[COMMITTEE PRINT]

SUMMARY OF TESTIMONY ON ADMINISTRATION'S PENSION PROPOSAL "INDIVIDUAL RETIREMENT BENEFITS ACT OF 1971" (H.R. 12272)

AT

PUBLIC HEARINGS, MAY 8 TO MAY 16, 1972

HELD BY THE

COMMITTEE ON WAYS AND MEANS

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

OCTOBER 1972

U.S. GOVERNMENT PRINTING OFFICE

78-387 WASHINGTON : 1972 JCS 3-72

SUMMARY OF TESTIMONY ON ADMINISTRATION'S PENSION PROPOSAL "INDIVIDUAL RETIREMENT BENEFITS ACT OF 1971" (H.R. 12272)

On December 8, 1971, the Administration submitted its private pension proposals entitled the "Individual Retirement Benefits Act of 1971." The proposals are embodied in H.R. 12272, introduced by Chairman Mills and Congressman Byrnes of Wisconsin at the request of the Administration. The proposed legislation, as described by the Administration, is designed to strengthen the private retirement system by providing minimum standards of participation and vesting in the benefits offered by an employer sponsored pension plan and to encourage the expansion of the private retirement system by offering greater tax benefits to individuals who choose to invest in a retirement savings plan. In general, the proposal would: (1) establish minimum standards for participation and for vesting of benefits under pension and profit sharing plans; (2) grant deductions to individuals for personal savings for retirement; and (3) increase the deductible contribution which may be made on behalf of self-employed individuals and shareholder-employees of subchapter S corporations to a retirement plan which covers themselves and their employees.

Testimony was received before the Committee on Ways and Means from the Administration, Members of Congress, and the general public at public hearings held May 8 through May 16, 1972. Summarized below are the statements of the witnesses appearing during the public hearings, as well as written statements submitted to the Committee on Ways and Means with respect to the provisions in the Administration's proposal and other tax proposals in this same general area.

I. EMPLOYER PLANS

Age and Service Eligibility Requirements

Present law.—The statute does not presently contain any specific eligibility conditions relating to age or service. Current regulations allow plans to be limited to employees who have (1) attained a designated age, or (2) have been employed for a designated number of years, as long as the effect is not discriminatory. Also, under administrative practice, a plan may exclude employees who are within a certain number of years of retirement (e.g., 5 or less) when they would otherwise become eligible to participate.

Administration's proposal.—Provides that a qualified plan could not require (as a condition of participation) any one of the following:

(1) that an employee have service with the employer in excess of 3 years;

(2) that an employee have attained an age in excess of 30 years; or

(3) that an employee who would otherwise become eligible to participate be more than 5 years younger than the earliest age at which he could retire with unreduced benefits.

A. COMMENTS SUPPORTING THE ADMINISTRATION'S PROPOSAL

William A. Dreher, president, William A. Dreher & Associates, Inc. (*May 11—sixth witness*).

First Investment Annuity Company of America, John F. Bridges, President (*May 11—eighth witness*).

United States Savings & Loan League (*written statement*).

B. COMMENTS OPPOSING THE ADMINISTRATION'S PROPOSAL

National Society of Professional Enginers, Paul E. Robbins, Executive Director, also representing American Society of Mechanical Engineers, American Society for Metals and the Institute of Electrical and Electronics Engineers (*May 10—fourth witness*). Participation requirements should not exceed one year of service or attainment of an age higher than 25.

United Auto Workers of America, Nelson J. Edwards, Vice President (*May 12—first witness*): Opposes a minimum age or 3-year service requirement and believes workers should receive full pension credit for all years of service.

Association of Long Island Engineers and Scientists (*written statement*): Believes that a maximum of one year's service should be required for participation in a pension plan.

Rocky Mountain Motor Tariff Bureau (*written statement*): Believes the minimum age requirement of 30 discriminates against younger employees and should be lowered.

C. OTHER COMMENTS

Marshall I. Wolper, National Association of Life Underwriters and Association for Advanced Life Underwriting (*May 9—sixth witness*): An employer should be able to exclude union employees who do not wish to participate and, for purposes of determining discrimination and coverage, the present statutory test should be amended to make clear that exclusion of employees who are not eligible to participate under the administration's proposed standards, does not constitute discrimination. Also suggests that a minimum of 5 years (rather than 3 years) of participation be required before 50 percent vesting is attained under the alternative test.

Eldon Nyhart, Indianapolis, Indiana (*May 9—tenth witness*): Suggests standards for participation require that all employees 25 years or over with 3 or more years of service be eligible to participate.

National Retired Teachers Association and American Association of Retired Persons, Cyril Birtchfield, for Bernard E. Nash, Executive Director (*May 10—third witness*): Believes the minimum service requirement should not be more than 3 years.

National Association of Manufacturers (*written statement*): Recommends employee coverage under private pension plan be mandatory after 5 years of service rather than 3.

Pre-Retirement Vesting

Present law.—Although a qualified plan must provide that an employees' rights are nonforfeitable upon its termination, or on discontinuance of contributions thereunder, there is no requirement that an employee have a nonforfeitable right to receive his accrued benefit before retirement. (The lack of pre-retirement vesting may, however, be taken into account to determine whether the plan is discriminatory.)

Administration's proposal.—

(1) *Time of vesting.*—Provides that a qualified plan must require that an employee's rights in 50 percent of accrued benefits become nonforfeitable on whichever of the following occurs later—

(a) as of the end of the year in which the sum of his age and years of participation in the plan equals or exceeds 50 ("rule of 50"), or

(b) after 3 years participation in the plan (reduced by any service before eligible to participate in plan).

(2) *Vesting as to balance of accrued benefit.*—After the occurrence of the event in (1), the employee's rights in the remaining 50 percent of accrued benefits must become nonforfeitable at least ratably over the next 5 years.

(3) *Relief for plans not fully funded.*—Existing plans are relieved of the pre-retirement vesting requirements during a plan year in which—

(a) benefit payments to retired participants exceed benefit accruals; and

(b) the value of accrued liabilities to retired and active participants taken together exceeds the value of plan assets.

This relief is not to apply during any year in which the plan is amended to provide for greater benefits within the next 5-year period.

A. COMMENTS SUPPORTING THE ADMINISTRATION'S PROPOSAL

John N. Cookenbach, American Bankers Association (May 9—ninth witness.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 10—first witness): Supports the rule of 50 as one acceptable standard.

Golf Course Superintendents Association of America, Charles G. Baskin, Chairman of the Pension Committee (May 10—fifth witness): Supports proposal to establish a standard for vesting of pensions to protect employees who move from job to job.

Teachers Insurance and Annuity Association of America and College Retirement Equities Fund, William C. Greenough, Chairman (May 12—third witness): Supports the rule of 50 as a minimum standard for vesting.

Honorable John N. Erlenborn, Member of Congress, Illinois (May 16—second witness).

B. COMMENTS OPPOSING THE ADMINISTRATION PROPOSAL

Honorable Jacob K. Javits, United States Senator, New York (May 8—second witness): States that rule of 50 discriminates against the hiring of elderly persons; vesting rule should provide for early and "age-neutral" vesting. Proposes "deferred graded vesting"—10 percent after 6 years, and 10 percent more each year thereafter until full vesting after 15 years.

National Retired Teachers Association and American Association of Retired Persons, Cyril Birtchfield, for Bernard E. Nash, Executive Director (May 10—third witness): Opposes the rule of 50; believes that rapid vesting on a graduated basis is more desirable and that there should be no minimum age requirement for vesting.

National Society of Professional Engineers, Paul E. Robbins, Executive Director, also representing American Society of Mechanical

Engineers, American Society for Metals and the Institute of Electrical and Electronics Engineers (May 10—fourth witness): Opposes the rule of 50 and supports requirements for immediate vesting. Alternatively, full vesting might occur ratably over a period of 5 years.

Gerald S. Susman, Bluestein & Prusky Associates (May 10—seventh witness): Believes that vesting should depend on years of service rather than age and that not more than 15 years' service should be required for full vesting.

American Federation of Labor-Congress of Industrial Organizations, Andrew J. Biemiller, Director, Department of Legislation (May 11—first witness): Favors national standards of vesting for single employer plans, but has serious reservations with regard to the "rule of 50." Believes that this vesting standard could easily result in discrimination in employment against older workers.

United Auto Workers of America, Nelson J. Edwards, Vice President (May 12—first witness): Opposes the rule of 50 on the ground that it denies vesting to younger employees. Also opposes feature of H.R. 12272 which requires vesting only for benefits accrued after December 31, 1973. Believes all benefits should be fully vested after 10 years' service.

Association of Long Island Engineers and Scientists (written statement): Believes there should be immediate vesting of rights in a pension plan, or that full vesting should occur ratably over a five year period.

Blue Bell, Inc. (writen statement): Opposes the rule of 50, and believes vesting formula should be designed to encourage employees to remain with their employer.

Honorable Edward P. Boland (written statement): Opposes rule of 50 as ultimately compounding problems that older workers face in obtaining suitable employment.

California Products Corporation (written statement): Opposes the rule of 50; believes the employer should be entitled to use its pension plan as a means of encouraging employees to remain in its employ.

Honorable John D. Dingell, Member of Congress, Michigan (written statement): Urges support of H.R. 686 which would require full vesting after 10 years of service.

Michael F. Finn (written statement): Opposes minimum vesting requirements on grounds of cost.

Honorable Seymour Halpern, Member of Congress, New York (written satement): Favors proposal for deferred graded vesting—10 percent after 6 years, and 10 percent more each year thereafter until full vesting after 15 years.

Taxation with Representation, Barry Bressler (written statement): Advocates immediate vesting of pension plan rights and believes administration proposal will encourage employers to discharge workers as they approach the time of vesting.

Taxation with Representation, William Withers (written statement): Opposes the rule of 50 on the ground that it may discourage hiring of the elderly.

C. OTHER COMMENTS

Honorable Elwood H. Hillis, Member of Congress, Indiana (May 8—fifth witness): Urges adoption of rule of 40 pursuant to which 10 percent of benefits would vest; remaining benefits would vest at the rate of 10 percent per year. Would provide for immediate vesting where retirement is a result of disability. Would provide for vesting of all benefits, and not just that portion accrued after the act becomes effective.

Marshall I. Wolper, National Association of Life Underwriters and Association for Advanced Life Underwriting (May 9—sixth witness): Suggests that a general provision be added providing that any tests or requirements in terms of age should be deemed satisfied if they are satisfied by the anniversary date under the plan which follows attainment of the age in question.

Robert J. Myers, Silver Spring, Maryland (May 9—seventh witness): Suggests that employees with vested benefits in contributory plans should be prohibited by law from withdrawing benefits, thereby destroying their vested rights, or, alternatively, that employees be allowed to withdraw their contributions to qualified plans without destroying their vested benefits.

Walter E. Klint, Council on Employee Benefits (May 9—eighth witness): Urges a minimum period of participation of 5 years (rather than 3) and, as an alternative to the rule of 50, suggests that a plan be qualified if 100 percent of an employee's rights are vested after not more than 10 years of participation in the plan.

Eldon Nyhart, Indianapolis, Indiana (May 9—tenth witness): Urges that plans be required to provide that 10 percent of accrued benefits be vested when sum of age and years of participation after act becomes effective equal 50; additional 10 percent of accrued benefit should become vested with each additional year of participation. This percentage would apply to the full accrued benefit and not just the portion that accrued after legislation becomes effective.

Daniel Halperin, Professor of Law, University of Pennsylvania (May 9—twelfth witness): States that some procedure is needed to provide for vesting of benefits earned prior to the effective date of the bill, otherwise legislation would be of little aid to those now nearing retirement.

National Retired Teachers Association and American Association of Retired Persons, Cyril Birtchfield, for Bernard E. Nash, Executive Director (May 10—third witness): Believes that dollar limitations should be imposed on the amount of benefits paid by qualified plans to an individual, or that there should be a maximum limit on contributions on behalf of any one individual.

American Federation of Labor-Congress of Industrial Organizations, Andrew J. Biemiller, Director, Department of Legislation (May 11—first witness): Suggests a vesting standard of 10 years for single employer plans. Points out that multi-employer plans should be exempt from this standard because employee pension credits are portable as workers move to one employer in industry or trade to another.

Bureau of Salesmen's National Associations, Marshall J. Mantler, Managing Director (May 11—second witness): Favors Federal legislation to prescribe minimum standards for vesting in qualified pension plans.

Quentin J. Smith, Jr., President, and Preston C. Bassett, Vice President and Actuary, Towers, Perrin, Forster & Crosby (May 11—fourth witness): Recommends the following modifications: (1) that participation in a qualified plan should not be deferred for more than 3 years regardless of the age of the employee; (2) benefits credited to employee should vest at the later of 5 years of service or when the age of an employee plus his service is equal to 50; (3) employers should be given 5 years in which to comply with the vesting provisions since the cost of providing for vested benefits can be a burden for many organizations; and (4) benefits should be vested for all years of credited service and not just for years of participation in a plan subsequent to 1973.

William A. Dreher, President, William A. Dreher and Associates, Inc. (*May 11—sixth witness*) *:* Suggests that the bill permit an employer to have a lesser degree of vesting under a single plan if he can demonstrate to the statisfaction of the Secretary that the combined vested rights under all plans (such as a pension or profit sharing, thrift or savings plan) qualified under section 401 of the Internal Revenue Code comply with the "rule of 50" requirements. Believes that any meaningful minimum vesting requirement must apply to all years of participation under a plan and not only to benefits accrued after 1973.

Herbert Ferster, New York City (*May 11—ninth witness*) *:* Believes that the pending bill covering private pension plans should not require multi-employer union plans to vest.

American Telephone & Telegraph Company, Stanley L. King, Jr., Assistant Vice President for Human Resources (*May 12—second witness*) *:* Generally supports the administration proposal, including the rule of 50, but believes the bill should be amended to provide that only retirement benefits will become vested, that vested retirement benefits need not be paid until the worker reaches age 65, and that the bill does not apply to qualified savings plans for employees, which have a separate vesting schedule for each year of contributions.

American Life Convention and Life Insurance Association of America (*written statement*) *:* Generally supports the idea of minimum standards for participation and vesting, and believes the administration proposal is one acceptable approach. However, believes that qualified plan should be permitted to provide, at its option, that benefits vest only to the extent that they are funded. Also believes that substantial administrative effort will be required of plan managers and the Internal Revenue Service to adjust to the proposed new rules, and that plans should be allowed a three-plan-year period of grace after the effective date of the Act to conform their plans to the new requirements and obtain IRS approval.

American Textile Manufacturers Institute (*written statement*) *:* Supports proposal to make vesting apply only to those benefits accrued after December 31, 1973 in order to reduce financial pressure on existing plans.

Walter H. Brummund, Appleton, Wisconsin (*written statement*) *:* Believes the rule of 50 is rigid and that forfeiture of rights should be permitted in the event of employee dishonesty.

Council of Profit Sharing Industries (*written statement*) *:* Suggests that a minimum vesting standard which requires full vesting after 10 years of service should be allowed as an alternative to the rule of 50: also suggests that the rule of 50 should not be applied in the case of profit sharing plans, known as "class year plans," which typically provide for vesting of the funds accumulated under the plan during each year of the plan's operation. Instead, class year plans should be required to provide for vesting of each year's accumulations after some prescribed period following the close of the class year.

James R. Dudeck, Jacksonville, Florida (written statement): Suggests that a system of deferred graded vesting might be preferable to the rule of 50.

Johnson & Higgins (written statement): Generally opposes mandatory vesting but believes the rule of 50 is superior to other proposals.

Mobil Oil Corporation (written statement): Believes that the rule of 50 is one acceptable standard, but that an alternative should be provided allowing qualification where the plan provides for full vesting not later than the completion of 10 years of service.

National Association of Manufacturers (written statement): Believes that rule of 50 may be one reasonable proposal, but that an alternative should be provided, allowing plans to qualify if they provide for full vesting after 10 years of participation. Also believes that vesting ought to include only accrued normal retirement pension payable, commencing at age 65 (not ancillary benefits such as early retirement. permanent disability).

National Retail Merchants Association (written statement): Unsure on rule of 50 because of inability to estimate cost impact on various industries. If vesting requirements enacted, employer should have flexibility to demonstrate to IRS that his plan is equivalent (although not identical) to enacted legislation. Also urges modification of H.R. 12272 to specify "accrued benefits" vesting refers only to employee's normal retirement benefit (e.g., life annuity beginning at normal retirement age) and does not include death benefits or early retirement benefits.

Taxation with Representation, Robert N. Schoeplein (written statement): Believes a "rule of 40" is more appropriate than the "rule of 50."

II. SELF-EMPLOYED RETIREMENT PLANS

Age and Service Eligibility Requirements

Present law.—If an owner-employee (i.e., a sole proprietor, or a partner with a greater than 10 percent interest in capital or income) participates, the plan must cover all employees with 3 or more years of service.

Administration's proposal.—A plan in which an owner-employee participates must cover each employee—

(1) who has 3 years or more of service if he is less than 30 years old,

(2) who has 2 years or more of service if he is between 30 and 35 years of age, and

(3) who has one year or more of service if he is 35 years of age or older.

A. COMMENTS SUPPORTING THE ADMINISTRATION'S PROPOSAL

First Investment Annuity Company of America, John F. Bridges, President (May 11—eighth witness).

B. COMMENTS OPPOSING THE ADMINISTRATION'S PROPOSAL

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 10—first wit-

ness) *:* Believes the eligibility requirements for plans benefiting owner-employees should be the same as those for employer plans.

National Society of Professional Engineers, Paul E. Robbins, Executive Director, also representing American Society of Mechanical Engineers, American Society for Meals and the Institute of Electrical and Electronics Engineers (*May 10—fourth witness*) *:* Participation requirements should not exceed one year of service or attainment of an age higher than 25.

C. OTHER COMMENTS

National Retired Teachers Association and American Association of Retired Persons, Cyril Birtchfield, for Bernard E. Nash, Executive Director (*May 10—third witness*) *:* Believes the minimum service requirement should not be more than three years.

The Honorable G. William Whitehurst, Member of Congress, Virginia (*written statement*) *:* Recommends that ministers should be eligible to establish Keogh plans on their own behalf.

Pre-Retirement Vesting

Present law.—A plan in which an owner-employee participates must provide for immediate vesting of benefits for all covered employees (i.e., a nonforfeitable interest in the contributions made on an employee's behalf under the plan).

Administration's proposal.—In a plan in which an owner-employee participates, an employee's interest—

(1) must be nonforfeitable in at least 50 percent of his accrued benefit at the close of the first plan year in which the sum of his age and his years of participation in the plan equal 35 ("rule of 35"), and

(2) must become nonforfeitable in the balance of his accrued benefit under the plan at least ratably over the next 5 years.

A. COMMENTS SUPPORTING THE ADMINISTRATION'S PROPOSAL

First Investment Annuity Company of America, John F. Bridges, President (*May 11—eighth witness*).

B. COMMENTS OPPOSING THE ADMINISTRATION'S PROPOSAL

Elliot I. Miller, Esq., New York City (*May 9—eleventh witness*) *:* Believes that self-employed plans should not be subject to more stringent vesting requirements than corporate plans; suggests that the rule of 50 should also apply to self-employed plan.

Gerald S. Susman, Bluestein and Prusky Associates (*May 10—seventh witness*) *:* Believes that vesting should depend on years of service rather than age and that not more than 15 years' service should be required for full vesting.

Contributions

Present law.—

(1) In the case of a self-employed individual—

(a) a deductible contribution made by the employer is limited to the lesser of 10 percent of earned income or $2,500;

(b) an additional $2,500 nondeductible contribution may be made by the self-employed participant in certain circumstances; and

(c) penalties are imposed if excessive contributions are made and are not repaid.

(2) In the case of a shareholder-employee of a subchapter S corporation—

(a) no limit is imposed on the amount that may be contributed on his behalf,

(b) but if the contribution exceeds the lesser of 10 percent of compensation or $2,500, the excess is includible in his gross income.

Administration's proposal.—

(1) The rate at which deductible contributions may be made on behalf of self-employed individuals may not exceed the lowest rate at which contributions are made on behalf of any other participant (but in any event not more than 15 percent of earned income).

(2) The maximum amount of earned income to which the rate may be applied is $50,000 (i.e., this would permit a deduction of as much as $7,500, but only if the owner-employee contributed 15 percent of compensation for his employees and had earned income of at least $50,000).

(3) Additional nondeductible contributions made by a self-employed participant may not exceed 10 percent of earned income, again with a maximum of $50,000 of earned income. (Ten percent is the limit under existing administrative practice applicable to nondeductible voluntary contributions by any participant in a qualified plan.)

(4) Shareholder-employees of subchapter S corporations are subject to same rules in above paragraphs (1), (2), and (3).

A. COMMENTS SUPPORTING THE ADMINISTRATION'S PROPOSAL

Sheldon S. Cohen, Special Committee on Retirement Benefits, American Bar Association (May 9—second witness): Favors the administration's proposal but would prefer to see all distinctions between self-employed and employer plans eliminated.

Honorable Eugene J. Keogh, New York City (May 9—third witness).

Robert J. Myers, Silver Spring, Maryland (May 9—sixth witness): Supports increase in limits for self-employed retirement as simply updating of previously stated dollar amounts so as to recognize changes in economic conditions; suggests that ceiling be related to maximum taxable earnings base under social security system so as to avoid necessity of increases in future.

National Society of Professional Engineers, Paul E. Robbins, Executive Director, also representing American Society of Mechanical Engineers, American Society for Metals and the Institute of Electrical and Electronics Engineers (May 10—fourth witness).

Jockeys' Guild, Inc., Nick Jemas, National Managing Director (May 10—sixth witness): Supports the administration proposal to raise the maximum deductible contribution from $2500 to $7500 per year, advocates that a minimum deductible contribution of $720 per year be allowed, and also advocates that individuals with substantial fluctuations in income be allowed to contribute additional money in high income years to make up for contributions which could not be made in low income years.

Honorable John N. Erlenborn, Member of Congress, Illinois (May 16—first witness).

American Association of Medical Clinics (written statement).

American Dental Association (written statement).

American Life Convention and Life Insurance Association of America (written statement).

American Medical Association (written statement).

Association of Mutual Fund Plan Sponsors, Inc. (written statement).

Walter H. Brummund (written statement).

Council of Profit Sharing Industries (written statement).

Warren Dill (written statement).

District of Columbia Dental Society (written statement).

Empire State Home Furnishings Representatives Associations, Inc. (written statement).

Georgia Home Furnishings Representatives Association (written statement).

Elliot A. Herman (written statement).

Illinois State Bar Association (written statement).

Indianapolis Bar Association (written statement).

Los Angeles County Bar Association (written statement).

Louisiana Home Furnishings Representatives (written statement).

National Association of Public Accountants (written statement).

National Home Furnishings Representatives Associations (written statement).

National League of Insured Savings Associations (written statement).

New England Home Furnishings Representatives Association, Inc. (written statement).

Toccoa Clinic Medical Associates (written statement).

United States Savings & Loan League (written statement).

B. COMMENTS OPPOSING THE ADMINISTRATION'S PROPOSAL

American Federation of Labor-Congress of Industrial Organizations, Andrew J. Biemiller, Director, Department of Legislation (May 11—first witness): States that the AFL-CIO opposed the original Keough bill as a tax avoidance program favoring the well-to-do and indicates that it opposes the expansion of it now.

United Auto Workers of America, Nelson J. Edwards, Vice President (May 12—first witness): Opposes raising the maximum deductible amount from $2,500 to $7,500 on the ground that this discriminates in favor of the wealthy.

John Y. Taggert, New York City (written statement): Believes parity should be achieved between employer and self-employed plans by placing limits on deductible contributions under employer plans.

C. OTHER COMMENTS

Honorable Jacob K. Javits, United States Senator, New York (May 8—second witness): States that there is no basis for discrimination between retirement plans for corporate employees and plans for self-employed persons. The limit should be liberalized and should be equal.

Elliot I. Miller, New York City (May 9—eleventh witness): Believes that limit on deductible contributions should be raised to $10,000 rather than the $7,500 as in the administration's proposal.

Daniel Halperin, Professor of Law, University of Pennsylvania (May 9—twelfth witness): Limitations should be imposed on the benefits which can be paid out under self-employed and employer plans—perhaps 80 percent of the first $50,000 of earnings.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 10—first witness): Believes there should be no distinction between treatment of employer and self-employed plans.

Alvin I. Apfelberg, New York City (written statement): Believes that self-employed persons should be afforded the same rights as corporate employees under the tax law with respect to pension plans.

Association of the Bar of the City of New York, Committee on Taxation (written statement): Believes there should be no distinction between employer and self-employed plans, but supports Administration's proposal to increase maximum deductible contribution from $2,500 to $7,500 as a temporary measure.

Dechart, Price & Rhoads (written statement): Opposes the provision which would reduce the 15 percent rate at which self-employed persons may make deductible contributions if contributions at less than 15 percent are made on behalf of employees. Believes deductible contributions by self-employed persons should be allowed to equal the lesser of 15 percent of earned income, or $7,500.

Leonard S. Elman, New York City (written statement): Believes that corporate employees should not be entitled to any greater pension benefits than those afforded to self-employed individuals.

Alvin D. Lurie, New York City (written statement): Believes there should be no distinction between employer and self-employed plans, but supports the Administration's proposal to increase the maximum deductible contribution from $2,500 to $7,500.

Southern Pension Conference (written statement): Supports the administration proposal to raise the maximum deductible contribution from $2,500 to $7,500, but believes it would be more equitable to remove all limitations, so as to achieve parity with employer plans. Believes this will encourage more partnerships and subchapter S corporations to establish plans for their employees.

III. SPECIAL ELIGIBILITY AND PRE-RETIREMENT VESTING REQUIREMENTS FOR CERTAIN EMPLOYER PLANS

Present law.—As is the case with employer plans generally, present law provides no special requirements on age and service conditions for participation or on pre-retirement vesting for partnership plans for employees where no owner-employee participates or for plans maintained by closely held corporations (including professional corporations).

Administration's proposal.—The Secretary would be authorized to issue regulations setting forth the circumstances under which plans of the following type would be considered nondiscriminatory—

(1) a plan of a partnership in which no owner-employee (a 10-percent owner) participates and which provides benefits for a partner having (a) more than a 5-percent interest, or (b) an interest between one and 5 percent, if all such employees with interests of this size together own more than 50 percent of the interests, or

(2) a plan of a corporation which provides benefits for a shareholder who owns (a) more than 5 percent of the stock, or (b) between one and 5 percent of the stock, if all such shareholders own (directly or indirectly) more than 50 percent in value of the outstanding stock.

The regulations are to provide that plans of this type referred to above, in order to qualify as nondiscriminatory, must provide for more rapid pre-retirement vesting and earlier age and service conditions for participation than employer plans generally, but such regulations may not require of these plans more rapid pre-retirement vesting or earlier age and service conditions for participation than is required of self-employed retirement plans.

COMMENTS ON ADMINISTRATION'S PROPOSAL

Marshall I. Wolper, National Association of Life Underwriters and Association for Advanced Life Underwriting (May 9—sixth witness): Urges that special eligibility and visiting rules for self-employed plans be deleted; suggests that these requirements discriminate against small employer and put him at a competitive disadvantage.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 10—first witness): Believes that more rapid vesting than the rule of 50 should be required where controlling ownership interests in a business entity also receive more than a 50-percent interest in employer contributions, but that this vesting requirement should not be more rapid than the rule of 35.

Gerald S. Susman, Bluestein and Prusky Associates (May 10—seventh witness): Believes the administration proposal discriminates unfairly against small employers and will discourage them from adopting plans.

IV. DEDUCTION FOR PERSONAL SAVINGS RETIREMENT PLANS

PRESENT LAW

There is no deduction for amounts contributed by an employee to a qualified pension plan (although the income earned on such amounts is not taxed until it is distributed) and no deduction for amounts paid by an individual for his own retirement outside the scope of a qualified plan.

ADMINISTRATION'S PROPOSAL

The Deduction

New provisions of the Code would be added allowing a deduction for—

(a) employee contributions to an employer-established plan, or

(b) amounts contributed to an individual's own qualified individual retirement account.

The amount deductible would be limited to 20 percent of the first $7,500 of earned income, or $1,500 maximum.

In the case of a married couple, each spouse would be entitled to claim the deduction, and the limit would be applied separately to each spouse.

A. COMMENTS SUPPORTING ADMINISTRATION'S PROPOSAL

Honorable Elwood H. Hillis, Member of Congress, Indiana (May 8—fifth witness).

Robert J. Myers, Silver Spring, Maryland (May 9—seventh witness).

National Retired Teachers Association and American Association of Retired Persons, Cyril Birtchfield, for Bernard E. Nash, Executive Director (May 10—third witness).

Golf Course Superintendents Association of America, Charles G. Baskin, Chairman of the Pension Committee (May 10—fifth witness): Believes that there should be provisions allowing a deduction for contributions to an individual's personal retirement savings plan.

Teachers Insurance and Annuity Association of America and College Retirement Equities Fund, William C. Greenough, Chairman (May 12—third witness): Generally favors the administration proposal as strengthening the private pension system, but suggests the use of a formula which would allow high contributions in high-income years to make up for contributions not made in low-income years.

Honorable John N. Erlenborn, Member of Congress, Illinois (May 16—first witness).

Michael F. Finn, Arlington, Va. (written statement): Supports the Administration's proposal to grant a deduction for personal savings retirement accounts.

David Gatz, Birdsboro, Pa. (written statement).

B. COMMENTS OPPOSING THE ADMINISTRATION'S PROPOSAL

Daniel Halperin, Professor of Law, University of Pennsylvania (May 9—twelfth witness): A deduction for personal savings will not benefit low and middle income taxpayers, who will generally be unable to save, but will give the wealthy another unwarranted tax benefit; if allowed, it should be structured so that it is not available to persons earning in excess of $15,000 per year.

American Federation of Labor-Congress of Industrial Organizations, Andrew J. Biemiller, Director, Department of Legislation (May 11—first witness): States that as a practical matter the plan has little value to those with low incomes since they need all of their income for living expenses and will be unable to set aside any of it for a personal savings retirement program. Believes for this reason that the provision will be extremely regressive, benefiting all the rich who wish to take advantage of it and none of the poor.

United Auto Workers of America, Nelson J. Edwards, Vice President (May 12—first witness): Opposes the administration proposal. Believes it will not aid moderate- and low-income families because they will be unable to save. Believes retirement income should be provided through increased social security benefits, and that up to $15,000 of earnings should be subject to the social security tax.

C. OTHER COMMENTS

Jerome Landry, National Conference on Public Employee Retirement Systems (May 9—fourth witness): Recommends that compulsoy contributions to retirement systems be excluded from gross income until the employee receives them either at retirement or as a result of withdrawal.

National Education Association, W. Jack Tennant (May 9—fifth witness): Urges consideration of allowing deduction for compulsory retirement contributions on the ground that a taxpayer is not in receipt of these amounts until withdrawal or retirement.

W. Warren Barberg, National Association of Life Underwriters (May 9—sixth witness): Urges increase in the $1,500 limit on deductible contributions or, alternatively, no offset to amount deductible.

Robert J. Myers, Silver Spring, Maryland (May 9—seventh witness): Urges that employees be allowed to deduct contributions to a private pension plan; suggests that such a step is necessary to prevent discrimination against contributory plans.

Eldon Nyhart, Indianapolis, Indiana (May 9—tenth witness): Suggests that employees be allowed a deduction of up to 16 percent of compensation for contributions to qualified plans.

National Council on Teacher Retirement, Jack E. Kennedy, Secretary-Treasurer (May 10—second witness): Believes that compulsory contributions to a retirement system should be deductible, or that the benefits paid under a system should not be subject to tax.

National Society of Professional Engineers, Paul E. Robbins, Executive Director, also representing American Society of Mechanical Engineers, American Society for Metals and the Institute of Electrical and Electronics Engineers (May 10—fourth witness): Believes the maximum deductible amount should be raised from $1,500 to $7,500.

Bureau of Salesmen's National Associations, Marshall J. Mantler, Managing Director (May 11—second witness): Supports the individual retirement savings plan but believes that the effectiveness of the proposed plan will depend upon its simplicity. Suggests that a flat $2,500 limitation on deductibility be provided (without any percentage test), to simplify the proposal while still providing a sufficient safeguard.

Quentin J. Smith, Jr., President, and Preston C. Bassett, Vice President and Actuary, Towers, Perrin, Forster & Crosby (May 11—fourth witness): Suggests that provision should be made to carry forward some or all of any unused prior contribution limits since it is often difficult for employees to save during their early working years.

Litton Industries, Inc., John H. Martin, Vice President (May 11—fifth witness): States that the usefulness of the proposal of tax deductibility of the employee's contribution has been severely limited by providing for a reduction of the deductible contribution if an employer contributes on the employee's behalf. Suggests that the reduction feature be eliminated and that the tax law should permit (1) a flat deduction of up to some amount, perhaps $1,500 or (2) a percentage of the social security wage base—say 15 percent, to keep the deduction in line over the years with what Congress considers a reasonable level of earnings to be used in establishing the basic social security retirement level.

William A. Dreher, President, William A. Dreher & Associates, Inc. (May 11—sixth witness): Suggests that a more reasonable rule for determining the limit on deductible employee contributions would be 6 percent of current annual earnings, but not in excess of $1,500 (this limit would not be affected by employer contributions to a qualified retirement plan).

Honorable Bertram L. Podell, Member of Congress, New York (May 16—second witness): Proposes that any married individual or head of a household not covered by an employer's pension plan should be allowed to establish a deductible retirement savings account for himself as if he were a self-employed individual earning $13,000 per year.

American Library Association (written statement): Believes that all mandatory employee contributions of employees to a public retirement system should be deductible.

Association of Long Island Engineers and Scientists (written statement): Believes employees should be entitled to make contributions to a personal retirement savings account on the same basis as self-employed individuals may under the Keogh Plan.

Association of Mutual Fund Plan Sponsors, Inc. (written statement): Generally supports the administration's proposal but believes the maximum deductible contribution should be raised to $4000 (20 percent of an individual's first $20,000 of earned income).

Council of Profit Sharing Industries (written statement): Generally supports the Administration's proposal, but believes that in the case of deductible employee contributions to an employer plan, the employee, not the employer, should be responsible for the necessary record keeping to support the claim for deduction.

Credit Union National Association, Inc. (written statement): Suggests that voluntary nondeductible contributions to an individual retirement account should be permitted equal to 10 percent of the individual's earnings, or $2,500, whichever is lesser.

James R. Dudeck, Jacksonville, Florida (written statement): Generally supports the administration proposal but suggests that the maximum deductible limitation of $1500 should be changed to equal 20 percent of the social security wage base; this would allow for an increase in contributions if the social security wage base increased and would help combat the effects of inflation.

James W. Hiemstra, Inglewood, California (written statement): Believes that the $1500 maximum deduction should be raised to $7500 to create equality with the proposed deductions to be allowed to self-employed individuals.

Jack B. Johnson, New England Life (written statement): Believes the $1,500 limitation on deductible contributions should be increased.

Henry V. Meyer, Denver, Colorado (written statement): Believes that the minimum contribution of $1500 is too low, and suggests that a graduated scale be adopted, at least on a transitional basis, allowing older individuals to contribute more to a retirement account than younger individuals.

National Retail Merchants Association (written statement): Advocates that the proposed $1,500 maximum deductible contribution should be increased to reflect the retirement needs of middle-management level employees.

Rocky Mountain Motor Tariff Bureau (written statement): Believes the $1,500 limitation on deductible contributions should be increased.

Taxation with Representation, Robert N. Schoeplein (written statement): Points out that the administration proposal would primarily benefit higher income families who would be better able to save.

United States Savings & Loan League (written statement): Suggests that the maximum deductible contribution be raised from $1,500 to $5,000.

Reduction of Deductible Amount

The maximum deductible amount for an individual would be reduced by—

(a) payments, if any, made by his employer to a qualified pension plan (which the employee, at his option, could assume had been made at a rate of 7 percent of earned income), and

(b) the FICA tax which would have been imposed on any earned income not subject to social security or the railroad retirement system had this income been subject to this tax.

A. COMMENTS OPPOSING THE ADMINISTRATION'S PROPOSAL

Jerome Landry, National Conference on Public Employee Retirement Systems (May 9—fourth witness): Urges that the amount deductible by employees not be reduced by the social security contributions which would have been made if the employees had been subject to social security.

National Education Association, W. Jack Tennant (May 9—fifth witness): Believes that deductible contributions should not be reduced because an individual is not covered by social security. States that approximately 700,000 public educators are not presently covered by social security.

Walter E. Klint, Council on Employee Benefits (May 9—eighth witness): Urges that the amount deductible should not be offset by employer contributions to qualified plan; believes that consideration should be given to a carryforward provision under which an individual who is not able to make a contribution in one year may carry over the credit for an additional year.

John N. Cookenbach, American Bankers Association (May 9—ninth witness): Deductible contributions should not be reduced by employer contributions to a qualified plan, or because the individual is not covered by social security.

National Council on Teacher Retirement, Jack E. Kennedy, Secretary-Treasurer (May 10—second witness): Believes that the maximum deductible amount should not be reduced because an individual receives earned income which is not subject to the social security system.

National Society of Professional Engineers, Paul E. Robbins, Executive Director, also representing American Society of Mechanical Engineers, American Society for Metals and the Institute of Electrical and Electronics Engineers (May 10—fourth witness): Believes the maximum deductible amount should be reduced to reflect employer contributions to a qualified pension plan only if benefits attributable to those contributions are vested.

Bureau of Salesmen's National Associations, Marshall J. Mantler, Managing Director (May 11—second witness): Suggests the elimination of the feature providing for reduction of the deductible contribution to reflect contributions made on behalf of the individual by his employer and suggests instead a fixed dollar ceiling (such as $1,500) for simplicity.

American Library Association (written statement): Believes the deductible contributions should not be reduced in the case of employees receiving income not covered by social security.

Jack B. Johnson, New England Life (written statement): Opposes proposal to reduce deductible contribution by amount of employer contribution, particularly in cases where employer contribution is not vested.

Mobil Oil Corporation (written statement): Individual contributions should not be reduced to reflect employer contributions to a qualified plan. Alternatively, the reduction should equal 5 percent of the employee's earned income, with no option to the employee to prove a lesser employer contribution.

National Association of Manufacturers (written statement): Opposes proposal to reduce deductible contribution to reflect employer contributions made on behalf of the employee. Also believes that an assumed reduction of 4 to 5 percent of earnings would be more realistic than the 7 percent rate in the Administration's bill.

National Retail Merchants Association (written statement): Believes maximum deductible contribution should not be reduced to reflect employer contributions on behalf of the employee.

Rocky Mountain Motor Tariff Bureau (written statement): Opposes the proposal to reduce the maximum deductible contribution by an amount equal to employer contributions made on behalf of an employee.

Thomson & McKinnon Auchincloss Inc. (written statement): Believes the maximum deductible amount of $1500 should not be reduced to reflect employer contributions on behalf of an employee because rights to those contributions may not be vested, or may be lost if pension plan funds are mismanaged.

B. OTHER COMMENTS

Jack McKinley, The Prototype Planner (May 10—ninth witness): Generally supports the administration proposal, but believes that the maximum deductible amount for an individual should only be reduced from $1500 to $1000 in the case of a person covered under an employer plan.

Quentin J. Smith, Jr., President, and Preston C. Bassett, Vice President and Actuary, Towers, Perrin, Forster & Crosby (May 11—fourth witness): Suggests that it would be unfair to reduce the deduction to reflect employer contributions to a qualified pension plan, particularly in a case where the employee's rights were not vested.

American Textile Manufacturers Institute (written statement): Believes that the assumed reduction of 7 percent for employer contributions is unrealistic and that a rate of 4 percent is more appropriate. Also suggests that employers should not be required to furnish employees with a separate computation of the actual employer contribution on his behalf, but should be allowed to supply an average computation.

Definition of a Qualified Individual Retirement Account

In general, an individual retirement account is qualified if—

(a) it is maintained for the purpose of distributing the contributions and income therefrom to the individual who established the account, his spouse, or his beneficiaries;

(b) no contributions in excess of the maximum deductible amount ($1,500 per year in the case of an individual with $7,500 or more of earned income) are made to the account;

(c) The assets of the account are not commingled with other assets of the individual or his spouse;

(d) a "plan or other governing instrument" provides that (except in the case of death or disability) no distributions will be made from the account until the individual attains the age of 59½ years; and

(e) a "plan or other governing instrument" provides that distributions from the account must begin not later than the time the individual attains the age of 70½ years, and distributions must be large enough so that the entire account will be distributed at least ratably over his life expectancy or the combined life expectancy of the individual and his spouse.

Management of Qualified Individual Retirement Account

The account may be held in trust by a bank, credit union or with other trustee, but the individual is not required to establish a trust with respect to the account, and the account assets may be held in a custodial account.

The funds of the account may be invested in a broad range of assets including stocks, bonds, bank accounts, and insurance or annuity contracts.

The assets of the account may be transferred from one form of investment to another, or from one trustee to another, but account assets withdrawn from a particular form of investment or trustee must be reinvested within 60 days.

COMMENTS

Honorable Eugene J. Keogh, New York City (May 9—third witness): Would allow deductible contributions to be made up to 3½ months after the close of the year in which the deduction is claimed.

W. Warren Barberg, National Association of Life Underwriters (May 9—sixth witness): Bill should make clear that contributions may be invested in a number of ways such as fixed and variable annuities and variable life insurance policies; also suggests that proposal be changed to allow investment in a form other than trust or custodial account, i.e., in life insurance where contract provides that cash surrender value may not be withdrawn.

American Institute of Certified Public Accountants, Robert G. Skinner, Chairman, Division of Federal Taxation (May 10—first witness): Supports the administration proposal but believes that provision should be made for simplified reporting by individuals.

First Investment Annuity Company of America, John F. Bridges, President (May 11—eighth witness): Recommends the inclusion of direct purchase of annuity contracts as one of the forms for individual retirement savings.

American Life Convention and Life Insurance Association of America (written statement): Believes that an individual should be allowed to establish a qualified individual retirement account by purchasing an insurance contract.

Association of Mutual Fund Plan Sponsors, Inc. (written statement): Believes the administration proposal should be amended to permit an individual to establish a qualified retirement account simply by designating a contractual plan for the purchase of mutual fund shares as his account.

Bank of America (written statement): Believes that the bill, as well as current banking laws, should be amended to allow banks to commingle the retirement savings plans of retired individuals into management agency accounts.

Corporate Fiduciaries Association of Illinois Employee Trusts Committee (written statement): Generally supports the administrations proposal, but suggests that provision should be made to allow banks and trust companies to commingle the assets of personal retirement savings accounts in collective funds, and also suggests that such collective funds should be exempt from the securities laws, because registration under the securities laws involves expense and red tape.

Credit Union National Association, Inc. (written statement): Generally supports the administration proposal, but suggests technical amendments to ensure that Federal credit unions, as well as State credit unions, could be custodians of individual retirement accounts.

National League of Insured Savings Associations (written statement): Generally supports administration proposal but requests that Homeowners Loan Act of 1933 be amended to make clear that Federal savings and loan associations are eligible to manage personal retirement savings accounts.

United States Savings & Loan League (written statement): Requests that the bill be amended to make clear that savings and loan associations may serve as custodians of personal retirement accounts.

Taxation of Beneficiaries

Generally, amounts distributed or made available to a beneficiary of a qualified individual retirement account will be taxable to him in the year in which such benefits are received.

Lump sum distributions from an individual retirement account would not be entitled to capital gains treatment, or to the special averaging treatment provided in section 72(n) of the Internal Revenue Code with respect to certain lump sum distributions under an employer-established qualified pension plan.

Amounts distributed from an individual retirement account before the individual reaches the age of 59½ (except in the case of death or disability) would not be subject to the general averaging provisions contained in subchapter Q of the Code, and would also be subject to an additional penalty tax equal to 30 percent of the amount prematurely withdrawn.

After an individual has reached the age of 70½ years, an excise tax of 10 percent will be imposed annually on amounts retained in the individual retirement account in excess of those amounts necessary so that the account may be distributed ratably over the life expectancy of the individual or the individual and his spouse.

COMMENTS

John N. Cookenbach, American Bankers Association (May 9—ninth witness): Suggests that 30 percent penalty applicable to premature distributions be reduced or eliminated; views current taxation as an adequate penalty.

Jack McKinley, The Prototype Planner (May 10—ninth witness): Believes that the 30 percent penalty on premature distributions from individual retirement accounts is excessive, and that the excise tax on undistributed amounts should be eliminated because there is no comparable provision for other types of qualified pension plans.

Bureau of Salesmen's National Associations, Marshall J. Mantler, Managing Director (May 11—second witness): Believes that there should be no penalty in the case of early withdrawals or, as an alternative, that the penalty should only apply in the case of withdrawals not made to meet emergency needs.

William A. Dreher, President, William A. Dreher & Associates, Inc. (May 11—sixth witness): Suggests that the 30 percent penalty for premature distributions is excessive and recommends that it be eliminated from the bill.

American Life Convention and Life Insurance Association of America (written statement): Believes the 30 percent penalty for premature withdrawals is excessive, and that the penalty provisions should be conformed with those applicable to self-employed persons. Also believes a penalty-free distribution should be allowed prior to age 59½, if the individual has elected early retirement.

Association of Mutual Fund Plan Sponsors, Inc. (written statement): Suggests that lump-sum distributions from a qualified personal savings account should be subject to the special averaging provisions of section 72(n) of the Code, which applies in the case of lump-sum distributions from a self-employed pension plan.

Council of Profit Sharing Industries (written statement): Opposes the 30-percent penalty for distributions prior to age 59½, particularly in light of the rising trend toward early retirement. Also points out that many qualified profit sharing plans contain provisions allowing for partial withdrawal of contributions prior to age 59½ in the event of extraordinary medical expenses, unemployment, or other severe hardship.

Mobil Oil Corporation (written statement): Opposes the 30 percent penalty on premature distributions, especially in the case of early retirement.

Rocky Mountain Motor Tariff Bureau (written statement): Believes the 30 percent penalty on premature distributions is unduly harsh.

COMMENTS ON OTHER AREAS

Funding

Honorable Jacob K. Javits, United States Senator, New York (May 8—second witness): Recommends that pension funds be required to have assets sufficient to pay the benefits promised.

National Retired Teachers Association and American Association of Retired Persons, Cyril Birtchfield, for Bernard E. Nash, Executive Director (May 10—third witness): Believes that accrued liabilities of the pension plan fund should be required to be amortized over a reasonable period of time and that there should be insurance of unfunded benefits.

National Society of Professional Engineers, Paul E. Robbins, also representing American Society of Mechanical Engineers, American Society for Metals and the Institute of Electrical and Electronics Engineers (May 10—fourth witness): Believes that there should be provisions requiring the full funding of pension plans, or the insurance of unfunded benefits.

American Federation of Labor-Congress of Industrial Organizations, Andrew J. Beimiller, Director, Department of Legislation (May 11—first witness): Favors Federal legislation establishing minimum standards of funding with respect to single employer plans, but believes such standards are unnecessary in the case of multi-employer plans.

Bureau of Salesmen's National Associations, Marshall J. Mantler, Managing Director (May 11—second witness): Recommends that provisions be added to the bill relating to mandatory funding. Believes that funding is necessary for the protection of both employees and employers; in the case of employers, if the funding of the plan is deferred for an extended period, the accrued liabilities may be so large when they become due that payment jeopardizes the solvency of the business.

Quentin J. Smith, Jr., President, and Preston C. Bassett, Vice President and Actuary, Towers, Perrin, Forster & Crosby (May 11—fourth witness): Recommends action in this area be deferred until further study is completed.

William A. Dreher, President, William A. Dreher & Associates, Inc. (May 11—sixth witness): Believes that to impose a narrowly defined set of minimum funding standards would unreasonably restrict a great many responsible companies and would have the practical effect of discouraging benefit improvements and the expansion of the private pension system to cover employees whose employers have not yet established private plans.

American Telephone & Telegraph Company, Stanley L. King, Jr., Assistant Vice President for Human Resources (May 12—second witness): Opposes proposal for mandatory funding of accrued pension plan liabilities on grounds of cost.

Bernard Greenberg, United Steel Workers of America (May 16—third witness): Urges that legislation require that qualified pension plans be adequately funded.

National Association of Manufacturers (written statement): States that funding of most pension plans is adequate; argues that regulation in this area would deprive plan sponsors of needed flexibility in funding and might discourage the establishment of new plans.

Rocky Mountain Motor Tariff Bureau (written statement): Believes the bill should contain provisions to require full funding of additional costs caused by minimum vesting and eligibilty requirements created under the bill.

Insurance

Honorable Jacob K. Javits, United States Senater, New York (May 8—second witness) : Recommends that pension bill include provision relating to insurance.

Honorable Vance Hartke, United States Senator, Indiana (May 8—third witness) : Urges adoption of an insurance program pursuant to which the Secretary would borrow money from the Treasury for its establishment. Loan would be repayed as soon as sufficient incoming premiums are received from covered pension programs.

Honorable Elwood H. Hillis, Member of Congress, Indiana (May 8—fifth witness) : Urges, as a condition for qualification, insurance issued by a private insurance carrier or a government agency similar to FDIC.

Eldon Nyhart, Indianapolis, Indiana (May 9—tenth witness) : Recommends that each pension plan be required to insure, through a Federal agency, that portion of the value of vested benefits in excess of 90 percent of the fund assets; in case of plan termination, the insuring agency would make up any deficiency in fund assets.

Daniel Halperin, Professor of Law, University of Pennsylvania (May 9—twelfth witness) : Plans should be made to require that benefits promised will be paid even though the employer terminates a pension plan; the employer's assets should be available to satisfy claims by employees, with insurance available in the event of bankruptcy.

National Retired Teachers Association and American Association of Retired Persons, Cyril Birtchfield, for Bernard E. Nash, Executive Director (May 10—third witness) : Believes that pension plans should be insured to the extent of unfunded accrued liabilities.

Quentin J. Smith, Jr., President, and Preston C. Bassett, Vice President and Actuary, Towers, Perrin, Forster & Crosby (May 11—fourth witness) : Recommends action in this area be deferred until further study is completed.

Herbert Ferster, New York City (May 11—ninth witness) : States that there is no need to require multi-employer union pension plans to pay for insurance. Indicates that experience proves that these plans are not terminated.

United Auto Workers of America, Nelson J. Edwards, Vice President (May 12—first witness) : Believes there should be a Federal program of insurance to cover unfunded pension plan liabilities in the event of termination of a pension plan.

Bernard Greenberg, United Steel Workers of America (May 16—third witness) : Believes that qualified pension plans should be protected by a Federal plan of insurance.

Honorable Edward P. Boland, Member of Congress, Massachusetts (written statement) : Supports plan termination insurance to protect pension rights of workers: also urges that in cases of plan terminations it be made mandatory that an employee be given an option of either receiving an actuarially-reduced pension from the time of his termination or a lump-sum payment or a combination lump-sum and periodic payment to carry him over until he finds a new job.

Honorable Seymour Halpern, Member of Congress, New York (written statement) : Favors legislation to establish Federal program of pension plan insurance.

Johnson & Higgins (written statement): Opposes proposals for insurance of unfunded pension plan liabilities.

National Association of Manufacturers (written statement): Opposes pension plan insurance on the ground that it may discourage adequate funding of pension plans and also on the ground that insurance is unnecessary because relatively few persons are affected by plan terminations.

National Retail Merchants Association (written statement): Feels that no action should be taken in area of insurance without further study.

Portability

John B. Anderson, Member of Congress (May 8—fourth witness): Would provide that employees be allowed to withdraw their retirement credits upon leaving a job and reinvest them in a new plan without those credits being subject to income tax.

Walter E. Klint, Council on Employee Benefits (May 9—eighth witness): Not necessary to consider the establishment of a mandatory system of portability; if a reasonable vesting standard is enacted, the accrued pension benefit is protected.

National Retired Teachers Association and American Association of Retired Persons, Cyril Birtchfield, for Bernard E. Nash, Executive Director (May 10—third witness): Believes there should be a federally funded clearinghouse to enable an employee to transfer pension plan credits between plans.

Quentin J. Smith, Jr., President, and Preston C. Bassett, Vice President and Actuary, Towers, Perrin, Forster & Crosby (May 11—fourth witness): Recommends action in this area be deferred until further study is completed.

Honorable James T. Broyhill, Member of Congress, North Carolina (written statement): Urges consideration of the proposed Private Pension Transfer Act, which would facilitate portability of private pension plan benefits by allowing a transfer or contributions between plans without taxation.

Honorable John D. Dingell, Member of Congress, Michigan (written statement): Urges support of H.R. 686, which would provide for portability of pension rights by creating a Federal clearinghouse under the Social Security Administration.

Honorable Seymour Halpern, Member of Congress, New York (written statement): Favors establishment of a Federal clearinghouse to facilitate transfer of pension plan credits.

Johnson & Higgins (written statement): Opposes proposals that pension rights should be portable on grounds that portability would be administratively difficult and expensive.

National Retail Merchants Association (written statement): Bill renders unnecessary proposals on "portability."

Fiduciary Responsibility and Disclosure

Honorable Elwood H. Hillis, Member of Congress, Indiana (May 8—fifth witness): Suggests that employer be required to submit an annual written statement of estimated retirement benefits and vested benefits to all active participants in the plan.

Eldon Nyhart, Indianapolis, Indiana (May 9—tenth witness): Employer should be required to give each employee a written summary of the plan each time it is amended; also, each employee should be given an annual written statement of estimated retirement benefits and present vested benefits.

National Society of Professional Engineers, Paul E. Robbins, Executive Director, also representing American Society of Mechanical Engineers, America Society for Metals and the Institute of Electrical and Electronics Engineers (May 10—fourth witness): Believes that adequate disclosure requirements and the establishment of fiduciary standards are desirable.

Honorable Seymour Halpern, Member of Congress, New York (written statment): Favors legislation to establish Federal standards of fiduciary responsibility in handling pension plan funds.

National Association of Manufacturers (written statement): Supports H.R. 12337, which sets forth requirements of fiduciary responsibility, but generally opposes further requirements for disclosure on grounds that present disclosure is extensive and adequate.

Other Comments

Mac Asbill, Jr., Section of Taxation, American Bar Association (May 9—first witness): Suggests that law relating to qualified plans (1) be amended to exclude certain bargaining unit employees for purposes of the coverage and antidiscrimination requirements, and (2) be amended to expand the provisions permitting retroactive amendments to cure defects. Would also provide that beneficiaries of nonqualified trusts and annuity plans not be taxed until distributions are received or otherwise made available.

Golf Course Superintendents Association of America, Charles G. Baskin, Chairman of the Pension Committee (May 10—fifth witness): Believes that contributions to a trade association retirement fund providing strong employee benefits should not be subject to the provisions of section 83 of the Internal Revenue Code (having to do with property transferred in connection with the performance of services).

Joseph H. Reynolds, Sr., Chief Executive Officer, J. H. Reynolds & Associates (May 10—eighth witness): Believes that the nondiscrimination requirements of section 401 of the Internal Revenue Code should be applied without reference to employees covered by collective bargaining agreements. Believes also that a new department of the Federal Government, not Treasury, should regulate pension funds.

American Federation of Labor-Congress of Industrial Organizations, Andrew J. Biemiller, Director, Department of Legislation (May 11—first witness): States that the Administration's proposal is simply a new tax loophole for the wealthy under the guise of pension reform. Indicates that it affords tax relief primarily to wealthy individuals and huge tax-subsidized profits to private insurance companies, banks and mutual funds.

International Brotherhood of Electrical Workers, Local No. 8, H. Lawrence Fox and Marc Gertner, Counsels on behalf of (May 11—third witness): States that the interpretation of the forfeiture prohibition in section 401(a)(8) to collectively bargained, jointly trusted purchase money allocated account retirement plans is uncertain. Indicates that since the appropriate vesting schedule of a multiple employer plan cannot be established until the plan has been in existence, there is bound to be unallocated forfeitures for a time. Points out that to allow section 401(a)(8) to prohibit the reallocation of such forfeitures is inequitable. Suggests a technical amendment to clarify this to be consistent with the original intent of the statute.

O'Hear W. Fraser, Jr., Washington, D. C. (May 12—fourth witness): Suggests that a plan should not be qualified if it contains provisions allowing an employer to take unilateral action which will have the effect of diluting benefits.

Louis O. Kelso, San Francisco (May 16—fourth witness): Recommends amendments to the Internal Revenue Code to encourage stock bonus trusts so that corporate employees may gradually acquire an equity interest in their employer; also recommends that bequests to a stock bonus trust should be deductible for estate tax purposes.

Michael F. Finn, Arlington, Virginia (written statement): Believes social security benefits are inadequate and should be increased.

Robert D. Paul, President, Martin E. Segal Company (written statement): Believes that the Federal Government should require all employers to establish pension plans on behalf of their employees, or contribute to a Federal pension plan which would pay Federal pension benefits in addition to social security.

Taxation with Representation, William Withers (written statement): Advocates establishment of a National Private Insurance Fund so that small employers could contribute to a plan with minimal administrative costs.

Eugene M. Thore, Washington, D.C. (written statement): Indicates that Canadian pension plans insured by United States life insurance companies bear a heavier tax burden under United States law than under Canadian law; recommends that section 805(d) of the Internal Revenue Code, which allows a reserve interest deduction equal to the current earnings rate of the insurance company, in the case of qualified U.S. pension plan reserves, be amended to cover Canadian plans.

○