against discrimination in favor of the higher paid officers and employees in the event of plan termination.

American Bankers Association, Fred E. Seibert, Chairman, Employee Trusts Committee (May 21).—Suggests legislation should require full funding of vested liabilities over a 30-to-40-year period.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Supports any reasonable standard of minimum funding providing there is provision for variances in contributions. Urges the revocation of the 10-percent limitation on the deductibility of past service funding to allow flexibility in meeting funding requirements. Urges also that any new funding requirements contain an exemption there-

from, as is presently contained in S. 4 and S. 1179, for plans funded exclusively by individual insurance contracts funded by level premiums and providing guaranteed benefits.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Bert Seidman, Director, Department of Social Security (May 22).—Feels that single-employer pension plans should be treated differently than multi-employer plans because of the greater risk involved in single-employer plans. Proposes that single-employer plans be required to pay normal or current costs and fund all past service costs over a 30-year period (similar to S. 4 and S. 1179). For multi-employer plans, would allow "interest only" funding but yet meet a standard requiring their unfunded liabilities be amortized over a period of 40 years. Suggests that multi-employer plans be allowed to petition for variance from the standards. Recommends that any experience deficiency be amortized over the average remaining life of the employees covered by the plan, as in S. 1179, rather than over 5 years, as in S. 4.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Believes that the vast majority of private pension plans are being adequately funded under present funding standards. Supports additional IRS requirements for the funding of unfunded vesting liabilities provided the rules are reasonable and flexible.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 22).—Agrees with the concept of a legislatively-prescribed minimum funding standard to strengthen the private pension system. Disagrees with the suggestion that existing pronouncements of the accounting profession support the adoption of such a standard which includes as one element "five percent of the unfunded liability for non-forfeitable benefits under the plan."

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Leonard Woodcock, President (May 23).—Recommends that contributions be required to be sufficient to meet current service costs over periods not longer than 30 years.

Chamber of Commerce of the United States, Robert T. Thompson, Member, Board of Directors (May 23).—Opposes proposals for mandatory funding. Argues that current tax law, which requires the funding of current service costs plus interest on past service costs, is sufficient.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Believes mandatory funding requirement to be unnecessary, because of current IRS and accounting profession requirements. Indicates that, if funding is mandated by legislation, the period for funding past service liability should not be less than 40 years and that the period should also apply to increased benefits resulting from any amendments to the plan (that this period is in accord with recommendation of AICPA).

American Society of Pension Actuaries, William W. Hand, President (May 23).—Points out that adequate funding depends on the soundness of the underlying actuarial assumptions. Believes that legislation should require that minimum actuarial standards and procedures be established and published to insure uniform protection for employees.

Marine Engineers Beneficial Association, Leon Shapiro, Counsel (May 23).—Opposes imposition of funding requirements on multi-employer plans.

Converse Murdock, President, Murdock, Longobardi, Schwartz, and Walsh (May 31).—States that S. 1179 and S. 1631 would have little or no effect on unfunded plans, while S. 4 would require unfunded plans covered by the Act to become funded. Maintains that without S. 4 provisions, there can be no meaningful pension reform for the workers now covered under unfunded pension plans.

Harold T. Schwartz, CPA (May 31).—States that the Code contains no specific provisions relating to the funding of benefits. Notes, however, that Treasury Regulations and Rulings require that the contributions to a qualified pension or annuity plan must be funded to the extent of current pension liabilities, plus interest on the unfunded past service costs. Points out that the status of funding is often checked during the course of an audit.

Herman C. Biegel, Attorney (June 4).—Maintains that the current rules tend to limit funding by complicated restrictions on the amount of pension contributions that may be deducted each year.

Believes that funding standards should focus on the aggregate period for funding. Indicates that a 30- or 40-year period for funding of total benefits might be acceptable, but if funding is applied only to vested benefits, the period could be even shorter—perhaps 25 years. Asserts that the Williams-Javits requirement to make up "experience deficiencies" in five years would raise grave problems, and that it should not be enacted.

Points out that the actuarial assumptions upon which employers fund their plans are based on the average anticipated experience over a long period of years. States that an increase in pay, for example, coupled with a decline in the stock market, could produce an experience deficiency of immense proportions in the short term. Asserts that to consider "irregular variations in experience" as creating "deficiencies" or "surpluses" on a short-term basis is a total warping of the entire process of funding on the basis of long-range actuarial assumptions. Maintains that short-run variations from the assumed averages does not indicate a real shortage or surplus funds.

Edwin S. Cohen, Attorney, Washington, D.C. (June 4).—Urges care in prescribing minimum annual contributions so that the first step taken is not so large as to endanger the survival of existing plans or discourage unduly the creation of new plans. Suggests confining the funding requirement to the vested benefits.

Believes the requirement in S. 4 for funding "experience deficiencies" over a five-year period could produce substantial cost fluctuations; and recommends its deletion.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Indicates that a funding system has inherent in it a judgment as to the priorities of distribution of a fund not sufficient to pay all vested benefits. Suggests that it would be fairer to treat each substantial increase in benefits involving an increase in past unfunded service liabilities as a separate plan for funding purposes. Thus, an initial grant of benefits required to be funded over, say, 25 years, would be fully funded after the expiration of 25 years regardless of how many other benefit increases took place in the meantime. Each separate benefit grant

would likewise be funded over a new period of 25 years beginning on the date of grant. In the event of termination of the plan, an employee who was fully vested in any "layer" of benefits would be entitled to payment of the amount which had been funded for that layer—similar to S. 4.

Characterizes the S. 1631 provision to follow the "declining balance" approach to pension funding, which would allow an infinite period of time for full funding. Points out that the Studebaker plan was funded on a better schedule than required by S. 1631, and the employees who were 100 percent vested and had accrued over 40 years of service still forfeited 85 percent of those vested benefits.

Indicates that the funding schedule in S. 1179 is adequate. States that the S. 1179 approach to "experience deficiencies" is weak, as it permits a plan to fund such deficiencies over the working life of the employee, whereas S. 4 requires a 5-year makeup.

Leonard Lesser, General Counsel, Center for Community Change, Washington, D.C. (June 4).—Endorses generally the provisions of S. 4 to require minimum funding.

E. Portability

Hon. George P. Shultz, Secretary of the Treasury (May 22).—Points out that under S. 1631, an individual could transfer without tax a lump-sum pension distribution to another qualified employer-sponsored retirement plan, if within 60 days after the close of the employee's taxable year. Thus, taxation of the pension could be deferred until actual retirement for those who receive pre-retirement distributions when they change jobs.

Hon. Paul J. Fasser, Jr., Assistant Secretary of Labor for Labor Management Relations (May 23).—Believes that a reasonable vesting standard is the best means of preserving pension credits. Opposes the Federal clearinghouse proposal because of difficulties of providing equitable treatment among participants whose benefits are transferred and those whose benefits remain with the plan. Points out that S. 1631, the administration's tax bill in the pension area, would allow the tax-free transfer of assets between qualified pension funds, so that voluntary portability would be worked out where all parties could reach agreement.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Proposes amending the tax law to specifically permit tax-free transfer of employees' pension rights between plans.

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob K. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—State that the Williams-Javits bill establishes a Federal clearinghouse fund in the Department of Labor to promote, on a voluntary basis, the transfer of vested pension credits from one plan to another as a worker changes jobs. Explain that the Bentsen bill would permit the tax-free transfer of vested pension credits from plan to plan without establishing a Federal clearinghouse. Indicate that the advantage to the Williams-Javits proposal is that it would centralize record-keeping and relieve employers of these burdens and also would provide a mechanism which could ultimately serve as a type of pension bank

for universal portability. Believe that there may be merit to trying both the Williams-Javits approach as well as the Bentsen approach since there is no inherent conflict between the two.

American Telephone and Telegraph Co., William G. Burns, Assistant Treasurer and Stanley L. King, Jr., Assistant Vice President (May 21).—Oppose all portability proposals on grounds that adequate vesting and funding make portability unnecessary.

Preston C. Bassett, Vice President and Actuary, and John W. Fisher, Vice President, Towers, Perin, Forster & Crosby, Inc. (May 21).—Feel that portability provisions are unnecessary and undesirable if adequate vesting proposal is enacted.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Opposes portability on the basis that its objectives are achievable by satisfactory vesting with adequate funding, bookkeeping, and communication to employees. Notes that provisions in S. 1179 and S. 1631 permitting an individual to reinvest his distributions from a qualified plan or an individual retirement account in another plan or account without having to pay a current tax will also allow for more flexibility in the handling of retirement funds.

American Bankers Association, Fred E. Seibert, Chairman, Employee Trusts Committee (May 21).—Objects to portability because it would greatly complicate the administration of pension plans, and is not necessary if there are adequate vesting and funding requirements.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Advocates the concept of portability on a voluntary basis.

Engineers Joint Committee on Pensions, Richard Backe, Chairman (May 21).—Supports proposals to allow tax-free transfer of funds between qualified pension plans.

American Federation of Labor and Congress of Industrial Organization (AFL-CIO), Bert Seidman, Director, Department of Social Security (May 22).—Asserts that the concept of portability of vested benefits is meaningless. Maintains that the real question is whether nonvested pension credits are made portable, as this is where an employee gets hurt when he leaves a job prior to vesting. Notes that the cost of portability of nonvested benefits is equivalent to the cost of immediate vesting.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Claims the adoption of mandatory vesting will make the need for portability academic and will avoid the many problems connected with it.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Leonard Woodcock, President (May 23).—Concludes that vesting and reinsurance are most effective means of achieving practical and widespread portability, but that legislated portability arrangements may be workable in profit-sharing or money purchase plans with individual accounts or individually purchased annuities.

Chamber of Commerce of the United States, Robert T. Thompson, Member, Board of Directors (May 23).—Feels portability proposals will not be necessary if adequate vesting standards are adopted.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Opposes legislation requiring portability, but supports proposal in S. 1631 for nontaxability to a terminating employee who reinvests his lump-sum distribution.

American Society of Pension Actuaries, William W. Hand, President (May 23).—Favors provision in S. 1179 to allow tax-free transfer of funds between pension plans. Also suggests plan administrators be given the option of purchasing single-premium deferred annuity contracts for severed participants or a new form of "restricted savings certificates" to be issued by banks. Opposes S. 4 proposal to create a Federal portability clearinghouse.

Marine Engineers Beneficial Association, Leon Shapiro, Counsel, (May 23).—Opposes application of mandatory portability provisions to multiemployer plans. (See *plan coverage* below.)

Carroll J. Savage, Attorney, Washington, D.C. (May 31).—States that the clearinghouse approach of S. 4 creates an additional bureaucracy which, in view of its voluntary nature, could be justified only by citing the very marginal benefit of consolidating the pension checks of some workers who have acquired vested rights under several plans. Counsels if portability is deemed desirable, there is much to be said for delaying the creation of any new Federal bureaucracy until there has been more experience with a tax law change which might accomplish much of the same objective on a self-administering basis.

Merton Bernstein, Professor of Law, Ohio State University (June 4).—Believes that a pension clearinghouse is essential to protect employees' savings under private plans. States that only with a clearinghouse will vested pension credits be useful to a separated employee.

Contends that under a voluntary clearinghouse the employer has no incentive to transfer the credit but has a powerful incentive not to do so. Points out that when an employee separates from a job, the cost of transferring the value of the vested benefit is higher than if the vested benefit is made from the pension fund itself. Believes, as a result that employers will not voluntarily transfer the employee's benefits. Notes that by keeping the reserve for the vested benefit in its own fund, the employer can use that frozen reserve and make money on it to lower the cost of paying benefits to other employees.

States that the proposed clearinghouse, although authorized to operate its own pension fund, is limited in its investments in that it may invest only in bank and savings and loan accounts. Believes that the clearinghouse should be empowered to invest just as any trust fund may. Maintains that the transfer of credits from individual plans to individual plans, while feasible, is awkward; is potentially more costly than transfer into the clearinghouse fund; and is subject to abuse by the receiving fund. Suggests that there be a clearinghouse plan for small companies in which the clearinghouse would operate such a plan on a money purchase basis so that any level of contribution would be possible and the credit purchased would be immediately vested. Asserts that the more plans utilizing the clearinghouse and providing transferable credits, the less expensive it would be for each employer to provide a unit of coverage.

Herman C. Biegel, Attorney (June 4).—States that portability is of questionable value and has been rejected by responsible officials of

the administration, labor, and management. Believes that the desired result can be achieved by providing for tax-free transfer of vested amounts, as suggested by the administration and the Bentsen bills.

Edwin S. Cohen, Attorney, Washington, D.C. (June 4).—Contends that if adequate minimum standards for vesting and funding are provided, much of the significance of portability would be eliminated. Believes a system could be devised with simplicity that would permit the Social Security Administration to serve as a vehicle to keep former employees and pension plan managers in contact with each other if they have changed address since the employee terminated employment. Feels that together with adequate vesting and funding, much of the portability problem would be solved in this fashion.

States that the administration's proposed amendment to permit a tax-free "rollover" of pension distributions received on termination of employment before retirement seems a desirable provision. Adds that if the proposal which would permit the employee to establish his own qualified plan to which he could contribute when he is not covered by adequate employer-created plan is enacted, these two provisions would prove especially helpful to persons changing employment.

Leonard Lesser, General Counsel, Center for Community Change, Washington, D.C. (June 4).—Believes that the purpose of portability is just as well met by adequate vesting, funding, and termination insurance provisions. Suggests that all pension plans be required to provide information on vested benefits to the Social Security Administration for inclusion in an individual's social security record; when the individual applies for social security, he would be notified of his rights to vested benefits and how application should be made.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Notes that the main problem of benefits forfeiture is dealt with in S. 4 primarily under vesting. Considers the portability provision to be merely a clearinghouse for the transfer of pension credits that have already vested. Those who have no vested benefits will not have "portability" of their unvested credits.

F. Plan Termination Insurance ("Reinsurance")

Hon. George P. Shultz, Secretary of the Treasury (May 22).—Notes that there is no provision for plan termination insurance under the administration's proposal.

Maintains that it is not easy to develop an insurance plan for terminations which would reduce the benefit losses significantly without providing government regulation of pension plans on a scale which would be inconsistent with the amount of benefit losses now being experienced. Indicates that Treasury is continuing to study the idea.

Hon. Paul J. Fasser, Jr., Assistant Secretary of Labor for Labor Management Relations (May 23).—Recognizes that loss of benefits due to plan terminations is a serious problem where it occurs, but believes such losses are relatively infrequent. Believes that there is a serious problem in determining the risk which would be insured, so as to prevent manipulation by plan parties, and at the same time, minimize Government interference in the structuring of pension plans.

Indicates continued Labor Department study in this area so that the problems can be worked out.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Believes that termination insurance is the heart of the problem of protecting pension benefits. Notes that the Treasury-Labor study indicates that 3,000 pension plan participants lost vested benefits during the first seven months of 1972. Maintains that the concept of termination insurance is not new. Points to the experience with the Federal Deposit Insurance Corporation to protect against bank failures and the recent Securities Investor Protection Corporation to protect brokerage houses.

Proposes a Pension Guarantee Corporation along the lines of the Securities Investor Protection Corporation. It would be a nonprofit membership corporation composed of all private plans.

The Federal insurance program would protect employee's rights to a pension equal to the lesser of 50 percent of his highest average monthly wage over a 5-year period, or \$1,000 a month. Premiums would initially be up to 0.2 percent of vested unfunded liabilities in the case of multiemployer plans or 75-percent funded plans, and up to 0.4 percent in other plans.

Hon. Vance Hartke, U.S. Senator, Indiana (May 23).—Urges adoption of an adequate insurance program. Indicates that in 1971, plans affecting more than 125,000 workers terminated. Advocates adoption of the Hartke Bill, S. 1858, which would insure vested benefits up to 80 percent of the highest average monthly wage over a 5-year period or \$500 monthly, whichever is less. Favors premium based on unfunded obligations of each plan, at a ratio not in excess of one-half of one percent. S. 1858 provides that the employer would be liable to reimburse the insurance fund upon plan termination in an amount not in excess of 50 percent of net worth.

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob K. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—Feel there is no more vital need in pension reform than a program of Federal plan termination insurance. Point out that S. 4 would establish a program to guarantee that vested pension credits of employees will be paid upon premature termination of a plan where there are not sufficient assets to pay workers' vested benefits.

American Telephone and Telegraph Co., William G. Burns, Assistant Treasurer and Stanley L. King, Jr., Assistant Vice President (May 21).—Object to all current pension insurance proposals.

Preston C. Bassett, Vice President and Actuary, and John W. Fisher, Vice President, Towers, Perin, Forster & Crosby, Inc. (May 21).—Believe adequate funding would minimize the need for insurance, but is not opposed to a limited insurance program protecting vested benefits.

United Steelworkers of America, Bernard Greenberg, Assistant Director, Insurance, Pensions and Unemployment Benefits Department (May 21).—Advocates pension plan termination insurance on the basis that expecting complete funding on the part of all employers is no more reasonable than expecting individuals to provide completely against catastrophes through savings accounts in place of life insurance.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Questions advisability of pension plan termination insurance because it would discourage adequate funding and discourage employers from adopting or liberalizing pension plans. Advises that if termination insurance is adopted, provisions should be enacted providing that employers whose plans terminate should be the first source of any funds needed to provide benefits, that there be a strong minimum mandatory funding standard, and that the administration of the program be under a Federal, nonprofit corporation.

American Bankers Association, Fred E. Seibert, Chairman, Employee Trusts Committee (May 21).—Warns that there is no meaningful cost data upon which to base a premium. Feels that it will be hard to establish underwriting rules in this area because it will be difficult to define the risk involved. Points out that Government liability could be substantial if pension plans terminated during a period of depressed investments.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Supports the general concept of plan termination insurance.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Bert Seidman, Director, Department of Social Security (May 22).—Considers termination insurance to be vital to pension reform. Endorses the provisions of S. 1179 to provide for two separate insurance pools—one for single-employer plans and one for multi-employer plans. Opposes, however, the experience rating of the plans within each class. Believes that the cost of termination insurance would be low.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Feels that the problems and inequities inherent in any proposed plan termination insurance program far outweigh any benefits that may be derived.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Leonard Woodcock, President (May 23).—Maintains that effective pension reform must include mandatory plan termination insurance similar in concept to Government programs reinsuring bank and savings deposits, and housing mortgages, and protecting investors against losses caused by financial difficulties to brokerage houses. States that the need arises even with reasonable funding requirements, because of large past service liabilities arising at inception of plan and at each improvement in benefits.

Urges that insurance guaranties cover all types of plan terminations, including partial discontinuances. To prevent abuse, suggests (1) three-year waiting period for new plans as well as for unfunded liabilities resulting from plan amendments and (2) liability of solvent employer to reimburse insurance funds for some portion of losses on termination. Feels that protection should be against loss of vested benefits of the type normally paid as life incomes to employees and surviving beneficiaries, including benefits based on service before and after enactment of legislation.

Asserts that premiums should be assessed at uniform rates based on unfunded vested liabilities. Calls for an insurance system to be made effective as soon as administratively feasible. Believes that a maximum

premium of 0.2 percent of unfunded vested liabilities for the first three years of program is an appropriate starting point, with possible additional premium for plans whose funding was inadequate prior to bill's enactment.

Chamber of Commerce of the United States, Robert T. Thompson, Member, Board of Directors (May 23).—Opposes proposals for required insurance on grounds of cost.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Opposes enactment of insurance requirement, at least until Labor and Treasury Departments have completed their study of plan terminations.

American Society of Pension Actuaries, William W. Hand, President (May 23).—Favors plan termination insurance as a necessary adjunct to funding requirements in order to protect employee benefits. Believes that there is a need for standard tables to determine present value of vested liabilities upon plan termination.

Eldon H. Nyhart, President of Nyhart (May 23).—Favors insurance of vested benefits through means of a Federal agency.

Marine Engineers Beneficial Association, Leon Shapiro, Counsel (May 23).—Maintains that plan termination insurance is unnecessary in multiemployer plans. Notes that Treasury-Labor study of terminations indicates that plan terminations involve less than 0.2 percent of participants covered by multi-employer plans and that in most of those cases where such plans terminate, it is usually because the union and the employers desire to consolidate various pension plans to which they are parties in order to achieve economy in administration and to provide uniform benefits, and that this does not result in loss of benefits.

John S. Nolan, Attorney, Washington, D.C. (May 31).—Opposes section 405 of S. 4 that provides the employer is liable to reimburse the plan termination insurance program for any benefits paid by the program to employees, to the extent of 50 percent of the employer's net worth. Suggests this may be unconstitutional, that the remedy is drastic, and that employers may terminate their plans to avoid it. Believes the imposition of this liability would prejudice the ability of employers to obtain additional credit or equity financing. Recommends that employers have three options regarding corporate liability for benefit payments instead of the proposal of S. 4. Also, suggests limiting benefit payments to employees from the insurance program to 85 percent of the amounts otherwise received under the plan.

Carroll J. Savage, Attorney, Washington, D.C. (May 31).—Feels that if plan termination insurance is deemed desirable, the use of a nongovernmental membership corporation (as proposed under S. 1179) seems a sound approach to continuation of the successful self-regulation which has characterized the private pension plan movement to date.

Harold T. Schwartz, CPA (May 31).—Comments that while there are no provisions in the Code that require plan termination insurance, there are regulations and rulings that are designed to protect employees in the event of termination of a plan. States that in the event a plan is terminated, or if contributions are curtailed, the Service requires that certain information be filed so that a determination may be made as to the effect of the termination or curtailment on the prior

qualification of the plan. Notes that the regulations also contain provisions that are designed to benefit the lower paid participants in the event a plan is terminated within ten years after its establishment, or where the current costs for the first ten years of the plan have not been fully funded.

Paul S. Berger, Attorney, Washington, D.C. (May 31).—Supports the provision of S. 4, which would establish a program of plan termination insurance under the supervision of the Secretary of Labor.

Morton Bernstein, Professor of Law, Ohio State University (June 4).—Urges that the committee consider the dimension and urgency of the serious problem of shut-downs without plan termination, which receives no treatment in any of the proposed measures. Suggests that of the serious problem of shut-down a presumption of termination; e.g., the separation of 50 percent of a plan unit participants so that the termination can reach back to the inception of the shut-down. Relieves that the Internal Revenue Code should require notification to employees and employee representatives of all filing by employers and union and plan administrators under the tax laws and have the standing of parties. States that the Code should be amended to confer substantial rights upon the employees enforceable by suit. Suggests that for purposes of uniformity and efficiency, the Tax Court might be the proper initial forum for suit.

Urges the committee to study the larger issue of windfall recoupments that occur when plans do not terminate.

Herman C. Biegel, Attorney (June 4).—Indicates that the Congress should not lose sight of the fact that employers do not have to establish any plan or set any prescribed level of benefits. Feels that the need for a pension re-insurance program has not been established. Asserts that there is every reason to expect that new funding standards would help to reduce the losses that are now being incurred from plan terminations.

States that the basic objection to insurance is not initial premium costs, although in the case of new plans that cost could be substantial, but the real concern is the potential for complete regulation of private retirement plans and the adverse effects that regulation would produce. Indicates that a second objection to a plan termination insurance program is the fact that a new Federal bureaucracy would be needed. Third, believes that the existence of an insurance pool to guarantee plan benefits would lead to pressure for increased benefits beyond the financial capacity of an employer to pay for them. Maintains that benefit levels should be established in accordance with sound collective bargaining or management decisions free from the distortion which would be caused by a program funded by other employers to cover deficiencies. Fourth, feels that such a proposal would encourage speculative investment of plan assets. Claims that the fact that a Federal pool would back-up any losses would lead some plan administrators to take unwarranted risks in investment, leaving soundly managed plans to bail out the speculators. States that the cure for discouraging such speculation would either mean investment control by the Government, or the requirement that employers be made to reimburse plans for their insured losses. Fifth, asserts that a liability to make up insured pension plan deficits out of corporate assets would add drastically to the severe financial difficulty an employer will

already be experiencing. Indicates that such a liability would reduce the company's access to credit at the time its very future is dependent on financial assistance. Contends that such a requirement would tend to assure that the company would not continue in business. Sixth, feels that most of the legislation recommended thus far does not resemble true "insurance" in any sense of the word.

Edwin S. Cohen, Attorney, Washington, D.C. (June 4).—Expresses concern about the provisions relating to recovery by the insurance program from employers for any insurance benefits paid by the program to the beneficiaries of a terminated plan.

Believes that the issue of employer-liability goes to the heart of the issue of feasibility of the insurance program, and deserves most careful consideration in view of the "potentially enormous liabilities" that may be involved. States that if these large liabilities must be reflected or provided for, significant defaults could occur. Points out that even if confined to a footnote explanation in the balance sheet, these liabilities could affect seriously both creditors and investors, depending on judgment as to the degree of possibility of plan termination before funding is completed. States that the terms "net worth" and "successor in interest" need to be defined with respect to the employer-liability provisions of S. 4.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Maintains that the low percentage of plan terminations does not argue against the need for such insurance but rather that the cost would not be unreasonable. Notes that S. 4 contains a deterrent against setting up collapsible plans by setting up a subrogation mechanism to restore funds by making company assets subject to lien by the pension fund.

Feels that the total absence of termination plan insurance ("reinsurance") in S. 1631 reflects an unwillingness to deal with the main problem which caused the movement for pension reform in the first place.

Leonard Lesser, General Counsel, Center for Community Change, Washington, D.C. (June 4).—Maintains that termination insurance is essential to provide assurance that all benefits will be paid in the event of plan termination. Disagrees with the objection that the magnitude of benefit losses is not sufficient to justify the establishment of an insurance program. Feels that a worker's pension rights have as much reason to be insured as do bank deposits and brokerage house securities investments.

Notes that S. 4 and S. 1179 would not insure liabilities created by increases in benefits which resulted from plan amendments occurring in the last 3 years, and that S. 4 would also require an employer to accept some liability for losses resulting from termination of the plan. Favors making a distinction between single- and multi-employer plans in establishing a premium rate. Opposes experience rating, however, for individual plans of either type.

G. Fiduciary Standards

Hon. George P. Shultz, Secretary of the Treasury (May 22).—Notes that under present law a prohibited transaction (one between the pension trust and the employer or a related person which results in a diversion of assets from the trust to the employer) results in loss of tax exemption. The payments to the plan by the employer are then

no longer deductible; also the employees lose their tax benefits of deferral.

Feels that this has not been a satisfactory deterrent to occurrences of prohibited transactions, while penalizing innocent employees. Proposes that such transactions be penalized by imposing sanctions directly on those involved. An initial excise tax of 5 percent of the amount of the prohibited transaction would be imposed, with an additional tax of 200 percent if the transaction is not corrected within 90 days after a notice of deficiency is mailed.

Proposes that any person who demonstrates that he will hold the assets consistently with the requirements for qualification may be a trustee for a plan benefiting an owner-employer (or individuals) or a custodian for any plan.

Hon. Paul J. Fasser, Jr., Assistant Secretary of Labor for Labor Management Relations (May 23).—Urges enactment of S. 1557, the administration proposal on fiduciary responsibility. Points out that the bill embodies the "prudent man" rule for management of fund assets and would impose personal liability on any fiduciary who breeches it standards. Indicates that enforcement would be shared by plan participants, who could sue for violation of fiduciary duty, and by the Secretary of Labor.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Notes that S. 1179 does not contain provisions relating to fiduciary standards because it is a tax bill. Supports proposals to enact stringent fiduciary responsibility statutes, as by amending the Welfare and Pension Plan Disclosure Act.

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob K. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—State that both the Williams-Javits bill and a separate administration proposal (S. 1557) would establish protection against fund abuse and conflict of interest. Point out that both bills would amend the Welfare and Pension Plans Disclosure Act and would charge the Secretary of Labor with responsibility for administering and enforcing the fiduciary standards.

Declare that the administration bill would, however, also incorporate the new fiduciary standards into the "prohibited transactions" provisions of the Internal Revenue Code and would impose tax penalties for a breach of trust. Believe that the inherent disadvantage of the administration approach is that it is the participants who bear the burden of tax sanctions. Point out that under the Williams-Javits bill, steps can be taken to prevent as well as redress breaches of trust.

Recommend that the "prohibited transactions" provision of the Internal Revenue Code be repealed insofar as it duplicates or is inconsistent with the fiduciary standards of the Williams-Javits bill.

American Telephone and Telegraph Co., William G. Burns, Assistant Treasurer and Stanley L. King, Jr., Assistant Vice President (May 21).—Back fiduciary standards and "prudent man" rules as a primary test of fiduciary activities.

Preston C. Bassett, Vice President and Actuary, and John W. Fisher, Vice President, Towers, Perin, Forster & Crosby, Inc. (May 21).—Generally favor the proposed legislation.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Suggests higher standards of fiduciary responsibility of plan trustees and administrators, such as the reasonable man rule for investing and handling funds, conflict-of-interest legislation, a limitation on investments in employer securities, prohibition of convicted felons from serving as plan fiduciaries, and authorizing the Federal Government to make reasonable investigations of pension plans or to secure injunctive relief for plan participants.

American Bankers Association, Fred E. Seibert, Chairman, Employee Trusts Committee (May 21).—Approves the proposals of S. 4, including the prudent man requirement and prohibited transaction rules. Asks that appropriate safeguards be included in the legislation so that a fiduciary is only responsible for his own actions and not those of other fiduciaries. Believes that banks and insurance companies should not be disqualified from serving as pension trustees because of malfeasance of employees.

National Small Business Association, Represented by Joseph L. Seligman, Jr., Attorney, San Francisco, and Robert C. Ware, President, Trustee Life Insurance Co. (May 21).—Caution that precise definitions of a fiduciary and of a party-in-interest transaction should be enacted that are not in conflict with the basic concepts of our legal system, and that a person who has power to exercise judgment or discretion should be defined as a trustee no matter what he is called.

Recommend remedies for violation of fiduciary responsibility that not only punish the immediate criminals but also corporate and labor leaders and their allies and agents who improperly use these trust funds for their personal benefit. Fault section 6 of S. 1631 because it does not go far enough and does not provide for compensating plan participants for their losses.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Supports a Federal standard for fiduciaries with a specific provision that fiduciary responsibilities can be allocated and that fiduciaries should be held personally responsible only for willful misconduct or gross negligence on their part. Endorses S. 1557.

Profit Sharing Council of America, John R. Lindquist, Counsel (May 22).—Endorses the concept of a Federal fiduciary standard for trustees and other fiduciaries involved with qualified profit sharing plans.

States that many qualified profit sharing plans have been created with the express purpose of investing in the securities of the employer. Urges Congress to follow the lead it asked for in excluding such profit sharing plans from any percentage limitation on investment in securities of the employer and also to exempt such plans from any diversification requirement which otherwise could apply under a Federal "prudent man" rule.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 22).—Supports the proposal for shifting the burden arising from prohibited transactions to the persons engaged in such transactions by the imposition of an excise tax, rather than the denial of a tax exemption of the trust.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Leonard Woodcock, President (May 23).—Calls for clear-cut Federal standards of fiduciary conduct in the handling of employee benefit funds.

Chamber of Commerce of the United States, Robert T. Thompson, Member, Board of Directors (May 23).—Supports the “prudent man” rule and believes administrators of pension funds should observe the highest standards of fiduciary responsibility. Also favors proposals requiring annual audit of pension funds.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Favors more stringent fiduciary responsibility—particularly limitations on dealings with parties in interest and “prudent man” rule. Expresses concern that certain proposals overly restrict plan administrator’s flexibility (e.g., required diversification by profit-sharing plans which invest in employer securities), or overly discourage service as a fiduciary (e.g., inter-trustee liability and imposition of an excise tax on a breach by a fiduciary).

American Society of Pension Actuaries, William W. Hand, President (May 23).—Generally supports S. 4 proposal.

Hon. Stanley C. DuRose, Jr., Commissioner of Insurance, State of Wisconsin (May 23).—Urges that a Federal agency be authorized to transfer to State officials the administration of fiduciary standards, especially as to small, intra-State funds. Indicates that concern as to extent of Federal enforcement is heightened by Treasury Department statement that “neither of these bills [S. 1631 and S. 1557] would require any significant expenditure of tax dollars since the Federal Government will play principally the role of watchdog over the new standards.” Does not advocate States adopting vesting, funding, portability, and reinsurance standards.

Eldon H. Nyhart, President of Nyhart (May 23).—Advocates a “prudent man” rule.

John S. Nolan, Attorney, Washington, D.C. (May 31).—Asks whether the potential consequence of all the new measures regarding enforcement of fiduciary obligations have been fully weighed. Notes that a new framework of law is being created, for there is no existing Federal common law for deriving a uniform “prudent man” standard. Indicates that some fiduciaries could be surprised by adoption by the Federal courts of a severe rule. Additionally, states that the broad definition of “fiduciary” would include many individuals who would be made liable for any losses resulting from a breach by them of any of their responsibilities without regard to the culpability of their conduct and with no limitation on their total liability. Feels that fiduciaries may avoid exercising initiative, judgment, responsibility under this system and that undue conservatism would be encouraged.

Recommends an approach similar to the Tax Reform Act of 1969, which provided excise tax penalties on foundation managers who participate in violation knowing it is a violation of a standard unless the action is not willful and is due to reasonable cause. Alternatively, suggests that liability be limited to breaches which fiduciaries know to be violations, to losses reasonably foreseeable as a consequence of their actions and to losses which might reasonably result in actual loss of benefits to participants. Also, proposes that liability not exceed 50

percent of net worth and no more than \$100,000 in the case of an individual. Urges prohibition or substantial limitation of class actions.

Carroll J. Savage, Attorney, Washington, D.C. (May 31).—Believes that in the area of fiduciary standards the administration proposals are guilty of the same duplication that it sought to avoid in the handling of eligibility, vesting, and funding proposals.

Considers it acceptable to follow the approach of S. 4 and S. 1557 of placing responsibility for enforcing the new disclosure and fiduciary responsibility rules in the Department of Labor.

Suggests that the Committee take a careful look at the idea of using the proposed excise tax provisions as the primary enforcement tool with respect to fiduciaries' standards and to cutting back the overlapping powers of enforcement of fiduciary responsibility rules proposed to be granted to the Secretary of Labor by S. 1557. Urges that if the excise tax rules are adopted, further study be devoted to the question of whether additional provisions are needed to avoid problems of concurrent enforcement.

Harold T. Schwartz, CPA (May 31).—Supports the provisions of S. 4 and S. 1557 which give the Labor Department the responsibility for overseeing new fiduciary responsibility standards.

Merton Bernstein, Professor of Law, Ohio State University (June 4).—Feels that the proposed fiduciary standards are not strong enough. Contends that the proposed fiduciary standards would permit self-dealing of up to 10 percent of the pension fund. Believes that such dealings should be completely prohibited.

Herman C. Biegel, Attorney (June 4).—States that the core of the fiduciary responsibility proposals is a Federal "prudent man" standard of conduct for those responsible for plan operation and for the funds under them. Points out that strict limitations are imposed against the avoidance of that standard by means of "exculpatory provisions" in the plans. Notes that the standard would require diversification of fund assets and prohibit many parties—in-interest transactions, including dealings between an employer and its pension fund. Adds that exceptions are made for a level of investment in an employer's stock, and plans that specifically provide for such investment are not limited to any particular level.

Emphasizes adoption of such standards will do much to correct abuses by some plan administrators, and will increase the confidence of millions of employees that their plans are being operated honestly and competently.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Endorses the fiduciary standards provisions of S. 4 (which is similar to S. 1557).

Suggests that once a person provides any service to the plan, the fiduciary should be on his guard against allowing that person to transact any business with the plan other than providing that service.

Leonard Lesser, General Counsel, Center for Community Change, Washington, D.C. (June 4).—Urges adequate fiduciary responsibility standards as a necessary reform of the private pension system.

H. Reporting and Disclosure

Hon. Paul J. Fasser, Jr., Assistant Secretary of Labor for Labor Management Relations (May 23).—Advocates adoption of S. 1557 because the bill would provide participants and beneficiaries of pen-

sion plans with more significant information about their rights and benefits, which would all be spelled out in layman's language.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Notes that S. 1179 does not contain provisions relating to reporting and disclosure laws because the bill is limited to Internal Revenue Code amendments. Supports amendment of the Welfare and Pension Disclosure Act to enact stringent disclosure laws.

American Telephone and Telegraph Co., William G. Burns, Assistant Treasurer and Stanley L. King, Jr., Assistant Vice President (May 21).—Favor meaningful disclosure to employee-participants regarding pension plans, but consider much disclosure as unnecessarily burdensome.

Preston C. Bassett, Vice President and Actuary, and John W. Fisher, Vice President, Towers, Perin, Forster & Crosby, Inc. (May 21).—Generally favor the proposed legislation.

American Bankers Association, Fred E. Seibert, Chairman, Employee Trusts Committee (May 21).—Supports proposals which would require more detailed and meaningful disclosure of financial administrative activities of plans to participants and the Government.

National Small Business Association, Represented by Joseph L. Seligman, Jr., Attorney, San Francisco, and Robert C. Ware, President, Trustee Life Insurance Co. (May 21).—Object to the existing Federal Disclosure Law and proposals to amend it because they erroneously suppose that if a little bit of disclosure is good, more must be better; because they fail to define correctly a fiduciary; and because they do not provide appropriate sanctions for theft and other outright crimes on one hand and the more subtle forms of self-dealing on the other.

Suggest that the law should require less, but more meaningful, disclosure. Propose that all qualified plans should annually disclose the rights of each participant, in dollar amounts, if possible, as of the end of the preceding year; require annual audits by independent certified public accountants; and disclosure of party-in-interest transactions, justifications of payments of salaries, fees and commissions in excess of amounts prescribed by law or common practice; and only the barest summary of all other financial and administrative transactions.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Suggests an exemption for plans with less than 100 participants from reporting requirements and the resulting burdensome administrative obligations to encourage small employers who do not currently have any qualified pension or profit-making plan to establish one.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Believes although much pension information is presently disclosed, the disclosure of some additional information may be useful, provided it is meaningful and not marginal in nature.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 22).—Supports the provision in certain bills requiring that independent audits be conducted by qualified independent public accountants in accordance with generally accepted auditing standards.

Believes that any proposed legislation dealing with employee benefit funds should include a definition of those persons qualified to conduct audit of such funds. Endorses the definition of a qualified independent auditor which was adopted by the General Accounting Office in September 1970.

Claims the proposed requirements in certain bills relating to disclosure and reporting requirements are too cumbersome and may adversely affect regulatory supervision.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Leonard Woodcock, President (May 23).—Stresses the need for measures to assure more intelligible disclosure of descriptive and financial information to covered workers and other interested persons.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Favors legislation requiring increased disclosure to employees of plan provisions and of annual status of fund—particularly clear and informative booklets to employees, annual audits by CPAs, actuarial certification, and adequate termination-of-service information to employees. Cautions that certain proposals appear to impose unnecessary reporting requirements (e.g., inclusion in the plan's annual report of a schedule of each receipt and disbursement).

American Society of Pensions Actuaries, William W. Hand, President (May 23).—Believes the detailed requirements of S. 4 and H.R. 2 are unnecessary if pension plans are subject to IRS audit. Opposes such proposals because compliance will involve substantial expense for the plans.

Eldon H. Nyhart, President of Nyhart (May 23).—Approves proposals for improved disclosure to employees and the Labor Department.

Marine Engineers Beneficial Association, Leon Shapiro, Counsel (May 23).—Believes that proposed reporting and disclosure requirements are unnecessarily burdensome, especially in the case of multi-employer plans.

Paul S. Berger, Attorney, Washington, D.C. (May 23).—Supports the provisions of S. 4 and S. 1557 which give the Department of Labor responsibility of overseeing new reporting and disclosure laws.

Herman C. Biegel, Attorney (June 4).—States that under the proposals for additional disclosure, plan administrators would be required to furnish substantially more information to the government and to participants about the substantive provisions of their plans, and about the financial operation and level of funding under these plans. Believes that more disclosure is desirable—in order to increase confidence in the operation of the private pension system, and to avoid the disappointment and hardship that can result when participants do not understand the limits on the rights provided in their plans. Asserts that Congress must avoid any tendency to require excessive detail and paperwork—particularly in the area of financial data, which would burden plan administrators severely, and would not contribute useful information.

Leonard Lesser, General Counsel, Center for Community Change, Washington, D.C. (June 4).—Urges adequate disclosure laws as a necessary reform of the private pension system.

I. Administering Agency and Enforcement

Hon. George P. Shultz, Secretary of the Treasury (May 22).—Points out that the bulk of Federal pension regulation has been by the Internal Revenue Service through its administration of the special tax provisions applicable to pension plans. Considers the IRS the logical agency to handle the main administrative work because of their large staff of qualified pension experts in the various areas involved—eligibility requirements, vesting, funding, plan terminations.

Indicates that the Labor Department has the expertise in the areas of reporting, disclosure, and bonding (areas covered by S. 1557, "Employee Benefits Protection Act").

Hon. Paul J. Fasser, Jr., Assistant Secretary of Labor for Labor Management Relations (May 23).—Agrees strongly with the Secretary of the Treasury that the provisions with respect to funding and vesting should be enforced by the Internal Revenue Service because the Service already has the needed expertise in this area. Believes that the Labor Department should enforce disclosure and fiduciary responsibility provisions.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Favors retaining the Internal Revenue Service as the primary Federal regulatory agency for private pension plans because of the accumulated experience and the interwoven tax benefit provisions for pension plans. S. 1179 would set up an office of Pension Plan Administration in the IRS.

Hon. Vance Hartke, U.S. Senator, Indiana (May 23).—Notes that S. 1858 would place pension vesting and insurance administration under the Labor Department and funding under the Internal Revenue Service.

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob K. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—Assert that there are three major fallacies that have arisen in connection with the argument that the Williams-Javits bill should be handled as part of the tax qualification procedures of the Internal Revenue Code.

State that the first fallacy is that private pension plans are exclusively a creature of tax incentives; the second fallacy is that the Internal Revenue Service regulates private pension plan design; and the third fallacy is that the need for supporting IRS jurisdiction over this legislation is that it would result in more effective administration.

Claim that expert testimony before numerous congressional committees has shown that the growth and development of private pension plans has not resulted exclusively from the provisions for favorable tax treatment. Feel that employer-employee motivation for retirement plans, in most cases, is for reasons completely apart from tax considerations. Concede while tax incentives, no doubt, help in getting private pension plans established, incentives are an element of facilitation, not the element of decision. Point out that over 50 percent of all private pension plans are collectively bargained—proving that tax considerations are not the prime condition for private growth.

Believe it would be incorrect to assume that incorporation of the Williams-Javits pension reform standards into the tax code presents

the most effective administrative and enforcement mechanism available. Assert that the imposition of tax penalties may be either too drastic or too weak a remedy, depending upon the circumstances. State that the exclusive use of the tax code mechanism may permit additional State legislation in the field, which would lead to duplicating, or even conflicting, pension regulation at the Federal and State levels. Maintain that it is not the greater effectiveness of the IRS, but rather anxiety over administration by the Labor Department of new pension laws which creates the impetus for putting IRS in charge of pension reform legislation.

Question whether a law for safeguarding the interests of workers in private pension plans should be given to an agency whose primary interest is tax collection and whose primary means of enforcement is the removal of tax privileges. Believe even if more adequate enforcement powers were given to IRS for purposes of protecting workers' pension rights, there is still a serious question as to whether the primary interest of IRS in tax collection would not displace effective protection for beneficiaries or result in undue disruption of IRS's traditional role. Assert that the agency selected to administer the private pension program should be unencumbered with other potentially conflicting missions, and that it be given the tools to do an effective job.

American Telephone and Telegraph Co., William G. Burns, Assistant Treasurer and Stanley L. King, Jr., Assistant Vice President (May 21).—Advocate regulation of pension plans by the Federal Government. Favor pension plan administration by the Internal Revenue Service in view of its 30 years of experience.

United Steelworkers of America, Bernard Greenberg, Assistant Director, Insurance, Pensions and Unemployment Benefits Department (May 21).—Prefers compulsion and Labor Department administration of private pension plans to voluntariness and Internal Revenue Service administration. Notes that labor law enforcement is a specialized field unrelated to commercial transactions.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Suggests that Federal regulation should be consolidated in a minimum number of departments whose reports may be coordinated to serve more than one purpose. Mentions the possibility of a new Federal agency charged with all aspects of pension regulation.

American Bankers Association, Fred E. Seibert, Chairman, Employee Trusts Committee (May 21).—Urges that the Internal Revenue Service be given jurisdiction to enforce the new pension legislation. Believes that Treasury already has the machinery necessary to do the job, and would be in a better position to administer the new law impartially.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Submits that most of the new proposed requirements in the pension field, particularly in the area of eligibility, vesting and funding should be administered by the Treasury Department. Would not object, however, to the continued administration of fiduciary and disclosure requirements by the Labor Department. Suggests that if provisions on portability and/or plan termination insurance are adopted,

they should be administered by a new governmental agency, similar to the F.D.I.C. in the savings and loan area.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Bert Seidman, Director, Department of Social Security (May 22).—Urges that the Department of Labor administer the pension plan requirements, as in S. 4. Considers pension plans to be an integral part of the collective bargaining process. Suggests that placing the administration in an agency whose primary interest is in collection of taxes may place the agency in a conflict-of-interest situation in relation to policing any funding standard because the more rapidly a pension plan funds, the less it pays in taxes. Maintains that regulatory supervision under the IRS hinges on an employer's self interest in obtaining tax deductions. Feels that this is a very weak enforcement mechanism from the viewpoint of the beneficiaries. Considers possible IRS solutions to noncompliance to not really protect the interests of the beneficiaries because if the plan's tax exemption is removed or the plan terminated, this does not help the beneficiaries.

Asserts that better administration would occur if a single agency were to be responsible for both enforcement and reporting.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Believes that regulatory functions in the pension area performed by the various departments and agencies of government should continue under their respective jurisdictions and should not be centralized in one agency, thus preserving the technical expertise required.

Profit Sharing Council of America, John R. Lindquist, Counsel (May 22).—Recommends that the Treasury Department continue to have responsibility for administration of any new pension regulatory legislation.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Leonard Woodcock, President (May 23).—Maintains that administration of pension reform legislation by Treasury Department, "which is oriented to prevention of tax abuses, does not offer the most promising route for protecting workers' pension rights." Prefers basic responsibility for protecting such rights in the Department of Labor "whose historic mission and orientation is worker protection."

Chamber of Commerce of the United States, Robert T. Thompson, Member, Board of Directors (May 23).—Strongly advocates that new legislation in the pension area (except for disclosure requirements) should be administered by the Internal Revenue Service. Points out that the IRS has been charged with this responsibility in the past, that the Service has developed expertise in this area, and that the tax laws are largely self-enforcing because taxpayers do not want to risk the loss of their tax deductions.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Urges that regulation of any new vesting and funding requirements be by the Internal Revenue Service, and that increased fiduciary and reporting requirements be administered by the Labor Department (unless, in the case of fiduciary requirements, an excise tax is to be imposed on violations).

American Society of Pension Actuaries, William W. Hand, President (May 23).—Strongly recommends that Treasury have the re-

sponsibility to administer vesting and funding requirements because Treasury already has the expertise necessary to do the job.

Marine Engineers Beneficial Association, Leon Shapiro, Counsel (May 23).—Indicates concern that Labor Department facilitation of suits by individuals will invite increased litigation, especially by attorneys taking advantage of disappointed claimants to begin frivolous suits in the hope of obtaining awards of attorney fees.

Daniel Halperin, Professor of Law, University of Pennsylvania (May 31).—Believes that the penalties proposed in S. 1631 are much better than the so-called "prohibited transactions." Asserts that vesting standards are best imposed as conditions for qualification, and doubts that the S. 4 requirements will be very meaningful, at least in part due to the minimum 25 employee requirement for coverage under the bill. Feels that the suggested sanction for failure to fund suggested by S. 1631 (full vesting of accrued benefits) would not seem appropriate in all cases and the requirement that the employer assume liability may be better.

Converse Murdock, President, Murdock, Longobardi, Schwartz, and Walsh (May 31).—Declares that the way to make pension promises and retirement benefits meaningful is to set standards for pension plans and to provide sanctions and remedies to protect the beneficiaries of the plans. Believes this is the particular function of labor laws. States that the sanctions connected with tax laws have nothing to do with getting promised benefits into the hands of retired workers. Believes a worker is better served by a law that gives the Secretary of Labor the power to seek an immediate injunction against misuse of funds than by a punitive tax imposed on a plan administrator.

Maintains that the proposed excise taxes in S. 1631 will give no direct benefit to a worker who has been deprived of his pension. Feels that, at best, these taxes may discourage some improper conduct but to the extent the threat is ineffective the worker gains nothing. Believes that a business manager is not going to refrain from "borrowing" from a pension fund to prevent business collapse merely because of the remote possibility that in the future he may have to pay an excise tax.

Does not believe reform through the tax laws will be meaningful and therefore is resigned to a dual regulation as a price for effective pension plan reform. Believes much can be accomplished to avoid expense of dual reporting and regulation. Notes that the Internal Revenue Service has decentralized administration, and maintains that each of the 58 Internal Revenue Service District Offices is "a law unto itself" regarding pension rules. Fear decentralization of new pension reform rules by the Internal Revenue Service would result in chaos.

John S. Nolan, Attorney, Washington, D.C. (May 31).—Notes that development of the existing private pension system over the past 30 years has been almost solely under the supervision of the Internal Revenue Service. States that the Service has been an effective overseer of a system that now covers some 30 million persons. Indicates that the Service has developed and enforced vesting and funding rules and hundreds of other detailed rules and requirements built on basic statutory standards. Believes that the rules have generally been accepted by employers, employees and the courts as fair and reasonable. Comments that the Service has intensively reviewed the organization or adoption of substantially every qualified plan in the U.S. during

the past 30 years, and has monitored the subsequent operation of a high percentage of these plans. Maintains that the Service has developed rules to protect the rights and benefits of lower paid employees and prevent diversion of the fund to any purpose other than the exclusive benefit of employees. Concludes that the practical necessity of an employer obtaining a "determination letter" from the Service has given it the opportunity to effectively enforce its rules.

Comments that the Service has highly skilled personnel reviewing private pension plans and has collected extensive files and data and a special "Employees Plan Master File System" with invaluable information.

Believes that the problems which exist in the private pension system are attributable to the absence of sufficiently comprehensive statutory requirements, not to the inadequate supervision by the Service. States that the Service has guided the development and operation of employee benefit plans to an extraordinary degree, and believes it is highly inadvisable to commit their administration to any agency other than the Service.

Maintains that the Service would necessarily continue to be concerned with coverage, vesting, and funding to insure there is no discrimination in favor of higher paid employees when the plan is for the exclusive benefit of employees. Feels that conflict would develop between the Labor Department and the Service if there was dual administration, that there would be two separate investigative staffs, and employers would be subject to two sets of audits.

Regarding fiduciary standards and reporting and disclosure, recommends continuation of existing dual administration with closer integration of requirements and sanctions. Indicates that fiduciary standard rules should be integrated into a single set of requirements with lessons learned from the restrictions of the Tax Reform Act of 1969 with enforcement by penalty excise taxes. Urges that enforcement by class actions be abandoned as highly inefficient and an unnecessary burden. States that the Service and Labor Department could be required to develop a single set of reports serving both their purposes and to integrate their enforcement activities regarding disclosure and fiduciary standards.

Notes that private pension plans are adopted by employers and benefits are provided under existing plans in large measure because of the favorable tax advantages and thus the Service must monitor the plans.

Recommends an approach similar to the Tax Reform Act of 1969, which provided excise tax penalties on foundation managers who participate in violation knowing it is a violation of a standard unless the action is not willful and is due to reasonable cause. Alternatively, suggests that liability be limited to breaches which fiduciaries know to be violations, to losses reasonably foreseeable as a consequence of their actions and to losses which might reasonably result in actual loss of benefits to participants. Also, proposes that liability not exceed 50 percent of net worth and no more than \$100,000 in the case of an individual. Urges prohibition or substantial limitation of class actions.

Carrol J. Savage, Attorney, Washington, D.C. (May 31).—Submits that the approach of S. 4 to administration and enforcement of proposed rules on eligibility, vesting, and funding may be expected to

be less effective than the approach taken by S. 1179 and S. 1631, which continue the present system, reinforced by more specific requirements in each of these areas.

Considers the Internal Revenue Service to be better equipped to administer and enforce new legislation in the private pension area. Observes that administration and enforcement of new legislation by the Department of Labor would require the creation of a completely new and extensive bureaucracy. Believes this to be not only unnecessary but unwise. Declares that the approach of S. 4 in administration and enforcement would lead to a need for dual staff, dual reporting requirements, and dual audits which could not be fully avoided by inter-departmental coordination due to the differences in statutory requirements. States that such a situation would not only be wasteful and inefficient, but frustrating and costly for those being regulated. Recommends that if the approach of S. 4 should be adopted, the creation of enforcement authority in the Department of Labor should be accompanied by a repeal of the nondiscrimination provision of the Internal Revenue Code, on which are based the rules concerning eligibility, vesting, and funding.

Believes that consequences of failure to comply with tax rules are so adverse that the tax rules to a large extent are self-enforcing. Maintains that enforcement only through court orders without automatic sanctions would reduce the effectiveness.

Suggests that the Committee take a careful look at the idea of using the proposed excise tax provisions as the primary enforcement tool with respect to fiduciaries' standards cutting back the overlapping powers of enforcement of fiduciary responsibility rules proposed to be granted to the Secretary of Labor by S. 1557. Urges that if the excise tax rules are adopted, further study be devoted to the question of whether additional provisions are needed to avoid problems of concurrent enforcement.

Harold T. Schwartz, CPA (May 31).—States that the Internal Revenue Service has more than 400 pension experts in its field offices and more than 50 pension specialists and actuaries in its National Office in Washington.

Believes it logical and preferable that any additional vesting, funding, and other similar provisions that may be required of private pension plans be enforced and administered through the Treasury Department.

Paul S. Berger, Attorney, Washington, D.C. (May 31).—Believes none of the three bills before the Committee faces up to the considerable challenge of assuring effective administration. Feels that S. 1631 and S. 1179 are correct to prescribe a system of tax incentives to encourage compliance with new Federal standards. Disputes the belief that tax remedies should be the only or principal means of enforcing these new standards. Contends that the Internal Revenue Service should not be the primary administrative home for the legislation.

Recommends that Congress establish one set of minimum Federal standards that covered pension plans must meet, which standards must determine both whether a plan is entitled to approval by the Labor Department, and whether it merits favorable tax treatment by IRS. Feels that the legislation should provide for both the traditional

tax sanctions provided in S. 1179 and S. 1631, and regulatory sanctions and remedies similar to those established by S. 4.

Believes primarily that administrative responsibility should be located outside the Internal Revenue Service, in the Department of Labor, as proposed by S. 4.

Suggests consideration be given to the transfer of IRS pension experts to the Department of Labor. Recommends that coordination should be assured and duplication minimized by instituting a certification procedure whereby Labor would certify to IRS that particular plans were in compliance with Federal standards and therefore entitled to favorable tax treatment.

Feels that the IRS can not regulate in an area of social goals since its task is to maximize the revenue of the Government.

States it is apparent that the traditional tax sanctions of existing law, and of S. 1179 and S. 1631, are not sufficient. Contends that the limited array of remedies available to the Service under the funding requirement and enforcement provisions of S. 1179 constitutes a blunt and often useless instrument. Finds that wherever the employer would prefer to ignore the needs of beneficiaries and accept the loss of favored tax status, the administrator will be without means to promote the basic aim of the statute to ensure relief to employees threatened with the loss of their pensions. Claims that the proper implementation of these provisions would necessarily involve the administering agency deeply in the routine operations of unions, companies, and plans.

Suggests that one partial response to this problem would be to empower the Service to assess an array of penalty taxes covering specified categories of the abuses for which disqualification would not be an appropriate response. Notes that such taxes could be authorized when an employer or plan administrator failed to comply with a lawful order to make required contributions or benefit payments, and they could be increased if the delinquency persisted. Points out that these taxes, of course, would not be assessed against the plan itself, but rather against the parties responsible for the violation. Cites S. 1631 as adding to the Code a penalty tax to be imposed on interested persons engaging in self-dealing transactions with pension funds. Believes that the exclusive reliance in the present version of S. 4 on judicial remedies sought by the Secretary of Labor or by private civil claimants offers the advantage of flexibility in devising remedies, but also promises delay and disinclination by recalcitrant offenders.

Supports the provisions of S. 4 and S. 1557 which would give to the Department of Labor the responsibility for overseeing new fiduciary, reporting, and disclosure standards.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Feels that there should be a separation of the agency that enforces the specified pension plan "requirements" as distinguished from the agency that determines tax qualifications. Points out that under S. 4, the Government is given the power, not to tax and penalize the fund (and thereby deprive the participants of retirement reserves), but rather to bring action in a Federal district court to compel compliance with the law—e.g., adequate funding and vesting, proper conduct of fund, and payment of benefits.

Believes that this is essentially a function of preserving the rights of workers—a traditional function of the Labor Department. Con-

siders the tax penalty under the Internal Revenue Code to be least effective when needed most—that is, when the company is losing money and doesn't need the tax deduction and when it may defer payment of proper pension costs.

Indicates that his first choice for an administering agency would be an independent pension commission that could consolidate pension regulation and utilize the expertise of personnel from the IRS, Labor Department, the SEC, and the others. However, if forced to choose between the Labor Department and the Treasury Department, would select the Labor Department to enforce the substance of the pension plan requirements, other than the tax aspects.

Agrees with the enforcement provisions of S. 4 to permit the Secretary of Labor to bring court action to enforce compliance, rather than rely on the tax code, as in S. 1631 and S. 1179.

Leonard Lesser, General Counsel, Center for Community Change, Washington, D.C. (June 4).—Favors Labor Department administration of the substantive requirements such as vesting, funding and termination insurance. If these conditions are prerequisites for tax qualification also, then the Labor Department could certify whether the plan qualifies to the Treasury Department. Feels that the heart of the problem is whether protection will be afforded to all workers or only those workers whose employers are concerned with tax deductions. Claims that there can well be cases where protection will be lost because the employer for tax reasons has no incentives to make either contributions to the plans or premium payments for pension termination insurance.

Herman C. Biegel, Attorney (June 4).—Notes that the Internal Revenue Service has developed a substantial capacity and expertise in analyzing complicated actuarial and other issues that arise with respect to vesting and funding plans. Believes that this expertise would constitute an invaluable asset in the administration of any new rules in those two areas. Points out that unless the tax rules are met, plans cannot qualify for the special benefit set forth in sections 401 through 404 of the Code, or for the tax exemption of plan funding mechanisms, provided by section 501(a) of the Code. Believes that this incentive, and the adverse tax consequences of losing qualification, form an effective system of self-regulation without the need for a harsh and extensive enforcement bureaucracy, or for new mechanisms for insurance and portability.

J. Contribution Limitations

Hon. George P. Shultz, Secretary of the Treasury (May 22).—Indicates that S. 1631 would repeal the present 5-percent limitation for employer plans, and allow deductions necessary to meet minimum funding requirements. For money purchase plans, contributions in excess of 20 percent of annual compensation would be included in gross income by the employee.

The limits on self-employed plans would be increased to the lesser of 15 percent of earned income or \$7,500. Estimates that this proposal on self-employed limits would cost \$70 million in the first year and \$140 million in later years.

Proposes that the deemed-contributions rule (deductions allowed for the taxable year if made prior to filing of the returns) for several taxpayers be extended to cash basis taxpayers.

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob E. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—Favor increasing tax deductions for contributions to plans covering the self-employed and their employees. Believe, however, the deduction for employed and self-employed workers, should be the same.

American Telephone and Telegraph Co., William G. Burns, Assistant Treasurer and Stanley L. King, Jr., Assistant Vice President (May 12).—Suggest amending the Internal Revenue Code to allow employers' tax deductions for larger contributions to pension plans. Claim that this would provide an incentive for greater funding when financial conditions are favorable.

American Bar Association, Sheldon S. Cohen, Chairman, Special Committee on Retirement Benefits Legislation (May 21).—Believes that all distinctions under the tax law between corporate plans and plans for the self-employed should be eliminated. Requests, in the alternative, adoption of the administration proposal to raise the limit on deductible contributions for the self-employed to 15 percent of earnings or \$7,500. Also, advocates the elimination of special social security integration rules for owner-employees.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Suggests liberalization in the Internal Revenue Code for plans for self-employed individuals and shareholder-employees of Subchapter S Corporations, such as an increase in the limitations on allowable contributions and tax deductions, removal of various restrictions, and replacement of mandatory full vesting for H.R. 10 plans by a more flexible schedule of vesting.

Endorses the concept of more nearly equalizing the treatment of retirement savings among different segments of the work force, but believes this should be accomplished by expanding the tax incentives for groups (such as the self-employed and employees not presently receiving adequate coverage) which are now limited under the tax laws, and not by imposing limitations on the contributions or benefits that may be provided under tax-qualified plans established by corporations.

American Bankers Association, Fred E. Seibert, Chairman, Employee Trusts Committee (May 21).—Recommends that employers be permitted to take deductions in excess of 10 percent of past service liabilities, so that contributions in good years can make up for contributions which were not made in lean years.

National Small Business Association, Represented by Joseph L. Seligman, Jr., Attorney, San Francisco, and Robert C. Ware, President, Trustee Life Insurance Co. (May 21).—Support the provisions of S. 1631 increasing the limit for deductible contributions for self-employed individuals from the present \$2,500, or 10 percent of earned income, to \$7,500, or 15 percent of income, whichever is less. Note that the maximum deduction under current law—\$2,500—has declined in purchasing power to about \$1,800, and accordingly urges that future self-employed retirement programs have flexibility in funding to allow for inflationary factors.

Assert that no weakening of corporate benefit plans is sought. Urge that equality be achieved by giving the truly small—the self-employed and his employees—increased tax incentives.

Request also that the Treasury Department encourage and allow flexibility in investment of self-employed retirement funds so that the money could be invested in the employer's own business, or invested in small business in some other fashion, rather than invested through banks or insurance companies acting as trustees in the securities of large corporations that may be competitors of small businesses.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Endorses an increase to \$7,500 per year in deductible contributions for self-employed persons and shareholder-employees of Subchapter S corporations.

Engineers Joint Committee on Pensions, Richard Backe, Chairman (May 21).—Believes that the maximum deductible contribution limit should not be reduced because of employer contributions to a qualified pension plan, unless the employee's rights in that plan are vested.

Supports the administration proposal to increase the contribution limits to \$7,500.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Bert Seidman, Director, Department of Social Security (May 22).—Opposes the expansion of the deduction under self-employed plans. Asserts that this would only further benefit those with higher incomes.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 22).—Favors legislation which would eliminate differences and provide equal treatment in connection with employee benefit plans for both self-employed individuals and employees of corporations. Believes restrictions or limitations of qualified retirement plans covering self-employed individuals should be no greater than the nondiscrimination and other qualification provisions of the Internal Revenue Code as they relate to employee benefit plans generally.

Opposes the special limitations on contributions to plans covering self-employed individuals. Believes there should be no distinction between plans covering self-employed individuals and those covering corporate employees. Strongly supports the proposed increase in deductible contribution limits under H.R. 10 plans as an attempt to achieve greater equity than currently exists.

Supports the retention of existing rules regarding the time for deductibility of pension plan contributions by cash-basis taxpayers.

Chamber of Commerce of the United States, Robert T. Thompson, Member, Board of Directors (May 23).—Generally supports proposal to raise contribution limits for the self-employed in S. 1631.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Opposes dollar limitations on contributions—even the S. 1631 proposed increase from \$2,500 to \$7,500 for H.R. 10 plans—unless maximum level “is consistent with the retirement needs at least of middle-management level employees.”

Supports deductibility by all employees (cash or accrual basis) of timely post-year-end plan contributions.

American Society of Pension Actuaries, William W. Hand, President (May 23).—Generally supports the administration's proposal to raise the contributions limits for self-employed plans.

Daniel Halperin, Professor of Law, University of Pennsylvania (May 31).—Does not propose that the amount of retirement benefits payable be limited. Maintains that the issue is whether there should be a limit on the amount of benefits the Treasury should help finance through special tax benefits. Notes that \$50,000 is the maximum amount of earnings which could be taken into account under the administration's proposal relating to self-employed persons and says that limiting a pension payable from a qualified plan to 70 or 80 percent of this amount would seem reasonable. Considers it not to be unreasonable to impose limitations only on those persons who are substantial owners of a business for they are in essence saving their own money which would otherwise come to them as owners. Believes that closely-held businesses are the ones most likely to have pension plans that benefits only a few highly paid persons.

John S. Nolan, Attorney, Washington, D.C. (May 31).—Believes that tax deferral is a substantial tax benefit. Indicates that the benefits to an individual should be subject to some overall limit. Notes that retirement annuities on behalf of corporate executives exceeding \$100,000 per year are not uncommon. Recommends that limitations on contributions or benefits be set so that the maximum benefit level would be at \$50,000–\$60,000 for high bracket individuals, subject to automatic upward adjustment due to cost of living increase.

Describes the limitation of contributions under H.R. 10 plans and notes the organization of "professional corporations" to circumvent the limitations on H.R. contributions.

Believes that there should be complete equality of treatment in the application of the qualified plan provisions with respect to all earned income.

Notes the essential public policy underlying the qualified plan provisions is to encourage personal saving for retirement. Indicates that employer sponsorship assures reasonably wide coverage, but it is not necessary to permit tax deferral benefits that are unduly large to achieve these objectives. Maintains the qualified plan provisions are not designed to sponsor wealth accumulation beyond maintaining the individual's standard of living after he ceases work.

Urges that the limitations for self-employed persons and shareholder employees of subchapter S corporations be increased and recommends that a uniform limitation be applied to all qualified plans, including those of all corporations. States that the limitation should be in terms of benefits under defined benefit plans, and in terms of contributions in the case of money purchase pension or profit sharing plans. Gives examples of possible dollar limitations. Believes that such limitations would not prevent adoption of nondiscriminatory qualified plans by employers. Suggests combining these limitations with a restriction preventing withdrawal or alienation of interests attributable to employer contributions until age 59½ and requiring withdrawals to begin by age 70½.

Carroll J. Savage, Attorney, Washington, D.C. (May 31).—Believes that as a general proposition, there should be a presumption against limits, and that limits should be applied only when compelling reasons exist.

Concludes that Congress might require that somewhat arbitrary limits on tax qualified retirement benefits should be imposed in situations where there is reason to presume that stated compensation or self-employment income is not determined at arm's-length subject to the constraints of outside ownership. Suggests such limits might be imposed where, *e.g.*, more than one-half of the benefits accruing under a plan are for the benefit of persons owning directly or indirectly more than a specified portion (*e.g.*, 5 percent) of the business, as sole proprietor, partner, stockholder, or otherwise.

Believes the provisions of S. 1631 raising the limits of present law applicable to unincorporated businesses and subchapter S corporations to the lesser of \$7,500 or 15 percent of earned income are a vast improvement and approach the reasonable area, although an increase in the dollar limit to \$10,000 might be more realistic.

Paul S. Berger, Attorney, Washington, D.C. (May 31).—States that in order to establish equality of tax treatment for variously employed taxpayers regarding the tax status of deferred income, Congress should revise downward the limits on contributions and deductions in areas where they are presently high, rather than revising upward the limits in areas where they are low.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Favors an expansion of Keogh pension plans. Suggests that the limit for both self-employed persons and employees not covered by the plans be the same, say, \$7,500.

K. Tax Incentives for Personal Retirement Savings Plans

Hon. George P. Shultz, Secretary of the Treasury (May 22).—Proposes a system to allow a deduction for personal retirement savings plans. The deduction would be the lesser of (1) 20 percent of earned income or (2) \$1,500. These limits would be scaled down dollar for dollar to reflect employer contributions to a qualified retirement plan, or any FICA or Railroad Retirement tax savings of the employee. Feels that present law discriminates against the half of workers not covered by employer plans which provide tax deferral benefits.

Prefers that a deduction be used rather than providing a credit in order to place the individual plan in approximately the same position as the employee under an employer-financed plan.

Suggests that the provision be effective for 1973, but limited to one-half the regular deduction to be allowed in later years. Estimates that the revenue loss would be \$375 million for the first year and \$800 million for the second year.

Hon. Lloyd Bentsen, U.S. Senator, Texas (May 22).—Suggests allowance of a tax credit for employee contributions to an employee retirement plan or to a personal retirement savings account. The credit under S. 1179 would be the lesser of (1) 25 percent of the contributions or (2) \$375. The maximum allowable credit would be reduced by 25 percent of any employer contributions to a qualified retirement plan, and would be further reduced by 25 percent of any FICA tax savings if the individual had earned income not subject to this tax.

Believes that a tax credit is better than a tax deduction because a credit gives more relative benefit to low-income persons.

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob

K. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—Support the administration proposal for permitting individual employees to deduct from taxable income an amount equal to 20 percent of earned income or \$1,500, whichever is less, for annual contributions to individual retirement funds or company funds.

Suggest that the Bentsen proposal for a tax credit for the employee's contributions to an individual retirement plan or a company plan is a good one and should be supported because it would more adequately extend the benefits of the administration's proposal to lower paid employees.

Assert that the major obstacle to widespread employee utilization of these advantages is the fact that they rely on specific tax deductions and credits. Believe it unlikely that many employees will take advantage of these proposed benefits unless some method is found to simplify the tax reporting responsibilities to the Internal Revenue Service.

Recommend that special consideration be given to establishing a tax credit for small businessmen which would encourage them to establish or participate in pooled pension fund plans. Note the overwhelming majority of employers without private pension plans are in the small business sector.

American Telephone and Telegraph Co., William G. Burns, Assistant Treasurer and Stanley L. King, Jr., Assistant Vice President (May 21).—Endorse a tax deduction for retirement savings.

Preston C. Bassett, Vice President and Actuary, and John W. Fisher, Vice President, Towers, Perin, Forster & Crosby, Inc. (May 21).—Advocate tax deduction for personal retirement savings. Generally support the administration proposal but believe that, for the sake of simplicity, the maximum deductible amount should not be reduced on account of employer contributions to a qualified pension plan.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Endorses tax deductions or credits for amounts set aside by individuals in their own retirement accounts in situations where they are either not covered by an employer-sponsored plan or desire to supplement that coverage.

American Bankers Association, Fred F. Seibert, Chairman, Employee Trusts Committee (May 21).—Generally, supports the administration's proposal for a tax deduction for personal retirement savings.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Urges extension of the tax-favored private pension system to individuals who are neither self-employed nor in the employ of employers who currently provide such coverage. Urges also an increase in the proposed \$1,500 annual limit for deductions for contributions to individual retirement plans to \$5,000.

Engineers Joint Committee on Pensions, Richard Backe, Chairman (May 21).—Favors the establishment of personal retirement savings plans, but urges that the limits on deductible contributions be set high enough to allow meaningful tax-sheltered savings by professionals, such as engineers.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Bert Seidman, Director, Department of Social

Security (May 22).—Contends that the tax deduction proposal in S. 1631 would add still another tax break which would primarily benefit the wealthy, the banks, the insurance companies and mutual funds. Maintains that few low-income persons could benefit because they do not have the savings available to invest in a retirement account. Points out that the deduction gives more relative tax benefit to those with higher incomes. Objects also to the tax credit proposal in S. 1179.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Supports the Administration's tax deduction proposal for retirement savings as an effective means of encouraging individual savings for retirement and providing additional capital for the economy.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 22).—Favors the administration proposal for providing for a deduction for individual retirement savings, but believes it should be reviewed at an early date with a view to raising the deduction limitation. Recommends that a simple method of annual reporting be adopted.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Leonard Woodcock, President (May 23).—Objects to proposals to permit deductions or credits for personal service retirement plans because of fear that such an approach would create new tax loopholes for persons at high income levels without measurably influencing extension of private plan coverage to low-income workers. Regards deductions as more objectionable than credits.

Chamber of Commerce of the United States, Robert T. Thompson, Member, Board of Directors (May 23).—Generally, supports the Administration's proposal for a tax deduction for personal retirement savings.

National Retail Merchants Association, Willard Bland, Chairman, Pension and Social Security Committee (May 23).—Strongly supports legislation providing tax deductibility of voluntary employee contributions to either employer established plans or individual retirement plans, but questions several of the restrictions and limitations accompanying the current legislative proposals, e.g., dollar limitations and "offset" for employer contributions.

American Society of Pension Actuaries, William W. Hand, President (May 23).—Generally supports the Administration proposal.

Eldon H. Nyhart, President of Nyhart (May 23).—Feels a tax credit equal to 25 percent of contributions would be desirable, subject to a limitation that contributions could not exceed 16 percent of compensation because this is generally the maximum total mandatory and voluntary employee contributions allowed presently under qualified pension plans.

Daniel Halperin, Professor of Law, University of Pennsylvania (May 31).—Comments on the administration's individual retirement account proposal and concludes that it would result, to some degree, in no additional retirement coverage but produce considerable revenue loss and would merely involve the transfer of existing savings from one account to another. Indicates that this proposal loses sight of the theory behind qualified plans, to encourage savings for retirement in a way that provides security for the low paid who otherwise would not be able to achieve it.

L. Lump-Sum Distributions

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Urges that the extreme complexity of the present tax treatment of lump-sum distributions from pension and profit-sharing plans be amended so as to treat these distributions as all one kind of income for tax purposes, but with an adequate tax formula to account for the fact that the distributions represent amounts which were accumulated over a period of years.

American Bankers Association, Fred E. Seibert, Chairman, Employees Trusts Committee (May 21).—Asserts that the 1969 Tax Reform Act amendments in this area have greatly complicated the law. Suggests a return to the pre-1969 rule of allowing full capital gains treatment.

National Small Business Association, Represented by Joseph L. Seligman, Jr., Attorney, San Francisco, and Robert C. Ware, President, Trustee Life Insurance Co. (May 21).—Propose repeal of section 515 of the Tax Reform Act of 1969 (pertaining to the tax treatment of lump-sum distributions from qualified plans) as of its effective date if possible, but, if not, at the earliest possible date. Advocate the substitution of a provision that would recognize the bunched-income problem inherent in the distribution in one taxable year of employer contributions that have been made and accumulated over many years and that would not further complicate the Code by various grandfather provisions that cannot be easily computed and applied. Suggest that the form and language of such a substitute would be of secondary importance to its simplicity, to the fact it does not attempt to classify any part of the accumulated employer contributions as capital gain, and to the lack of a requirement of voluminous new records for its development and maintenance.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Recommends a return to the overall capital gains treatment of lump-sum distributions from qualified pension and profit-sharing plans.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Suggests that the Congress take a new look at the action taken in this area in the Tax Reform Act of 1969 in order to eliminate some of the complexities and problems that have arisen as a result of that action.

Profit Sharing Council of America, John R. Lindquist, Counsel (May 22).—Urges that Congress return to the treatment of lump-sum distributions made under qualified profit sharing plans as long-term capital gains and to continue the deferral of any tax on unrealized appreciation of securities of an employer which are included as a part of a lump-sum distribution. States that if the Congress does not see fit to return to long-term capital gain treatment, Congress ought not to adopt a new method of taxation of such distributions in order to avoid adding further complexity and confusion.

Daniel Halperin, Professor of Law, University of Pennsylvania (May 31).—Feels that it is senseless to encourage retired persons to take the entire amount accumulated for retirement in one year and

risk its possible dissipation. Says bunching need not occur, *e.g.*, on distribution of an annuity contract where taxation is deferred until the annuity is payable.

Believes it is unwise to have special incentives for distributions of employer stock and it is more logical to prohibit or discourage investments in employer stock by a retirement plan.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Considers the present taxation of lump-sum pension distributions when a person transfers from one plan to another to be unjust.

M. Federal Preemption of State Laws

Hon. Harrison A. Williams, Jr., U.S. Senator, New Jersey, Chairman, Senate Committee on Labor and Public Welfare, and Hon. Jacob K. Javits, U.S. Senator, New York, Ranking Minority Member (June 12).—Believe that there should be a uniform national set of standards for private pension plans so as to avoid unnecessary regulation at both the Federal and State levels. Note that the Williams-Javits bill, with minor exceptions, preempts the States from regulating the areas covered by the bill.

American Life Insurance Association, Represented by Douglas A. Hunter, Second Vice President, Connecticut General Life Insurance Co. (May 21).—Recommends that undue administrative burdens be lessened by preemptive (of State and local rules) Federal regulations of private retirement plans in disclosure, plan design, funding, investment restrictions applicable to pension funds, and fiduciary responsibility.

National Association of Manufacturers, Robert A. Albright, Vice Chairman, Employee Benefits Committee (May 22).—Recommends that any new Federal statute on pensions should supersede similar provisions in State laws to preclude confusion and jurisdictional problems.

Profit Sharing Council of America, John R. Lindquist, Counsel (May 22).—Recommends that any new Federal statute on pensions should supersede similar provisions in State laws to preclude confusion and conflict.

Hon. Stanley C. DuRose, Jr., Commissioner of Insurance, State of Wisconsin (May 23).—Maintains that Federal regulation of disclosure and fiduciary responsibility should be supplemented by State regulation because: (1) the number of funds is too great for proper surveillance to be provided by one Federal agency; (2) most problems in fiduciary standard regulation come from funds with the smaller number of participants; (3) disclosure reports alone are not adequate, as aggressive action is required to regulate disclosure and fiduciary standards; and (4) effective consumer protection needs to be provided for pension and welfare plan participants at the level of the consumer.

Asserts that section 101(e) of S. 4, which provides for a joint Federal and State administration of fiduciary standards, would not provide a workable system. Indicates that, for it to be effective, the authority granted to the Secretary of Labor must be transferable to a State official or the State official must be able to have such authority by State law.

Frank Cummings, Attorney, Washington, D.C. (June 4).—Agrees with the S. 4 provision to preempt State laws dealing with pension.

plan requirements or the Welfare and Pension Plans Disclosure Act in order to prevent legislative chaos. Points out that S. 1631 and S. 1179 cannot preempt State laws.

N. Plan Qualification Under Internal Revenue Code

National Small Business Association, Represented by Joseph L. Seligman, Jr., Attorney, San Francisco, and Robert C. Ware, President, Trustee Life Insurance Co. (May 21).—Suggest that any bill should make clear that a tax-exempt organization should not be denied the right to establish and maintain a funded, deferred compensation plan that would otherwise qualify under Section 401(a) just because such a plan has to qualify as a profit-sharing plan because it is neither designed nor intended to pay "definitely determinable benefits."

Propose that if a United States employer contributes to a foreign plan which covers only its nonresident, alien employees, and the contributions are made to a foreign trust, insurance company or other funding agency, the deductibility of the employer's contribution should be determined under section 162 rather than section 404(a)(4).

Recommend that there be an appropriate amendment to the Code similar to section 7(b) of S. 1631 which would exclude the nonresident alien employees of the company from the census of employees that is used to determine qualifications of the United States dollar payroll plan under section 401(a)(3) and (a)(4).

Urge an amendment of section 407 of the Code that would give DISC employees the same opportunity to participate in the parent's qualified retirement plan that Western Hemisphere Trade Corporation's employees presently enjoy.

Propose that the Service should determine whether a plan qualifies under the tests of section 401(a) of the Code by combining all companies as one company if two or more employers adopt a common, identical retirement plan, designating one of the employers as the employer that established the plan and returning the power to designate or remove the trustee or members of committees and to amend or terminate the plan.

National Association of Life Underwriters, Buckley Hubbard, Jr., Vice Chairman, Committee on Federal Law and Legislation (May 21).—Supports permissibility of curative plan amendments adopted on or before the fifteenth day of the fifteenth month following the close of the year for which the plan is amended. Advocates the provisions of H.R. 7157 and S. 1631 which would allow a cash-basis taxpayer to make his contributions to the plan, as is presently permitted of accrual basis taxpayers, within the time required to file his return (plus extensions).