[COMMITTEE PRINT]

SUMMARY OF TESTIMONY ON PROPOSALS FOR PRIVATE PENSION PLAN REFORM

AT THE

1973 PUBLIC HEARINGS

ON THE

GENERAL SUBJECT OF TAX REFORM

HELD BY THE

COMMITTEE ON WAYS AND MEANS

PREPARED FOR THE USE OF THE

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BY

THE STAFF

OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

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SUMMARY OF TESTIMONY ON PRIVATE PENSION PLAN REFORM DURING 1973 TAX REFORM PUBLIC HEARINGS

The Committee on Ways and Means held public hearings on the general subject of tax reform (including pension plan reform) during February, March, and April 1973. A panel of witnesses testified on pension plan reform on February 22, 1973 (Panel No. 7).

Summarized below are the comments of witnesses at the tax reform public hearings, as well as written statements received by the committee during tax reform hearings, on the subject of private pension plan reform.

A. General

Association for Advanced Life Underwriting, Marshall I. Wolper, President (March 7).—Points out that 82 percent of qualified pension and profit sharing plans provided some benefit to every terminated participant. Notes that 99 percent of covered employees who left employment after 7 years received benefits; and 100 percent of covered employees who left employment after 10 years received some benefit.

Professor Daniel Halperin, University of Pennsylvania Law School (February 22).—States that present tax benefits on account of qualified pension and profit-sharing plans result in revenue losses of nearly $4 billion annually. Contends that this $4 billion is distributed in an inequitable manner under present law and that administration tax proposals (H.R. 12272, introduced in the 92d Congress) appear designed only to aggravate existing inequities.

Notes that, generally, compensation deductions are available to employers only at about the same time that payments are taken into income by employees, with the major exception to this rule of current matching of income and deductions being for qualified (under sec. 401) pension and profit-sharing plans. Asserts that the most important of the benefits granted to qualified plans is that of tax deferral—deductions allowed to employers currently while taxation to employees is delayed until actual distribution from plans. Maintains that this mismatching of deduction and inclusion amounts to an interest-free loan from the government, the value of the loan depending on both the amount that is being deferred (the amount of the contribution, plus the plan's tax-free earnings on the contribution) and also on the marginal income tax rates of the employer and the employee.

Contends that the social justification for giving such benefits to higher income persons is that in order to get those tax benefits the higher income persons must see to it that lower income persons are also receiving significant retirement benefits. Believes that the present tax system provides unduly great benefits for higher income persons and fails to produce retirement benefits for many lower income persons.

Converse Murdoch, Attorney, Wilmington, Delaware (February 22).—Suspects that changes that increase the cost of qualified plans will result in larger employers moving towards nonqualified, nonfunded deferred compensation plans for executives. However, believes that such changes would have a neutral effect on smaller employers because they must offer a qualified plan to meet competition.

Victor Zonana, Assistant Professor of Law, New York University School of Law (April 4).—Urges that the nation's private retirement system be given the same continuing surveillance as the Social Security system. Notes that bills are introduced each year to correct the private systems' alleged deficiencies but no action has been taken in the past 10 years. Stresses that Social Security alone is inadequate and must be combined with payments under a private retirement plan even though half the nonagricultural labor force does not participate in private plans. Indicates that only 58 percent of the workers entitled to Social Security benefits also receive retirement benefits under a private plan, and half the retirement plans studied by the Senate Subcommittee on Labor paid average monthly benefits in 1969–1970 of less than $100. Asserts that combined average retirement benefits under Social Security and many private retirement plans barely exceed poverty levels; and many employees who are potentially protected under private plans find that the benefits are illusory because of stringent vesting conditions or inadequate funding.

States that the current annual Federal tax subsidy of $3.9 billion attributable to the private retirement system is composed of three costs: employers' deduction of contributions, deferral of tax from employees, and the tax-exempt status of retirement fund income. Notes that in exchange for this subsidy, the Internal Revenue Code exacts only one principal condition for qualification—that the plan not discriminate in favor of employees who are officers, etc. Believes that the ultimate goal of a national pension policy should be to provide annual retirement benefits equivalent to 65–75 percent of the employee's annual earnings prior to retirement. Acknowledges that Social Security benefits cannot be increased to this level and that it would prove impossible to encourage personal savings to this extent; concludes, therefore, that the private retirement system constitutes the only available vehicle for increasing pension benefits.

Arthur M. Wood, Chairman of the Board, Sears, Roebuck and Co. (April 5).—States that the Sears' profit-sharing fund which was established in 1916 has been beneficial to covered employees. Although actual benefits cannot be predicted with certainty because they depend on a number of factors such as service, future profits and market performance of Sears stock, notes that retired Sears employees have generally been able to live out their retirement years in comfort. For example, points out that employees who retired in 1972 with 25 to 30 years of service received, on the average, cash and Sears stock with a combined value of $114,823 of which an average of $7,246 had been deposited by each employee.

National Retail Merchants Association, Bruce Matthews and Martin Amdur, Counsel (April 5).—Indicate that reasonable reform legislation will be beneficial by assuring the fulfillment of work-related noncontributory pension promises. Assert, however, that because one-

half of the country's employees now work for firms without pension or profit-sharing plans, restrictive legislation would discourage the adoption of new plans.

American Society for Personnel Administration, National Committee on Compensation and Benefits, Subcommittee on Retirement Income Systems, Ernest J. E. Griffes, Chairman (*April 5*).—Believes that the basic structure of the private pension system is sound and capable of delivering the benefits it promises. Contends that significant legislation is needed to encourage faster funding and broader coverage for American workers so that encouragement is offered to individuals to provide a measure of their retirement income security from their own resources as a supplement to social security.

National Retired Teachers Association and American Association of Retired Persons, Bernard E. Nash, Executive Director (*April 6*).—Urges comprehensive legislative reform in the areas of eligibility, vesting, funding, portability, termination insurance, disclosure and fiduciary responsibility, rather than a piecemeal approach as in H.R. 12272 (92d Congress).

Morris Gould, President, Pension Counsellors, Inc. (*April 6*).—Believes that the IRS when considering plans for non-union workers, should exclude those who are members of unions, in order to relieve the burden on the small employer.

Honorable Jack Edwards, Member of Congress, Alabama (*written statement*).—Recommends setting minimum service requirements and age requirements for participation in qualified plans to prevent an employee from arbitrarily being excluded from a retirement plan.

Daniel B. Curll, Jr., Vice-President, Day & Zimmermann Consulting Services, New York, N.Y. (*written statement*).—Calls attention to the fact that retirement funds which are placed in an approved depository don't just disappear between the time of deposit and the payout on retirement. Explains, rather, that if used by the depository for investment in new issues of stock or bonds, loans to industry, or mortgages, the result of capital improvements and additions would yield taxes far more significant than sales taxes which would be produced by the same money spent on consumer goods. Urges a study of the macroeconomic impact of individual savings before criticizing currently proposed legislation because of revenue losses to the Treasury.

National Association of Manufacturers (*written statement*).—Notes that voluntary private pension plans have made, and are continuing to make, a vital contribution to retirement security of more than 50 percent of the private nonfarm labor force, and is a vital source of capital accumulation so necessary to sustain the growth of our economy. Believes that the private pension plan system should be expanded to cover as many in the work force as possible and that additional Federal legislation that encourages such expansion should be considered.

R. Ivan Slarks, Local Union 880-Sign Display and Allied Workers, AFL–CIO, St. Paul, Minnesota (*written statement*).—Urges changes in the Internal Revenue Service rules and regulations which would allow people who are union members and also shop owners to participate in the union pension plan by making contributions as self-employed.

B. Plan Coverage and Participation

Professor Daniel Halperin, University of Pennsylvania Law School (February 22).—Notes that about half the work force is not covered by private retirement plans and that the percentage of coverage is lower for companies whose employees' average salaries are lower, and for companies with smaller numbers of employees.

Asserts that the main cause of low coverage in small businesses probably is not lack of adequate vesting provisions, since the Internal Revenue Service usually insists on relatively fast vesting for such small companies; believes that the main cause probably is unduly restrictive eligibility requirements (age, service) established by small businesses' plans.

Recommends removing or lowering age barriers to eligibility.

Association for Advanced Life Underwriting, Marshall I. Wolper, *President (March 7).*—Supports maximum eligibility requirements of 3 years of service, with a minimum age of 30 or more.

Calls for statutory permission for qualified plans to exclude employees who are in a unit covered by a collective bargaining agreement which does not provide that such employees are to be included.

American Institute of Certified Public Accountants, Division of Federal Taxation, Robert G. Skinner (March 12).—Agrees with the principle that qualification of private pension plans should be permitted only where the eligibility conditions are not unduly restrictive as to age and service. Suggests that it is a matter of judgment whether an appropriate age qualification requirement should be established within a 30 to 35 range or whether the service qualification requirement should be based on a 3-year formula.

Does not believe that there is any basic justification for imposing additional restrictions on the qualifying conditions for a plan which also benefits self-employed individuals who are "owner-employees." Opposes the "3–2–1" service and age eligibility tests proposed for such plans. Maintains that the eligibility requirements for plans benefitting "owner-employees" should be no different than for plans established by corporate employers.

Victor Zonana, Assistant Professor of Law, New York University School of Law (April 4).—Proposes that service before age 25 be ignored, with participation commencing after 2 years of service or age 25 whichever is later, and with a special scale of vesting for employees hired between the ages of 43 and 47. Suggests that these rules apply to all new plans adopted after the date of enactment with existing plans being required to conform immediately with respect to employees age 45 and older and within 5 years as to all other employees.

American Society of Pension Actuaries, William J. Hand, President (April 5).—Supports minimum funding requirements. Maintains that to be effective, such minimum funding requirements must also embrace minimum standards for actuarial assumptions and computation methods. Indicates that without such minimum standards for actuarial assumptions, the effectiveness of minimum funding requirements could be defeated merely by a change in actuarial assumptions.

American Society of Pension Actuaries, William J. Hand, President (April 5).—Favors extending regulation under proposed legislation to all plans regardless of size, provided that reporting requirements are not materially increased.

National Retail Merchants Association, Bruce Matthews and Martin Amdum, Counsel (April 5).—Recommends 30 years of age as the minimum age requirement and three years of service as the minimum period of employment.

National Society of Professional Engineers, Paul H. Robbins, Executive Director (April 6).—Favors immediate eligibility but in no case should it exceed one year of service or age 25 for employer's pension plans.

Morris Gould, President, Pension Counsellors, Inc. (April 6).—Urges repeal of the mandatory inclusion of short-service and underage employees in pension plans of small corporations, as it provides for an inequitable expenditure on the part of the small employer only. Believes that so amending the provision might encourage the employment of young people.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (written statement).—States that most companies experience the greatest degree of employee turnover within the first three years of employment, and that requiring the enrollment of all employees after one year of service (or a similar period) will create much additional paperwork for little or no benefit to the employees terminated within the three-year period. Recommends that the service requirement for eligibility be increased to 3 years.

C. Vesting

Herman C. Biegel, Attorney, Washington, D.C. (February 22).—States if Congress deems it advisable to adopt a vesting standard, then a minimum, rather than a maximum, standard should be imposed. For example, an amount of plan benefits should be vested which, when added to Social Security benefits, equals 50% of the payroll covered by Social Security. If a more stringent standard is deemed imperative, no single formula—whether it be ten years, the rule of 50, the 30% at 8 years plus 10, etc.—should be mandated. A vesting formula which falls within the general parameters of such a standard should be able to qualify. Consideration should also be given to whether the imposition of a vesting standard retroactively on previously accrued benefits is legal. Views the proposal that provides for full vesting after ten years as being the most liberal for the employee. Observes further that only 20 percent of the plans do not have vesting and that any of the vesting proposals being discussed would eliminate the worst abuses and hardship cases.

Frank Cummings, Attorney, Washington, D.C. (February 22).—States that present laws with respect to the private pension system are inadequate because they do not contain sufficient requirements with respect to vesting and funding. Favors a system of deferred grading vesting, based on years of service, and supports the vesting requirements found in S. 4 (the Williams-Javits bill), which provide for 30-percent vesting after eight years of service, with ten percent

additional vesting each year thereafter, until 100 vesting is required after 15 years of service. Argues that vesting proposals which weigh age as a factor would tend to result in less hiring of the elderly, would impose a burden on the employee's last employer to provide his full pension, and also could result in meaningless vesting because the pension rights which are vested will be very small in the case of the elderly employee with only a few years of participation in the pension plan.

Asserts that labor unions could not always be depended upon to bargain for adequate vesting rights for their members, because it might be decided to seek other benefits instead. Argues that the Federal Government should set minimum standards in this area.

Indicates that the cost of providing adequate vesting would not be excessive, and would probably equal between 0.1 and 0.2 percent of payroll for most pension plans.

Professor Daniel Halperin, University of Pennsylvania Law School (February 22).—Maintains that, if the goal is relatively universal coverage by the private retirement system, the period of service required before vesting should be short enough to make it likely that any employee with average experience in changing jobs will earn vested benefits for at least a substantial portion of his working career. Tends to favor the Senate Labor Committee's approach—30 percent vesting after 8 years, increasing 10 percent a year to reach full vesting at 15 years. Urges shorter vesting periods in owner-dominated plans because the owner himself is "immediately vested in his benefit by the fact that he controls the business and thus is virtually certain to remain employed while the business is in existence."

Professor Dan M. McGill, University of Pennsylvania (February 22).—Recommends vesting not only as a matter of equity and because of the difficulty of explaining nonvesting to employees, but especially because of the social role which private pensions serve in supplementing relatively meager Social Security benefits. Sets out eight principles which should be embodied in a statutory scheme of mandatory vesting:

(1) The legislation should apply to all types of plans—corporate, union, State, and local; funded and unfunded; and collectively bargained as well as single employer plans.

(2) Time of vesting should encompass age and length of service, based preferably on the Rule of 50 (under which vesting occurs when the sum of the employee's attained age and years of service with the employer equals fifty), coupled with a pre-vesting period of three years, reduced perhaps to two years for new employees over the age of thirty-five, and one year for employees over the age of forty-five. Concedes, however, that there is strong support for ten-year vesting and anticipates an eventual requirement of only five years.

(3) Employment with a given employer both before and after the enactment of vesting legislation should be taken into account in determining eligibility and also, if possible, the amount of vested benefits; however, to permit wage adjustments which would offset the higher cost of mandatory vesting, the effective date of the legislation should be deferred for three years.

(4) There should be an upper limit on the monthly pension income required to be vested in order to avoid costs in excess of those required to provide a modest retirement income, taking Social Security payments into account.

(5) Cash withdrawals should be prohibited with benefits paid only in installments commencing at retirement age.

(6) Each employee should be given an annual statement as to his retirement benefits, as well as a termination certificate setting out his vested benefits and how to claim them when he reaches retirement age.

(7) Vested benefits should be preserved and protected either by the deferred claim approach or by the purchase of annuities from life insurance companies; transferring credits and associated assets to a successor plan, while appropriate to certain governmental units on a reciprocity basis, is too complex actuarially to be feasible in the private sector.

(8) Vested benefits ultimately payable to a terminating employee should be fixed in amount at the time he terminates.

American Textile Manufacturers Institute, Inc., Roger Milliken (March 5).—To preserve the flexibility of the private pension system, feels that if legislative vesting standards are adopted such standards should provide maximum flexibility by allowing substantial compliance with any one of several alternative standards. To avoid heavy costs which would seriously affect benefit levels, proposes that any mandatory vesting rules should be applicable only to future service.

American Paper Institute, William J. Steinmetz, Chairman, Financial Management Committee and Thomas R. Long, Chairman, Subcommittee on Tax Affairs (March 6).—Support the Administration's proposed "Rule of 50" or any equally fair alternative. Alternatively, suggest including 50-percent vesting after 10-years' service with no age requirement.

Association for Advanced Life Underwriting, Marshall I. Wolper, President (March 7).—Recommends the vesting standards of S.4 (30 percent after 8 years plus 10 percent for each year thereafter, until full vesting after 15 years); or, alternatively, suggests the administration's "Rule of 50" (but in the latter case only if there is a minimum period of 5 years of coverage in order to avoid a large entry cost for 49-year-old workers).

Favors less restrictive vesting rules for small employers than for large employers.

Chamber of Commerce of the United States, Walker Winter, Chairman, Taxation Committee, and Robert R. Statham, Taxation and Finance Manager (March 8).—Express approval of "reasonable minimum" Federal standards or regulation governing vesting of private pensions, with the following criteria:

(1) Incorporation in the tax code as a condition for plan qualification;

(2) Apply to all private pension plans (including multiemployer plans);

(3) Allow employers a reasonable time to comply (including the duration of existing collective bargaining agreements);

(4) Allow variations from minimum vesting standards as long as they result in at least as liberal vesting; and

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(5) Special laws should not be provided to give preferential treatment to selected groups on special early vesting.

American Institute of Certified Public Accountants, Division of Federal Taxation, Robert G. Skinner (March 12).—Believes that the "Rule of 50" could be an appropriate device to establish legislative requirements if it is desirable to recognize age in addition to service as a factor in vesting.

Victor Zonana, Assistant Professor of Law, New York University School of Law (April 4).—Recommends that the standard should incorporate both age and service requirements so that an employee aged 45 or with 10 years of service would have at least 50 percent vesting and an employee at age 50 or with 15 years' service would have full vesting. Suggests combining this into a "Rule of 45" whereby 50 percent of the participant's interest becomes vested when the combination of his age and years of service equals 45 with the remaining 50 percent vesting at the rate of 10 percent per year over the ensuing 5 years.

American Life Insurance Association, Douglas B. Hunter (April 5).—Believes that the adoption of a reasonable mandatory minimum vesting requirement for all pension and profit-sharing plans would accelerate the trend to better vesting and provide greater assurance to covered employees that they will actually receive pension benefits. Indicates that the American Life Insurance Association has supported several minimum vesting formulas to date. These include (1) vesting of accrued normal retirement benefits after 10 years of service (excluding for this purpose service prior to age 30) as included in H.R. 2, the Dent bill; (2) vesting under the so-called "Rule of 50" as proposed last year by the Administration; or (3) vesting of 30 percent of accrued normal retirement benefits after 8 years of total service increased ratably to full vesting 7 years later as under S. 4.

American Society of Pension Actuaries, William J. Hand, President (April 5).—Supports mandatory minimum vesting requirements. Does not believe that reasonable vesting requirements will adversely affect the growth of pension plans among small- and medium-sized companies.

Institute of Electrical and Electronics Engineers, Richard Backe, Chairman, Pension Committee (April 5).—Maintains that engineers are discriminated against under present pension plans because as a result of the nature of their employment, they do not generally stay long enough with any one employer to accumulate vested rights to pension benefits. Also, because their stay with any one particular employer tends to be so brief, engineers would not be given adequate relief by present legislative proposals such as S. 4 and H.R. 2 which would impose minimum vesting standards.

Recommends revision of Internal Revenue Service rules to permit "engineers-architects-scientists only" multi-employer pension plans run by professional societies or other private groups which could offer immediate vesting to participants.

National Retail Merchants Association, Bruce Matthews and Martin Amdur, Counsel (April 5).—Believe that a vesting formula requiring 50-percent vesting of a plan participant's normal retirement benefits after 15 years of service with 10 percent for each additional year of participation, would not be overly disruptive of the existing private pension system.

American Society for Personnel Administration, National Committee on Compensation and Benefits, Subcommittee on Retirement Income Systems, Ernest J. E. Griffes, Chairman (April 5).—Maintains that there must be a minimum level of vesting, although 100 percent vesting immediately is unrealistic because of the cost. Indicates that as a requirement for qualification, pension plans should provide full vesting not later than age 55, with 5 years' service, with partial vesting occurring prior to that age and commencing not later than age 40.

American Telephone and Telegraph Company, William G. Burns, Assistant Treasurer (April 6).—Favors the concept of reasonable vesting but questions proposed legislation which would limit the ability to make the optimum use of available resources. Feels that the most equitable allocation of resources is found under the "Rule of 50."

Sheldon Cohen, Attorney, Washington, D.C., Chairman of Special Committee on Retirement Benefits Legislation, American Bar Association (April 6).—With regard to H.R. 12272 (92nd Congress), recommends deletion of the provision (section 2(c)) which delegates to the Secretary of the Treasury the authority to adopt special eligibility and vesting rules for certain plans, and to substitute therefor the statutory eligibility and vesting requirements, if any, which are to apply.

Supports adoption of the "Rule of 50" vesting provisions, but suggests increasing the period of service from 3 years to 5 years before vesting would be required.

National Society of Professional Engineers, Paul H. Robbins, Executive Director (April 6).—Advocates immediate vesting as the best solution to the problems of engineers because technological changes make it difficult for engineers to stay with one employer long enough to accumulate any vested benefits. Considers the vesting provisions of S. 4 and H.R. 2 to be too long.

Bureau of Salesmen's National Associations, Marshall J. Mantler, Managing Director (April 6).— Believes there is a need for the Federal Government to establish minimum standards with respect to vesting as a condition of continued tax-exempt qualification of any pension plan.

Carol Burris, President, Women's Lobby, Inc. (April 6).—Believes that a housewife should receive vested rights to survivor's benefits under her husband's pension plan.

Morris Gould, President, Pension Counsellors, Inc. (April 6).—Feels that present vesting rules are too stringent for small corporations. Advocates the adoption of universal use of a Federal system, such as full vesting and retirement after age 55 and 30 years of service.

Honorable Jack Edwards, Member of Congress, Alabama (written statement).—Reports an estimate that about 70 percent of private pension plan participants are not now vested and that 34 percent of private pension plan participants 50 years of age or older do not have a vested right to retire with benefits. Considers vesting as the main pillar of the private pension problem. Urges the Committee to consider carefully a provision for rapid vesting for other workers, such as the "rule of 50".

National Association of Manufacturers (written statement).—Supports the concept of vesting but stresses that any legislation in the area of vesting should properly indicate that payment of mandatory vested retirement benefits would be at the normal retirement age specified in the plan, but in no event later than age 65, and would encompass only a life annuity and not any early or ancillary benefits, such as death, disability or other benefits that may be available under the plan. Recommends that any specified period of service for requiring mandatory vested rights apply only to service accrued subsequent to the effective date of the legislation.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (written statement).—Counsels moderation in the vesting rules and the elimination of any unnecessary complications in the proposed rules for vesting and funding.

D. Funding

Herman C. Biegol, Attorney, Washington, D.C. (February 22).—Notes that available information indicates that a large percentage of plans are adequately funded, both with respect to accrued benefits as well as vested benefits. If Congress desires to set guidelines, then a 40- (rather than a 30) year period should be permitted for accrued liabilities. Most importantly, however, the experience deficiency provision in the Williams-Javits Bill, and the 4% ratio provision in the Dent Bill, should be eliminated or, at the very least, modified significantly. Congress should also be aware of the adverse effect on the revenues if any funding proposal requires major additional contributions to qualified plans.

Frank Cummings, Attorney, Washington, D.C. (February 22).—Argues that adequate funding requirements are necessary to ensure that the promise of a pension will not prove illusory. Favors the proposal contained in S. 4—that current service costs should be funded currently, and that unfunded past service costs should be funded ratably over a 30-year period. Believes that funding requirements should be backed up with a Federal program of pension plan insurance.

Professor Daniel Halperin, University of Pennsylvania Law School (February 22).—Indicates that since the crisis as to security of retirement benefits arises only on termination of plan, is reluctant to recommend mandatory increases in funding for all plans just because a few terminate. Believes that the present arrangement is undesirable in placing on the employees the burden of default on termination. Maintains that if the private retirement system is to fulfill the role of working in tandem with Social Security to assure adequate retirement income, employees must be able to count on it.

Professor Dan M. McGill, University of Pennsylvania (February 22).—Recommends that funding standards applicable to all plans should be imposed by law with periodic certifications of compliance by actuaries accredited for that purpose by an appropriate Government agency. While normal costs should be funded currently, more latitude is possible with respect to initial unfunded liability and other supplemental costs, which can safely be amortized over thirty or even forty years. Although multiemployer plans would strongly resist mandatory

funding standards requiring amortization of supplemental costs, many of these plans are in precarious financial condition and such standards are essential to the protection of their participants (about one-third of the total employees covered by private plans).

Association for Advanced Life Underwriting, Marshall I. Wolper, President (March 7).—Supports any reasonable standard of minimum funding (such as the 30-year standard of S. 4), if there is some flexibility to deal with situations where the employer has financial difficulties in one or more years. Urges revocation of the 10-percent limit on deductions of past service funding.

Victor Zonana, Assistant Professor of Law, New York University School of Law (April 4).—Urges the adoption of a more stringent funding standard than the present requirement that the plan's current costs be paid on an annual basis plus interest on unfunded past service liabilities. Indicates that not only is there no requirement that past service liabilities be funded, but employers are denied a deduction in excess of one-tenth of these liabilities in any one taxable year. Recommends that Congress enact a mandatory funding standard including the funding of past service liabilities over a period not in excess of 30 years.

American Life Insurance Association, Douglas B. Hunter (April 5).—Supports, as a general principle, a reasonable mandatory minimum funding standard to assure that funding of pension promises should be carried out on a sound basis. Believes that such a funding standard is appropriate for all types of plans including multiemployer plans. However, appropriate transitional devices should be provided to give plan sponsors sufficient time to reach the mandated standard. Also, funding assumptions and methods should be left to the discretion of the sponsor subject to certification by a qualified actuary without being prescribed by a regulatory agency. Membership in the American Academy of Actuaries should generally be accepted as a sufficient basis for certification of qualified actuaries. Also, existing tax restraints on funding should be removed.

National Retail Merchants Association, Bruce Matthews and Martin Amdur, Counsel (April 5).—Maintains that legislation mandating a specific funding schedule for all plans is unnecessary. But if such funding requirements are to be mandated, indicates 40 years would be an acceptable period of time for funding the unfunded past service liability.

American Society for Personnel Administration, National Committee on Compensation and Benefits, Subcommittee on Retirement Income Systems, Ernest J. E. Griffes, Chairman (April 5).—Asserts that a requirement for funding of past service over a period of not more than 40 years would contribute to securing benefits without creating a burden on the contributing employers.

American Telephone and Telegraph Company, William G. Burns, Assistant Treasurer (April 6).—Believes there is a great need for allowance of flexibility so that costs of funding can be spread fairly to customers over several years. Projects that H.R. 2's funding requirement coupled with 10-year vesting would have resulted in an additional $1.76 billion in Bill funding requirements from 1962–71. Urges that funding schedules soften the impact of stock market fluctuations.

Feels that some alternative such as funding 5 percent of unfunded vested liabilities would relieve the severity of funding schedules without affecting its impact on poorly funded plans. Maintains that the basic funding requirements should be directed at the funding of vested benefits.

Views the five-year period for required liquidation of experience deficiencies as too brief. Suggests that contributions should not be increased over a five-year period to compensate for salary increases over actuarial assumptions. Advocates a more stable, long-range approach where actuarial losses and gains are adjusted accordingly. Proposes that the Code allow larger funding contributions on a tax-deductible basis.

National Society of Professional Engineers, Paul H. Robbins, Executive Director (April 6).—Urges legislation to guarantee minimum funding standards.

Bureau of Salesmen's National Associations, Marshall J. Mantler, Managing Director (April 6).—Supports the H.R. 2 funding provision, which would require full funding of pension plan benefits over a 25-year period.

Honorable Robert McClory, Member of Congress, Illinois (April 17).—Indicates that Elgin employees have contributed more than $13 million to the Elgin Pension Fund, which was founded in 1917, and that the company has paid in approximately $12 million, but that the company has made no contributions since 1957. States that the assets of the Elgin National Watch Company were purchased in 1966 by another company, Elgin National Industries, Inc., which has its principal place of business in New York City. Asserts that the fund's pension amounts, which now vary from $16.50 to $85.00 per month, were established according to prices and values prevailing during the depression years, but that the fund now has assets (totalling $30 million) far in excess of the amount needed to pay the relatively nominal monthly pensions.

Claims that if the pensions were now liquidated on the basis of the original agreement, the balance remaining in the trust would be from $10 million to $12 million, the amount of the company contributions. Affirms that the company, under the provisions of section 404(a)(1) of the Internal Revenue Code, and related regulations, proposes to purchase insurance policies which would provide the pensioners with pensions in the amounts based on values as they existed in the depression years, after which the company would be free to take over the balance of the fund in the amount of $10 million to $12 million. Contrasts language of the regulations to the effect that a pension trust fund must be used for the benefit of employees except in the case of "erroneous actuarial computations," and explains that the company has amended the pension agreement to permit its acquisition of the pension fund balance on the grounds that the balance amount resulted from "erroneous actuarial computations."

States that the old company, the Elgin National Watch Company, frequently stated that the company could have no claim to any amount of the pension fund. Argues that the present company position is inconsistent with the intent of the pension plan, Internal Revenue Code, and the regulations.

Notes that the company's pension fund contributions were then taxed to the employees and that the company might avoid taxation in the appropriation of the pension fund balance if it could offset the resulting capital gain with losses from other business activity. Urges that the Ways and Means Committee consider ways to strengthen the present prohibition against diversion of any portion of a pension trust to the benefit of an employer, especially in cases of overfunding of pension funds.

Honorable Jack Edwards, Member of Congress, Alabama (written statement).—Supports minimum funding standards for pension plans.

National Association of Manufacturers (written statement).—Agrees that adequate funding is necessary to a good pension plan, but points out that recent studies show that the vast majority of plans are now being adequately funded because of present IRS requirements and the Accounting Principles Board Opinion No. 8.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (written statement).—Believes that the mandatory funding and vesting provisions will tend to discourage employers from establishing new pension plans and will tend to interfere with collective bargaining and the freedom to individualize plans. Argues that, if funding is such a vital concern, employers should be allowed to deduct more than the present limit of 10 percent per year for the funding of past service liability. Cautions that care should be taken so as not to force employers to terminate their plans, keeping in mind that many employer benefit plans have been voluntarily established by the employer to provide security for his employees.

Believes that amounts due to overfunding resulting from erroneous actuarial errors should revert to the employer who would still be required to pay tax on the funds returned. Questions why any excess funds should not be returned to the employer if plan funds are sufficient to discharge all vested liabilities and the participants will receive what was promised them. Asserts that a prohibition on return of overfunding to the employer will encourage employers to underfund their plans and cause unjustified complications in determining how any excesses might be distributed to retirees.

Criticizes the exemption of Federal and State retirement systems from the funding provisions of the proposed bills. Feels that it is inequitable to force future generations to pay for the pensions of Government employees who, in many cases, enjoy pension benefits far in excess of most private plans.

E. Portability

Herman C. Biegel, Attorney, Washington, D.C. (February 22).—States that portability is of questionable value and has been rejected by responsible officials of the Administration and the Labor Department. Suggests that the desired result can be achieved by recording on the Social Security records of each employee the vested benefit under the several plans in which he has participated over his working life.

Frank Cummings, Attorney, Washington, D.C. (February 22).—Favors the voluntary system of portability provided in S. 4, in which vested pension benefits of participants requesting portability would be

transferred through a Federal clearinghouse in the case of plans which voluntarily agree to participate in the program.

Professor Dan M. McGill, University of Pennsylvania (February 22).—Recognizes that the concept of portability has great political and emotional appeal, but warns that it is subject to many interpretations, particularly the extent to which an employee's accumulated pension benefits from previous employers should be adjusted upward to reflect subsequent events, including rising prices, expanding productivity, and changes in salary base and benefit formulas. Technically, portability is merely one method of implementing mandatory vesting, coupled either with reciprocity agreements among employers or the transfer of vested benefits to a successor plan, a central agency, or a life insurance company. As a practical matter, the preservation of vested benefits should be confined to transfers to insurance companies, although the deferred claim approach is also suitable if the employer's plan is adequately funded. Mentions the desirability of devising procedures which would protect the purchasing power of vested benefits, especially if payments will be long deferred.

American Textile Manufacturers Institute, Inc., Roger Milliken (March 5).—Objects to attempts to legislate portability.

Association for Advanced Life Underwriting, Marshall I. Wolper, President (March 7).—Generally favors the concept of voluntary portability.

Victor Zonana, Assistant Professor of Law, New York University School of Law (April 4).—Regards portability as too complex to be feasible at this time.

American Life Insurance Association, Douglas B. Hunter (April 5).—States that the objective of portability is achieved by satisfactory vesting combined with sound and adequate funding, accurate recordkeeping and adequate communication to employees. Contends that any further and more formal and costly arrangements are unnecessary.

American Society of Pension Actuaries, William J. Hand, President (April 5).—Supports a voluntary system of portability which should include (1) the direct tax-free transfer of assets from one plan to another, or (2) purchase of a single premium deferred annuity contract, or (3) purchase of a "Restricted Savings Certificate" which would be issued by banks directly to terminated plan participants. Maintains that this would eliminate the necessity for creating a new governmental agency, as in S. 4.

Opposes the mandatory portability provisions of Title III of S. 4 and Title I of H.R. 462.

Institute of Electrical and Electronics Engineers, Richard Backe, Chairman, Pension Committee (April 5).—Proposes that individuals forced to withdraw vested funds from qualified plans be allowed to transfer such funds to any other qualified plan with full tax deferral, regardless of the amount involved.

American Society for Personnel Administration, National Committee on Compensation and Benefits, Subcommittee on Retirement Income Systems, Ernest J. E. Griffes, Chairman (April 5).—Believes that if there is adequate vesting, portability of benefits is unnecessary. In addition, considers it to be unworkable as well as involving an unwarranted intrusion by Government into the private pension system.

American Telephone and Telegraph Company, William G. Burns, Assistant Treasurer (April 6).—Objects to proposals for portability.

National Society of Professional Engineers, Paul H. Robbins, Executive Director (April 6).—Believes that the creation of a Federal pension credits clearinghouse would be an ideal method of carrying pension rights from one employer to another. Maintains that portability can be provided just as well through mandatory early vesting. Notes that without proper vesting, there are no benefits to transfer.

Honorable Jack Edwards, Member of Congress, Alabama (written statement).—Observes that the question of portability requires careful study with close attention to the problems of standardization of plans and the administration of transferred pension credits.

National Association of Manufacturers (written statement).—Maintains that the adoption of vesting and some additional funding requirements make the justification or reason for portability largely academic and undesirable. Points out that portability would create many technical difficulties such as the ascertainment of how the present value of a vested pension with its ancillary features would be determined for transfer to another plan and how to determine the equivalent actuarial value under the new plan. Cautions that portability would necessarily restrict a greater portion of investments to securities which are readily convertible to cash, thereby foregoing the consideration of long-term yields which helps to reduce the cost of benefits or make higher benefits possible.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employees Trusts Committee (written statement).—Believes that no need has been shown for portability, and that it would give rise to unnecessary expense to taxpayers. Suggests as an alternative (though not necessarily as a recommendation) that upon termination of employment with vested rights, an employee could elect to have the value of those rights used to purchase a special U.S. retirement bond which either could be redeemed in full at age 59½, as in the case of H.R. 10 plans, or paid over a period of years by submitting payment coupons to the Treasury. Points out that the administration (and related costs) of such a program would be practically nonexistent.

Contends that the bookkeeping requirements of a portability system would be monumental, and that valuation for comparison of individually designed plans with many different benefit provisions would be a virtual impossibility.

Notes that many employee benefit plans provide for payment of benefits to terminated participants upon the attainment of retirement age, and that a member of the work force who has been employed by several different empoyers during his career will receive benefit checks from each employer's pension plan. Questions the wisdom of reducing the present flexibility when the vesting requirements accomplish the portability objective.

John A. Tornquist, Financial Secretary-Treasurer, Local Union 683–UAW, Minneapolis, Minnesota (written statement).—Favors pension portability to make private pension plans comparable to Social Security and to assure no lost pension benefits. Claims that the present system benefits the employer because many years of pension service can be lost by an employee through no fault of his own, such as

through accidents, plant shutdowns, advancement, moving for health reasons, etc.

F. Plan Termination Insurance

Herman C. Biegel, Attorney, Washington, D.C. (February 22).—Believes that insurance is highly undesirable. Indicates that the cases it is designed to cure involve a fraction of 1% of the employees covered. Argues that to set up a huge bureaucracy for so negligible a fraction of the pension universe would be foolhardy. Moreover, it would lead inevitably to standardization of actuarial assumptions and complete control of the investment of pension funds. Notes that no one has advocated these harsh results, yet without control of these two sides of the equation, the insurance risk could be varied at the will of the insured.

Frank Cummings, Attorney, Washington, D.C. (February 22).—Feels that funding requirements should be backed up with a Federal program of pension plan insurance.

Professor Daniel Halperin, University of Pennsylvania School of Law (February 22).—Supports approach under which some basic amount is covered through insurance and remainder becomes obligation of the employer. Favors Senate Labor Committee proposal on this point.

Professor Dan M. McGill, University of Pennsylvania (February 22).—Indicates that although the percentage of plans terminated is very small, the consequences to individual victims are often tragic. Urges, accordingly, that a program of termination insurance be instituted, at small added cost, for both multiemployer and single employer plans, with appropriate premium differentials. Initially, at least, such insurance should be limited to plans covering more than 25 employees and therefore subject to the Federal Welfare and Pension Plan Disclosure Act; while this limitation would exclude 95 percent of private plans, it would include 95 percent of private plan participants. Safeguards against fraudulent terminations are necessary even with respect to these larger plans, but insurance abuses would be less likely.

Suggests that termination insurance be limited to vested benefits or perhaps only the mandatory portion thereof, with a dollar maximum expressed in terms of a multiple of Social Security benefits (not less than 1 nor greater than 2). Losses to participants resulting from insufficient assets should be covered whether the resulting termination is partial or complete. Stresses that termination insurance is not feasible unless coupled with contingent liability on the part of the employer to repay the insuror out of subsequent profits over an ensuing 20-year period, with the insuror's claim being subordinate to claims of general creditors.

Also discusses methods of financing termination insurance, including Government loans on a temporary basis, and various bases for computing premium rates, including comparisons with the ten years' experience of Sweden and Finland.

Association for Advanced Life Underwriting, Marshall I. Wolper, President (March 7).—Generally supports concept of plan termination insurance as necessary to ensure employee expectations of realizable pension benefits.

United Automobile, Aerospace and Agricultural Implement Workers of America, Leonard Woodcock, President (*March 12*).— Contends that Federal reinsurance should be the condition for tax deductions on employer contributions.

Victor Zonana, Assistant Professor of Law, New York University School of Law (*April 4*).—Feels that plan of self-supporting termination insurance should be adopted which would initially insure that portion of each employee's benefits which, when added to anticipated Social Security benefits, would equal 70 percent of his taxable wages in the year of the plan's termination. Suggests that percentage of benefits insured should be increased if subsequent experience indicates this can be done without excessive cost, but believes insurance of full benefits to be unwise because it could engender financial irresponsibility. Contends that imposition of employer financial responsibility for pension benefit losses is a necessary corollary to termination insurance. Recognizes that the imposition of primary responsibility for pension obligations on the employer will act as a deterrent to the adoption of private retirement plans, but argues that this is preferable to creating unenforceable expectations in the minds of employees.

American Life Insurance Association, Douglas B. Hunter (*April 5*).—Asserts that planned termination insurance proposals present serious and competing considerations. However, suggests the following:

(1) employers whose plans terminate must be the first source of any funds needed to provide protected benefits;

(2) the program must be underpinned by a strong minimum mandatory funding standard in order to avoid serious adverse selection against the program; and

(3) the administration of the program (including the handling and investment of the program's funds) should be placed in the hands of a Federally chartered nonprofit corporation operating in the private sector under the direction of persons knowledgable in the investment and administration of private pension funds.

American Society of Pension Actuaries, William J. Hand, President (*April 5*).—Believes that plan termination insurance cannot be separated from minimum vesting standards. Supports the private nonprofit corporation concept of S. 1179 to administer the termination insurance. Urges establishing and publishing standard tables based on acceptable actuarial assumptions, as well as the procedures used in determining the present value of vested liabilities.

National Retail Merchants Association, Bruce Matthews and Martin Amdur, Counsel (*April 5*).—Believes reinsurance of pension rights requires considerable further study before any legislation is enacted.

American Society for Personnel Administration, National Committee on Compensation and Benefits, Subcommittee on Retirement Income Systems, Ernest J. E. Griffes, Chairman (*April 5*).—Argues that plan termination insurance of unfunded past service liabilities or vested benefit liabilities is not desirable. Maintains that the cost would fall most heavily on young plans with large liabilities for past service, which would act to discourage plan development. Alternatively, contends that the cost would be factored into contributions and benefits would be lower.

American Telephone and Telegraph Company, William G. Burns, Assistant Treasurer (April 6).—Opposes all proposals dealing with "reinsurance."

National Society of Professional Engineers, Paul H. Robbins, Executive Director (April 6).—Recommends mandatory insurance for unfunded vested benefits.

Honorable Jack Edwards, Member of Congress, Alabama (written statement).—Favors a National insurance program to protect against loss of benefits caused by the termination of pension plans.

National Association of Manufacturers (written statement).—Contends that the concept of plan termination insurance is unworkable, inequitable, and undesirable because an essential element in insurance is that the risk insured against be beyond the control of the insured (employer), who in pension plans determines the initial pension obligation. the termination of the plan, and the investment policy of the particular pension plan. Forecasts that a plan termination insurance program could lead to pressure for rigid requirements controlling in detail all aspects of pension plan funding, financing, and investing.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (written statement).— Objects to the concept of plan termination insurance. Draws attention to a Labor Department survey which found that only one-tenth of one percent of workers are affected by pension plan terminations (but do not necessarily lose all their benefits). Argues that, if the vesting provisions of the current proposals are enacted, the one-tenth of one percent would shrink. Contends that this feature would discourage the establishment of new plans which will obviously have greater unfunded liabilities and, therefore, the greater amount of premiums to pay. Asks whether it would not make more sense to have premium dollars applied instead against unfunded vested liabilities or for an increase in benefits.

John A. Tornquist, Financial Sec.-Treas., Local Union 683 (UAW), Minneapolis, Minnesota written statement).—Urges passage of legislation providing for pension reinsurance. Maintains that if the Government can guarantee bank savings against any type of loss, there is no reason why pensions cannot be guaranteed in the same way.

G. Fiduciary Standards

Frank Cummings, Attorney, Washington, D.C. (February 22).—Maintains that there is a need for additional requirements with respect to fiduciary responsibility in the management of pension plans. Feels that there is a need to expand the list of "prohibited transactions," to prevent parties in interest, such as the employer or the union, to engage in loan, gift or other transactions with the pension fund and to restrict the amount of pension plan assets which may be invested in employer stock. Believes, also, that trustees of the fund should be held to a prudent man standard in managing the fund's assets.

Indicates that the proposal in S. 4 to limit the amount of a pension fund's assets which could be invested in the employer corporation to 10 percent was not intended to apply to profit-sharing plans, such as the Sears plan, but only to pension plans where an employee's rights

to a fixed pension could be lost if the plan's assets were invested in a financially shaky employer.

Professor Daniel Halperin, University of Pennsylvania School of Law (February 22).—Urges requirement of diversification in investments of plan. Indicates that, as to fiduciary requirements, the section 4941 private foundations self-dealing approach is desirable. Notes that this approach indicates that Internal Revenue Service can use enforcement tools other than denial of tax-exempt status. Cites this as another reason why pension reform should be handled through tax system, at least where tax benefits are given to pension plans.

American Society for Pension Actuaries, William J. Hand, President (April 5).—Believes in strong, enforceable fiduciary standards, and basically agrees with the provisions of Title V, (Section 510) of S. 4. Questions the wording in subparagraph (2) of Section III(a) of Title I of H.R. 2, which seems to prohibit death and disability benefits from being part of a pension plan.

American Telephone and Telegraph Company, William G. Burns, Assistant Treasurer (April 6).—Supports legislation establishing the highest fiduciary standards and "prudent man" rule along with relevant and meaningful disclosure.

National Society of Professional Engineers, Paul H. Robbins, Executive Director (April 6).—Recommends legislation to establish fiduciary standards.

Honorable Stanley C. DuRose, Jr., Commissioner of Insurance, State of Wisconsin (written statement).—Endorses the concept of Federal regulation of pension plan fiduciaries of the type contained in Title I of H.R. 2 but would recommend several amendments. Commends the provisions which make it clear that people serving as trustees of employee welfare and pension trusts are to act under the common law standards applicable to trustees in general, and the provisions requiring notice statements to individual plan participants.

National Association of Manufacturers (written statement).—Favors legislation which would concretely define the nature of fiduciary responsibilities, but cautions that fiduciaries should be held personally responsible only for willful conduct or gross negligence on their part.

Credit Union National Association, Inc., Wilfred F. Broxterman, Executive Assistant Managing Director, Washington Office (written statement).—Indicates several questions and issues regarding fiduciary duties which need clarification:

(1) Will investments other than those enumerated be permitted?

(2) Are there investment limitations on trusteed plans?

(3) Will the bill as currently proposed change the code limitations with respect to custodial accounts.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (written statement).—Questions why plans covering less than 9 participants are exempt from fiduciary standards.

Points out that provisions of the proposed bill prohibit any person from serving as a fiduciary of or consultant to any employee benefit plan for 5 years after conviction of certain specified crimes. Criticizes this penalty as too harsh as applied to a corporate fiduciary or insur-

ance carrier by excluding them completely from the retirement fund business possibly through the uncondoned act of a single employee.

Supports the proposals which would provide remedies in the event of breach of fiduciary responsibility. Believes, however, that the definition of "fiduciary" as set forth in the bills should be broadened to include investment counsellors who give advice for a fee or other compensation, direct or indirect.

Disputes the necessity of the need for a new definition of prohibited transactions in the bills, in light of the definitions of Section 503(b) of the Code. Contends that the proposed definition of prohibited transactions is too strict and would put fiduciaries in an almost impossible situation in cases where the trust instrument requires certain investments which do not meet the "prudent man" rule. Urges that the bills be amended to include exceptions to the "prudent man" rule when such rule is in conflict with the requirements of the trust instrument.

Feels that if certain duties are allocated to one fiuciary by the trust instrument, the other fiduciaries should be specifically relieved of liability for those duties by the law, rather than require the nondesignated fiduciaries to depend solely on separate agreements of indemnification which may not be upheld by the courts.

H. Reporting and Disclosure

Chamber of Commerce of the United States, Walker Winter, Chairman, Taxation Committee, and Robert R. Statham, Taxation and Finance Manager (March 8).—Favor strengthening the protection of participants in employee plans under the Welfare and Pension Plans Disclosure Act (including requiring a Federal fiduciary responsibility act for pension plan administrators and trustees).

American Life Insurance Association, Douglas B. Hunter (April 5).—Argues that the present level of required reports and conformance to complex regulations acts as a deterrent to new retirement plans. Suggests that one way to accomplish a minimum of duplication would be to create a new Federal agency charged with all aspects of pension regulations. Urges, however, that careful study should be given to the various alternatives in this respect.

American Society of Pension Actuaries, William J. Hand, President (April 5).—Favors reasonable disclosure requirements and requirements to improve communications to employees. However, believes that reporting requirements should be kept to a minimum to prevent retarding the growth of pension plans among small- and medium-size plans. Opposes the increased reporting requirements of S. 4 and S. 2.

National Retail Merchants Association, Bruce Matthews and Martin Amdur, Counsel (April 5).—Supports most aspects of the fiduciary responsibility and disclosure sections of legislation such as H.R. 2 (introduced by Congressman Dent) and S. 4 (the Williams-Javits bill), particularly the "prudent man" rules, requirements for clear and informative booklets to employees, annual audits by certified public accountants, actuarial certification and adequate termination of service information notices to the employees, and limitations on dealings with parties in interest. Expresses concern, however, that certain proposed fiduciary responsibility requirements—such as intertrustee

liability and the especially wide area for lawsuits by beneficiaries—may discourage talented individuals from continuing to serve as fiduciaries or administrators of pension or profit-sharing plans.

American Telephone and Telegraph Company, William G. Burns, Assistant Treasurer (April 6).—Views some aspects of the disclosure proposals as meaningless and burdensome. Objects to requirements for masses of data.

National Society of Professional Engineers, Paul H. Robbins, Executive Director (April 6).—Urges legislation to improve disclosure requirements.

Honorable Jack Edwards, Member of Congress, Alabama (written statement).—Favors the concept of adequate disclosure of a pension plan's administrative and financial affairs, but cautions against creating an impenetrable thicket of forms and paper work which would be particularly burdensome to a small businessman.

National Association of Manufacturers (written statement).—Believes that while the disclosure of some additional information may be useful, it is not desirable or helpful to further burden plan administrators, beneficiaries and Government agencies by requiring disclosure of information of a more marginal and generally less meaningful nature than that provided in the 16 pages of Form D–2, required under the Welfare and Pension Plan Disclosure Act. Supports the provision which would require an annual audit by independent accountants, except where such plans are regularly examined by banking or insurance regulatory agencies.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (written statement).—Agrees that participants should receive worthwhile information to enable them to clearly understand their rights to benefits and in order to determine whether they have to take any steps to protect their interests, but believes that the current proposals require too much detailed reporting and information which would tend to confuse most people and be extremely costly and burdensome to compile. Disagrees with the intrinsic assumption of the bills that all the reports that are currently required could be reviewed by those expert enough to glean meaningful information therefrom.

Argues that all that should be required by the bills is a summary statement of receipts and disbursements, a list of assets, and a statement of transactions involving parties-in-interest. Maintains that such summarized statements, together with independent audits by qualified public accountants and "exception reporting," i.e., parties-in-interest transactions and any deviation from normal standards established, is a more practical method of disclosure.

Criticizes the proposals that funds held by banks subject to examination by Federal or State agencies are still to be audited by outside accountants, claiming that this will give rise to an unnecessary expense, especially to smaller funds. Compares the proposed bills to the similar provisions of the Welfare and Pension Plans Disclosure Act and recommends that these proposals should also exempt banks from the bonding requrements of the bills.

Opposes the provisions which would require a detailed statement of commissions, including brokerage commissions paid for the purchase

or sale or marketable securities through registered dealers. Fails to see any benefit to be gained from such reporting requirements and recommends that brokerage commissions be an exception to reporting commissions.

Requests that the reporting requirement proposals be amended to permit banks to comply by filing with the Secretary of Labor a copy of the annual report of entire collective trust funds, rather than require hundreds of accounts which report duplicate receipts and disbursements and assets and liabilities as applicable to the pro rata portion of each individual fund within the collective trust fund.

I. Administration and Enforcement

Herman C. Biegel, Attorney, Washington, D.C. (February 22).—States that the tax system is the appropriate mechanism for any changes that are made. The Internal Revenue Service, both in its National Office and in the numerous field offices, already has a substantial administrative staff with expertise in this field.

Frank Cummings, Attorney, Washington, D.C. (February 22).—Believes the power to enforce these new rights should be given to the Department of Labor, or possibly some other public agency. Suggests also that private citizens should be permitted to go into Federal court to enforce their rights. Does not believe that the Internal Revenue Code is an appropriate vehicle for enforcement, since disqualification of the pension fund for Federal tax purposes hurts the employee.

States that in the enforcement area some agency should have the right to go into court and put the assets of a pension fund into receivership, where it was felt that the financial security of the fund was being threatened by manipulation.

Converse Murdoch, Attorney, Wilmington, Delaware (February 22).—Believes the tax law is not the proper vehicle for enforcing vesting, funding, insurance, and portability. Does not favor self-dealing penalty taxes in the pension area such as exist in the private foundation area; believes these penalties are too strong.

Chamber of Commerce of the United States, Walker Winter, Chairman, Taxation Committee, and Robert R. Statham, Taxation and Finance Manager (March 8).—Object to provisions, such as in S. 4 and H.R. 462, that would create a new Federal agency to regulate private pension plans, and that would impose new Federal funding, insurance, or portability requirements.

American Society of Pension Actuaries, William J. Hand, President (April 5).—Supports the provisions of S. 374 and S. 1179, which retain primary responsibility for the supervision of pension plans in the Treasury Department, avoiding needless duplication of administration.

National Retail Merchants Association, Bruce Matthews and Martin Amdur, Counsel (April 5).—Maintains that any new vesting or funding standards should be added to the tax requirements for the qualification of pension and profit-sharing plans instead of being placed under the supervision of a new agency or the Department of Labor.

American Society for Personnel Administration, National Committee on Compensation and Benefits, Subcommittee on Retirement In-

come Systems, Ernest J. E. Griffes, Chairman (April 5).—Indicates that while a vesting minimum should be set, it should be enacted as a Treasury Department or Internal Revenue Service requirement for qualification and not legislated by an act of Congress.

American Telephone and Telegraph Company, William G. Burns, Assistant Treasurer (April 6).—Advocates that the administration of any new pension legislation continue to be under the expertise of the Internal Revenue Service.

National Retired Teachers Association and American Association of Retired Persons, Bernard E. Nash, Executive Director (April 6).—Believes that the administration of pension plan reform is feasible by either the Department of Labor or the Internal Revenue Service. Does not indicate preference, but expresses hope that a combined bill can be enacted as developed by the labor and tax committees.

Honorable Stanley C. DuRose, Jr., Commissioner of Insurance, State of Wisconsin (written statement).—Criticizes H.R. 2 because it appears to rely too heavily on disclosure requirements, without adequate provision for review and audit of annual reports supplemented by field examinations. Recommends that a government agency be particularly designated to be available to accept inquiries and complaints of participants and beneficiaries, to make the required investigations, and to resolve the matter, in the nature of an ombudsman. Points out that this function is especially important since the majority of the funds are administered directly or indirectly by the employer, and the employees are reluctant to take their complaints directly to the employer.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (written statement).—Notes that at least eight Executive agencies have some authority over the operations of private pension plans and that the current proposals give additional authority to the Department of Labor without consolidation of any facilities or reporting requirements. Asserts that employers are already overburdened by the excessive reporting requirements on private pension plans and believes that any added cost imposed by these proposals might discourage employers from increasing benefits or establishing new plans. Requests that Congress revise the proposals to eliminate duplication of reports and controls and to simplify the entire private pension system. Concurs with the proposals for a specialized agency within the Treasury Department to be the repository of investigatory and enforcement powers under the bill, or in the alternative, that a newly established independent agency be created invested with all the powers and duties now held by various Government agencies.

Recommends that the authority of the Secretary of Labor to prescribe rules and regulations should not apply to general or specific interpretations of the "prudent man" rule as proposed in the bills, but rather that the final decision as to whether or not an act is prudent should be subject to judicial review and not to the decisions of the Secretary of Labor. Objects to such power being given to the Secretary of Labor because it might result in a new body of trust law evolving from the rules and regulations.

Favors substantially increasing the 6-month registration period proposed in the bills because it would be almost impossible for em-

ployers to comply with the detailed requirements after waiting sometime subsequent to the enactment of the bill for rules and regulations to be issued by the Secretary of Labor, or other authorized agency.

Draws attention to the provisions in the proposed bills which provide that civil actions may be brought against the fiduciaries of private pension plans in any court of competent jurisdiction in the district where the plan is administered, where the breach took place, or where the defendant resides or may be found. Believes that it would be unduly burdensome and costly for a fiduciary to be sued in any jurisdiction where the plan is administered, which possibly could mean any location where the employer has employees covered under the plan. Recommends that this jurisdictional provision be deleted from the proposals. Urges that the bills should provide for attorneys' fees and costs only to a successful party and should require the posting of a bond to cover costs, in order to avoid frivolous and nuisance lawsuits.

J. Limitations on Contributions

Professor Daniel Halperin, University of Pennsylvania Law School (February 22).—States that the issue is not whether there should be a limit on retirement benefits, but whether there should be a limit on eligibility for tax benefits. Suggests that tax benefits be limited to providing retirement benefits of $35,000–$40,000 a year. Suggests that the limitation be stated in terms of restriction on amounts set aside on tax deferred basis to provide a pension for any one individual: once the vested amount set aside equals the limit, any future vesting of contributions or earnings on the account would be currently taxable. Urges that, if across-the-board limitations seem unacceptable, then limitations be imposed wherever contributions on behalf of low-income persons is less than half the total contributions under the plan.

Feels that substantial benefits for high-income persons are particularly disturbing when half of the work force does not receive any private pension benefits and those people, largely lower-income people are required to make up revenue losses incurred to give extra benefits to higher-income persons.

Indicates that for lower-income persons, contributory plans are contrary to the justification for tax benefits for private retirement programs, especially if the contributions are voluntary, because they make it less likely that employers and higher-income persons will see that adequate retirement benefits are provided to lower income persons.

Maintains that increasing available deductions on behalf of the self-employed also benefits high-income professionals without doing very much for the great majority of workers.

Contends that self-funded plans are not the proper approach to increase coverage of private pension system since it is likely that most of those who set up such plans are apt to have higher incomes. Cites experience of Canada which, in 1969 (12 years after the adoption of the program) had only 1.2 percent of persons earning less than $10,000 a year showing contributions to self-funded plans while over 35 percent of persons earning more than $25,000 were participating.

Converse Murdock, Attorney, Wilmington, Delaware (February 22).—Feels that the self-employed, or person working for a small or

closely-held business, faces special financial problems because his income is likely to stop if the principal owner of the business is disabled or dies. Contrasts this situation with the relative financial security of a person who works for a large organization.

Believes there is discrimination against the self-employed because there is an unreasonably low ceiling on deductible contributions to retirement plans (10 percent of earnings to a maximum of $2,500 per year).

Asserts that there is tax discrimination in the rule that places Keogh plan contribution limits on pension and profit sharing plans of Subchapter S corporations. Feels this has discouraged small business from electing Subchapter S status. Urges the committee to recommend the repeal of this rule.

The National Society of Public Accountants, Peter Yosinoff, Chairman, Federal Taxation Committee (March 6).—Believes that proposed increases in the level of annual tax deductible contributions from 10 percent or $2,500 to 15 percent or $7,500 maximum is logical and reasonable. Contends that without some liberalization of the present limits, the sole practioner is indirectly and unduly encouraged to seek professional incorporation.

Association for Advanced Life Underwriting, Marshall I. Wolper, President (March 7).—Favors an increase to $7,500 per year maximum deductible contributions for self-employed persons and shareholder employees of subchapter S corporations.

Chamber of Commerce of the United States, Walker Winter, Chairman, Taxation Committee, and Robert R. Statham, Taxation and Finance Manager (March 8).—Support increasing the deductible amount for self-employed persons.

Donald C. Lubick, Attorney, Buffalo, New York (March 9).—Recommends identity of treatment between pension and profit sharing plans of self-employed, employees of professional corporations, and owner-employees of closely-held corporations—thereby avoiding inequities of the present system as well as the legal fees, recordkeeping, and additional audits caused by otherwise unnecessary incorporations.

Considers a maximum annual deferral of $5,000 in pension contributions (per person) to be reasonable both for self-employed and corporate owner-employee plans.

American Institute of Certified Public Accountants, Division of Federal Taxation, Robert G. Skinner (March 12).—Suggests that with respect to deductible contributions to qualified retirement plans, there is no rational justification for distinguishing between plans covering self-employed persons and those which cover only employees. Recommends that to achieve more equality with corporate plans, the maximum earned income base be eliminated for self-employed or that it be raised substantially.

Victor Zonana, Assistant Professor of Law, New York University School of Law (April 4).—On the basis of both equity and simplicity, believes that the present disparate treatment of corporate and noncorporate employees should be eliminated. Recommends that a single set of rules apply alike to corporate retirement plans, H.R. 10 plans, and Subchapter S plans, with all plans being subject to similar modi-

fication requirements, deduction rules, and taxation of distribution rules; with the maximum amount of earnings which may be taken into account for computing pension benefits not exceeding $60,000; and with a ceiling on the amount of pension benefits for which a deduction may be taken, stated either as a dollar limitation (e.g., $45,000) or as a percentage of the employee's compensation. Concedes that the effect of the foregoing proposals would sharply curtail the retirement benefits of highly compensated employees. Feels, however, that tax subsidy should be limited to moderate benefits available to all while permitting corporations to provide larger benefits for their officers and other highly compensated employees, but not at public expense through a subsidy.

American Life Insurance Association, Douglas B. Hunter (April 5).—Urges liberalization of the Internal Revenue Code provisions applicable to plans for self-employed individuals, such as an increase in the limitations on allowable contributions and tax deductions, removal of various restrictions, and replacement of mandatory full vesting by a more flexible schedule of vesting.

Supports the allowance of income tax deductions for contributions made by employees to tax-qualified pension and profit-sharing plans together with appropriate disincentives against premature withdrawal of such contributions.

American Society of Pension Actuaries, William J. Hand, President (April 5).—Recommends that limits on deductible contributions for self-employed individuals be increased to 15 percent of earned income not to exceed $50,000, as proposed in S. 372.

Institute of Electrical and Electronics Engineers, Richard Backe, Chairman, Pension Committee (April 5).—Believes that self-employed people should have more generous tax deductions than they now receive under present law for contributions to pension plans. Maintains this would encourage the self-employed to provide more adequate benefits for themselves and their workers.

American Society for Personnel Administration, National Committee on Compensation and Benefits, Subcommittee on Retirement Income Systems, Ernest J. E. Griffes, Chairman (April 5).—Suggests that the present limitations on deductible contributions to H.R. 10 plans for the self-employed should be increased.

Sheldon Cohen, Attorney, Washington, D.C., Chairman of Special Committee on Retirement Benefits Legislation, American Bar Association (April 6).—Supports legislation such as in H.R. 12272 (92d Congress) and H.R. 404 (93d Congress), but believes that all distinctions between corporate plans and self-employed plans should be eliminated. Alternatively, proposes that the limit on deductible contributions for self-employed plans be increased to at least $7,500 per year. Suggests raising substantially the limitation of $50,000 of earned income, or compensation, in H.R. 12272 to be taken into account in computing the allowable deduction (but without necessarily increasing the effective $7,500 deduction limit). Asserts that such legislation would not only benefit lawyers but also owners of small businesses, farmers and other professional persons and their employees.

Also, recommends consideration be given to making it feasible for self-employed persons and shareholder-employees of subchapter S

corporations to participate in pension plans of the "defined benefit" type, and to establishing limits which are imposed with respect to participants in such plans in terms of the *amount of benefits* which may be provided rather than limits as to the annual tax-deductible contributions.

Further, suggests that the special social security integration rules for owner-employees in self-employed plans be eliminated, so that the social security rules which apply under present law to corporate plans will also apply to all self-employed plans.

National Society of Professional Engineers, Paul H. Robins, Executive Director (April 6).—Supports increasing the tax deduction features related to pensions for the self-employed to $7,500. Feels, however, the companion proposal with respect to participants of employer-financed plans whereby an allowance calculated to be the employer's contribution is subtracted from the employee's income is faulty. Advocates a revision to provide for a subtraction only where the employer's contribution vests unconditionally to the employee's benefit.

Bureau of Salesmen's National Associations, Marshall J. Mantler, Managing Director (April 6).—Recommends that limits on deductible contributions be the same for individuals, self-employed persons, and for corporate employees.

Bruce Griswold, President, Cleveland Bar Association (April 6).—Argues that the Federal tax laws discriminate in many ways against the self-employed, particularly with respect to fringe benefits. Recommends that the limits on tax-deductible contributions to self-employed plans be increased substantially, to enable the self-employed to provide an adequate pension for themselves.

Proposes that special provisions be made with respect to annual contribution deduction limits for the older person who does not have many more years to retirement.

Nicholas James, Managing Director, Jockeys' Guild (April 6).—Favors Congressman Corman's suggestion providing that a self-employed person be permitted to set aside whatever amounts he wants to contribute until he accumulates a sufficient annuity.

Recommends that (1) the maximum amount of contributions to a qualified pension plan be increased to 15 percent of earned income or $7,500, whichever is less; (2) a self-employed person be permitted (in order to avoid excess contribution calculations) to contribute a minimum amount each year regardless of his earned income (suggests $720) and; (3) an individual be permitted to contribute to a pension plan in a year when his earnings are high an additional amount to compensate those years when his earnings were lower.

Morris Gould, President, Pension Counsellors, Inc. (April 6).—Urges that the 1969 Tax Reform Act changes dealing with the treatment of stockholder-employees of Subchapter S corporations be repealed.

Melvin M. Wilf, Attorney, Philadelphia, Pa. (April 6).—Believes that the laws dealing with qualified pension and profit-sharing plans should be unified to provide more equitable tax treatment. Favors the administration's recommendation of an increase in the deductible limitations imposed on the self-employed as a step in the right direction.

Advocates the establishment of a new across-the-board limitation on the retirement benefits any individual may obtain solely from qualified plans and that it be expressed in terms of a dollar limit with a built-in cost of living adjustment. Believes that a pension limit of $80,000 per year would be reasonable. Suggests that the same limitation be placed upon all owner-employees. Maintains that pension plans based on a uniform relationship to compensation are not deserving of the present favorable tax treatment because they discriminate against the lower-paid working individual. Proposes a system where a pension plan participant at the lower levels of compensation be entitled to a pension of 70 to 80 percent of his final average pay. Asserts that this arrangement along with the new across-the-board limitation would prove more equitable to the majority of the working populace.

Daniel B. Curll, Jr., Vice-President, Day & Zimmermann Consulting Services, New York, N.Y. (*written statement*).—Supports a direct tax credit equal to 25 percent of the contribution up to $50,000 in place of a deduction from earned income. Stresses that this treatment will better equalize the treatment of high- and low-bracket taxpayers.

National Association of Manufacturers (*written statement*).—Recommends raising the limits on deductible plan contributions by the self-employed and shareholder employees of small business corporations.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (*written statement*).—Believes that the H.R. 10 program for the self-employed has not been successful due to the unrealistically low limitation on amounts that self-employed people can claim as a deduction when contributing to their own retirement plan. Suggests the contribution limit be set at $7,500.

Beverly Hills Bar Association Taxation Committee, Beverly Hills, California (*written statement*).—Urges the Congress to enact legislation which would allow any taxpayer to adopt a qualified pension and/or profit-sharing plan and which would apply uniform rules and limitations to all qualified retirement plans regardless of the type of taxpayer adopting the plan. Believes that uniformity and universality is a much fairer tax policy with respect to qualified retirement plans that the current law which discriminates in favor of the large corporations and against small corporations, partnerships, professionals, and individual employees. Fails to see any policy reason why an individual whose employer has not adopted a retirement plan for his benefit should not be able to plan for his own future security by adopting his own personal qualified plan. Recommends, that if a uniform maximum dollar limitation as to annual contributions for each participant is imposed, such dollar limitation should be substantially higher than the current $2,500 limit applicable to owner-employees and shareholder-employees.

Robert W. Hanson, Secretary-Treasurer, Rosemount, Inc., Minneapolis, Minn. (*written statement*).—Believes that private retirement funding is a sounder basis on which to build a fund for retirement than increasing the present Social Security program, because it builds a better understanding and appreciation for the need to have such a fund and reduces reliance on the Government to take care of old-age needs.

Recommends that employees be able to contribute up to 10 percent of wages to a qualified pension of profit-sharing plan after age 30 without paying income tax until the benefits are paid under the plan.

K. Tax Incentives for Personal Retirement Savings Plans

Frank Cummings, Attorney, Washington, D.C. (February 22).—Believes tax incentives should be adopted to solve the problem of employees who are not covered by a private pension plan, or employees, such as engineers, who change jobs so often that they are not likely to be protected under any vesting standard. Favors the proposal contained in H.R. 12272 (92nd Congress) to allow a deduction for contributions to a personal retirement savings plan in the case of an individual not covered under another form of private pension plan. Suggests that the maximum deduction should equal $7,500, not $1,500 as proposed under the bill.

Converse Murdoch, Attorney, Wilmington, Delaware (February 22).—Supports the administration proposals for limited deductions for voluntary contributions under retirement plans. Hopes that revenue estimators will not assume that a sizeable number of taxpayers will deduct the maximum. Favors allowing individuals to set aside before taxes enough money to provide a reasonable income at age 65, and suggests allowing this amount to be set aside at a pace chosen by the individual. Believes this would aid the person who cannot start saving until late in life.

American Textile Manufacturers Institute, Inc., Roger Milliken (March 5).—Indicates that the proposal allowing a limited deduction for employee contributions for retirement should be adopted.

American Paper Institute, William J. Steinmetz, Chairman, Financial Management Committee and Thomas R. Long, Chairman, Subcommittee on Tax Affairs (March 6).—Endorse the concept of a deduction for personal retirement savings but suggest that a reduction of the deductible amount based on employer pension plan contributions would introduce extremely difficult computational and administrative problems and should be eliminated.

Association for Advanced Life Underwriting, Marshall I. Wolper, President (March 7).—Urges extension of tax benefits to self-funded plans for individuals who are neither self-employed nor employed by companies who provided pension coverage.

Chamber of Commerce of the United States, Walker Winter, Chairman, Taxation Committee, and Robert R. Statham, Taxation and Finance Manager (March 8).—Favor income tax deferral for individual retirement savings plans.

American Institute of Certified Public Accountants, Division of Federal Taxation, Robert G. Skinner (March 12).—Supports the Administration's proposal to provide a tax deduction for an individual retirement savings plan.

American Life Insurance Association, Douglas B. Hunter (April 5).—Recommends the allowance of tax deductions 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 such coverage.

American Society of Pension Actuaries, William J. Hand, President (April 5).—Supports tax deductions for individual retirement savings equal to at least 20 percent of the first $7,500 of earnings.

Institute of Electrical and Electronics Engineers, Richard Backe, Chairman, Pension Committee (April 5).—Favors tax deductions for contributions made by employees to save independently for their retirement or to supplement employer-financed pensions.

National Retail Merchants Association, Bruce Matthews and Martin Amdur, Counsel (April 5).—Supports the granting of a tax deduction for voluntary employee contributions for retirement purposes as embodied in H.R. 12272 (92d Congress, 1st Sess.). However, urges replacement of the maximum $7,500 deduction limit proposed in H.R. 12272 with a dollar limit which is more consistent with the retirement needs of middle-management level employees.

National Society of Professional Engineers, Paul H. Robbins, Executive Director (April 6).—Endorses the concept of permitting tax-free funding of individual retirement programs. Suggests that the limit on deductible contributions for this be made equivalent to that for the self-employed person.

Bureau of Salesmen's National Associations, Marshall J. Mantler, Managing Director (April 6).—Favors the concept of personal retirement savings plans and believes the limits on deductible contributions should be the same as those imposed on corporate or self-employed plans. Feels that withdrawals from personal retirement plans should be permitted in emergency situations.

National Retired Teachers Association and American Association of Retired Persons, Bernard E. Nash, Executive Director (April 6).—Favors an extension of the use of tax qualified retirement plans to non-covered employees (as in section 3 of H.R. 12272, 92d Congress), but does not desire the creation of a new tax shelter benefitting higher income taxpayers.

Carol Burris, President, Women's Lobby, Inc. (April 6).—Believes that women who work in the home should be eligible for coverage under a pension plan, with deduction of at least that currently allowed to self-employed persons—10 percent of income up to $2,500.

Virgil Frizzell, C.L.U. and President, Frizzell and Company, Salinas, California (April 6).—Urges that tax deductions be permitted for contributions to personal retirement savings plans, so that all workers will be placed on an equal footing in the pension area—regardless of whether the worker's employer happens to provide a pension plan.

Daniel B. Curll, Jr., Vice-President, Day & Zimmermann Consulting Services, New York, N.Y. (written statement).—Contends that the provisions of current proposals limiting deductible contributions of employees to 20 percent of the first $7,500 of earned income (equal to $1,500) is unfair and discriminatory, especially when considered relative to the proposed increase in limits for self-employed individuals. Recommends that limits for employees and self-employed individuals be raised to 25 percent of the first $50,000 of earned income.

Recommends that all employers now contributing to qualified plans and all new plans which are approved be required to offer all eligible

participants the option of a retirement savings plan in the place of the usual pension plan. Proposes that contributions to the retirement savings plan would be made by the employer to an approved depository in the name of an individual employee. Enumerates the following benefits from such an option:

(1) Permit continuation of present plans with a minimum of change;

(2) Cost the employer exactly the same as his qualified pension plan;

(3) Provide immediate participation;

(4) Provide immediate vesting in full from each contribution;

(5) Provide complete portability;

(6) Provide 100 percent funding;

(7) Accumulation of a retirement fund over a normal working life with either single or multiple employers;

(8) Solve the problems of participation and vesting of conventional plans which arise upon the hiring of older people; and

(9) Avoid the inequities of a few benefitting from many contributors.

Honorable Jack Edwards, Member of Congress, Alabama (written statement).—Urges consideration of allowing individuals a deduction in computing adjusted gross income for amounts contributed to qualified individual retirement plans which they have established or which have been established by their employers.

American Dental Association, Louis A. Saporito, President (written statement).—Endorses the provisions of H.R. 7157 which would amend Section 404(e) of the Code to permit a self-employed person to deduct his annual contribution to an IRS-approved retirement plan up to a maximum of 15 percent of his net income or $7,500, whichever is less. Claims that these increased tax benefits are especially important for dentists who have a relatively short worklife and who find the alternative of incorporation to be undesirable.

National Association of Manufacturers (written statement).—Supports the liberalization of tax treatment of savings for retirement purposes by allowing a new deduction from adjusted gross income for employees not covered by employer plans or where the employer contributions are not significant.

Credit Union National Association, Inc., Wilfred F. Broxterman, Executive Assistant Managing Director, Washington Office (written statement).—Supports H.R. 186, which permits a tax deduction to an employee who sets aside a portion of his earned income into an individual retirement savings account. Feels that such an incentive will support and encourage thrift and savings among the working public, and enhance their ability to live their retirement years with dignity rather than merely existing or subsisting. Observes that section 408 of the bill would authorize an individual to utilize his State credit union as the depository of the money set aside in an individual retirement savings account but urges that it be amended to include Federal credit unions as qualified repositories. Offers a conforming amendment to the Federal Credit Union Act to obviate any questions as to the authority of Federal credit unions to receive such funds.

L. Taxation of Lump-Sum Distributions

Herman C. Biegel, Attorney, Washington, D.C. (February 22).—Believes that in this year of special emphasis on tax simplification, it would be most helpful if the long-recognized Congressional concern for the bunched-income problem in lump-sum distributions from qualified plans could be resolved on an equitable and more simplified basis.

Professor Daniel Halperin, University of Pennsylvania School of Law (February 22).—Maintains that the purpose of the private pension program—encouraging savings for retirement—is defeated by lump-sum distributions; consequently, present law which grants special favorable tax benefits to such distributions exaggerates this defect and so should be replaced by provisions which prohibit or discourage such distributions.

American Textile Manufacturers Institute, Inc. Roger Milliken (March 5).—To achieve much needed simplification, maintains that the capital gains rules previously applicable to lump-sum distributions from qualified plans should be reinstated.

Association for Advanced Life Underwriting, Marshall I. Wolper, President (March 7).—Recommends returning to overall capital gain treatment. Maintains that the 1969 amendments are too complex.

Chamber of Commerce of the United States, Walker Winter, Chairman, Taxation Committee, and Robert R. Statham, Taxation and Finance Manager (March 8).—Oppose treating any greater portion of a lump-sum pension distribution as ordinary income rather than capital gains.

Arthur M. Wood, Chairman of the Board; Sears, Roebuck and Co. (April 5).—Maintains that the capital gains treatment on lump-sum distributions from profit sharing plans represents a proper method of taxation. This is on the ground that the employee's profit-sharing account, including his share of the employer's contribution, is an investment at risk and therefore is entitled to capital gains treatment like any other risk investment. In this connection, notes that under the 1969 Tax Reform Act, lump sum plan distributions are to the extent that they represent employer contributions made after 1969, taxed as ordinary income—with averaging relief when distributed. Asserts that a return to full capital gains treatment of lump sum profit-sharing distributions would be desirable. If capital gains treatment for the full lump-sum distributions cannot be restored, then urges retention of present law. Recommends that appreciation in employer stock included in a lump-sum distribution should continue to be treated as under present law—i.e., such appreciation should not be taxed until it is actually realized by the employee through a sale.

Profit Sharing Council of America, John R. Lindquist (April 5).—Indicates that the Council is not particularly concerned with funding, portability and reinsurance proposals since they are primarily applicable to pension plans. States that the Council is primarily concerned that lump-sum distributions of profit-sharing plans be treated properly. Maintains that capital gains treatment is appropriate for such lump-sum profit-sharing distribution and urges the restoration of such

capital gains treatment for the entire amount of such lump-sum distributions on the grounds that:

(1) an employee's interest under such a plan represents employee money which is placed "at risk";

(2) when distributed in a lump sum, an employee's interest represents bunched income;

(3) capital gain treatment is easily understood and simple to administer which is especially important in view of the fact that many thousands of lump-sum distributions are made under qualified profit-sharing plans each year to average taxpayers;

(4) capital gain treatment produce a fair result to all classes of taxpayers, especially now that capital gain rates have an element of graduation built into them; and

(5) if Congress finally decides to provide for varying rates of taxation of long-term capital gains depending upon the length of time a particular asset has been at risk, such an approach would fit lump-sum distributions made under qualified profit-sharing plans.

Honorable Jack Edwards, Member of Congress, Alabama (*written statement*).—Recommends that individuals not be taxed on the receipt of a lump-sum distribution from a qualified retirement plan if the individual reinvests the funds in another qualified plan.

National Association of Manufacturers (*written statement*).—Criticizes the provisions of Sections 402(a) and 72(n) of the Code, which deny capital gains treatment to post-1969 employer contributions distributed as part of a lump-sum distribution from a qualified pension or profit-sharing plan and which substitute a 7-year averaging device. Maintains that this is so complicated that the IRS has been unable to implement regulations which are equitable and consistent with the Code. Recommends that Congress seriously consider restoring capital gains treatment to the total distribution in the interest of simplifying a complicated area that presently is a source of great confusion to both employers and employees.

Procter & Gamble Company, Cincinnati, Ohio, J. W. Nethercott, Vice-Pres.-Comptroller (*written statement*).—Reports that lump-sum distributions are the major consideration in the retirement plans of almost every one of their employees. Claims that retiring employees request lump-sum distributions for a number of reasons, such as the desire for a free reign in handling their own resources, the desire to use a capital sum in purchasing a small farm, a duplex, or some other form of small business, or the desire to relocate upon retirement.

Contends that any proposed changes in the tax treatment of lump-sum distributions which would impose a tax burden greater than that imposed by current law would reduce retirement income and threaten retirement arrangements and plans of thousands of private employees. Infers that the uncertainty among older employees in the wake of the proposed changes may lead many employees to request early retirement, and feels that the overall economy cannot afford such a loss. Requests that Congress restore full capital gain treatment to all lump-sum distributions, and in the alternative, recommends retention of the existing law.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (written statement).—Suggests a return to the pre-1969 treatment of lump-sum distributions from employee benefit plans because it has been practically impossible for the Treasury to write regulations in the area and because the 1969 Reform Act decreased the tax differential between capital gains rates and ordinary income rates.

M. Federal Preemption of State Laws

American Telephone and Telegraph Company, William G. Burns, Assistant Treasurer (April 6).—Feels that Governmental regulation should be initiated at the Federal level for the sake of uniformity.

Honorable Stanley C. DuRose, Jr., Commissioner of Insurance, State of Wisconsin (written statement).—Opposes the proposed Federal preemption of State regulatory effort in this area because it will result in ineffective, or non-regulation, particularly with respect to the smaller funds where regulation is needed most. Feels that it is essential that Federal regulation be supplemented by State regulation because:

(1) The number of funds is too great for proper surveillance to be provided by any one government agency;

(2) Most problems in fiduciary standards regulation come from funds with the smaller number of participants;

(3) Affirmative and aggressive action is required to adequately regulate fiduciary standards; and

(4) Effective consumer protection needs to be provided at the level nearest the consumer.

Estimates that Federal authority would extend over somewhere between 150,000 and 200,000 trusts, and questions whether the Federal bureaucracy would be able to give this great number of trusts the individual attention needed to enforce the fiduciary standards. Indicates that the National Association of Insurance Commissioners is considering a proposed model act that would establish State fiduciary standards and regulation of employee pension and welfare plans and which would supplement Federal regulation. Submits suggested language for a new section 106(K) to H.R. 2 to permit States to regulate employee welfare and pension plans and funds.

National Association of Manufacturers (written statement).—Endorses the provision of H.R. 2 which provides that the act shall supersede any and all laws of the States as they relate to certain specific provisions of that bill, but feels that section should be broadened to encompass all titles of the pending legislation.

N. Miscellaneous

Professor Daniel Halperin, University of Pennsylvania School of Law (February 22).—Maintains that, since the objective of the tax benefits for such plans is provision for retirement needs of lower income persons, that integration with Social Security should not be permitted to result in exclusion from plan benefits until combined Social Security and private plan benefits reach prescribed levels of adequacy.

Association for Advanced Life Underwriting, Marshall I. Wolper, President (*March 7*).—Proposes that curative plan amendments be permitted within 14½ months after the close of the taxable year, instead of the 2½ months maximum under present law.

Recommends that a qualified plan be permitted to be originated within 2½ months following the close of the taxable year.

Suggests that contributions be permitted to qualified plans within 2½ months following the close of the taxable year, and be treated as though made in the taxable year.

Chamber of Commerce of the United States, Walker Winter, Chairman, Taxation Committee, and Robert R. Statham, Taxation and Finance Manager (*March 8*).—Suggests that Congress review how private pensions will be affected by new social security benefit and tax increases.

George D. Webster, Counsel, American Society of Association Executives (*April 4*).—Describes ASAE as a professional society composed of 4500 association executives spanning the total nonprofit field—educational, technical, and scientific societies; business leagues; agricultural organizations; and professional societies, all serving a public interest as recognized by the tax exemptions granted them under section 501(a) of the Internal Revenue Code.

Objects to the recent decision by the National Office of IRS that section 501 organizations, because they do not have taxable income, are not entitled to "profit sharing" plans. Contends that the advantages inherent in a profit sharing plan whereby the employers' contributions are accumulated without income tax for the ultimate benefit of the employee should be available to 501(a) organizations on the ground that it serves as an incentive for making cost savings as well as a method of providing deferred compensation for these employees.

Maintains that the position of the National Office of the IRS is manifestly unjust and discriminatory as between employees of tax exempt and other organizations, and urges Congress to take remedial steps to correct the inequity by enacting a proposal along the lines of H.R. 3608—permitting organizations to use amounts by which their operating revenues exceed expenditures as the basis of contributing to profit sharing plans. Claims that this would not result in any revenue loss. Asserts that abuses would not arise from such legislation as section 401 of the Code would continue to guard against discrimination in favor of officers, shareholders or other highly compensated employees.

Dwight Weist, Actor and Radio Announcer, New York City (*April 4*).—Proposes an "Income Tax Bond Plan" to provide a portable pension plan for individuals as well as a deferred compensation plan for employees with fluctuating income. States that Plan has been endorsed by the Screen Actors' Guild, the American Federation of Television and Radio Artists, and the Eastern Directors' Council of the Directors' Guild of America.

Outlines major major principles of Income Tax Bond Plan as follows: Each year, an individual may deduct his purchases of Government bonds in that year in an amount not exceeding 10 percent of his adjusted gross earned income or $2,500; upon subsequent redemption, he would pay ordinary income tax on the proceeds. Quali-

fied bonds could be Series E bonds or a special class of bonds bearing no interest for the first 10 years and 2½ percent per year thereafter. The percentage ceiling of 10 percent would be reduced by the amounts set aside by employers in existing pension plans and no bonds could be redemmed in less than three years after purchase. Receipts issued at time of purchase and redemption would be attached to the taxpayer's income tax return together with full information with respect to other pension plans in which the purchaser participates. Banks would file information returns on all redemptions.

Contends that the Plan as outlined presents several advantages: (1) would be helpful in controlling inflation by encouraging savings in high earning years and providing funds in times of recession or unemployment; (2) would provide the Government with interest-free money for ten years and thereafter at a low interest rate. Points out that economic and statistical studies are required to determine the impact of the Plan and assess its feasibility.

Victor Zonana, Assistant Professor of Law, New York University School of Law (April 4).—Recommends that the Code requirement of 70 percent coverage be increased to 90 percent of all eligible employees with the further provision that at least 80 percent in fact participate and that the employee contribution rate does not exceed 3 percent. In plans which do not meet the foregoing tests, proposes a codification of recent court decisions with respect to discriminatory plans including the following guidelines: (a) any employee whose annual compensation exceeds the Social Security wage base would be deemed a "highly compensated employee"; and (b) a plan would be deemed discriminatory if 30 percent or more of the employees covered were shareholders or "highly compensated employees" unless their benefits did not exceed those available to non-plan participants. Feels that the above restrictions are particularly important in connection with small plans and would accept less stringent qualifications for larger plans.

American Society of Pension Actuaries, William J. Hand, President (April 5).—Maintains that the establishment of regulations for "pension actuaries" in connection with pension reform would be a dangerous precedent. Maintains that if professional qualification requirements are established. all individuals who demonstrate that they have been successfully practicing in this field for a period of at least five years, or who can otherwise demonstrate proficiency, should be considered as having met such qualification requirements. Also indicates that any standards established for pension actuaries should emphasize the need for competency not only in the field of actuarial science (which is in reality only a small part of pension plan administration) but also competency in other aspects of pension plan administration which requires a diversity of talents.

Opposes recognition of membership in a private organization such as the American Academy of Actuaries as automatically qualifying an individual to certify pension plan calculations as required in H.R. 2 and S. 4.

Julius Halperns, Public Employee of State of Illinois (April 5).—Recommends that public employees should be granted tax deductions for their contributions into public retirement systems because the benefits from such contributions are postponed until the retirement

years. Indicates that the Internal Revenue Service does allow the tax deferment of compulsory retirement contributions of public employees where the contributions are forfeitable in the event of termination of employment prior to eligibility for retirement. Argues that similar tax deferment should be allowed for employee contributions for public retirement plans regardless of whether or not the benefits are forfeitable.

Feels that public employees should be allowed to exempt pension income in half as many years of retirement as the number of years of public service in which their contributions were taxed, or on some other sliding-scale basis.

Maintains that the various public pension funds in the State of Illinois are inadequately funded although the new Illinois Constitution appears to confirm the State's pension obligations.

Recommends that all public employees should be allowed to enjoy tax-deferred annuities along the lines of the tax deferment now permitted to employees of public schools or nonprofit organizations who participate in tax deferred insured annuities under section 403(b) of the Internal Revenue Code.

Robert S. Bromberg, Attorney, Cleveland, Ohio, on behalf of Memorial Hospital of Long Beach, California (April 5).—Indicates that the Internal Revenue Service has recently adopted a position that prevents tax-exempt hospitals from establishing "productivity incentive plans" under section 401(a) of the Code. Maintains this has the unfortunate result of working against national efforts to hold down rising hospital costs.

Points out that the Memorial Hospital of Long Beach, California, generally pays into a deferred compensation plan an annual amount representing the employees' share of the cost savings realized by the hospital during the year. In 1972, the Internal Revenue Service issued a number of private rulings to the effect that the establishment of any form of profit sharing plan, including an employee incentive (or savings sharing) plan by a nonprofit hospital, is incompatible with its tax-exempt status, and also that such a plan cannot qualify under section 401(a) of the Code because a nonprofit organization does not have profits in the traditional sense.

Recommends the enactment of Mr. Collier's bill, H.R. 3608, as a remedy. Urges legislation enabling nonprofit hospitals exempt under section 501(c)(3) of the Code to establish and maintain incentive programs which qualify as profit-sharing plans under section 401(a) of the Code.

National Society of Professional Engineers, Paul H. Robbins, Executive Director (April 6).—Recommends continued congressional inquiry into the problems of pension plans as experience is accumulated. Suggests that one such study should be with respect to the Government's procurement regulations in order to provide protection against forfeiture of pension rights or benefits in consequence of job transfers or employment losses due to terminations or modifications of Federal contracts or procurement policies—such as included in S. 4 this session and included in S. 32 (92nd Congress).

Morris Gould, President, Pension Counsellors, Inc. (April 6).—Recommends that the Social Security integration levels for plans be raised over the present 37-percent level.

F. Cleveland Hedrick, Jr., on behalf of the Prudential Insurance Company of America (written statement).—Calls attention to the fact that section 401(d)(4)(B) of the Code provides that in order for a self-employed pension plan to qualify, no benefits may be distributed to an owner-employee unless he is disabled or has reached age 59½, and that section 72(m)(1) requires any funds that are withdrawn prematurely by an owner-employee to be included in income. Contrasts that treatment with the right of a common law employee to withdraw his voluntary contributions without taxation or penalties at any time. Argues that the owner-employees incentive to save by making voluntary contributions is lessened, since he may feel he must have access to funds for intervening emergencies and thus cannot risk supplementing his plan with these voluntary contributions because his plan does not permit their withdrawal. Claims also that these provisions create an artificial incentive to incorporate. Recommends the amendment of sections 401 and 72 to permit owner-employees under self-employed pension plans to withdraw their voluntary contributions without taxation or penalties in the same manner as common law employees.

John S. Nolan, Attorney, Washington, D.C. (written statement).—Notes that the Treasury Department has proposed new regulations under sections 402 and 403 of the Code, which would provide that an employee participating in a "salary reduction pension plan" would be taxable currently on his salary reduction. Notes that the proposed change does not purport to change the treatment of many other forms of deferred compensation which present the identical issue. Urges congressional action to end this inequity and again make it possible for small employers to adopt plans for their employees in this manner.

Describes in detail the legislative and administrative history supporting the current treatment of salary reduction pension plans. Explains that the key features of these qualified plans are that the employee's interest is fully vested, the election must be made by the employee prior to the time any services are rendered, and the amount by which any employee may elect to reduce his current compensation is limited to 6 percent thereof. Claims that the cost of adopting and administering salary reduction pension plans is extremely low because they are standardized. Maintains that employees are more easily persuaded to accept the benefits of these plans because such plans are simple, the costs are low, the benefits are easily understood, and there is a demonstrable tax benefit to them.

Argues that the proposed regulations, if adopted, would be contrary to existing law, contrary to long-standing administrative practice, and contrary to the obviously desirable public policy of encouraging employees to plan for retirement. Contends that the circumstances of an employee salary reduction plan cannot be distinguished in substance from the case where a union, negotiating a new contract, agrees to an increase in the employer's contribution to a qualified pension trust as part of a total wage settlement; if such an increase had not been agreed to, the union would have demanded and obtained a larger increase in current wage levels. Declares that employers are forced to pay the same present value for labor as a factor of production, irrespective of how the benefits are allocated by the parties between current cash compensation and the actuarial value of interests in a trust.

Doubts that continuation of the current practice will have any substantial effect on Treasury receipts; but even assuming that losses to the Treasury would be substantial, believes that the benefits of possible extension of the private retirement system to many more small businesses far outweighs the potential Treasury losses.

Defines the legal issue in the proposed change as whether employer and employee are free to decide, prior to the time that the employee's services are rendered, that the employee will receive less current compensation and that the employer will then subsequently contribute an equivalent amount to qualified pension or profit-sharing trusts for the employee's account. Discusses a long line of legal precedents dealing with deferred compensation and the constructive receipt doctrine in support of the current treatment of employee salary reduction pension plans. Asserts that court cases hold that there is no constructive receipt when, prior to the time the participants had a right to receive benefits, they had given up such rights. Points out that the issue in the salary reduction pension plans is distinguishable from the one in assignment of income cases, the former being a problem of tax deferral, not tax avoidance as in the latter cases.

Robert J. Lichtenstein, Attorney, Pittsburgh, Pa. (April 6).—States that Internal Revenue Service interpretations of the discrimination rules have resulted in situations where small employers may be prevented from establishing pension plans for their salaried employees. Suggests that the tax law be amended to provide a "business purpose" test for determining whether a plan of a small employer discriminates in favor of highly-compensated employees.

Corporate Fiduciaries Association of Illinois, J. W. Cooper, Chairman, Employee Trusts Committee (written statement).—Calls attention to the fact that the Securities and Exchange Commission requires banks to register pooled or group trusts for H.R. 10 plans, unless all participants are residents of a State where the bank is headquartered. Claims that under such circumstances it is impractical and uneconomical for banks to service the small employers. Urges that pooled funds established by banks to service H.R. 10 plans and individual retirement plans should be exempt from SEC registration and regulation by law.