“ENHANCING RETIREMENT SECURITY: H.R. 10, THE COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001”

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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HEARING ON "ENHANCING RETIREMENT SECURITY: H.R. 10, THE COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001"

Thursday, April 5, 2001

U.S. House of Representatives,

Subcommittee on Employer-Employee Relations,

Committee on Education and the Workforce,

Washington, D.C.

The Subcommittee met, pursuant to call, at 10:40 a.m., in Room 2175, Rayburn House Office Building, Honorable Sam Johnson, Chairman of the Subcommittee presiding.

Present: Representatives Johnson, Fletcher, Boehner, Ballenger, McKeon, Tiberi, Tierney, Kildee, Andrews.

Staff Present: David Frank, Professional Staff Member; Christopher Bowlin, Professional Staff Member; George Canty, Counselor to the Chairman; David Connolly, Jr., Professional Staff Member; Peter Gunas, Director of Workforce Policy; Patrick Lyden, Professional Staff Member; Heather Oellermann, Staff Assistant; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Jo-Marie St. Martin, General Counsel; Brian Compagnone, Minority Staff Assistant/Labor; Camille Donald, Minority Legislative Associate/Labor; Joycelyn Johnson, Minority Staff Assistant; Peter Rutlege, Minority Senior Legislative Associate/Labor; and Michele Varnhagen, Minority Labor Counsel/Coordinator.

Chairman Johnson. The Committee will come to order. A quorum being present, the Subcommittee on Employer-Employee Relations will come to order.

We are meeting today to hear testimony on H.R. 10, which is the Comprehensive Retirement Security and Pension Reform Act of 2001.

OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Chairman Johnson. Under committee rule 12, opening statements are limited to the chairman and ranking minority member of the Subcommittee. However, this morning I am going to allow Mr. Tierney to make an opening statement. And when Mr. Andrews gets here, we will allow him to make a short statement as well. Therefore, if other Members have statements, they may have them included in the record.

With that, I ask unanimous consent for the hearing record to remain opening for 14 days till to allow Member statements and other extraneous material references during the hearing to be submitted in the official hearing.

Is there any objection?

Without objection, so ordered.

Today, we are going to look at a bill that will directly improve retirement security in America, H.R. 10, the Comprehensive Retirement Security and Pension Reform Act of 2001, which is Mr. Cardin and Portman's act. And Mr. Portman just finally walked in. They are the two sponsors. Well, you had to come a long way, didn't you, Rob?

This will make retirement security more available to millions of workers by, one, expanding small business retirement plans which cover 75 percent of the work force, allowing workers to save more, addressing the needs of an increasingly mobile workforce through greater portability, making pensions more secure, and cutting red tape that has hamstrung employers who want to establish pension plans for their employees.

I am pleased that Rob Andrews, the Subcommittee's ranking member, who will join us later, has joined me in support of this important legislation, the most significant overall of pension law in 25 years.

It is no secret that, with the cooling economy, people have watched their retirement accounts fall. Of course, this makes them uneasy. They are saving for their golden years, retirement; and their nest egg is dwindling.

It is time to act now to help people better prepare for the day when they no longer show up for work every morning. And the best way is to give these people peace of mind and enact H.R. 10.

One of the committee's long-standing objectives has been to find ways to expand pension coverage especially by small business, to make ways to make pensions more portable. H.R. 10, introduced by Representatives Rob Portman and Ben Cardin, who are among our witnesses today, address the retirement savings gap in a comprehensive way.

Improving retirement security is a top priority of this Congress this year to ensure America's future. But improving retirement security is not just about fixing Social Security; it is also about expanding access to private pension plans and making innovations that will maximize every American's opportunity for a safe, secure retirement. And the time for action is now.

This legislation is truly bipartisan. In the last Congress, the committee reported a virtually identical bill by a bipartisan vote. In July, the House passed H.R. 1102, which was a bill last year, by a vote of 401 to 25. This bill has a broad spectrum of support. Over 150 Republicans and nearly 100 Democrats are cosponsors. They may have more by now.

More than 100 groups have endorsed the bill, both business and union; from AFSME, the Teamsters, the Laborers International, the National Education Association, to the U.S. Chamber, the National Federation of Independent Businesses, the National Association of Manufacturers, the American Benefits Council, and the American Council of Life Insurance.

In the future, the committee will, again, mark up these provisions, the full committee, of the bill within our jurisdiction, and those amending the Employment Retirement Income Security Act, ERISA. This bill contains many ERISA amendments to simplify pensions action, promote retirement coverage, including granting relief from excessive PBGC premiums for new small business plans, accelerating the vesting of workers accounts, repealing and modifying a wide range of unnecessary and outdated rules and regulations, providing more frequent benefits, statements to workers, requiring enhanced disclosure and other protections when future pension benefits are reduced, as in the case of conversion to a cash balance account, and repealing the so-called full funding limit that arbitrarily limits defined benefit plan funding to a less than actuarially sound level.

We are committed to strengthening the retirement security of workers and their families by expanding private-pension coverage and protecting their pension and retirement savings. Unnecessarily complex regulations that have little benefit reduce the incentive for employers to offer pension plans.

Congress must increase access to pension plans by further simplifying regulations, which today make it difficult for many employers to offer pension plans. H.R. 10 is a significant step toward achieving these goals.

It is my goal and that of Chairman Boehner, who is with us today, to mark up this legislation and move it to the floor in coordination with the Committee on Ways and Means, of which I am also a member. And I welcome my two compatriots.

I look forward to working with Mr. Andrews and Members of both sides of the aisle to see the Portman-Cardin bill enacted into law. Strengthening our private employer-based pension system is a critical issue for all Americans, especially the 76 million baby boomers who are nearing retirement age.

This legislation increases retirement security for millions of Americans by strengthening that third leg of retirement security, our pension system. I am confident we can continue down this bipartisan path, ensuring workers their golden years are comfortable and secure.

And now I yield to Mr. Tierney, who is the ranking member present, for a statement if you so desire, sir.

WRITTEN OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX A

Mr. Tierney. Thank you, Mr. Chairman. Mr. Portman, Mr. Cardin, I congratulate you on a job well done. You have been at this for a considerable period of time, and it has taken a lot of effort and perseverance. I also think it has taken a lot of listening from the two of you, as I have noted changes in the bill over several years that I have been here; and I congratulate you for having that ability and willingness and for the work that you have done.

You address a large group of people and small businesses obviously that need this kind of relief, and this is a good step forward. And I don't intend to be critical, but I want to make a couple remarks of things that I hope will be considered in the long run. I know both you gentlemen have thought about them in the past.

It is my understanding that the Senate intends or may provide for individual savings credits when it reviews this version of the bill, talking about lower- and moderate-income savers up to about $50,000 receiving a tax credit for contributions. For taxpayers less than $30,000 a year, the credit will match up to 50 percent of $2,000 into any qualified retirement plan; and for others, it will cap or match up to about 30 percent or some amount that hasn't been capped yet.

I hope that there will be some consideration for amendments that might be offered under this committee or the Ways and Means or on the floor, some serious consideration for that, because I think it broadens out the number of people that this bill attracts. And from conversations with each of you and listening to the remarks that were made in the past, I don't think that is necessarily repugnant to you. So I hope that there will be some consideration for that.

Also, for the small business tax credit, providing 50 percent credit to employers contributing to plans for non-highly compensated employees up to a maximum of 3 percent of their salary, another provision that I think, and I hope others may think, would be an improvement on an already good bill.

Lastly, I know that my colleague from Massachusetts, Richard Neal, and I think your work, Mr. Cardin, is talking about a version, a credit version of the retirement savings account that would match up to 50 percent of qualified pension contributions up to $2,000, with a phase-out beginning at $30,000.

Again, while this is a good piece of legislation, I think that, if it has any failure, it is that it doesn't reach down to everybody. It doesn't provide for the kind of relief that Americans earning less than $50,000, less than $30,000 are entitled to. And we should be concerned when we are concerned about savings for the savings of all Americans.

And so I congratulate you on addressing it for many Americans. I look forward to your cooperation and assistance on trying to expand the bill out so that it covers, in fact, everybody. Thank you, Mr. Chairman.

Chairman Johnson. Thank you, John.

Now, I would like to introduce our first panel of witnesses. The first panel consists of my friends and colleagues from the Committee on Ways and Means, the bipartisan sponsors of H.R. 10, Representatives Rob Portman and Ben Cardin.

Rob Portman is currently in his 8th year in Congress representing the Second Congressional District in southwest Ohio. He has taken the lead in the Committee on Ways and Means on the retirement security issues and has authored a number of bills that have been signed into law. Rob served in the first Bush White House, first as associate counsel to the President and then as director to the White House Office of Legislative Affairs.

Ben Cardin has represented Maryland's Third Congressional District since 1987. He is the ranking member of the Ways and Means Human Resources Subcommittee and, along with Rob Portman, was instrumental in crafting the first major reform of the IRS in 50 years, and in changing pension laws to make it easier for more Americans to contribute to private pension plans. Prior to coming to Washington, Ben was Speaker of the Maryland House of Delegates.

It is great in my view to see two committees working together in concert to pass a bill of this nature. And let me remind the witnesses that, under our committee rules, they must limit their whole statements to 5 minutes, if you would. And the entire written statements can appear in the record and will be admitted.

With that said, Mr. Portman, would you begin your testimony.

STATEMENT OF THE HONORABLE ROB PORTMAN, U.S. HOUSE OF REPRESENTATIVES, MEMBER OF CONGRESS, 2ND DISTRICT OF OHIO

Mr. Portman. With pleasure, Mr. Chairman. I want to start by thanking you very much for holding this hearing and for all your work on this bill. You just mentioned that it is nice to have the different committees working together. You realize you are the bridge between these committees. Being on Ways and Means, you have been one of the people with whom we have worked and relied on to get this product through the Subcommittee and in the full Committee on Ways and Means. And I am delighted that you are chairing this Subcommittee and that you have such a strong interest in this legislation. We are lucky to have you.

I also want to thank you for not holding me in contempt for my tardiness this morning. I was downtown.

Chairman Johnson. You will get a $50 fine when you walk out the door.

Mr. Portman. You are more generous than I remembered you.

But it is, indeed, a pleasure to have you in this position to be able, again, to move this through on a bipartisan, a bicameral, and a bicommittee basis.

And Mr. Tierney, Mr. Fletcher, Chairman Boehner, thank you all for being here. Mr. Boehner was the Subcommittee chairman in the last Congress and helped us move this process forward and improved the bill as it went forward. And his leadership role in the full committee also is very helpful in terms of this process and in terms of education reform and so many others things. So we are delighted with his success and ascension to the chairmanship.

What I thought I might do today is talk a little about the bigger picture, what we are trying to do here. You laid it out very well, Mr. Chairman. I want to touch on briefly some of the major elements of the bill and what is under your jurisdiction, and then have Ben do all the hard work. And we will be open for any questions that you might have.

Congress has, of course, made strengthening Social Security a priority, as has this new administration. And I fully agree with that, as does Mr. Cardin, as do members of this panel. But we also believe very strongly that Congress needs immediately to expand retirement security in other ways. And that is what this is really all about. We have an opportunity to do that.

Specifically, we can strengthen retirement savings by strengthening our private employer-based system in pretty dramatic ways. And this is a critical issue for all Americans. I look forward to talking to Mr. Tierney about his comments, but we do address retirement security for all Americans already in this legislation. While there may be some differences on what credits we should or should not include in the legislation, our goal is, in fact, to expand it for every American. And we believe that the most effective way to do that is to get small businesses engaged in the business of providing pensions, retirement security, and so that everyone can benefit.

That is why, over the last 4 years, actually, my partner in this, Ben Cardin, and I have been working on comprehensive improvements to the system. This year, we have reintroduced legislation as H.R. 10. It is really very similar to H.R. 1102 that passed the House with almost, well, with 401 votes twice last year. In fact, it has passed the House five times, I am told, Ben. I am not quite sure what our problem is. We can't seem to get it done. But we are going to keep at it for another 4 years if we have to. Hopefully, this year we won't. Hopefully, we can get it done in this Congress and with this new administration.

I am delighted to say, Mr. Chairman, you mentioned on the co-sponsorships, we do now have 285 co-sponsors, including 160 Republicans, about 120 Democrats, and 14 members of this Subcommittee. Again, we really appreciate the Subcommittee taking the lead with this on this issue.

What we try to do is strengthen, as you mentioned, that third leg. We have Social Security, the public pension system. We have private savings, which we also deal with in this bill through IRA expansions. And then we have the third leg, which is the employer system. Defined benefit plans as well as defined contribution plans are addressed in this legislation both in a comprehensive way.

Let me just give you a couple of statistics to talk to you about how bad things are now. More than half the workers in this country have no retirement savings now under any kind of a pension, not even a simple, or a SEP plan, or a 401(k), safe harbor, nothing.

We know for a fact that over 20 percent of small businesses today that only 20 percent of the small businesses today, those with less than 25 employees, offer any kind of a pension.

So we have a real problem out there. And at a time when not enough workers have pension coverage, we also have an overall savings rate that is dangerously low, and talk about economics for just a minute. The savings rate in this country which this Subcommittee has talked about before is something that all economists, right, left and center, agree is very troubling for our country. In fact, in February of this year, as you know, the Commerce Department reported that our Nation's savings rate was a minus 1.3 percent.

The economic argument on pension reform is sometimes overlooked. Let me just touch on that. The current slowdown in our economy, Mr. Johnson mentioned it, talked about the capital markets, this has spurred an interest in tax relief, I think appropriately. And a lot of economists have pointed to tax relief as an effective way to spur consumption and get down consumer debt. We, of course, agree with that. I think it will help.

But in addition to that, we need to encourage Americans to, not just consume and reduce debt, but also save. And the savings will strengthen the long-term financial security, of course, of individuals and families; but it also will provide a number of positive effects for the U.S. economy as a whole and do so in a short term.

Of course, that is what provides our economy with a ready source for investment capital. Assets and employer-sponsored retirement plans and IRAs today, Mr. Chairman, total more than $5 trillion. And pension assets alone account for over 26 percent of all equity holdings and, in fact, over 12 percent of all taxable bond holdings in the United States. So a significant part of our savings is tied up in these pensions.

It is a way we can immediately increase our savings rate and, therefore, increase the pool of capital, which will in effect permit greater production of goods and services in our economy. And this increased capital accumulation, of course, also generates additional tax revenues in our system. So there is an economic argument here that is sometimes overlooked about the importance of doing this and doing it now.

Some might argue that the Federal tax expenditure that is involved--and you and I deal with this all the time with the Joint Tax Committee--for pensions and retirement savings is significant. However, evidence also demonstrates that this expenditure is a highly-efficient use of the Federal tax dollar, particularly as compared to other tax relief.

Data from the Commerce Department shows that benefits paid by employer-sponsored pensions are 4.6 times as large as the foregone Federal tax collections. Think about that. This is a very efficient way for us not to get more of a hit on Federal revenues, but in fact to get more revenues into the Treasury and help the economy.

The investments in the employer-sponsored pension systems contained in this bill would clearly be a sound Federal expenditure that is going to translate also into meaningful retirement benefits for all Americans.

So I just wanted to lay that out, because that is something we don't talk about enough, I think, is the fact that this is going to be extremely important in helping our economy and helping our savings rate.

Chairman Johnson. I think the time of the gentleman has expired.

Mr. Portman. I thank the gentleman. And I look forward to the comments from my colleague.

Chairman Johnson. Well, unlike the Ways and Means, Mr. Boehner wants these things to run on time. And I might add he supported this bill full-blown last time, and it was he who helped get it through this committee and intends to, I believe, do it again. So we appreciate that.

Thank you, Mr. Portman. The rest of your testimony can be entered into the record.

WRITTEN STATEMENT OF THE HONORABLE ROB PORTMAN, U.S. HOUSE OF REPRESENTATIVES, MEMBER OF CONGRESS, 2ND DISTRICT OF OHIO- SEE APPENDIX B

Chairman Johnson. Mr. Cardin, you may begin your testimony.

STATEMENT OF THE HONORABLE BENJAMIN CARDIN, U.S. HOUSE OF REPRESENTATIVES, MEMBER OF CONGRESS, 3RD DISTRICT OF MARYLAND

Mr. Cardin. Thank you, Mr. Chairman. I want to echo the comments of Mr. Portman in thanking you for your leadership, not only on this committee, but on the Committee on Ways and Means.

Mr. Boehner, I want to thank you also for your leadership, in particular the provisions that are under the ERISA statute. They are complicated provisions, and you have been very helpful to us in crafting this bill.

Mr. Andrews is not here, but I hope you will express my thanks to him. He has been very encouraging in his work on strategies on the Democratic side to make sure that we can keep the bipartisan momentum for the passage of this legislation.

Mr. Portman mentioned the fact that this is truly a bipartisan bill. I want to thank Rob for all of his help on both sides of the aisle to keep us focused on keeping our coalition strong. It is not only bipartisan, but we have reached out to all elements within the pension community.

This bill doesn't do everything that everybody wants, but we think it is a bill that is well balanced and enjoys broad support, because we have been able to keep it balanced; and we want to continue to do that.

Mr. Portman has indicated the great need for it. I am not going to repeat what he has said, except to mention one point. A person who enters the workforce today, when that person retires, the number of people who are over 65 in this country as a percentage of the total population will increase from about 12.8 percent, which it is today, to 20 percent of our population. I think that is somewhat a sobering thought. We really need to do a much better job on private savings and private retirement.

What I would like to say is this bill makes progress by going backwards. We tried to deal with some of the problems that we have created during the last 20 years, 25 years, in our pension laws that have made it more difficult, particularly for small companies to establish employer-sponsored pension plans. So we try to simplify the system to make it easier for an employer to provide pension opportunities for their employees.

So we restore some of the limits, which basically don't even get us back up to where we would have been if we had adjusted for inflation. And we adjust the limits on all the plans, whether it is a 401(k), a 403(b), a 457. All those defined contribution plans are increased to $15,000. We increase the IRA contributions.

We make it easier for defined benefit plans. We have been taking steps to make it more difficult for employers to continue defined benefit plans; but our bill increases the limits and makes it easier for these plans to continue.

We provide for the portability among all the plans. I would like to name that provision after my daughter who, at the age of 31, already has five different pension plans, and they are all very small. And she was very tempted to cash out. I told her, no, wait. Help is on the way. This committee is going to act in a very timely way, and we are going to be able to continue to allow her to combine these plans and keep them for her retirement.

One provision that I want to just emphasize that I am really very pleased about is this catch-up contribution. It allows individuals who are 50 years of age or older to put an extra $5,000 into defined contribution plans.

And the reason for that is, quite frankly, two things: first, when you are younger, your first intentions are to educate your family, to pay off the mortgage on your home, and you don't really have the wherewithal sometimes to put money away for retirement. This allows you to be able to take care of your retirement needs after those obligations have been completed.

It is particularly important for women, many of whom have left the workforce, are now returning to the workforce after they have raised their families, to be able to have enough money put away for their retirement. The bill also deals with many, many provisions under the jurisdiction of this committee, under the ERISA statutes.

Dealing with small business, we really focus on trying to help small business be able to establish employer plans. The IRS user fees; as you pointed out, the premiums under the PBGC; and the 5500 filings.

We also deal with complexity by trying to deal with the highly compensated employee rules that we think have been unduly burdened upon particularly smaller companies, the subchapter S problems.

The notice requirements under ERISA, we try to clean up and make them really do what we intended them to do and not be a burden.

Let me just respond to Mr. Tierney's question, if I might, for my final comments. I appreciate your concerns and I agree with you. We would like to expand the bill. We were trying to be as frugal as possible on the use of Federal revenues.

And I am pleased to point out that those who are asking us to do more, we applaud you. We would like to do more. We had in our original bill a tax credit for small business. We are sorry that that was taken out of the bill.

The bill that we filed is identical, basically identical to the bill that enjoyed broad bipartisan support on the floor of Congress with 401 votes. We hope, as it works its way through Congress, that we can work with the different groups to see whether we cannot expand the bill to even be more inducement for individuals and companies to deal with retirement security. We look forward to working with the committee.

Chairman Johnson. Thank you, Mr. Cardin. I appreciate your comments.

WRITTEN STATEMENT OF THE HONORABLE BENJAMIN CARDIN, U.S. HOUSE OF REPRESENTATIVES, MEMBER OF CONGRESS, 3RD DISTRICT OF MARYLAND- SEE APPENDIX C

Chairman Johnson. And since you brought up the subject of small business, either one of you can answer it, can you tell us what, in your opinion, are the major reasons small employers are far less likely to offer pension plans to their workers than large employers. And how does this bill remedy that situation?

Mr. Portman. Mr. Chairman, early on in our process, we looked to the private sector for that answer and there was actually a survey done that indicated what would be common sense, which is the costs, the burdens, and the liabilities.

And one reason I am in this business of pensions is I used to practice law and represented a lot of small employers and went through some of those issues of costs, burdens, and liabilities, particularly in the liability side, which we do address in our legislation, incidentally. And that is the notion of the bill, and that is what I was responding to earlier.

In relation to Mr. Tierney's comments, I agree. We need to do every thing we can to expand pension coverage. The most effective way to do that is to get small businesses engaged, which is where most lower- and middle-income workers work. Larger businesses, for the most part, have pension problems. Some of them even have defined benefit plans still. And we encourage that and help promote that in this legislation, although those are fewer and fewer as you know.

But what we want to do is be sure that we do reduce the cost, reduce the burdens, make it so that a small employer doesn't feel like it is possible the whole plan could be disqualified for a simple inadvertent error, which is the case now. We think that this legislation will take a tremendous step in that direction.

We also believe that there is even more you can do in the future to reduce those costs, but we think this is the important first step. We think it is the right balance, as Mr. Cardin said, to be sure that you still have all the existing security for workers, all the provisions that make sure that it is a fair system for those who are not highly compensated. But in the end, this will simplify it, Mr. Chairman. We think it will get more small businesses engaged.

Mr. Cardin. Just quickly, a small business owner cannot have an individual assigned just to deal with pension issues. In some cases, it is very complicated. So the complexity clearly has been one of the reasons why. There have been a lot of traps in the law that small companies particularly are afraid to go down this road, because they might be subject to certain penalties; and it was unintended consequences of some of the provisions we put in the law in the 1980s.

Then, lastly, let me mention the limits. If a company is looking at establishing a pension plan, but they can't get enough money into the pension plan, why bother doing it? And the key people who make these decisions look at the limit and say, gee, it is just not worth it.

So what we are trying to do is give a balanced approach to make it is easier for companies to establish pension plans.

Chairman Johnson. You all talk about making it easier. How do you reduce red tape that is involved administratively to help them in this bill?

Mr. Cardin. There are several points. First, some of the fees are reduced if they decide to go into the defined benefit plans. We have also reduced a lot of the red tape on the 5500 filings, making it easier for them to deal with that. Then the testing rules, we make it_for example, there are certain safe harbors that are currently in law, but those safe harbors do not apply for the highly compensated employee rules. We say that, if you are in the safe harbor, you don't have to worry about the highly compensated rules.

So I think the way we have done it is reduce the direct cost, establish safe harbors that small companies can get into, and not have to worry about the testing, the expensive testing requirements.

So they are the major provisions.

Mr. Portman. Mr. Chairman, I would just add to that that what you are doing in this Subcommittee also helps tremendously. I mean, our main focus has been to get at some of the complexities and nondiscrimination testing and the top-heavy rules. I think we have done that in a fair way, a balanced way. Frankly, some people would like to have gone further in the business community. Some people were more worried about worker protections and think we went too far. We probably have hit about the right balance.

But what you do, reform of the NI cutback rule, for instance, is going to help businesses. That is very important. The allowing the summary-end reports to be made available electronically is going to help. I mean, that is simplification that saves costs.

The allowing loans for small business owners from retirement plans, it is not permitted now. We think that is an inadvertent trap has been set in the current law where some things we think just, you know, are sort of nonsensical that are in current law that we try to clean up.

The small business PBGC premiums for new plans, we talked about the defined benefit earlier and how we try to encourage that. So actually we do some things on the Ways and Means Committee where you have jurisdiction, and we do some things in your new Subcommittee where we have jurisdiction that are going to make it easier for businesses. ESOPs, for instance, are very excited about this bill. It is going to help them.

So we get at these issues. Again, there are other things that we could look at down the line depending on how this works. But we think this is the right balance right now to give more small businesses engaged in the business of offering retirement plans.

Chairman Johnson. Thank you. My time is up.

Mr. Tierney.

Mr. Tierney. Thank you very much. Again, thank you for your testimony. I also for 22 years represented a lot of small companies; and I understand perfectly well what you are saying, although I do note that SEPs are not a bad vehicle for some and fairly simple except nobody seems inclined to market them because they don't make an awful lot of money on them.

I was wondering, you know, at some point in time, we might move forward on trying to address that issue, because I think that is by and large a part of it. The other part of it, of course, is many of the small businesses I represented truly were small; and what the real impediment for them having plans was they just didn't make enough money. No matter how simple you make the forms or whatever, they just didn't have enough money to do that.

Which brings me back to the drum I was beating before, and I don't mean to be contentious about it at all, because I think we can be at some sort of agreement. If we really wanted a balanced plan here, wouldn't we also in this vehicle as we move forward do something for people that make less than $50,000? I mean, 80 percent of the people that are earning wages earn less than $50,000. If we want balance, it seems to me, we would include them in this bill. Yet, in order to get this bill moving, if the compromise had to be made, we dump out that segment and keep in that.

I think it brings into question what your colleagues' priorities are if they forced you to take those sections out. I am disturbed by what your colleagues' priorities were if they are the ones that forced you to take that degree of balance out of that. They are, in fact, going to be the people that, when they retire, are going to get less Social Security; they are going to have less in the bank. And we ought, I hope, to include them in the path forward.

I guess I am disturbed that if we are fracturing this thing, saying, well, this group we are going to deal with first, and we will get to them later, I am not sure we are going to get to them later. I think this might be the time to force that issue.

If people are really interested--and we have such great bipartisan support in this bill, which it appears we do--why not use that capital, political capital to put in and really strike some balance here and put those programs into this bill and move it forward, as I understand is going to be done in the Senate.

Mr. Cardin. First, if I might respond, I think the bill that you have before you is well balanced and will help the system and will help lower-waged workers by having more companies establish pension plans.

It is a matter of dollars and cents. I agree with you. I support efforts to help lower-wage workers within our current pension plans participate. That is why I have supported the efforts of some of our colleagues in that direction in the Senate as well as in the House.

But it is a matter of dollars and cents, in other words, how much money we have available. The bill that we present to you is a modest cost bill. It will allow companies to establish pension plans, which will help all workers.

If we have more dollars that we can put into the plan, then I certainly support the efforts on behalf of lower-wage workers to offer additional incentives so they can participate in employer-sponsored pension plans. I think that makes sense. I support that.

The one provision that we had in our bill that was removed last year dealt with the credit for small business expenses. We think, we hope that, as this bill works its way through the process--that can be added. That was not that terribly expensive. And we think it would be an improvement.

Again, we were cautious. We wanted to do the bill that passed the Congress last year. But we hope, as it works its way through both the House and the Senate, if additional resources are available, that we can move forward on some of your suggestions.

Mr. Tierney. Again, I don't mean this as a criticism of you two gentlemen, because I think you are working hard to get through what you can get through and address the problem. I guess my point to whomever might be listening out there on that is, you know, for another $10 billion, you can do the ERISAs. You know, so you have $50 billion on this program; and for one-fifth of that added on, you deal with a whole slew of people that might not otherwise be covered. To me, it makes sense to do it on this bill. I mean, we could certainly analyze whether or not we could move forward at this time on that.

Mr. Cardin. The ERISA proposals range anywhere from the dollars you mentioned to much, much, much more money.

Mr. Tierney. But here is the time to draft one.

Mr. Cardin. It depends on whether you want to make it refundable and what income limits you want to apply to them.

Mr. Tierney. I agree with you. But here is the time to do that discussion. Here is the time to make one that is affordable. Here is the time, as they are in the Senate going to do, come up with a portion where it says this is what we are going to do, it is going to bring it in around $10 billion. And if it is refundable or not refundable, we will have the debate now.

Once this debate moves forward, I think, unfortunately, this is gone for the year, perhaps for the whole session. Look how long it has taken you gentlemen just to move this vehicle now. I guess my only plea to you would be that, if you have the energy, and I know you have the will and the intent, to maybe support those amendments to it that would come up that would move in that direction, support if it came out of conference committee.

And, in the last few seconds, I would like to know, would you support this, continue to fight aggressively for this bill if it came out of conference committee with provisions in that that were affordable in a $10 billion range for ERISAs.

Mr. Cardin. Well, absolutely.

Mr. Portman. Mr. Chairman, I don't know how much time we have. I don't want to go over your limits.

Mr. Tierney. Can I ask you, Rob, just start with the back end of that. Would you support it if it came out with the provisions?

Chairman Johnson. You can answer if you want.

Mr. Portman. I don't know. I think, you know, we have a bipartisan love-fest here, and this bill has got 285 co-sponsors, but I think we have a philosophical difference. I really do.

Mr. Tierney. I can get you probably another 150 co-sponsors if you move that philosophy toward the people that we are talking about.

Mr. Portman. You know, you say that 80 percent of workers in America make less then 50,000 bucks a year and we are not doing anything for them. That is just wrong.

Mr. Tierney. I never said you are not doing anything for them. I said I would like to see you do the ERISA's for that.

Mr. Portman. Well, you certainly implied that. Let me give you another statistic. Seventy-seven percent of participants in pensions in this country make less than 50,000 bucks a year. If you are getting some more information there, you can respond to that.

Mr. Tierney. I already gave you the information.

Mr. Portman. That is a fact. And I just get a little tired of the folks who are critical of this process, saying we do nothing for low-income workers. Those low-income workers work in those small businesses that you and I used to represent. And they are getting nothing now. You know, 19 percent of small businesses aren't offering anything. That is what you are trying to do. To me, if you are going to put some money against this, that is where I would put it. I mean, I am not saying I would vote against--.

Mr. Tierney. But I just don't want to see you---you are fighting a fight that isn't out there. Nobody said you are not doing anything for them.

Mr. Portman. But there is a philosophical difference here, I think. You know, it is not just that we all agree more should be added. In my view, if I had another 10 billion bucks, I would put it against more of what we are doing to try to expand coverage to the people you and I used to represent, because that is where I think we are going to get more bang for the buck. This $10 billion provision that came out of the Senate Finance Committee last year I think will have very little impact, frankly.

I think what you need to do instead is you need to tell people whom you and I used to represent, hey, there is something in it for you. And because of the nondiscrimination rules, you have got to offer it to everybody. Then you get the tremendous leverage we talked about. In the testimony, I said 4.6 times the amount of tax expenditures you are going to get in terms of benefits, because they are going to get matching--you want to increase matching contributions from employers to get more people in the system.

So I would probably approach it a little differently. I would do what we are trying to do in complexity and the burdens and the liabilities; but, also, I would probably make the system a little more attractive for small businesses so that you can give those people coverage.

If you do an ERISA that goes--that is nonrefundable, then you probably have more impact on those low-income workers. But that gets very complicated and has all kinds of compliance problems, as we have seen with the ITC. It gets very expensive, obviously.

So I just wanted to make it clear that, you know, I understand what you are saying. I agree with you in terms of the goal. But I think there is a difference in terms of how we approach--how you get to that goal.

Mr. Tierney. Thank you.

Chairman Johnson. Thank you, Mr. Portman. Mr. Andrews has joined us. Thank you for catching the train on time.

Mr. Andrews. I apologize for my tardiness. The 8:13 train was an hour delayed, thereby resulting in a massive forfeiture of Amtrak's pension fund.

Chairman Johnson. I thought it was all the Democrats sitting on the tracks.

Mr. Andrews. I don't think it was that. But I apologize.

Mr. Cardin. I hope it was not a problem coming through Baltimore, was it?

Mr. Andrews. Never through Baltimore. It always works through Baltimore.

Chairman Johnson. Mr. Andrews, you are recognized for a statement, if you wish.

Mr. Andrews. Thank you, Mr. Chairman. First, let me thank you and commend you for your openness and spirit of collegiality in your early days as chairman of the Subcommittee. I am very encouraged by that, and I appreciate and look forward to a strong working relationship between us and among our members.

I wanted to briefly express my enthusiastic support for the legislation that Mr. Portman and Mr. Cardin have put forward. It does not by any stretch of the imagination address every problem in America's pension system, but it strongly and positively affects a number of those problems.

I appreciate their persistence in this goal over the last few years. I think that last year's outstanding vote on the House floor is evidence of the breadth of support that they have built.

I briefly want to say the three major reasons that I support the legislation and then suggest a fourth area that I believe our Subcommittee, along with our friends from Ways and Means, ought to pursue in the future.

First of all, the modification of the overfunding rules is a major plus for small businesses. The present Tax Code essentially outlaws investing more money into a pension fund. When an entrepreneur or employer wants to put more money away, we make it difficult to do; and we ought to do the opposite. And that is what this bill does.

Secondly, I think that the catch-up provisions will be beneficial to many people, but particularly to women who leave the workforce or cut back on their compensated work time for family obligations and then who wish to catch up for those missed years or lower-contribution years at another point in their lives. This legislation is going to make that possible. And I think it is going to secure an economic future for many workers, most especially women.

Third, I think that the legislation is commendable because it finally addresses the anomaly of section 415 of the Internal Revenue Code. By pure accident of circumstance, there are, I suppose, hundreds of thousands, perhaps even millions, of workers who have put their money away over the years, enjoyed good success in the investment of that money, and now find that they can't collect what they are entitled to, that the collection of those funds would result in the disqualification of their pension plan from tax-favored status. No one ever intended that. And it is important that that problem be remedied, and that is what the bill does.

The final suggestion, and I know Mr. Cardin has already co-sponsored this effort, along with Mr. Neal and Mr. Rangel, is an idea to try to write into our law a mechanism that would help lower-income workers begin to save voluntarily, legislation that would provide for a tax credit of 50 percent for contributions for workers making $25,000 a year and less. And then a diminishing matching contribution for workers making between $25,000 and $50,000 a year is something that I strongly support.

And I think it would go a long way toward addressing the concern that the GAO pointed out last year in a study that Mr. Owens and I asked for that points out that there are tens of millions of Americans with no pension coverage at all. Many of these individuals are low-income people working in industries with small profit margins. And, frankly, the commendable employer incentive mechanisms that are in this bill probably won't do much to help those folks, and we need to find a mechanism that does.

At any rate, again, I appreciate your indulgence with my tardiness. And I strongly encourage my colleagues to continue this effort and look forward to working with them on the floor to enact this bill. I yield back.

Chairman Johnson. Thank you, Mr. Andrews. We charged Mr. Portman $50 for being late. You will get the same bill when you leave. I thank you for your comments. By the way, we had a discussion of the subject you ended with just before you walked in for about 5 minutes.

I would like to recognize now Mr. Fletcher, who is the vice chairman of this Subcommittee for questioning.

Mr. Fletcher. Thank you, Mr. Chairman. And I appreciate both of you coming and the work you have done. In the past, having owned a small business and set up several different funds for the employees and owners as well, I realize the complexity that small businesses face. And actually, we--it is a significant cost that could be put into retirement. And any reduction of red tape, et cetera, is very welcome.

Also considering the fact that folks stay--or spend less time under one employer than they used to in the past, there is a lot of transferring going on, the provisions of portability. I wonder if you could discuss that. I know, Congressman Cardin, you mentioned your daughter might be helped by such a plan; and obviously, portability may help with that.

I know I had the experience of workers--when they left, most of them generally cashed out. A few rolled it over into an IRA, but most cashed out. So maybe both of you, Mr. Cardin, you can discuss that; and, Mr. Portman, that would be helpful.

Mr. Portman. I want to say briefly that, since the provision is named after Ben's daughter, I am going to let him talk about it more, but you are right. Most workers cash out. And I commend Ben's daughter for not doing so. She's maybe providing a new model. But isn't it amazing, most people, we are told, actually cash out of these things and pay the surcharge. So it is a tremendous problem. We try to make it seamless, particularly between 401(k)s, 457s, 403(b)s, that you can just move the plan from one account to another and not have to have separate accounts.

Mr. Cardin. As you know, we have different sections of the code dealing with different types of employers, whether it is government and nonprofit or for-profit, and then we do have different types of plans even within those categories. It is not unusual for employers--for people to change jobs frequently. That is the current workforce. And it is not unusual for someone in their thirties to have worked for four, five, six different employers that have different types of plans and even to work for the same employer that offers different opportunities.

So it is--what happens is, if you only have $1,000 or $2,000 in that account, and then you leave the employer, it is very tempting to cash out. Because you look at what will that mean when you reach retirement and all the administrative chores connected with that one account. And it is--you say, well, I might as well withdraw all the money, pay the taxes, and do something else with it. What you end up doing with it is usually not put it into additional retirement.

So what we want to do is change the rule so that you are allowed to keep these retirement funds in a consolidated account, portability, subject to certain restrictions based upon the requirements of each of the plans. And we are able to do that in a way, and we have used some of the concepts that I think it was Mr. Blunt that came to us with Earl Pomeroy. And we think it makes an awful lot of sense and will encourage people to consolidate these accounts and then keep them for retirement security rather than cash out.

Mr. Fletcher. Mr. Portman, one of the questions--I know there is some allowability in rules, in other words, if the plans have different benefit structures or whatever it appears. And I am looking at the section 405, and I wonder if you can explain. I know there is some effort to protect if there is transfer. If you could help explain that just a little bit under section 405. And maybe, I am asking a more specific question.

Mr. Portman. No, that is fine. This is a very sensitive area as you can imagine. The cash balance plans have gotten a lot of publicity in the last couple years. I mentioned earlier--alluded to the fact that many larger companies are still offering defined benefit plans. But they are fewer and fewer.

In fact, if you look at what has happened in the last 15 years, as Ben alluded to earlier, you have more restrictions, more limits, even a reduction of contribution limits or benefit limits, and you see fewer and fewer defined benefit plans. It is just a reality, a dramatic decrease. And you also see this movement of some companies from a traditional defined benefit plan to a cash balance plan.

What we do is not tell businesses that they are prohibited from doing so, because, after all, companies are not mandated to offer anything, and you don't want to create a situation where you have less incentive to offer a plan by putting more and more mandates in place. But, instead, we do provide for greater disclosure. We do provide for sooner notification. We think that is probably the right balance right now in terms of how you deal with this issue.

We know the Senate has taken a strong interest in this. The Treasury Department has had some comments on this. And we are open to other suggestions, Dr. Fletcher. And if you had some or other members of this committee, we would love to hear them. But right now, we are focused on disclosure and notification for workers to make it fair for workers who are caught in this situation.

With the cash balance, we understand there are some more senior employees who might not receive the same benefit that they thought they had accrued or would receive. There are also a lot of workers, particularly, obviously, younger workers who would get more of a benefit. And most of the analysis comes back showing that most workers, and clearly the younger workers, actually could stand to benefit more from most of the cash balance plans that have been proposed.

So it is an interesting issue that has a lot of emotion around it. We think the way to deal with it right now is through disclosure and increased notification.

Mr. Fletcher. Thank you very much. And I commend you on the work. It is very complicated. I think you have given a great deal of flexibility and a lot of information that is available to the participants. Thank you very much.

Chairman Johnson. Mr. Kildee is recognized for questions.

Mr. Kildee. Just briefly, I am cosponsor of this bill. And I will not claim that the bill is perfect or covers as much as maybe we would want. But this bill was written on Capitol Hill, not Mount Sinai, and most of our bills do improve afterwards. So I think you are on the right track here, and that is why I am cosponsoring the bill. Perhaps there are some people who could be helped, and we maybe can help--but this is a great step down the road. And I don't think it will hurt any other worker. And we can address those other problems at another time, too. But I think you ought to be commended for your work on this bill.

Mr. Portman. Thank you.

Mr. Cardin. Thank you, Mr. Kildee. I thank you for those comments. When we started, Mr. Andrews was not here, but I really want to underscore the importance that Mr. Andrews has been, particularly on the Democratic side, in helping us with strategies. And I thank both of you for your continued support.

Mr. Portman. Mr. Chairman, can I just for a moment mention Mr. Andrews as well, because last year Mr. Boehner and Mr. Andrews took the lead in your committee on some very important issues, and some of them were pretty tough. Since Mr. Andrew mentioned it, I want to mention the repeal of the current liability funding limit that is in this legislation. Again, I couldn't agree more with what Mr. Andrews said. And I will say that Mr. Andrews took some risks in taking that position, because there are others who feel strongly on the other side. Of course, the facts are with us, right, Mr. Andrews?

But I mean, honestly, there are some difficult issues in the pension area that has some emotion attached to them. And if your goal is at the end of the day to provide more retirement security for more people, I think there is a fairly clear path. But I think you showed some courage in taking that one on in particular and some others. I think we have got a better bill as a result. So thank you.

Chairman Johnson. Thank you. And the Chair recognizes the Chairman of the Full Committee, Mr. Boehner.

Mr. Boehner. Mr. Chairman, thank you, and thanks for having this hearing this morning. Let me congratulate you and Mr. Andrews for your ongoing efforts to work with this bill.

Let me congratulate Mr. Portman and Mr. Cardin for your tireless efforts at keeping this issue in front of the Congress. The fact that we voted on it so many times over the last few years is a testament to your tenacity.

Let me also say thank you for the cooperation that you have given us with these issues that we share jurisdiction on. I think it has worked out very well over the last 3 or 4 years. And I know that I speak on behalf of Mr. Johnson and Mr. Andrews and say thank you. We have had a good working relationship.

As some of you may recall, as we went through this testimony in prior years, I set up my own defined contribution plan, two plans, a pension plan and a profit-sharing plan, defined contribution plan in my own company some 23 years ago. And I remember looking at this for several years trying to make a determination as to whether it was worth the expense, the effort, and the record keeping to even begin for someone such as myself with, at the time, three or four other employees.

But I made the decision mostly because it was in my own self-interest. But the hurdles that have been there in law and the expense for small employers and small plans is tremendous. And I think the changes that are outlined in this bill will, in fact, make it easier for small employers to get into the pension business.

Mr. Boehner. I think it is very important. I am glad that I did it. My employees are very glad that I did it. These plans today are multimillion-dollar plans, to the benefit of myself and my employees who have participated in them.

Let me just mention the cash balance issue that you have just talked about, Rob. With cash balance plans there have been a few rocky moments over the last few years, but I think all of us who have been involved in this issue for some time understand that cash balance plans are a way to preserve defined benefit plans, which as we all know have been shrinking dramatically over the last 20 years.

We have to be very careful that we do not make it difficult for people to transition to cash balance plans, which are a form of defined benefit plans, and thereby create a situation where they frankly just eliminate the defined benefit plan for their newer workers, and it goes away forever.

I do think most of the problems in those conversions have been resolved. I think the safeguards that we outlined in the bill before us really do make sense, to require more disclosure, to give earlier notification. Almost all companies today are protecting those older workers that tend to have difficulty in those conversions.

I think we are dealing with it in a very responsible way in this bill, and I would hope that we do not get into the traditional fight over trying to go too far. It may sound good up front, it may be well-meaning and well-intentioned, but we have to look at the big picture and make sure we do not throw the baby out with the bath water.

With that much, again, I want to say thank you for coming today, and keep up the good work.

Chairman Johnson. Do you guys want to ask him a question?

Mr. Portman. Yes, I would. I would like to ask him how he has been so patient with us.

One of the problems, Mr. Chairman, has been that when you bring this bill the floor, it tends to be under a Ways-and-Means type rule, which means a closed rule, and it tends to be focused on the Tax Code and not ERISA, so as not to open it up to other issues.

We just want to tell you that we appreciate the patience Chairman Boehner has shown in the past, and Ranking Member Andrews, and I know you will show, being a member of the Committee on Ways and Means, with that process.

I hope we can once again get a strong letter, or maybe even include some of this in the bill on the floor. I also appreciate what Mr. Boehner said with regard to cash balances. It is a sensitive area, if we have the right balance at this point. We will see how it works.

I don't want to leave without saying that over the next month we hope we will be dealing with this issue again as to how to deal with the ERISA provisions within this bill.

Speaking for Mr. Cardin, too, we feel very strongly about the ERISA provisions. We feel the bill is not complete without them. We will do everything in our power to make sure they are part of the final product.

Chairman Johnson. Thank you. I'm sure Mr. Boehner and I agree with you on that subject. We appreciate your testimony and your response to the questions.

You can be excused at this time, if you desire. Thank you very much.

Chairman Johnson. We welcome the next panel now, if they would take their seats.

Our first witness will be Nanci Palmintere, the Director of Tax, Licensing and Customs for Intel Corporation in Santa Clara, California. She has worked at Intel for 22 years. Ms. Palmintere is testifying on behalf of the American Benefits Council. I think she has her daughter with her, somewhere.

Next would be Judy Mazo, Senior Vice President and Director of Research at The Segal Company, a national actuarial benefits and compensation consulting firm. She is appearing on behalf of the Building and Construction Trades Department of the AFL-CIO, and on behalf of the National Coordinating Committee for Multi-Employment Plans.

Following her will be Richard Turner, Associate General Counsel at the American General Financial Group. Mr. Turner is the Chairman of the Pension Committee, the American Council of Life Insurers, on whose behalf he is testifying, and I suppose he is from Texas.

Is that right?

Mr. Turner. Yes, sir.

Chairman Johnson. The last witness on this panel is Karen Ferguson, Director of the Pension Rights Center in Washington, D.C.

Let me remind the witnesses that under our committee rules, they must limit their oral statements to 5 minutes. The entire written statement is allowed to be included in the record. We will allow the entire panel to testify before we begin to question the witnesses.

Let me explain the lights in front of you. There will be a green light that comes on, telling you, you have 5 minutes. The yellow light will come on at 1 minute, and the red light will tell you your time has expired.

Chairman Johnson. Ms. Palmintere, you may begin your testimony.

STATEMENT OF NANCI S. PALMINTERE, DIRECTOR OF TAX, LICENSING AND CUSTOMS, INTEL CORPORATION, SANTA CLARA, CALIFORNIA, TESTIFYING ON BEHALF OF THE AMERICAN BENEFITS COUNCIL

Ms. Palmintere. Thank you, Mr. Chairman, and members of the Subcommittee.

I am Nancy Palmintere. I am Director of Taxes for Intel Corporation, and a member of Intel's retirement plan administration committee.

Intel is the world's largest manufacturer of integrated circuits and is also a leading manufacturer of computer networking and communication products.

Intel maintains a 401(k) plan, a profit-sharing plan, and a defined benefit pension plan, with total assets of approximately $6 billion, as well as a number of multilateral retirement plans from companies we have recently acquired.

I am here today representing the American Benefits Council, of which Intel is an active member. The Council is a public policy organization representing principally Fortune 500 companies, as well as other organizations that assist employers of all sizes in providing benefits to employees.

It is a privilege for me to be with you here to discuss H.R. 10, the Comprehensive Retirement Security and Pension Reform Act. This legislation has been cosponsored by more than 280 Members of the House, including 14 Members of this Subcommittee, and has the support of more than 100 organizations representing groups as diverse as teachers, police officers, State legislators, union workers, and businesses of all sizes.

This bipartisan legislation will strengthen our Nation's employment-based retirement system, and will give individual Americans new tools to save for their retirement.

Mr. Chairman, your commitment to give careful consideration to the portions of H.R. 10 that come within the Subcommittee's ERISA jurisdiction means that we have a real opportunity to move this entire bill through Congress this year.

The Council wants to thank you, Chairman Boehner, and Ranking Member Andrews for your longstanding commitment to this legislation.

I would like to focus my remarks on the ERISA elements of the bill that would simplify pension regulation, improve pension funding, and give employers new incentives to offer retirement plans. H.R. 10 contains a series of simplification proposals that will streamline today's often incomprehensible pension rules.

Throughout my career, Mr. Chairman, I have dealt with countless issues involving our company's retirement plans and the plans of the companies that we have acquired. It is my conclusion, from more than 20 years of experience, that the astounding complexity of pension regulation and the onerous burdens associated with plan administration drive many people to reduce or limit their retirement programs, and deters some employers from initiating retirement plans at all. Not only are business people leery of the cost of complying with pension rules, but many fear that the legal and regulatory complexity will impose burdens from which they will never find relief.

Among the many simplification provisions contained in H.R. 10 is reform of the anti-cutback rule, which today frustrates pension portability and complicates pension plan operation. Reform of the rule will greatly enhance the ability of companies to assimilate plan participants and their benefits in the wake of business acquisitions.

H.R. 10's many other provisions to reduce administrative burdens include allowing employers to make summary annual reports available electronically, folding suspension of benefit notices into the basic plan document, and expanding the time frame in which distribution notices may be given.

The Council believes the cumulative effect of such simplifications will be truly significant in improving the health of our private retirement system and encouraging new pension coverage.

The Council is also pleased that H.R. 10 repeals the current liability funding limit that has often prevented employers from funding the pension benefits that have been promised to workers. The bill would leave in place the preexisting and more appropriate funding limit, which is tied to the future benefit costs rather than current liabilities.

The current liability limit, which was added to the law in 1987 to raise Federal revenue, forces systematic under-funding of pension plans and erratic contribution patterns. If this limit is not removed, some employers may be in the position of being unable to make up the shortfall and forced to curtail benefit plans or even terminate them. Removal of the limit will instead allow employers to provide future retirees with the security that comes from pension funding.

At this point, I want to thank you very much for the opportunity to appear. We at the Council look forward to working with you to enact this important legislation.

Chairman Johnson. Thank you. I appreciate your comments. The rest of your statement will be entered in the record.

WRITTEN STATEMENT OF NANCI S. PALMINTERE, DIRECTOR OF TAX, LICENSING AND CUSTOMS, INTEL CORPORATION, SANTA CLARA, CALIFORNIA, TESTIFYING ON BEHALF OF THE AMERICAN BENEFITS COUNCIL- SEE APPENDIX D

Chairman Johnson. Ms. Mazo, you may begin your testimony now.

STATEMENT OF JUDITH F. MAZO, SENIOR VICE PRESIDENT, THE SEGAL COMPANY, WASHINGTON, D.C., TESTIFYING ON BEHALF OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO AND THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

Ms. Mazo. Thank you, sir.

Mr. Chairman and Mr. Andrews, it gives me great pleasure to be here today on behalf of the Building and Construction Trades Department of the AFL-CIO and the National Coordinating Committee for Multiemployer Plans.

Both the BCTD, as we call it--it is hard to avoid acronyms when you have such long names for your organizations, but both of these organizations very, very strongly support H.R. 10, primarily for one of the reasons that Mr. Andrews highlighted, because of the relief from Internal Revenue Code section 415 that it would provide for multiemployer plans that would enable us to pay the full benefits.

It is an anomaly, but we have lower-paid people who end up losing their pensions, or part of them, because of section 415. This bill would resolve that. We support that very, very highly.

There are many other provisions of the bill that are of interest to us. There are some that are not of particular interest to the multiemployer world. I want to mention just a few that are within the ERISA bounds, and also just to mention a little bit to give you some framework for multiemployer plans.

The other thing, interestingly, the deduction limits that were mentioned are very important in many cases in multiemployer plans, where as we run up against what we would call artificial limits, employers who have agreed in collective bargaining to put a certain amount into a pension plan, and the workers have said, "I would rather have that go into the plan than my wage," and then the employer cannot take the deduction, that is clearly wrong and we welcome any relief that can come about for that.

I want to just highlight two features of multiemployer plans that I think demonstrate why so many of the features of the bill are of relevance to us.

That is that the plans do provide portability, internal portability. People who work for any employer that has an agreement with that union, all of their pension credits, all of their service, are added together within the multiemployer plan, and they can move from job to job within the plan and not forfeit anything, not even have to worry about rolling over.

The second thing is that multiemployer plans to a very great extent are vehicles for small employers who employ union workers to come together and effectively transfer all the burden of administration, all of the red tape burden that is all taken over by the trust. Many, many of the employers contributing to multiemployer plans, in fact, are small employers who would be unable to provide benefits for their workers if it were not for the multiemployer plans. So we very much appreciate efforts to soften the regulatory burdens to enable us to meet the benefit goals more directly.

I want to just highlight two of the disclosure-related features of H.R. 10, which are directly ERISA features and mention them a little bit, and explain our position on them.

One is section 504 of the bill, which addresses the disclosure that was discussed previously, the disclosure that would be given in the case of an amendment to a plan that reduces future benefit accruals.

This was, as was discussed, primarily motivated I believe by concern about people's losing what they had expected to get over their careers in cash balance conversions. Multiemployer plans are not at all involved in cash balance conversions, actually. We have no problem with the bill as it is written. If additional disclosure is considered in order to protect people in cash balance conversions, we urge that--as was done last year, I believe, in other versions of the bill, that those additional detailed disclosures be limited to the conversion situation and not imposed on all pension plans whenever an adjustment has to be made in the rate of future benefit accruals.

For data reasons and others for multiemployer plans, the burdens would be very significant, and it could cause plan funding positions to be harmed if they had to continue providing unaffordable benefits.

Finally, I just want to mention an issue regarding suspension of benefits and the notice requirement.

This version of the bill eliminates the need to give a special notice to people who continue working after normal retirement age, which would be one of those provisions of the law which, frankly, 99.9 percent of all plan sponsors probably violate because it is counterintuitive for someone who is not yet retired to be told that he or she is not going to get his or her pension.

The bill does require that notice be given to people who go back to work if their pensions are going to be withheld.

I am going to take one more second, if you do not mind. As good citizens, we think notice should be required for multiemployer plans in a slightly broader situation, which I will discuss on a technical basis with counsel. But I am in the odd situation of saying, please regulate us more than the bill actually does in order to safeguard participants' expectations.

Chairman Johnson. Thank you very much. We appreciate your comments.

The rest of your statement may be entered in the record.

WRITTEN STATEMENT OF JUDITH F. MAZO, SENIOR VICE PRESIDENT, THE SEGAL COMPANY, WASHINGTON, D.C., TESTIFYING ON BEHALF OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO AND THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS- SEE APPENDIX E

Chairman Johnson. I don't think that is too bad an acronym, NCCMP. It is so long everybody has to say it all. Thank you for your testimony.

Mr. Turner, you may begin your testimony now.

STATEMENT OF RICHARD A. TURNER, ASSOCIATE GENERAL COUNSEL, AMERICAN GENERAL FINANCIAL GROUP, HOUSTON, TEXAS, TESTIFYING ON BEHALF OF THE AMERICAN COUNCIL OF LIFE INSURERS (ACLI)

Mr. Turner. Thank you, Mr. Chairman. I am Richard Turner, Associate General Counsel for the American General Financial Group and for VALIC, an American General company. I am also the current Chair of the Pension Committee of the American Council of Life Insurers, the ACLI. I am pleased to be here today on behalf of the ACLI.

Mr. Chairman, years ago Congress recognized the need to place primary reliance on private sector sources to assure the adequacy of retirement income. As a result, it encouraged employers and employees to use a voluntary private retirement system to supplement the economic protection offered by public programs such as Social Security.

Since then, America has gone on to build a retirement system that is the envy of the world, and we are very proud to be a part of that system. The Council applauds the introduction of H.R. 10, the Comprehensive Retirement and Pension Reform Act of 2001. If adopted, this measure will help Americans save more for retirement in both private savings plans and employer-sponsored retirement plans.

In addition, we believe that the measure will increase coverage of non-covered employees and expansion of retirement savings.

This legislation is being considered at a critical time. With the aging of the baby boom generation, coupled with the uncertain future of government entitlement programs such as Social Security and Medicare, it is critical that employer-sponsored plans and individual savings be strengthened to meet the retirement security challenges of the 21st century.

Contrary to a common assertion, Mr. Chairman, the majority of current pension participants and recipients are not wealthy. Census Bureau data from 1997 indicates they are middle-income Americans. For example, 77 percent of pension participants have earnings below $50,000. These trends are similar for pension recipients. Among married couples, 70 percent had incomes below $50,000. Among widows and widowers, 55 percent of pension recipients had incomes below $25,000.

When viewed in terms of pension dollars, over 50 percent of pension benefits go to elderly retirees with adjusted gross incomes below $30,000. With additional incentives, simplification, and expansion, this system will increase that security in terms of both the numbers of individuals covered as well as the amount of retirement income received.

In addition, it is a perfect complement to marginal tax rate cuts, because an increased level of retirement savings means an increased level of investment capital for the economy. This translates into increased levels of GNP, and increased standards of living for Americans.

Mr. Chairman, we support the bill in its entirety, including the ERISA provisions that are of interest to this Subcommittee. In addition, we would like to highlight three specific provisions of the bill.

First, we would highlight the restoration of plan limits. The legislation would increase the limitation on voluntary pre-tax contributions to 401(k), 403(b) and 457 plans to $15,000. As the baby boom generation nears retirement, these increased limits will allow them to increase their retirement savings, thereby ensuring greater retirement security.

Next, we would highlight the provisions for catch-up contributions. We believe that allowing individuals to catch up their retirement contributions in later years when other financial obligations have been satisfied will only increase retirement security. This provision is especially helpful to working women, who are the most likely to be in and out of the work force during their younger working lives.

Finally, Mr. Chairman, we would highlight the repeal of the 25 percent of compensation limit on contributions. The repeal of this limit on contributions and similar limits that apply to schoolteachers, health care workers, and employees of State and local governments will allow individuals to increase their retirement savings. This provision is particularly meaningful to middle-income individuals who are most likely to be subject to the cap.

This provision would have a positive impact on small businesses, where pension coverage is weakest.

Mr. Chairman, these changes can help real participants. Public school teachers and college professors who participate in their State's defined benefit plans are the only employees whose contributions are reduced in real terms just because they participate in a defined benefit plan.

In addition, under the current rules, those same schoolteachers and college professors, hospital workers, and other 403(b) participants can also see their contribution limits reduced significantly and disproportionately, just because they change employers or reduce their working hours.

All of these concerns are addressed and resolved in the pension legislation that you are considering. If I might add one more example, I know it is discussed frequently, the number of individuals who contribute up to the dollar limits today.

In fact, one additional note is that if your compensation is below $42,000, by definition, if you are subject to the 25 percent limit, you could not contribute the $10,500, which is the limit today.

Again I want to commend you, Chairman Johnson, and the members of the Subcommittee for your recognition of the vital role that employer-sponsored plans play in the retirement security of this Nation. We encourage all members of this committee to endorse H.R. 10 and to work for passage of this comprehensive pension legislation. Your efforts on behalf of this measure will ensure the future retirement security of millions of Americans.

The ACLI looks forward to working with you, Chairman Johnson, as well as Chairman Boehner and members of this committee, as we move forward to enact this vitally important pension legislation.

Chairman Johnson. Thank you, Mr. Turner, for your testimony.

WRITTEN STATEMENT OF RICHARD A. TURNER, ASSOCIATE GENERAL COUNSEL, AMERICAN GENERAL FINANCIAL GROUP, HOUSTON, TEXAS, TESTIFYING ON BEHALF OF THE AMERICAN COUNCIL OF LIFE INSURERS (ACLI)- SEE APPENDIX F

Chairman Johnson. Mrs. Ferguson, you may begin your testimony now.

STATEMENT OF KAREN W. FERGUSON, DIRECTOR, PENSION RIGHTS CENTER, WASHINGTON, D.C.

Ms. Ferguson. Thank you, Mr. Chairman. I am Karen Ferguson, Director of the Pension Rights Center. The Center is a nonprofit consumer organization that has been working to promote and protect the retirement security of American workers, retirees, and their families for the past 25 years. We very much appreciate the opportunity to testify today.

I would like to start by commending the Subcommittee and Congressman Portman and Congressman Cardin for their willingness and your willingness to tackle what is one of the most difficult and most overlooked challenges facing the Nation today: how to ensure that Americans who have worked a lifetime will have the retirement savings they will need to pay their basic bills when they are too old to work.

As you know, Social Security provides a critical safety net, but as you also know, it pays the typical retiree less than the minimum wage, and that retiree needs at least twice that amount to maintain his or her pre-retirement standard of living.

I am here this morning because we are deeply concerned that the major provisions of this legislation would diminish rather than increase the likelihood that the majority of hardworking Americans will receive adequate incomes in retirement.

Although the bill may achieve its stated objectives of making retirement security available to millions of workers by, among other things, expanding small business retirement plans and allowing workers to save more, the reality is that for a great many workers, merely creating more plans and allowing more money to be sheltered from taxes could undermine rather than enhance their retirement security.

Our concerns are that the measures, these major measures, will primarily help higher-paid individuals while jeopardizing the future retirement security of millions of ordinary workers. I would like to also say that contrary to the statement by Congressman Portman, our understanding is that these measures would reduce rather than increase the personal savings rate for the country.

I would like to begin first by addressing the centerpiece provisions of the bill, and then turn to the specific ERISA issues within the jurisdiction of this Subcommittee.

The provisions of the bill that have received the most attention would increase the amounts individuals could shelter from taxes in savings plans, such as 401(k)s and IRAs. The bill would provide particularly generous tax breaks for the very small proportion, 5 percent, of higher-earning employees who are now contributing the maximum, $10,500 a year, to 401(k) plans. If these employees are age 50 or over, the bill would allow them to nearly double their contributions, and if they are employers, it would permit them to more than double that amount, to a total of $45,000 a year.

Contributions at this rate would certainly encourage more employers to set up 401(k)s, but it would not increase the retirement security of the 95 percent of 401(k) contributors now contributing less than the current maximum. It is important to note that currently half of all full-time year-round workers earn less than $32,000 a year. These workers simply cannot afford to contribute two-thirds of their after-tax earnings to a 401(k).

But far more troubling from a retirement policy perspective is that the increased limits will inevitably encourage more employers to jettison their traditional pension and profit-sharing plans. That is because 401(k)s are cheaper than traditional plans.

Unlike traditional employer-financed plans that provide benefits to workers at all income levels, employers ordinarily do not make any contributions to employees for those of their employees who cannot afford to put money in first. By switching from employer-paid plans to 401(k)s, companies can significantly cut costs.

In the past decade, the number of traditional plans has dropped by 66 percent, but of course the shift is far greater because larger companies have simply cut back on their traditional plans and emphasized the 401(k)s. Since 401(k)s are so very popular with employees who can afford to contribute, as well as employers, this would not be a problem but for the fact that despite multimillion-dollar educational efforts, 401 account balances remain extremely small. The most recent government figures show that half of all 401(k) contributors have less than $16,000 in their accounts. That is a total amount of $16,000. If there is data showing that these plans can provide a more realistic source of income for more working Americans, then these measures would make sense. We have not seen that data.

Others have noted the tax policy aspects of these proposals, and those are discussed in our statement and in two articles attached to our statement.

I will turn, if I may, to another provision, which I do not know that it has been mentioned this morning, but one that has been high on the agenda of many consultants and financial institutions.

Chairman Johnson. Can you highlight that for us, because your time has expired.

Ms. Ferguson. On the top-heavy rules, I will just refer to the GAO study. The protections provided by the top-heavy rules to people in small plans, particularly in small 401(k)s and particularly in the safe harbor 401(k)s we describe in our statement. Are extremely important and should not be eliminated.

Elsewhere in our statement, I will simply reference the fact that we discuss the cash balance provisions. We think they are woefully inadequate and state the reasons in our statement. We are also very, very concerned about the merger and acquisition cutback statements that were referenced by the first speaker.

We detail some of our concerns about the disclosure provisions. Let me just mention one. As it is now written, it appears that the suspension of benefit notice would apply to participants in multiemployer plans who return to work for an employer who is not their former employer. This could be very serious. It could take away a very important protection.

I was encouraged that Judy Mazo mentioned that that is not their intention, so I hope the legislation will be modified to reflect the intention.

Thank you very much.

WRITTEN STATEMENT OF KAREN W. FERGUSON, DIRECTOR, PENSION RIGHTS CENTER, WASHINGTON, D.C.- SEE APPENDIX G

Chairman Johnson. Thank you for your testimony. We appreciate you being here.

Obviously, you are in opposition to the first three witnesses, but we recognize in this Congress and in America that we have two sides to almost every question; sometimes three. It is good for us to hear both sides of the subject. I think Mr. Andrews agrees with me.

Mr. Andrews. Yes, Mr. Chairman.

Chairman Johnson. Thank you for your testimony.

I would ask a couple of questions and then let Mr. Andrews ask some if he desires.

Ms. Palmintere, your statement said that your voluntary pension plan, if the business owner is not convinced to offer a plan, employees do not have the chance to earn retirement benefits. That kind of talks to what Ms. Ferguson was just saying.

Why is a business owner so hesitant to offer a plan under the current system, and how would H.R. 10 change this?

Ms. Palmintere. As was discussed previously by Congressman Portman, a good piece of the problem related to smaller businesses implementing plans is both the concerns about liability and also the costs and administrative aspects that really deter people from wanting to venture down that path.

Prior to working at Intel, which, unfortunately goes back about 25 years or so, I did also work in the pension and benefit plan area for small businesses and have had some experience. I found that the true administrative aspects are really one of the key deterrents, and some of the things in this bill with respect to electronic notification and other items like that really help to minimize the pain of administration.

Anything that can help do that, I think, really does encourage businesses to go forth with plans.

Chairman Johnson. So you think it would reduce the administrative costs to small businesses?

Ms. Palmintere. I think some of that absolutely would.

Chairman Johnson. Thank you.

If any of you wish to add comments when we talk to one of the other witnesses, you would be welcome to do it. If you would just let me know, I will recognize you.

Mr. Turner, you mentioned catch-up contributions. How would they be beneficial to working women, and how would they increase the retirement security for women?

Mr. Turner. Mr. Chairman, it is not uncommon for individuals, both men and women, to move in and out of the marketplace, and particularly for working women who may oftentimes choose to stay home with their children when they are growing up. They might move out of the work force for any number of reasons, however.

Chairman Johnson. Because they make more money than we do in the stock market, right?

Mr. Turner. That may be.

But for those individuals, Mr. Chairman, the current structure of the limitations would not give them an opportunity to make up for those years when they were not able to save for their retirement.

We see that frequently with participants who are in their later years and would like to make up for those earlier years when they were not able to contribute because they were not working, or because they just did not have the financial resources to do so, this would allow them to make those contributions and have a much more secure retirement.

Chairman Johnson. Thank you.

Ms. Mazo, you state that there are some participants who lose out in a benefit formula change. Could you give us an example?

Ms. Mazo. In terms of a benefit formula change?

Chairman Johnson. Yes.

Ms. Mazo. There would be people who would lose out if, for example, a plan were_I will give you an example of a multiemployer plan that I know about.

This plan is in the unusual situation of having_facing a significant financial threat. In order to remain affordable, the plan or the trustees are considering reducing the subsidy for early retirement benefits that people would now be entitled to. You could now retire, I think, after 20 years of service on a full pension. They are not sure that they can afford that for the future.

If a change of this type were made in the first place in a multiemployer plan situation, it is a highly political situation because union officers are part of the running of the plan, and they run for office, so they would be cutting benefits of people who vote for them. They would only make such a change if they were facing extreme financial stringency, and they would clearly publicize this. So some people would not get the early retirement benefit that they would otherwise have expected.

The plans would let everybody know that the rule has changed, and your bill would strengthen the certainty that that kind of a notice would be given.

In that case, it would be very difficult for the plan to calculate every single one of maybe 5,000 or 10,000 working people: What would this person have actually accumulated if they worked 20 years; what is their service history, et cetera? The plan would not be in a position to give everybody a detailed set of numbers on what they would otherwise have given.

For these kinds of changes, the impact is pretty understandable to individuals. The changes that are harder for people to grasp are, for example--or that may be harder--are when a plan is converted from a regular defined benefit plan to a cash balance plan.

Our request is just that if you add more disclosure requirements for those conversion situations, that care is taken that it does not--that you don't require that every change require the plan to give a lot of detail, changes where the impact is evident on their face.

Chairman Johnson. Thank you.

Ms. Ferguson, you indicate that we are going to lose people. They are going to have less opportunity to save. Would you explain that?

Ms. Ferguson. Yes, Mr. Chairman. One of the biggest dangers of making 401(k)s so very attractive, even more attractive than they are now, is that the business owner in many cases will be able to take care of himself or herself adequately through the 401(k). If you put $30,000 a year, even, and compound it with reasonable stock market performance, you can according to experts amass $5 million very, very quickly.

The problem with 401(k)s is that despite their many positive features, they require employees to contribute first before they get anything. Most employers now match employee contributions, but if you don't put anything in, if you cannot afford to put anything in, you get nothing from the plan.

One of the reasons we have seen this wholesale retreat from pension and profit-sharing plans in the last two decades has been because 401(k) plans are cheaper for employers precisely because they don't have to put in for any money for lower-income workers who cannot afford to contribute.

So it is common sense. If you make these plans incredibly attractive, you will lose the remaining ones, and there are many remaining pension and profit-sharing plans that are financed by employers and provide income to workers of all income levels.

Until the advent of 401(k)s, we actually had a quite ingenious system in which enticing the employer to contribute through tax bribes and other means did result in a trickle down of benefits to lower-income workers.

The multiemployer plans Judy Mazo has described are a perfect example. There are millions of very low-income laborers, construction workers, who are now able to pay their bills in retirement because they had employer-financed plans. Our concern is the retreat from those kind of plans to the do-it-yourself savings plans that many people cannot afford to take advantage, or full advantage of, is not the way that the Nation's retirement policy should go.

Chairman Johnson. I kind of believe that if you put in only $5 a month, your resources are going to be immense by the end of the time you retire.

Ms. Ferguson. I wish that were true. Unfortunately, the statistics do not bear it out. That is what we have been hearing time and time again. Also, people who are living paycheck to paycheck have to pull the money out to buy a house.

Chairman Johnson. Do you agree that money quadruples over time?

Ms. Ferguson. We have heard the rule of--whatever it is.

Chairman Johnson. If they leave it in.

Ms. Ferguson. For the workers who cannot afford to contribute adequately to these plans, when their employer moves from a traditional, let's say, profit-sharing plan to a 401(k), it is a pay cut for those workers who cannot afford to contribute. The employer is putting in less for them while putting in something for others.

Chairman Johnson. I need to adhere to my own rule.

Do you have one comment?

Ms. Palmintere. Yes, Mr. Chairman. I do have a comment with respect to that.

First off, a 401(k) plan is not necessarily the only type of defined contribution plan there is. A defined contribution plan also could be a plan where an employer contributes money.

For example, Intel has both a 401(k) plan and a defined contribution plan. Our position is we do not make an employee match because we feel we should treat all of our employees equally. Therefore, we contribute a portion of the company's funds to all employees.

I don't agree that moving from a pension plan to a DC plan will necessarily keep employers from making contributions to employees. I think the position that Intel has taken is truly indicative of what really could happen, which I don't think is necessarily bad. We do contribute on our employees' behalf. We don't force them to put money in.

I don't think other companies will necessarily follow the route that you have prescribed to only allow 401(k) contributions.

Ms. Ferguson. May I comment, Mr. Chairman? I just applaud Intel for having an employer-paid defined contribution plan in addition to the 401(k). Your 401(k) is obviously a supplement to your other plans, and that is absolutely right.

Chairman Johnson. Thank you.

Mr. Andrews?

Mr. Andrews. Mr. Chairman, thank you.

I also want to say that obviously people are paying attention to us. You announced the first hearing of the Subcommittee of the year, and my understanding was the S&P futures were up 25 points this morning. There is a cause and effect, and I commend you for helping to rally the markets of America.

I think the panel was excellent. I appreciate the diversity of views and the well-thought-out testimony very much. I think it will help the Subcommittee in its deliberations.

Ms. Palmintere, I wanted to ask you if you could estimate for us what the savings that are incorporated in this bill would mean to Intel on an annual basis. How much money might you save?

Ms. Palmintere. Do you mean from a corporate deduction perspective if we increased limits?

Mr. Andrews. Yes.

Ms. Palmintere. To be very honest, we have not calculated that in any respect. Our goal is not to save money for the corporation, our goal is specifically to provide employees with more retirement income.

Mr. Andrews. How about the savings in administrative costs?

Ms. Palmintere. The administrative costs are somewhere in the $50,000, $100,000 range.

One of the key items that would save administrative costs is the distribution electronically of information. That is one key item.

Mr. Andrews. Mr. Turner, I wanted to ask for your insight. As several of the witnesses have pointed out, several members, there is a problem with many Americans having no private pension coverage at all. These Americans tend to be people in low-wage jobs, working at industries that have low profit margins. It is conceivable that some of those individuals will be helped by this legislation, but it is likely that many of them will not.

What suggestions do you have that we might pursue to try to reach the tens of millions of people in the country who have no private pension coverage?

Mr. Turner. Congressman, that is a wonderful question. I hope that I can be up to the answer.

Mr. Andrews. I'm sure you are more than up to it.

Mr. Turner. At the ACLI, one thing that is very important to our members, and we think very important to the benefits community and to Americans who participate in retirement plans, is to focus on the programs that we have today, as opposed to creating new types of plans. Because one of the things that happens is that it creates more confusion. As a result of creating more confusion, it can actually result in fewer employers establishing the plans.

I am not sure if that is directly responsive to your question, Congressman.

Mr. Andrews. It is a difficult question. We certainly would invite anyone to supplement the record with a written response as well. It is obviously a very difficult question.

Ms. Ferguson, I appreciate your testimony. I want to explore with you your concern about the catch-up rules, and the example you use in your testimony, your written testimony.

If I understand it correctly, you use the example of a person who would take full advantage of the $200,000 ceiling in a plan that sets aside 2 percent of the salary and multiplies that by the number of years of service to reach the benefit.

So under that formula, a person who presently could get a maximum of $68,000 from the pension could be moved up to $80,000, if you follow the numbers.

You expressed the concern that what might happen is that the plan would simply cut the 2 percent contribution down to 1.7 percent to keep that high-paid person at $68,000, and then there would be a resulting benefit cut for everyone else.

The question is, why wouldn't they do that now? Why wouldn't they bring the person below $68,000 and find some other way to compensate her, and save the money with the other people? Why does the increase from the 170 to 200 make any difference?

Ms. Ferguson. Let me say at the outset, we are talking about the increase in the covered compensation level. Actually, I would love to talk about the catch-up provision, as well.

Mr. Andrews. I'm sorry, I did misidentify it, the increased contribution.

Ms. Ferguson. The two articles I have attached to my statement give much better examples than the one I included in our statement to clarify this point.

The question of why wouldn't they do it now, they have a formula--let me just say, this is an unintended result of this provision. The intention of the provision is to allow company owners and officers to contribute more for themselves and have more of it trickle down. It is a well-intentioned provision. One of the arguments is that this may eliminate the need to have executives-only pensions that are not protected by the law.

In answer to your question, I don't know why they wouldn't do it now. This is simply something that could happen in the future. At the current level, they receive a certain amount.

Mr. Andrews. I just don't see the connection to the issue of raising the covered compensation level. To answer my own question, the reason they don't do it now, I think it would be a lousy recruiting and retention policy. You would lose a lot of good employees that you want to keep.

I think that the value of increasing the covered compensation level is it makes retention of the plan and distribution of its benefits to everyone, or nearly everyone, a more attractive proposition from the point of view of the person who owns the company.

Ms. Ferguson. The fail-safe response I would offer, and it is in our statement, to assure that this unintended consequence that so many commentators have pointed out would not happen, we would suggest that the bill be modified so that anybody who takes advantage of the increase in the compensation not reduce accrual rates for a 5-year period. That is something that has been done in other areas of the pension law.

Mr. Andrews. I wanted to finish by asking Ms. Mazo a question.

I was intrigued by your example of a clerical employee of a union making $38,000 a year and not being able to collect her or his full pension.

Could you just elaborate on it a little bit? Because I think it very clearly points out the need to change section 415.

Ms. Mazo. Thank you, sir. It is touching, and some of these people in fact call on a regular basis saying either, when can I retire, or when am I going to get the rest of my money?

To take a sort of simplified example, you would have, let's say, a plan for plumbers, a multiemployer plan for plumbers. As we all know, plumbers are skilled, well-paid--.

Mr. Andrews. Plumbers are the most important people on the face of the Earth, trust me.

Ms. Mazo. Maybe next to electricians. But they are well paid.

That plan may provide benefits of, let's say, $50 a month times your years of service. It is typical in a multiemployer plan that the benefits are not a percentage of the person's individual compensation. It is the exact same benefit for everybody in the plan who works the same length of service. So to that extent, they are extremely egalitarian.

The plan, let's say for someone with 30 years of service, might end up paying a maximum of $45,000 a year, which is a nice pension, and it is a little less than, say, a journeyman plumber who might be making $60,000 a year when he retires, but it is a nice benefit.

This person--and frankly, the phrase that is used, it is typically the woman, it is the silver-haired ladies, long-term secretaries who work for the labor unions that are part of the plan. Say one secretary, she has been working for the labor union a long time and is also in the employer plan, and her final pay may be $40,000 a year; not a terrible salary for a secretary, clerical worker. She has earned a retirement plan of $45,000, but she is only allowed to collect what her pay was, so she cannot collect more than $40,000 a year. She could be losing $5,000, $6,000, or $7,000 a year, solely because she is paid less than most of the people in the plan.

One of the important things this bill would do is, for multiemployer plans, it would get rid of this pay-based limit and allow the lower-paid people to receive the pension that they have earned, even if it is more than what they are actually paid.

Mr. Andrews. It is correct that under the bill, when and if enacted in this hypothetical, she would be permitted to receive the full pension and go up to $45,000, or whatever it would be?

Ms. Mazo. Exactly.

Mr. Andrews. A lot of us are interested in this bill for that reason. I have had a lot of direct personal experience. This lady does not just call you, she calls me all the time. It tends to be people who drove trucks and who worked on construction sites, or worked for public employers, nonprofit employers, who made modest amounts of money for a long period of time and were in plans that were pretty fair and generous.

They tend to be collectively bargained, because a lot of us believe collective bargaining tends to yield fair and generous plans.

It is a truly unfortunate anomaly, and I think both sides, Republican and Democrat, deserve credit for including this in this legislation. I think it is one of the key strategic reasons that we will be successful on the floor.

Thank you.

Chairman Johnson. Thank you.

Let me ask just one more, if I might, of Ms. Mazo. Recently the committee received kind of an unusual letter from the United States Court of Appeals for the Second Circuit. You are probably aware of it. The court was troubled by the conclusion ERISA forced it to reach, and it invited Congress to amend the law.

In this case before the court, the plaintiff worked for two decades at two full-time jobs, one by day and one by night, for two separate employees and as a member of two separate unions. Although each employer made full pension contributions through each union on the worker's behalf, all contributions were paid into a single multiemployer plan pension fund, the one pension forfeiting the other.

The court upheld the trustees' decision, since it was not arbitrary and capricious, but asked Congress to amend ERISA to impose a duty on multiemployer plans to notify each employee who works for multiple participating employers that his ability to collect more than one pension may be compromised.

How widespread do you think this problem is, and would multiemployer plans support a change to ERISA?

Ms. Mazo. Thank you, Mr. Chairman. Committee counsel alerted me to this letter yesterday. I actually knew about it because the plan involved is a client of our company.

Frankly, when this happened, the administrator of our plan called me up and said, "This is terrible. How could we do this to this person? Why were we able to get away with it?" I had to talk her down from her outrage.

In fact, after hearing from the counsel, I got in touch with the leadership of this plan, who asked me specifically to let you know that they are very unhappy with the result of that case and plan to amend their plan so it does not happen again.

This is an extraordinarily unusual situation. It is a very sad and unfortunate set of facts, and I have never heard of this happening before in such a way that a person who is working two full-time jobs, and in this case he was a janitor in buildings, a very, very hardworking person, I believe he was also told by the union that he would get his full pension.

I suspect that nobody was lying to him. It is because this is so unusual that they naturally assumed that the rules would work a different way than they ended up working. They had never heard of something like this, so they were not trying to mislead him, they just did not expect it.

This is an issue which we will be happy to work with counsel on to come up with appropriate disclosure if that is necessary. But again, the particular plan, their representatives asked me to extend their apologies, both to the gentleman in the case and to you all. That was not at all their intended design.

Chairman Johnson. I would not think so. That is kind of a gross error, I think, on our part, and perhaps the court's in not being a little more lenient in their judgment.

Ms. Mazo. I think there is a question about the constitutional propriety of the court's writing to Congress under the separation of powers.

Mr. Andrews. If the Chairman would yield, I just want to express my own desire to work with you and the witnesses and counsel to correct this problem. Our counsel has advised us of it as well. It is a truly anomalous and I hope rare result. I hope it is not a precedent that the second circuit starts asking us to decide all these cases.

Chairman Johnson. Thank you all so much for your testimony. We appreciate all of you being here today. I know Mr. Andrews and I do, as the leaders of this Subcommittee, and everyone who was not here--as you know, Congress adjourned early yesterday, so we are lacking a few members, but we do appreciate you being here.

Thank you for your attendance.

I don't think anyone has any further questions. The Subcommittee is adjourned.

[Whereupon, at 12:25 p.m., the Subcommittee was adjourned.]

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

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STATEMENT OF THE HONORABLE SAM JOHNSON
CHAIRMAN
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

April 5, 2001

Enhancing Retirement Security: A Hearing on H.R. 10, The "Comprehensive Retirement Security and Pension Reform Act of 2001"

Today, we look at a bill that will directly improve the retirement security of American workers. H.R. 10, the "Comprehensive Retirement Security and Pension Reform Act of 2001," makes retirement security more available to millions of workers by (1) expanding small business retirement plans, which cover 75% of the workforce, (2) allowing workers to save more, (3) addressing the needs of an increasingly mobile workforce through greater portability, (4) making pensions more secure, and (5) cutting the red tape that has hamstrung employers who want to establish pension plans for their employees.

I am very pleased that Rob Andrews, the Subcommittee's Ranking Member, has joined me in support of this important legislation, the most significant overhaul of pension law in 25 years. It's no secret that with the cooling economy, people have watched their retirement account balances fall. Of course this makes them uneasy, they're saving for their golden years – retirement – and their nest egg is dwindling. It's time to act now to help people to better prepare for the day when they no longer show up for work every morning. The best way to give these people peace of mind is to enact H.R. 10.

One of the Committee's longstanding objectives has been to find ways to expand pension coverage, especially by small business, and ways to make pensions more portable. H.R. 10, introduced by Representatives Rob Portman and Ben Cardin, who are among our witnesses today, addresses the retirement savings gap in a comprehensive way. Improving retirement security is a top priority this year as Congress works to secure America's future. But improving retirement security is not just about fixing Social Security. It is also about expanding access to private pension plans and making innovations that will maximize every American's opportunity for a safe, secure retirement. The time for action is now.

This legislation is truly bipartisan. Last Congress, the Committee reported a virtually identical bill, H.R. 1102, by a bipartisan voice vote. In July 2000, the House passed H.R. 1102 by a vote of 401-25.

This bill has a broad spectrum of support. Over 150 Republicans and nearly 100 Democrats are cosponsors. More than 100 groups have endorsed the bill, both business and union – from AFSCME, the Teamsters, the Laborers International, and the National Education Association (NEA) to the U.S. Chamber, the National Federation of Independent Business (NFIB), the National Association of Manufacturers (NAM), the American Benefits Council, and the American Council of Life Insurers (ACLI).

In the near future, the Committee will again mark up those provisions of the bill within our jurisdiction, those amending the Employee Retirement Income Security Act (ERISA). The bill contains many ERISA amendments to simplify pensions and promote retirement coverage, including: granting relief from excessive PBGC premiums for new small business plans; accelerating the vesting of workers' accounts; repealing and modifying a wide range of unnecessary and outdated rules and regulations; providing more frequent benefits statements to workers; requiring enhanced disclosure and other protections when future pension benefits are reduced (as in the case of conversion to a cash balance plan); and repealing the so-called "full funding limit" that arbitrarily limits defined benefit plan funding to a less than actuarially sound level.

We are committed to strengthening the retirement security of workers and their families by expanding private pension coverage and protecting their pensions and retirement savings. Unnecessarily complex regulations that have little benefit reduce the incentive for employers to offer pension plans. Congress must increase access to pension plans by further simplifying regulations which today make it difficult for many employers to offer pension plans. H.R. 10 is a significant step towards achieving these goals.

It is my goal, and that of Chairman Boehner, to mark up this legislation and to move it to the floor in coordination with the Ways and Means Committee, of which I am also a member. I look forward to working with Mr. Andrews and Members from both sides of the aisle to see the Portman-Cardin bill enacted into law.

Strengthening our private, employer-based pension system is a critical issue for all Americans - especially the 76 million Baby Boomers who are nearing retirement age. This legislation increases retirement security for millions of Americans by strengthening that "third leg" of retirement security – our pension system. I am confident that we can continue down this bipartisan path to ensuring American workers enjoy their golden years comfortable and secure.

APPENDIX B - WRITTEN STATEMENT OF THE HONORABLE ROB PORTMAN, U.S. HOUSE OF REPRESENTATIVES, MEMBER OF CONGRESS, 2[ND] DISTRICT OF OHIO

TESTIMONY OF THE HONORABLE ROB PORTMAN

House Subcommittee on Employer-Employee Relations

April 5, 2001

Thank you, Chairman Johnson and Ranking Member Andrews, for allowing us to testify here today. I want to commend you and your subcommittee for your strong interest in improving our pension system and for your willingness to work closely with the Ways and Means Committee to do so.

Congress and the Administration have appropriately made strengthening Social Security a top priority, and both Ben Cardin and I are strongly supportive of these efforts. But we also believe this Congress needs to explore expanding retirement security in other ways. Specifically, we believe we must take steps to significantly increase the availability of secure retirement savings – by strengthening our private, employer-based pension system. This is a critical issue for **all** Americans – especially the 76 million Baby Boomers who are nearing retirement age.

That's why – over the past four years, along with my Ways and Means colleague from Maryland, Mr. Cardin, and Members of this Subcommittee -- we have been working on comprehensive improvements to our pension system. This year, we have introduced H.R. 10 – the Comprehensive Retirement Security and Pension Reform Act. It builds on pension expansion and simplification measures Congress has taken the lead on in the past few years, and, if enacted, would constitute the most sweeping reforms to our pension system in a generation.

H.R. 10 is nearly identical to H.R. 1102, the pension legislation that passed the House last year -- twice with 401 votes. H.R. 1102 actually passed the House on five separate occasions. Clearly, pension reform is an idea whose time has come.

And I am delighted to say that, as of today, H.R. 10 has more than 285 cosponsors -- including more than 160 Republicans and more than 120 Democrats – and 14 members of this Subcommittee. In the last Congress, Chairman Boehner and Ranking Member Andrews were leaders in helping us move this legislation through the committee and subcommittee, and we appreciate their efforts. Chairman Johnson played a crucial role in helping move this bill through the Ways and Means Committee last Congress and I'm delighted to see him chairing this subcommittee today.

H.R. 10 increases retirement security for millions of Americans by strengthening that "third leg" of retirement security -- our pension system -- including traditional **defined benefit** plans as well as **defined contribution** plans like 401(k), 403(b) and 457 arrangements.

Clearly, pensions are a critical component of America's retirement safety net. But not all is well with our pension system. Right now, only half of all private sector workers have a pension plan. And, far fewer than half of employees who work for small businesses have access to a pension plan. Today, only 20% of small businesses with less than 25 employees offer any kind of pension plan.

And, not enough workers have pension coverage at the same time that overall savings is dangerously low. In fact, the personal saving rate in this country – the amount of money people save for retirement and other needs – is at historically low levels. You may have seen a recent report from the Commerce Department that, in the month of February, the nation had a savings rate of minus 1.3 percent. For economists, this is the most troubling statistic out there.

And this is one aspect of pension reform that is often overlooked – the economic argument. The current slowdown of the economy has helped spur interest in tax relief. Many economists point to tax relief as an effective way to spur consumption and provide working Americans with the resources to pay down debts. But in addition to encouraging Americans to consume and to reduce debt, tax relief should also encourage Americans to save. Savings not only strengthens the long-term financial security of individuals and families but also produces a number of positive effects for the U.S. economy as a whole.

Retirement savings provides our economy with a ready source of investment capital. Assets in employer-sponsored retirement plans and IRAs total more than $5 trillion and pension plan assets account for 26.2% of all equity holdings and 12.3% of all taxable bond holdings in the U.S. Increasing retirement savings will increase the pool of capital which permits greater production of goods and services. Increased capital accumulation also generates additional corporate tax revenue for the federal government.

While some might argue that the federal tax expenditure for pensions and retirements savings is significant, evidence demonstrates that this expenditure is a highly efficient use of federal dollars. Data from the Department of Commerce's Bureau of Economic Analysis shows that the benefits paid by employer-sponsored pensions are 4.6 times as large as the foregone federal tax collections attributed to them. The investments in the employer-sponsored pensions system contained in Portman-Cardin would clearly be a sound federal expenditure that will translate into meaningful retirement benefits for American workers.

Pension reform is particularly important because it benefits everyone. Pensions provide a needed backstop to our Social Security system for lower and middle income workers. A pension makes the difference between retirement subsistence and real retirement security for millions of retirees.

And, 77% of current pension participants are middle and lower income workers. By taking action to expand pension availability this year, we will help those workers who are most in need of secure retirement savings.

The Portman-Cardin legislation is designed to directly address the deficiencies in our current pension system. Simply put, it lets workers save more for retirement. It makes it less costly and burdensome for employers -- particularly smaller businesses -- to establish new pension plans or improve existing ones. And, we modernize pension laws to address the needs of a changing, 21st Century workforce.

Let me highlight a few of the key provisions.

First - Increased Contribution Limits: Over the last 20 years, Congress has lowered the annual dollar limits on contributions workers can make and benefits they can accrue. These restrictions have been an obstacle to adequate private pension savings. Portman-Cardin partially restores the limits for all types of plans.

Catch-up Contributions: Portman-Cardin increases the limits on employee contributions to employer-sponsored savings plans by an additional $5,000 for workers 50 and older so that they can "catch-up" for years when they weren't employed, didn't contribute to their plan or otherwise weren't able to save. Americans are quickly becoming aware of the importance of retirement savings. Since 1994, the percentage of workers who have attempted to calculate their income needs in retirement has risen from 34% to 56%. And we know from research that many Baby Boomers who are <u>now</u> approaching retirement age have only saved about 40% of what they will need for retirement. In particular, this catch-up provision will benefit women who have returned to the workforce after taking time away to raise families.

Increased Portability: We're told that the average worker will hold nine jobs by the age of 32, and workers typically do not stay in any job for more than five years until age 40. H.R. 10 includes "portability" provisions to allow workers who are changing jobs to roll over retirement savings between 401(k)s, 403(b)s and 457s. To accommodate the needs of an increasingly mobile workforce, we also lower the vesting requirement for matching employer contributions from 5 to 3 years.

Cutting Pension Red Tape: The increasing complexity of the laws governing pensions – both in the private sector and in the non-profit and government sectors – has discouraged the growth of pension plans. For many small businesses in particular, the costs and liabilities associated with pensions have made it too expensive for many companies to offer plans. Portman-Cardin takes steps to cut the unnecessary red tape that has put a stranglehold on our pension system.

And, let me specifically summarize a few of the issues that fall within this subcommittee's jurisdiction.

REGULATORY RELIEF

Reform of the "Anti-Cutback" Rule: Under current law, the "anti-cutback rule" prohibits companies from eliminating any of the plan's payment options. Yet, as a result of combining plans through mergers and acquisitions, plans can have dozens of often nearly identical payment options. By preventing streamlining of these options, the anti-cutback rule complicates business acquisitions, significantly increases plan administration costs and results in confusion for plan participants. Easing this rule - while protecting participants' rights as H.R. 10 does - will make it easier for companies to continue workers' benefits in the wake of business acquisitions. It will also assist participants in consolidating their retirement savings during a company merger or acquisition.

Allow Summary Annual Reports To Be Made Available Electronically: Currently, plan administrators must provide all plan participants with a summary of an annual report filed with the Department of Labor several months after the end of the plan year. Few participants make use of the summary yet the burdens associated with providing every employee with this report are substantial. H.R. 10 would provide an electronic alternative that would eliminate this costly requirement while continuing to ensure that plan participants can get the information they need.

SMALL BUSINESS INCENTIVES:

We also provide a number of incentives to encourage small businesses to sponsor pension plans.

Loans for Small Business Owners: Under current law, many small business owners are not permitted to take loans from retirement plans even when all other employees can do so. H.R. 10 would lift this discriminatory restriction, thereby treating business owners like all other plan participants. This will encourage small business owners to establish plans and, for those who currently maintain plans, to include a loan feature, which is a significant incentive for employees, especially lower income individuals, to contribute to the plan.

Reduced Small Business PBGC Premiums for New Plans: Studies repeatedly show that one of the chief reasons small employers do not establish defined benefit plans is the significant administrative costs incurred in maintaining the plan. PBGC premiums are cited as one of these cost barriers. H.R. 10 would address this concern by reducing PBGC premiums in the early, formative years of a plan's existence. Small employers would enjoy the largest premium discount. This will not only encourage small employers to establish defined benefit plans, but will help those plans flourish, since scarce benefit dollars can be contributed towards employee benefits rather than administrative costs.

Pension Insurance for Small Business Owners: Under current law, many business owners do not receive the same PBGC guaranteed benefits upon a plan termination that non-owners receive. Together with significant administrative costs, this lack of comparable pension insurance has acted as a strong disincentive to defined benefit plan creation and maintenance by small employers. H.R. 10 would eliminate this discriminatory treatment for many business owners. Together with the reduced PBGC premiums discussed previously, this pension insurance reform will encourage small employers to offer defined benefit plans to their employees.

Sounder Pension Funding

One area of particular emphasis in this legislation is a concern we share with this subcommittee – to make pensions more secure.

Complete Repeal of Current Liability Funding Limit: H.R. 10 repeals the current liability funding limit, which was added to the law in 1987 to raise federal revenue. This limit has impeded sound plan funding and can result in benefit reductions or plan terminations due to the inability of companies to fund benefits promised to their employees on a methodical basis. The repeal of this limit will allow employers to fund their plans on a more rational, stable basis. The continued existence of the underlying funding limit - which is tied to future benefit costs - will ensure that companies fund their plans based on a more appropriate standard and will ensure the benefit security of future retirees.

Modification of Timing of Plan Valuations: Under current law, the date for valuing a defined benefit plan's assets and liabilities for a plan year must generally be in the same plan year. This requirement has resulted in uncertainty for plan sponsors in terms of knowing what their funding requirements will be and being able to budget appropriately for pension plan contributions. H.R. 10 addresses these issues and will promote sounder pension funding by permitting defined benefit plans to elect to use a valuation date up to one year prior to the beginning of the plan year.

Again, we would be pleased to give you whatever input we have that might be useful on these items within your jurisdiction.

Let me conclude by pointing out that, in addition to more than 285 cosponsors on a bipartisan basis, we also have more than 105 endorsing organizations from across the ideological spectrum -- from the U.S. Chamber of Commerce and the NFIB to labor organizations like AFSCME and the Building and Construction Trades Department of the AFL-CIO. This coalition has been together for four years to reach this point.

Again, this is a chance to help all Americans save more for their retirement. Imagine the impact we would have on our national savings rate and overall retirement security if we could give every American worker access to a 401(k), a defined benefit plan or another kind of pension.

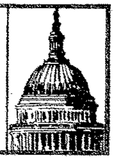
This is a tremendous opportunity that I hope this Congress will seize this year. Thank you.

APPENDIX C - WRITTEN STATEMENT OF THE HONORABLE BENJAMIN CARDIN, U.S. HOUSE OF REPRESENTATIVES, MEMBER OF CONGRESS, 3RD DISTRICT OF MARYLAND

Congressman

Ben Cardin

Third District — Maryland



TESTIMONY OF THE HON. BENJAMIN CARDIN
BEFORE THE
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
APRIL 5, 2001

Mr. Chairman, I am pleased to appear this morning to testify on the need to expand and strengthen our nation's private pension system.

Let me start by commending you, Mr. Chairman, for your leadership in holding this hearing, as well as for your strong support for this legislation in the Ways and Means Committee. I also want to commend my friend Rob Andrews, who, as the ranking member of this subcommittee, has been a strong leader on retirement security issues. Your committee has a crucial role in making pension reform legislation a reality in this Congress, and I look forward to continuing to work with each of you.

I am especially pleased to be here with my good friend and partner in the enterprise of pension reform, our colleague Rob Portman. We last had the opportunity to appear before you in the last Congress. At that time, the prospects for enactment of this bill looked very strong, and, indeed, we were able to pass the bill in the House with more than 400 votes -- not once, but twice. With your continued leadership, I am confident that we will be once again win overwhelming bipartisan support in the House. This time we will be able to finish the job and give the American people the incentives they need and deserve to save for their retirement.

The debate over retirement security has attained new significance in the past few years. As the "baby boom" generation approaches retirement, the need to help this generation and future generations of Americans live comfortably in retirement has gained greater prominence as a legislative priority.

That is why Rob Portman and I have introduced H.R. 10, the Comprehensive Retirement Security and Pension Reform Act. This legislation takes the next step, in a process that began with pension reforms enacted over the past three years, in rebuilding our nation's private pension system.

I use the term "rebuilding" because in many respects, H.R. 10 simply restores the pension law to what it was a decade or two ago. For fifteen years, beginning in the early 1980's, our federal pension policies suffered from a severe disconnect between rhetoric and action. While we acknowledged the economic advantages of private retirement savings, and exhorted Americans to save more, we frequently passed legislation that made it more difficult for them to do so. We made the system more complicated, and more expensive, and more confusing, making it more difficult for the American people to save.

H.R. 10 says we can do better. The bill proposes a number of changes that will expand employer-sponsored retirement savings opportunities for millions of American workers. In developing the bill, we have listened to Americans from every sector of the economy. We have included provisions to strengthen and expand savings opportunities for Americans who work for small businesses, large businesses, state and local governments, and non-profit organizations. We have listened to the concerns of public school teachers, plan administrators for Fortune 100 companies, women and men who own small businesses, and representatives of organized labor. We have included specific reforms that benefit Americans who participate in multi-employer pension plans. We have included proposals that will strengthen defined contribution plans and defined benefit plans, as well as IRAs, 401(k) plans, 403(b) arrangements, or 457 plans.

I am particularly proud of the bill's sweeping provisions to liberalize the portability of retirement savings, so that workers moving from one job to another can take their savings with them. When a state government employee accepts a job at a non-profit organization, and then moves on to a new position in the private, for-profit sector, she should be able to keep her retirement savings in one account, and we would allow that to happen.

Mr. Chairman, we are at a crucial time in the consideration of this issue. The graying of the "baby boom" generation is upon us. Over the next forty years, the percentage of the U.S. population that is over age 65 will rise from 12.8% to more than 20%.

The importance of retirement savings has grown accordingly. Americans are more aware of the need to plan for their retirement. According to one survey, the percentage of workers who have attempted to calculate their income needs in retirement has risen from 34% to 56% since 1994.

A new survey by the New York Times underscored the increased concern Americans have about retirement savings. The Times found that the percentage of Americans who say they have begun to save for their retirement has jumped from 47% five years ago to 73%. Even more important, the Times found that Americans are prepared to take responsibility for their own retirement security. More than half said they expected their major source of retirement income to come from their own retirement savings, rather than from Social Security or a pension plan.

H.R. 10 is designed to help those American workers who are determined to save for their retirement by removing limits and complexities in the law that make it more difficult for them to do so. We do that by expanding the savings opportunities within qualified plans as well as by making it easier for businesses to create plans.

I strongly believe that the creation of qualified retirement plans is essential if workers are with respect to the filing of Forms 5500's.

The provisions dealing with Form 5500, like many others in this bill, are amendments to ERISA, and within the jurisdiction of this committee. Some of the ERISA changes have broad application, and others are narrow and technical in nature. They include incentives to help small businesses set up and maintain retirement savings plans, important simplification provisions, and measures to improve funding of pension plans.

Many of the provisions are based on the notion that common sense makes for good government. The bill introduces flexibility in areas of the law that too frequently have been controlled by rigid requirements. For instance, ERISA and the tax code are littered with requirements for written notices which too often mean nothing to the participants. The bill will bring needed common sense to these requirements, resulting in fewer administrative burdens with no loss of access to information for workers.

The bill contains a number of provisions that increase participants' rights to regular, periodic statements showing the benefits they have earned. Keeping people informed of the status of their retirement savings is an important means of maintaining support for their participation in the plan. We would require a benefit statement annually for defined contribution plans. For defined benefit plans, plans would be required to provide a notice of availability of a benefits statement every year, or provide a statement every three years.

We also reform the existing provisions of law regarding the consent period when participants are to receive a distribution. The bill permits notices regarding distributions to begin 180 days before distribution, instead of the current law requirement that the notice be given not more than 90 days before the benefits are received. In order to ensure that participants understand the long-term economic advantages of leaving their retirement savings in the plan, the bill also contains an important provision that requires plans to notify participants of the growth that they will forego as a result of the withdrawal.

Another notice provision addresses the situation when a beneficiary returns to the workforce of the company from which they retired. Most plans do not pay benefits to active employees. We currently require the plan to notify the participant of the suspension of benefits upon his or her return to work. These notices frequently result in confusion for employees and burdens for employers, especially for defined plans. Instead of requiring these confusing and burdensome notices to be sent to individual employees, the bill would permit the plan to include the same information in the summary plan description.

Finally, the bill addresses the issue of cash balance conversions. We are all familiar with the controversies that have arisen with respect to defined benefit plans converting to cash balance plans. Concerns have appropriately been raised that employees have not had been made aware of changes that may adversely affect their future benefit accruals. We should require employers to provide notice, under section 204(h) of ERISA, of any significant reduction in benefit accruals that may occur under a proposed conversion of a defined benefit plan.

Mr. Chairman, this bill contains numerous other significant provisions that will help plan sponsors and participants alike. We would provide relief from unreasonable restricitons under the "anti-cutback" rules; repeal the 150% full funding limit, while maintaining the cap at 100% of accrued liability; shorten the vesting period on matching contributions from 5 to 3 years; add an electronic dissemination option to the requirement that annual reports be distributed to all participants; and allow employers to disregard rollovers for purposes of determining whether a terminated participant can be cashed-out.

Mr. Chairman, while I believe our bill marks a major step forward in opening the door to the creation and expansion of qualified retirement plans by small businesses, there may be other issues we should also consider. For example, the original version of Portman-Cardin that was introduced in the 106th Congress included a version of the tax credit to help small businesses with the start-up administrative costs of launching a pension plan. I would hope that we would be able to restore that provision to this package as it works its way through the legislative process.

The progress we have made in simplifying federal pension laws over the past three years has come as the result of bipartisan cooperation. Mr. Chairman, there is no single answer to the retirement savings crisis in our country. In presenting the Portman-Cardin proposal to the House, however, we have worked to formulate a plan that will take federal pension law in a new direction. We want to back up our pro-savings rhetoric with pro-savings legislation.

Again, Mr. Chairman, I applaud your leadership in holding this hearing. I appreciate the opportunity to testify before this committee today, and I look forward to working with all the members of this committee to rebuild our nation's private savings system.

APPENDIX D - WRITTEN STATEMENT OF NANCI S. PALMINTERE, DIRECTOR OF TAX, LICENSING AND CUSTOMS, INTEL CORPORATION, SANTA CLARA, CALIFORNIA, TESTIFYING ON BEHALF OF THE AMERICAN BENEFITS COUNCIL

AMERICAN BENEFITS
COUNCIL

Testimony of
Nanci S. Palmintere
Director of Tax, Licensing and Customs
Intel Corporation

On behalf of the
AMERICAN BENEFITS COUNCIL

Employer-Employee Relations Subcommittee
Education and the Workforce Committee
U.S. House of Representatives

Washington, DC
April 5, 2001

Shaping the World of Corporate Benefits Policy

1212 New York Avenue, NW Suite 1250 Washington, DC 20005 202-289-6700 Facsimile 202-289-4582 www.americanbenefitscouncil.org

Mr. Chairman and members of the Subcommittee, I am Nanci Palmintere. I am Director of Taxes for Intel Corporation and a member of our retirement plan administrative committee. Intel maintains a 401(k) Plan, a Profit Sharing Plan, and a Defined Benefit Pension Plan, with total assets of approximately $6 billion, as well as a number of smaller retirement plans of acquired companies. I am here today representing the American Benefits Council, of which Intel is an active member. The Council is a public policy organization representing principally Fortune 500 companies as well as other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

It is a privilege for me to be with you this morning to discuss H.R. 10, the Comprehensive Retirement Security and Pension Reform Act. This legislation was recently re-introduced by Representatives Portman and Cardin together with more than 250 House cosponsors, including 14 members of this Subcommittee. H.R. 10 has the support of more than 100 organizations representing groups as diverse as teachers, engineers, police officers, state legislators, union workers and businesses of all sizes. This bipartisan legislation will strengthen and expand our nation's employment-based retirement system so that more American families can enjoy the security that comes with having pension coverage. It will also give individual Americans new tools to save for their retirement.

Mr. Chairman, your cosponsorship of this bill and your commitment to give careful consideration to the portions of H.R. 10 that come within this Subcommittee's ERISA jurisdiction mean that we have a real opportunity to move the entire bill through Congress this year. Employers nationwide and the American Benefits Council want to thank you, Chairman Boehner and

Ranking Member Andrews for your long-standing commitment to the employer-sponsored retirement system and to this legislation in particular.

I would like to focus my remarks on the ERISA elements of the bill that will (1) simplify pension regulation and lessen the burdens of plan administration, (2) improve pension funding, and (3) offer employers new incentives to offer retirement plans.

Simplifying Pension Regulation & Reducing the Burdens of Plan Administratic

H.R. 10 contains a series of simplification proposals that will streamline today's often incomprehensible pension rules and reduce the substantial burdens that accompany retirement plan administration. Throughout my career, Mr. Chairman, I have dealt with countless issues involving our company's retirement plans and the plans of companies we have acquired, and have discussed a wide variety of retirement plan issues with my colleagues at other companies. It is my conclusion from dealing with retirement plans for more than 20 years that the astounding complexity of pension regulation and the substantial burdens associated with administering a retirement plan drive many businesspeople to reduce or limit their retirement programs, and deter some employers from initiating retirement plans at all. Not only are businesspeople leery of the cost of complying with pension rules, but many fear that the legal and regulatory complexity will impose burdens from which they will never find relief.

Among the many simplification provisions contained in H.R. 10 is reform of the "anti-cutback" rule, which today frustrates pension portability and complicates pension plan operation for both employers and workers. Reform of the rule will greatly enhance the ability of companies to assimilate plan participants and their benefits in the wake of business acquisitions. It will also help simplify the process of selecting a payment option when an employee takes a distribution from the pension. This is just one of many ways the bill helps our pension law keep pace with the modern economy. The bill's many provisions to reduce administrative burden include allowing employers to make summary annual reports available electronically, folding suspension of benefit notices into the basic plan document, and expanding the timeframe in which distribution notices may be given. The American Benefits Council believes the cumulative effect of the bill's regulatory and administrative reforms will be truly significant, improving the health of our private retirement system and encouraging new pension coverage.

Improving Pension Funding

The Council is also pleased that H.R. 10 repeals the current liability funding limit that has often prevented employers from funding the pension benefits they have promised to workers. The bill would leave in place the pre-existing and more appropriate funding limit, which is tied to future benefit costs rather than current liabilities. The existing current liability limit, which was added to the law in 1987 solely to raise federal revenue, forces systematic underfunding of pension plans and erratic contribution patterns. Under the existing current liability limit, employers whose contributions are now capped will have to contribute more in future years to meet the benefit obligations of tomorrow's retirees. If the current liability limit is not removed, some employers may be in the position of being unable to make up this shortfall and forced to curtail benefits or terminate plans. Removal of the limit will instead allow employers to provide future retirees with the security that comes from sound pension funding.

Encouraging New Plan Formation

H.R. 10 also remedies some of the disincentives that have deterred employers from providing retirement benefits to their employees. For example, the pension insurance premiums that companies pay to the Pension Benefit Guaranty Corporation (PBGC) would be reduced for the early years of a plan's existence. Rates would be especially low for plans started by small businesses. The PBGC would also be authorized to pay employers interest when returning premium overpayments. These proposals for premium relief recognize that premium costs have been a barrier to maintenance and initiation of defined benefit pension plans. The Council believes that such premium relief, when combined with the bill's pension funding reforms, may help to stem the decline in defined benefit plans, which have dropped in number from 114,000 in 1987 to 39,000 in 1999.

Other disincentives in current law include providing less PBGC pension insurance for small business owners than for rank-and-file workers and prohibiting many small business owners from taking loans from 401(k) plans even when their employees are allowed to do so. Not surprisingly, both of these rules make business owners less willing to initiate retirement plans, meaning the law frustrates pension coverage rather than fosters it. And in our voluntary pension system, if the business owner is not convinced to offer a plan, employees do not have the chance to earn a retirement benefit. H.R. 10 would reform both of these rules and align the law to encourage pension coverage.

Restoring Benefit and Contribution Limits

While not in this Subcommittee's ERISA jurisdiction, I want to briefly mention several other provisions of H.R. 10 that are critical to expanding pension coverage and helping individual Americans save for retirement. The bill would restore a number of the dollar limits on the amounts that employees may contribute to -- and earn from -- employer-sponsored retirement plans. These limits on tax-preferred pension savings were reduced repeatedly by prior Congresses in an effort to close the federal deficit and are lower today in actual dollar terms than they were many years ago. Restoring these limits, as well as instituting new catch-up contributions for workers age 50 and older, will aid the many Americans who are behind in their retirement savings. These changes are particularly critical for baby-boomers, many of who are rapidly nearing retirement with insufficient savings. In our voluntary pension system, restored retirement plan limits are also important to ensure that business owners and other key decision-makers have a sufficient stake in tax-qualified retirement plans that benefit workers at all income levels. For if these key decision-makers do not believe they can fund a reasonable benefit for themselves, they may be less likely to initiate, maintain or improve the broad-based plans upon which rank-and-file workers depend.

Thank you, Mr. Chairman, for the opportunity to appear before you today and share our views as to how H.R. 10 will improve the retirement security of American workers and families. We at the American Benefits Council look forward to working with you to enact this important legislation.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Nanci S. Palmintere		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which <u>you have received</u> since October 1, 1998: None		
3. Will you be representing an entity other than a government entity?	Yes X	No
4. Other than yourself, please list what entity or entities you will be representing: Intel Corporation American Benefits Council		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: Intel: Director of Tax, Licensing and Customs American Benefits Council: none		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract: None		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: Nanci S. Palmintere Date: 7/3/01

Please attach this sheet to your written testimony.

APPENDIX E - WRITTEN STATEMENT OF JUDITH F. MAZO, SENIOR VICE PRESIDENT, THE SEGAL COMPANY, WASHINGTON, D.C., TESTIFYING ON BEHALF OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO AND THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

TESTIMONY OF THE
BUILDING AND CONSTRUCTION TRADES DEPARTMENT OF THE AFL-CIO
and
The NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS
BEFORE THE
COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
ON
HR 10 – THE COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001

April 5, 2001

My name is Judith F. Mazo and I am appearing today on behalf of the Building and Construction Trades Department, AFL-CIO, and the National Coordinating Committee for Multiemployer Plans.[1]

I. Introduction

We strongly support HR 10 (the Bill), as we supported its predecessor in the 106th Congress, HR 1102. Legislation to promote retirement income security, especially through defined benefit pension plans, is long overdue. The Bill would simplify a number of the complex pension rules in the Internal Revenue Code that have had the effect of discouraging retirement savings.

While there are many provisions in the Bill that would affect multiemployer plans, to us its primary attractions are the provisions that would reform and update Code section 415, specifically, sections 201(a) and 505 of the Bill. With the enactment of these reforms, the rank and file working people covered by multiemployer plans will again be assured that they will get the pensions that they have earned, which their unions have negotiated and their employers have paid for. The section 415 relief in HR 10 will enable multiemployer plans to make good on their pension promises to the lowest-paid among their participants, and to those who, after 20 or 30 years of backbreaking work, seek respite in early retirement. Attached is a detailed discussion, in question-and-answer format, of how section 415 harms rank-and-file participants in multiemployer plans and the relief that HR 10 would bring. We heartily urge its

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[1] The NCCMP is the only national organization devoted exclusively to protecting the interests of the approximately ten million workers, retirees, and their families who rely on multiemployer plans for retirement, health and other benefits. Our purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit organization, with member plans and plan sponsors in every major segment of the multiemployer plan universe. Mr. Edward Sullivan, President of the Building and Construction Trades Department of the AFL-CIO, is Chairman of the NCCMP.

enactment.

II. Background: Characteristics of Multiemployer Plans

We are here today, of course, to discuss the amendments to ERISA that HR 10 would make. I will address only those changes that would affect multiemployer plans. While the multiemployer plan community has no problems with most of the ERISA provisions in the Bill, and would welcome some of them, there are several technical points on which we would appreciate clarification. Before going into them, however, let me briefly outline the distinctive design and structure of multiemployer plans so that you can appreciate the perspective from which we make our observations.

Multiemployer plans cover people working under collective bargaining agreements that their union has negotiated with two or more employers. Virtually all of them are set up under the Taft-Hartley Act, which requires that all plan assets be held in a trust fund managed by a board of trustees on which the employers and the union are equally represented. Often called "Taft-Hartley funds", multiemployer plans are administered as separate, stand-alone operations, independent of the contributing employers and the sponsoring unions. Since they are not linked to the employers' payroll and human resources systems, they must undertake separately to assemble and organize the data needed to determine participants' benefits. And, since all expenses incurred to run the plans as independent entities must be paid from the trust funds, every dollar spent on plan administration is one less dollar available to provide benefits.

Multiemployer plans are common in industries characterized by many small employers and highly volatile employment patterns, such as the construction trades, garment, trucking, longshore, entertainment, etc. Often participants in these plans will work for only a brief period for any one contributing employer, and work for numerous employers each year.

Multiemployer plans add up these periods of service for eligibility, vesting and benefit accruals. They provide two elements for their participants and contributing employers that all observers agree are sorely needed in the pension system generally to make it feasible for small employers to provide pensions -- full portability for mobile workers and efficiencies and economies of scale in plan administration.

Multiemployer plans are funded based on contribution rates fixed in collective bargaining agreements that typically run for a period of at least three years. These agreements require employers to contribute a set dollar amount per hour worked, or other measure of service or unit of production, for each employee covered by the bargaining agreement. The total contributions to the plan therefore fluctuate based on increases and decreases in covered work in the industry.

Employee representatives typically negotiate a dollar per hour labor cost with employers. The hourly dollar amount of current wages is generally this total labor cost, reduced by the amount of plan contributions. Thus, as a practical matter, employees are making benefits contributions out of their current hourly wages.

Multiemployer pension plans typically provide a fixed dollar amount of benefits, determined using a formula based on the individual's total amount of covered service, such as a dollar amount times years of service. Unlike the standard for single-employer plans, multiemployer plan pensions are rarely based on a participant's compensation.

II. **HR 10: ERISA Disclosure Changes**

A. Additional Disclosures in Connection with Amendments Reducing Future Benefits

Section 504 of the Bill would amend section 204(h) of ERISA to require more explicit disclosure when a pension plan is amended to reduce the rate of future benefit accruals, or to reduce early retirement benefits or subsidies. Given their collective-bargaining underpinnings, benefit reductions in multiemployer plans are extraordinarily rare. If they occur, it is for very serious reasons that, typically, will already have been well publicized. On the other hand, there may be situations in which a benefit formula is restructured in a way that will increase benefits for almost everybody, but leave a few people with lower benefits going forward. While the ERISA changes that would be made by the Bill may add a little extra cost to the formal disclosure process that multiemployer plans would be undertaking anyway, it should not be material.

On the other hand, some alternatives that have been proposed to the language in this provision of HR 10 could create extreme problems for multiemployer plans. Those alternatives are directed at the conversion of standard defined benefit plans to cash balance or other hybrid plans. This is solely a single-employer phenomenon: multiemployer pension plans are not being converted to cash balance plans. Disclosure requirements designed to help participants cope with the transformation of their pensions to a cash balance format are neither needed nor feasible for the kinds of adjustments that multiemployer plan trustees might make in their plans' benefit formulas. We strongly urge you to avoid imposing more demanding disclosure requirements on defined benefit plans, outside of the conversion context.

B. Periodic Pension Benefit Statements

Section 507 of the Bill would update the rules for the provision of individual benefit statements to participants. We support it, and appreciate the accommodation that it makes for the special data needs of multiemployer plans.

C. Benefit Suspension Notices

Section 707 of the Bill would direct the Labor Department to revise the benefit-suspension regulations so that an individual, contemporaneous notice is only required if benefits are being suspended when a retiree returns to work. Plans would no longer be required to give a direct, personal, contemporaneous notice to someone who continues to work past normal retirement age, warning that he or she will not receive pension benefits until retirement. This common-sense reform is long overdue, and we support it.

However, we suggest a technical change in the language of this provision, to make sure that personal notice is given in the situations in which a multiemployer plan might withhold payments from a re-employed retiree. That is because, under ERISA section 203(a)(3)(B)(ii), multiemployer plans are permitted to suspend benefits when a pensioner goes back to work not only for an employer maintaining the plan, but in any job in the same industry, trade or craft and geographic area that the plan covers. While a multiemployer plan that stops making pension payments would tend to tell the person why the benefits are being interrupted whether the law requires it or not, we think it would be appropriate to include this situation in the statutory requirement. We will be happy to work with the subcommittee staff to come up with suitable language.

III. **ERISA Regulatory Changes**

A. PBGC Missing Participants Program Available for Terminated Multiemployer Plans

Under current law, the Pension Benefit Guaranty Corporation takes over responsibility for providing guaranteed benefits to participants in single employer plans who cannot be located when their pension plan terminates. Section 701 of the Bill would make this program applicable to terminated multiemployer plans as well. We welcome the availability of this useful tool for protecting the benefits of multiemployer plan participants.

Since multiemployer plans are supported by contributions from an industry rather than a single employer, there are comparatively few multiemployer plan terminations. And, under the special funding and withdrawal liability rules enacted for multiemployer plans in 1980, the formal "termination" of a multiemployer pension plan may not signal the end of either the employers' funding obligation or the continued operation of the plan, under the supervision of its labor-management trustees, as a vehicle for paying benefits. As there would be no need to turn over responsibility for missing participants to the PBGC until the plan stops functioning, we suggest that the legislative history of this provision point out that the PBGC is not expected to take over until that time, which may be any number of years after the plan's official termination date.

B. Interest on PBGC Premium Refunds

Section 704 of the Bill would authorize the PBGC to pay interest when it refunds premium overpayments. We support this common-sense reform, and urge its enactment.

C. Waivers of Civil Penalties for Fiduciary Breaches

Section 706 would authorize the Labor Department to waive or reduce the civil penalties imposed under ERISA section 502(l) in connection with fiduciary breaches that are corrected as a result of Labor Department enforcement actions. We support the grant of waiver authority. However, the possibility that the language of the provision may inadvertently have the unanticipated effect of expanding the application of these civil penalties has recently come to our attention. We are working with others in the employee benefits community to analyze the implications of this possible interpretation of the language. We and others acting on behalf of the sponsors of ERISA plans will inform you promptly if, once we have had the chance to look carefully at the issue, we have any misgivings about the statutory language or feel that clarifying legislative history would be helpful. Please note, any concerns in this area would be common to all ERISA plans, not just multiemployer plans.

* * * * *

We appreciate this opportunity to provide testimony on H.R. 10 and the support it will provide for a flourishing private pension system generally, and for multiemployer plans in particular. We would be pleased to provide any additional information that the Subcommittee may request.

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ATTACHMENT TO BCTD/NCCMP TESTIMONY ON HR 10

Questions and Answers About Section 415 Reform

4/5/2001

1. Q: What is a multiemployer plan?

   A: A multiemployer plan is a benefit plan covering people who work for more than one employer, under one or more collective bargaining agreements. Frequently called "Taft-Hartley plans" because they are governed by the Taft-Hartley Act (as well as ERISA, the Internal Revenue Code, the National Labor Relations Act and other federal laws), multiemployer plans are run by labor-management Boards of Trustees, half representing the sponsoring unions and half representing the contributing employers.

   Multiemployer plans are common in the construction, trucking, maritime, longshore, retail, services, entertainment and garment industries. They typically cover people who work for small employers and frequently move from job to job. Because of this, most of these people probably would not be able to qualify for benefits without a multiemployer plan, and their employers could not afford to provide them.

   Multiemployer plans may be local, regional or national in scope. They range in size from several hundred to hundreds of thousands of participants, and have as few as a handful or as many as thousands of contributing employers. In total they cover roughly 10 million workers, and hold assets totaling many billions of dollars. Separate trusts, often managed by the same board of trustees, provide covered workers with pensions and with health and welfare benefits; a number of groups also have defined contribution "annuity funds" for supplemental retirement savings.

2. Q: Do the unions and employers bargain over multiemployer-plan pension levels?

   A: In the great majority of cases the unions and employers bargain over the amounts the employers will *contribute* to the plans, not the benefit levels. The labor-management board of trustees then sets the levels of benefits the plan will promise, based on their actuary's advice about the level of benefits that can be paid from the expected contributions plus investment earnings. The trustees typically increase benefits if the plan's income goes up, whether because the union negotiates higher contributions or the plan's investments do better than had been anticipated.

3. Q: Are there any employee contributions to multiemployer pension plans?

A: Technically the plans are funded by employer contributions. However, the pension contributions are part of the employees' collectively bargained wage package. Since the employees, through their union, agree to take lower wages in return for pension contributions, they view the money going into the plan as their contributions. Employers typically share that view: they have agreed to pay a fixed amount into the pension plan – no more, no less -- and beyond that the program is up to the trustees, for the plan participants. The money is committed to the trust, to be used for the workers' benefits; by law it cannot be paid back to the employers, even after plan termination.

4. Q: What is the difference between a defined benefit plan and a defined contribution plan?

   A: A defined benefit plan promises employees a fixed monthly pension when they retire. Multiemployer and other defined benefit plans are called "pension plans." A defined contribution plan promises employees no more than the amounts contributed to their accounts, accumulated with earnings. Multiemployer defined contribution plans are often called "annuity funds"; most single employer defined contribution plans are §401(k) plans.

5. Q: What are "credit hours"?

   A: Credit hours are hours of work covered by a collective bargaining agreement for which an employee gets credit under a multiemployer plan. Ordinarily, they are also the basis for determining employer contributions, which are likely to be a fixed amount, say $2.00, for each hour of work by a covered employee. Some plans give credit in a worker's pension for time worked in the industry before the employer started contributing. This is called "past service credit."

   An employee with, say, 1500 credit hours in a year would receive a year of pension credit, under a standard multiemployer plan formula. The pension is then based on the total years of credit, along the lines of "$50 a month times years of pension credit." Of course, there are many variations on this theme, and in some industries contributions and pension credits are based on other units, such as days or weeks of covered work. But in the great majority of plans the pension amount is based on a standardized measure such as credit hours, rather than each individual's pay.

6. Q: Where does the "lost money" go when pensions are not paid because of section 415?

   A: In a pension plan, all of the assets are held in a single account, available to pay any of the benefits as they come due. So money that is not paid to one retiree because of section 415 remain in the trust, and are eventually used to meet other plan expenses.

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7. Q: Do the limits change with age?

   A: The *dollar* limit depends on the age of the employee at retirement. After payments start it does not change based on the retiree's increasing age.

   For rank-and-file workers in multiemployer plans, the pension limit is reduced if benefits start before the person is eligible for full Social Security benefits – age 65, for those born before 1938, age 66 for those born after 1938 and before 1955 (baby boomers) and age 67 for those born after 1954. For government workers and people working for tax exempt organizations, the limits are reduced if they start before age 62. For people who retire after 65 (or 66, or 67), the limits are actuarially increased.

   The limit based on 3-year average pay is the same regardless of when the retiree's benefits start.

8. Q: What is the relationship between Social Security and Section 415?

   A: One connection is direct: if Section 415 prevents workers from receiving the reasonable retirement benefits that they have earned in multiemployer plans, there will be greater pressure on Social Security to make up the losses.

   There is also a more subtle link. We may be facing a crisis of confidence in Social Security that has little to do with its actual financial condition. The fears of people heading into retirement would be further inflamed if, because of Section 415, their multiemployer plans default on what the worker saw as a benefit promise.

9. Q: Besides highly paid "union bosses", who else is affected?

   A: First it should be noted that most of the union officers who are affected by section 415 are elected leaders of Local Unions, who are paid well but far from lavishly – in the range of $65,000 - $100,000, far below their corporate-executive counterparts. But they are far from a majority of those hurt by the impact of section 415 on multiemployer-plan benefits. Many are rank-and-file workers who lose benefits due to section 415 when they retire early on a full pension after 25 or 30 years of service, or whose benefits are cut by section 415 because their pay has dropped off.

   Frequently those whose pensions are cut by section 415 are the clerical staff of the local unions, who have earned good pensions under their Locals' multiemployer plans combined with the pension plan maintained by the International Union. For example, one International Union's plan has 11 retirees who have lost benefits due to section 415: five were union officers, six were secretaries.

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10. Q: Why is the $140,000 limit important?

A: By itself, $140,000 a year at age 66 or 67 is more than enough for multiemployer plans, whose normal retirement pensions are nowhere near that level. However, the problem is that the limits on early retirement pensions are based on the normal-retirement-age limit. Since many industries where multiemployer plans are prevalent, such as construction, maritime and truck driving, involve physically demanding work, plan participants simply wear out after 25 or 30 years on the job. For carpet layers, roofers, long-haul truckers and the like, early retirement is a must, not an option. But too often section 415 gets in the way of their receiving the early retirement pensions that will enable them and their families to live comfortably.

H.R. 10 would increase the $140,000 ceiling, across the board, to $160,000, and would apply it to benefits starting as early as age 62. That would automatically increase the early retirement limits to levels that would be adequate for most multiemployer plan participants.

11. Q: What are the effects of early retirement at different ages, under current law?

A: For a baby boomer working under a collective bargaining agreement in the private sector, the maximum early retirement benefit, in 2001, is, roughly:

	Born Before 1955	Born After 1954
Age 59:	$83,100/year	$83,700/year
Age 55:	$62,200/year	$58,100/year
Age 50:	$44,470/year	$41,500/year
Age 48:	$39,100/year	$36,500/year

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12. Q: Why were multiemployer plans left out, when government workers were given relief on section 415?

    A: We can only assume that the final decision was made by people who did not have all of the facts.

13. Q: How many participants are affected by section 415?

    A: At present we estimate it is not a great number, probably less than 1% of multiemployer plan participants. However, unless the problem is fixed the impact could be much greater by the time more of the baby boomers retire.

14. Q: Why should someone in a multiemployer plan get more pension than wages?

    A: The 100%-of-pay limit creates problems for multiemployer plans because pensions under those plans are typically the same for everyone who has worked the same amount under the plan, without regard to their individual compensation. Because contribution rates and benefit levels are uniform for everyone working under the same labor agreement, it is not possible to make adjustments for the small number of people who may end up earning pensions higher than their pay.

15. Q: What is a "non-qualified" plan?

    A: These are pension plans that are not designed to take advantage of the tax benefits that apply to plans that meet various IRS requirements, including section 415. An arrangement to pay benefits above the section 415 limits is a non-qualified plan. As a practical matter, non-qualified plans cannot be "funded", so they cannot use trusts to accumulate assets systematically, to pay future benefits. As a result, they cannot make a firm, absolute promise to pay benefits, the way tax-qualified multiemployer plans do.

16. Q: Do the employers that contribute to multiemployer plans support 415 relief?

    A: None oppose it, and a number of employer associations, as well as individual employers, actively support it. Once they have made the contributions agreed-to in the collective bargaining agreement, they want their employees to get the benefits.

17. Q: If section 415 relief passes, would that cause funding problems for multiemployer plans?

    A: No, for several reasons. First, the great majority of multiemployer plans – especially those with section 415 problems -- are very well funded, and the total amount of additional benefit payments will be insignificant in comparison to the overall size of the funds. Second, the change would not be automatic: the trustees of the affected plans could leave the old limits in place, if they choose to do so to protect the plans' funded status.

18. Q: Why will this fix cost money for the federal government? What is the revenue estimate?

A: We do not believe the multiemployer-plan relief, on its own, will cost money. In fact, we think it will be a modest revenue-raiser, because it will result in increased benefit payments on which retirees will pay income taxes. However, the Joint Tax Committee has estimated that fixing section 415 for multiemployer plans would have a modest cost, presumably because they think it would cause a net increase in tax-deductible employer contributions.

19. Q: Why does/does not the proposal affect single employer plans?

A: The increase in the section 415 dollar limit, to $140,000, and the corresponding increase in the early retirement dollar limits, would apply to all qualified pension plans.

The 100%-of-pay cap does not appear to be a problem for single employer plans. They typically define benefits as a percentage of each individual's pay, so there is no danger of coming up against the limits unintentionally, which is what happens with multiemployer plans. And even where that is not the case, in a single employer plan an individual employer – in conjunction with the union that represents the employees, if there is one – has much more flexibility to make any needed adjustments on an employee-by-employee basis.

Aggregation, too, is a uniquely multiemployer problem for similar reasons: individual employers (and unions) do not have the flexibility under multiemployer plans to adjust the funding or benefits to accommodate those individuals for whom coverage under both a multiemployer and a single employer plan produces benefits above the section 415 limits.

20. Q: Who would be other, unintended beneficiaries of the proposed section 415 changes?

A: As noted, all qualified-plan participants would benefit from the increase in the dollar limit on defined benefit pensions. The separate section 415 relief provisions that are specifically for multiemployer plans are, by their terms, limited to participants in those plans, so no one else can be affected by them.

21. Q: What is aggregation? How does it work?

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A: See attached summary explanation of aggregation

22.Q: What is the 100%-of-pay limit?

A: That is the rule, in section 415, that says that a plan may not pay an annual pension that is higher than the worker's average pay (from the employers that contribute to the plan) over the three consecutive years in which pay was the highest. Among other things, this causes problems for people in industries like construction, who work on projects at various locations throughout the country and therefore might not have three *consecutive* years of high pay under any one plan.

23.Q: Would the legislation benefit current retirees?

A: Yes. The people whose pensions have already been cut because of section 415 could get an immediate benefit increase, once the change goes into effect. However, they would not receive make-up payments for the benefits lost to section 415 in past years.

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ATTACHMENT TO 415 QUESTIONS & ANSWERS

Section 415 Aggregation Requirements for Multiemployer Plans

GENERAL RULE

An employee's benefits from all plans sponsored by the same employer are added together when the §415 limits are applied. This prevents employers from evading the limits by setting up extra plans.

MULTIEMPLOYER RULE: IN GENERAL

Under IRS regulations issued in 1980, multiemployer plans do not have to be combined or aggregated *with other multiemployer plans.* This relieves multiemployer plans of the need to identify all of the multiemployer plans in which a participant may have worked, anywhere in the country, on projects managed by the same contractor.

AGGREGATION REQUIREMENTS FOR MULTIEMPLOYER PLANS

If an employer has contributed to a multiemployer plan and a single employer plan on behalf of the same employee, that person's benefits under both plans have to be added together and are subjected to one §415 limit.

MULTIEMPLOYER PLAN PARTICIPANTS AFFECTED

Employees who are promoted from a bargaining-unit job to a salaried position within the same company;

Individuals who work for themselves (their own companies) under bargaining agreements and on other projects;

Employees of Locals of the labor organizations that represent plan participants.

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SPECIAL ISSUES FOR LABOR UNION EMPLOYEES

Mandatory Coverage Under Overlapping Plans

In construction and transportation especially, employees of labor union Locals receive the same benefits that the unions negotiate for their members. In addition, most international unions sponsor nationwide pension plans for their Locals' officers and employees, to which all of the Locals are required to contribute. Local unions cannot choose to stay out of either one.

Uniform Coverage

Multiemployer plans require that all employees of a Local union participate, not just the officers or those who started out as union members. This is also true of the Local Union plans maintained by the International Union. As participation is required by the international union's constitution, Locals that already have adequate pensions for their employees still must cover them in the union-wide plan.

Uniform Funding

The multiemployer plans and the union-wide plans both require full contributions from the Local unions. Like employers contributing under collective bargaining agreements, the amounts the unions pay to the plans do not vary based on their employees' expected pensions.

Unfair Results

Sometimes the total is higher than the §415 limits even when the pension provided by each plan on its own is modest. This is common in the case of the unions' support staff, since adding in the single-employer plan benefits aggravates their problems with the 100%-of-pay §415 limit.

Here is a real example: a 50-year old secretary who has worked more than 22 years for a Local union representing skilled craft workers is currently making $38,000. If she retired today, her total pension from the multiemployer plan for the members and the union-wide plan would be $48,700. She would lose over $10,000 a year due to §415.

Even if the 100% of pay limit under §415 is repealed for multiemployer plans***, unless the aggregation rule is also eliminated, the pay-based limit will still cut off the pensions of lower income retirees in multiemployer plans.*** The additional benefits they could receive from the multiemployer plans would just reduce the amounts their single employer plans could pay.

The contributions that the Local unions must make to the pension plans come out of the funds the Locals could otherwise use for wages. So the staff are paid less because their employer is contributing toward their pensions, and then they can't get the pensions either.

RELIEF NEEDED

These problems can be relieved by amending §415 so that multiemployer plans do not have to be aggregated with *any* other plans for purposes of the 100%-of-pay defined benefit limit. This would codify and extend the existing special rule for multiemployer plans.

Multiemployer relief on aggregation would allow employees to receive all of the pension benefits that they have earned and paid for through reduced wages, up to the applicable dollar limit, *without opening the door to tax manipulation.* That is because employers cannot just set up extra multiemployer plans for their employees -- those plans must be created through collective bargaining. And no matter how many single-employer plans an employer has, in total they will not be able to provide more than what §415 would allow from one plan. The only difference would be that an employee could receive her full benefits from the multiemployer plan without sacrificing benefits she had also earned under the single employer plan.

Committee on Education and the Workforce

Witness Disclosure Form – "Truth in Testimony"

Name: Judith F. Mazo

1. I will **not** be representing a federal, State or local government entity.

2. I was appointed to the U.S. Labor Department's ERISA Advisory Council by former Secretary Herman, for a term commencing in March, 1998 and ending in November, 2001. In that capacity I am treated as a Special Government Employee, and paid at a statutory *per diem* rate for the days on which I attend Advisory Council meetings. As I am a full time employee of The Segal Company, a private firm, the Labor Department makes those payments directly to my employer. This is the only payment made on my behalf by the federal government since October, 1998.

3. I will be representing two private sector entities in my apprearance before the Subcommittee on Employer-Employee Relations.

4. I will be representing the National Coordinating Committee for Multiemployer Plans (the NCCMP) and the Building and Construction Trades Department of the AFL-CIO (the BCTD).

5. I am a member of the Working Committee of the NCCMP, and a technical advisor to that organization. I am also a technical advisor on employee benefit issues to the BCTD.

6. The NCCMP has not received any federal grants or contracts. The BCTD has received certain grants or contracts from federal agencies, as follows:
   US AID: $1.5 million for vocational training programs in Egypt
   Federal Mediation and Conciliation Service: $150,000
   US Department of Labor: $100,000 for recruitment and retention of minorities and women in the construction trades

   We will provide further detail on these matters by the end of this week.

7. The BCTD is a department of the AFL-CIO. I am representing the BCTD, not the AFL-CIO, before the Subcommittee on this matter.

Signature: Judith F. Mazo

Date: 4/3/2001

APPENDIX F - WRITTEN STATEMENT OF RICHARD A. TURNER, ASSOCIATE GENERAL COUNSEL, AMERICAN GENERAL FINANCIAL GROUP, HOUSTON, TEXAS, TESTIFYING ON BEHALF OF THE AMERICAN COUNCIL OF LIFE INSURERS (ACLI)

AMERICAN COUNCIL OF LIFE INSURERS
FINANCIAL SECURITY FOR LIFE

STATEMENT OF THE

AMERICAN COUNCIL OF LIFE INSURERS

BEFORE

**THE SUBCOMMITTEE ON EMPLOYER -EMPLOYEE RELATIONS
OF THE
COMMITTEE ON EDUCATION AND THE WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES**

ON

H.R. 10 THE COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001

THURSDAY, APRIL 5, 2001

1001 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2599
202/624/2000•FACSIMILE 202-624-2319

Thank you, Mr. Chairman. I am Richard Turner, Associate General Counsel for the American General Financial Group and for VALIC, an American General company. I am also the current Chair of the Pension Committee of the American Counsel of Life Insurers, the ACLI. I am pleased to be here today on behalf of ACLI. The ACLI is the major trade association of the life insurance industry, representing 493 life insurance companies. These companies hold 82% of all the assets of the United States life insurance companies and 83% of the pension business. ACLI's member companies hold one-fifth of the privately administered retirement assets in the United States—$1.8 trillion.

Mr. Chairman, you and the members of the Committee are to be commended for this timely hearing on an issue of extreme importance to the Nation. Years ago, Congress recognized the need to place primary reliance on private sector sources to assure the adequacy of retirement income. As a result, it encouraged employers and employees to use a voluntary private retirement system to supplement the economic protection offered by public programs such as Social Security. Since then, America has gone on to build a retirement system that is the envy of the world, and we are extremely proud to be a part of that system. The legislation we will be discussing today will further enhance the employer-based and private retirement savings systems.

The Council applauds the introduction of H.R. 10, the Comprehensive Retirement Security and Pension Reform Act of 2001. Representatives Rob Portman (R-OH) and Ben Cardin (D-MD) introduced this measure on March 14. You, Mr. Chairman, and most of the members of this Committee are original cosponsors of the bill. The list of cosponsors now numbers well over 270. If adopted, this measure will help Americans save more for retirement in both private savings plans and employer-sponsored retirement plans. In addition, we believe the measure will increase both coverage of non-covered employees and expansion of existing retirement savings. This legislation is being considered at a critical time – with the aging of the baby boom generation, coupled with the uncertain future of government entitlement programs, including Social Security and Medicare, it is critical that voluntary employer-sponsored plans and individual savings be strengthened to meet the retirement security challenges of the 21st century.

The employer-sponsored system has been a tremendous success in ensuring current and future retirees' retirement security. Contrary to a common assertion, the majority of current pension participants and recipients are not wealthy. Instead, they are middle-income Americans. According to 1997 Census Bureau data, 77 percent of pension participants have earnings below $50,000. These trends are similar for pension recipients. Among married couples, 70 percent of pension recipients had incomes below $50,000. Among widows and widowers, 55 percent of pension recipients had incomes below $25,000. When viewed in terms of pension dollars, over 50 percent of pension benefits go to elderly retirees with adjusted gross incomes below $30,000. With additional incentives, simplification and expansion, this system will increase that security in terms of both the numbers of individuals covered as well as the amount of retirement income received. We believe the legislation we are discussing today, if enacted, will take significant steps in achieving these goals.

Before discussing some of the individual provisions of the bill, we think it is particularly important to focus on pension reform legislation as an appropriate individual tax cut as you proceed with your consideration of this measure. In fact, H.R. 10 is a perfect complement to marginal rate cuts. While marginal rate cuts will provide short-term economic stimulus, the pension reform package provides long-term economic stimulus by encouraging Americans to save more for retirement. The pension reform package is aimed at encouraging broader participation in saving for retirement and in increasing the amount that can be saved under qualified pension plans and under IRAs. An increased level of retirement saving means an increased level of investment capital for the economy. This translates into increased levels of GNP and increased standards of living for Americans.

While we are very supportive of the entire bill, we would like to express our support for the following provisions:

(1) Restoration of plan limits: The legislation would increase the limitation on voluntary pre-tax contributions to 401(k), 403(b) and 457 plans to $15,000; SIMPLE plan limits would be raised from $6,000 to $10,000; and IRAs would be raised from $2,000 to $5,000. As the baby boom generation nears retirement, these increased limits will allow them to increase their retirement savings, thereby ensuring greater retirement security.

(2) "Catch-up"contributions: We believe that allowing individuals to "catch up" their retirement contributions in later years, when other financial obligations have been satisfied, will only increase retirement security. This provision is especially helpful to working women who are the most likely to be in and out of the workforce during their younger working lives. Accordingly, we believe these "catch-up" contributions will greatly enhance savings opportunities for women. We strongly support this provision.

(3) Repeal of the 25% of Compensation Limit on Contributions: The repeal of this limit on contributions, and similar limits that apply to school teachers, healthcare workers, and employees of state and local governments, will allow individuals to increase their retirement savings. This provision is particularly meaningful to middle-income individuals who are most likely to be subject to the cap. This provision will have a positive impact on small business where pension coverage is weakest.

(4) Repeal of the defined benefit full funding limitation: Defined benefit plans provide retirement security and, in most cases, the guarantee of a lifetime stream of income. This is a very valuable benefit. However, the current liability full funding limit enacted in 1986 has hampered an employer's ability to steadily fund a plan over time. The repeal of this limit will ensure adequate funding over the life of the plan and will be particularly helpful in the small employer market. We strongly support its inclusion in the legislation.

(5) Modification of the Top Heavy Rules: Top heavy rules apply to all qualified plans but they affect only small businesses. The Employee Benefits Research Institute's 1998 survey of small business reveals that the top heavy rules are one of the greatest regulatory disincentives to pension plan formation and retention by small businesses. In addition, subsequent to the adoption of the top heavy rules, many additional provisions have been enacted which provide broad safeguards for plan participants. As a result, the perceived need for these requirements is far outweighed by the fact that they serve as a significant barrier for small business plan expansion. We strongly support the provisions providing relief from some of the top heavy requirements. We would go further and support the Department of Labor's ERISA Advisory Council recommendation for total repeal of the top heavy rules.

(6) Additional Incentives for Small Employers: In addition to several of the proposals outlined above which we believe will encourage small employers to establish plans, H.R. 10 contains other provisions that are designed specifically for small employers interested in establishing pension plans for their employees: (a) reduced PBGC premiums; (b) phase-in of additional premiums; and, (c) plan loans for small business owners like subchapter S owners, partners and sole proprietors. In addition, we would hope that a tax credit for pension plan startup costs would be added to make it easier for small businesses to sponsor a pension plan.

(7) Shortened vesting schedules from 5 to 3 years for employer matching contributions will increase retirement savings for our mobil workforce.

(8) Portability provisions that will enable workers to more readily roll their retirement savings into a new employer's plan or into an IRA, combined with shortened vesting, should maximize the benefit that workers receive from retirement plans.

Finally, more Americans need to understand the importance not just of accumulating savings, but of planning to protect these savings against the uncertainties of what life might hold; uncertainties such as becoming disabled or a family provider dying early; uncertainties such as outliving one's income or needing long-term care. We should do more to encourage all

Americans to accept the dual challenges of accumulating retirement savings and managing risks to these savings.

We need to adopt tax policies that reward responsibility and provide more flexibility for retirements that will be longer and very different from the past. The life insurance industry is the only private industry that can provide life insurance protection against leaving family members without money should a wage provider, childcare provider or homemaker die early; that can provide annuities which guarantee income for every month a person and his or her spouse lives, no matter how long; and that can protect a nest egg from being wiped out due to disabilities, or long-term care needs through disability and long-term care insurance. Representatives Nancy Johnson and Karen Thurman as well as Senators Chuck Grassley and Bob Graham have recognized the need to encourage Americans to protect against the costs of a long-term care episode by introducing H.R. 831, and S.627 respectively, legislation that offers an above-the-line tax deduction for the costs of long-term care insurance premiums. Accumulating savings for retirement is vitally important; protecting those savings before and in retirement is equally important. As leading providers of both accumulation and protection products, the insurance industry is uniquely qualified to assist in developing strategies that will help Americans enjoy a secure retirement.

Again, we want to commend you Chairman Johnson, and the members of this Subcommittee for your recognition of the vital role that employer-sponsored plans play in the retirement security of this Nation. The voluntary employer-sponsored system not only needs to be maintained but expanded so that more individuals are covered and those individuals receive greater benefits. This legislation takes important steps in those directions. We encourage all members of this Committee to endorse H.R. 10 and to work for passage of this comprehensive pension legislation. Your efforts on behalf of this measure will ensure the future retirement security of millions of Americans.

The ACLI looks forward to working with you, Chairman Johnson as well as Chairman Boehner and the members of this Committee as we move forward in efforts to enact this vitally important pension reform legislation. Please feel free to contact us if we can provide any assistance in these efforts.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Richard A. Turner		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998: N/A		
3. Will you be representing an entity other than a government entity?	Yes X	No
4. Other than yourself, please list what entity or entities you will be representing: American Council of Life Insurers		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: Chairman, ACLI Pension Committee		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract: ACLI/None Richard.A. Turner, American General/None		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: [signature] Date: 04/02/01

Please attach this sheet to your written testimony.

APPENDIX G - WRITTEN STATEMENT OF KAREN W. FERGUSON, DIRECTOR, PENSION RIGHTS CENTER, WASHINGTON, D.C.

PENSION RIGHTS CENTER

1140 19TH STREET, NW SUITE 602 WASHINGTON, DC 20036-6608
TEL: 202-296-3776 FAX: 202-833-2472
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STATEMENT OF THE PENSION RIGHTS CENTER

ON THE

COMPREHENSIVE RETIREMENT SECURITY

AND PENSION REFORM ACT OF 2001

H.R. 10

BEFORE THE

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

APRIL 5, 2001

STATEMENT OF THE PENSION RIGHTS CENTER
ON THE COMPREHENSIVE RETIREMENT SECURITY
AND PENSION REFORM ACT OF 2001, H.R. 10
BEFORE THE
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
APRIL 5, 2001

Mr. Chairman, Members of the Subcommittee, I am Karen W. Ferguson, Director of the Pension Rights Center. The Center is a nonprofit consumer organization that has been working for the past 25 years to protect and promote the retirement security of American workers, retirees and their families. Thank you for inviting us to testify today on H.R. 10, the Comprehensive Retirement Security and Pension Reform Act of 2001.

At the outset, we would like to commend Congressman Rob Portman and Congressman Benjamin Cardin for their willingness to tackle what is one of the most difficult – and most overlooked – challenges facing the nation today: How to ensure that Americans who have worked a lifetime will have the retirement savings they will need to need to pay their basic bills when they are too old to work. As everyone in this room – but few outside – are aware, despite the critically important financial foundation that Social Security provides, it pays the typical retiree less than the minimum wage. As you also know, that retiree needs at least twice that amount to maintain his or her pre-retirement standard of living.

I am here today because we are deeply concerned that the major provisions of this legislation would diminish rather than increase the likelihood that the majority of hardworking Americans will receive adequate incomes in retirement. Although the bill may achieve its stated objectives of making "retirement security *available* to millions of workers" by, among other things, "expanding small business retirement plans," and "allowing workers to save more," the reality is that for a great many workers, merely creating more *plans* and *allowing* more money to be sheltered from taxes, could undermine rather than enhance their retirement security. These measures will primarily help higher-paid individuals, while jeopardizing the future financial security of millions of ordinary workers. They will also not increase national savings.

I would like to begin by briefly addressing these centerpiece provisions, then turn to issues within the jurisdiction of this Subcommittee. I will also suggest ways in which the provisions could be modified to more nearly achieve their intended objectives. Needless to say, among the more than 50 provisions in this 150-page bill, there are a number that we support. I would be pleased to address those in the question period.

H.R. 10's CENTERPIECE PROVISIONS

(1) Increasing contribution limits for savings plans

The provisions of the bill that have received the most attention from the media and lobbyists would increase the amounts individuals could shelter from taxes in retirement savings plans such as 401(k)s and IRAs.[1] Sections 201(b) and 301 of the bill would provide particularly generous tax breaks for the very small proportion – 5 percent – of higher-earning employees who are now contributing the current maximum $10,500 a year to 401(k)-type plans.[2] If these employees are 50 and over, the bill would allow them to nearly double their contributions, and if they are also employers, it would permit them to more than double that amount, for a total of $45,000 a year.[3]

Contributions at this rate would certainly encourage more employers to set up 401(k)s,[4] but it would not increase the retirement security of the 95 percent of 401(k) contributors now contributing less than the current maximum. Currently, half of all full-time, year-round workers earn less than $32,000 a year. They simply cannot afford to contribute two-thirds of their after-tax earnings to a 401(k).

But far more troubling from a retirement policy perspective is that the increased limits will inevitably encourage more employers to jettison their traditional pension and profit-sharing plans. 401(k)s are much cheaper than traditional plans because, unlike these employer-financed plans that provide benefits to workers at all income levels, employers ordinarily do not make any contributions to 401(k)s for those of their employees who cannot afford to put money into the plan. By switching from primarily employer-paid plans to 401(k)s companies can cut costs, and, in many cases, through an accounting maneuver, also boost their bottom lines. In the past decade, the number of traditional plans has dropped by 66 percent. In fact, the shift is far greater than this figure would suggest, since larger companies have cut back on, rather than eliminated, their employer-financed plans.

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[1] A recent *Wall Street Journal* article, citing figures from the Center for Responsive Politics, noted that "securities and investment firms helped write [the pension bill] and gave $78 million during the 2000 elections." "Bill Provides Incentive for More Investment in Pension Plans, IRAs," David Rogers, January 26, 2001.

[2] "House-Passed Pension Changes Would Overwhelmingly Benefit Corporate Executives and Owners: Provisions Could Lead to Pension Reductions for Low- and Moderate-income Workers," Peter R. Orszag, Iris Lav and Robert Greenstein, Center on Budget and Policy Priorities, August 1, 2000.

[3] The limits on all employee contributions would increase from $10,500 to $15,000, and those age 50 and over would be allowed an additional $5,000 a year "catch-up" contribution. Employers would then be free to match employee contributions, up to a total of $40,000, plus the additional age 50 catch-up contribution.

[4] The employers would be able to reduce their taxable incomes signficantly, and thanks to stock market gains and the "magic" of compound interest, would be able to reasonably anticipate multimillion dollar million nest eggs. See "Why Pension Reform Legislation Is a Bad Idea," Daniel I. Halperin, 89 *Tax Notes* 958, November 13 2000.

Since 401(k)s are very popular with employees as well as employers, this would not be a problem, but for the fact that despite multimillion dollar educational efforts, accumulations in 401(k)s remain very small. ***The most recent government figures show that half of all 401(k) contributors have less than $16,000 in their accounts.***[5] In our view, it makes no sense to increase the attractiveness of 401(k)s to employers and other higher income employees, unless and until it can be conclusively demonstrated that these plans can provide a realistic source of retirement income to many more working Americans.

As others have noted, the increases in 401(k) and IRA limits also raise critical tax policy issues, but since these have been addressed in other forums, I will merely mention them in passing:

- little, if any, of the increased contributions to these plans would be new savings, since most of the money contributed by higher earners would simply be shifted from taxable investments;[6] and

- all taxpayers, including the 80 million workers not now contributing to 401(k)s and IRAs, would effectively be paying for these costly tax breaks.[7]

What can be done to modify Sections 201 and 301 to better achieve the objective of increasing retirement savings? A starting point might be a provision introduced by Congressman Rob Andrews last year as part of the Retirement Enhancement Act of 2000. Section 101 of H.R. 5549 would have required that plans be required to include all employees in a single line of business who meet certain age and service requirements. This provision could be applied to all 401(k) plans adopting the higher contribution limits.[8] In addition, you could modify the catch-up provision in Section 301 of H.R. 10 so that it applies only to participants who take time away from work for caregiving purposes, and to employees earning less than $50,000 a year.

(2) Reducing protections for workers in "top-heavy" plans

A long-standing legislative objective of consultants and financial institutions that market private retirement plans to small businesses and professional offices has been the elimination of

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[5] 1998 Survey of Consumer Finances, Federal Reserve Board of Governors. There are the added facts that much of this money is likely to be spent before retirement, and, given the recent performance of the stock market, a considerable amount could be at risk.

[6] William Gale, "The Impact of Pensions and 401(k) Plans on Saving: A Critical Assessment of the State of the Literature," Brookings Institution, September 1999.

[7] The federal tax expenditure for public and private employer-sponsored retirement plans is estimated at more than $80 billion this year. According to the Joint Committee on Taxation, "The general purpose of the tax benefits for qualified plans is to encourage employers to establish broad-based retirement plans for their employees." *Overview of Present-Law Tax Rules and Issues Relating to Employer-Sponsored Retirement Plans*, March 22, 1999, p. 2.

[8] One of the most overlooked, and most disturbing, provisions of H.R. 10, is Section 609(b), which would roll back rules that now limit the percentage of an employer's workforce that can be excluded from a plan. We believe that this provision should be deleted from the bill, and that the General Accounting Office should be asked to examine the full ramifications of its likely impact on low and moderate-income employees.

so-called "top-heavy" rules, particularly in 401(k) plans. The top-heavy rules were put into the law nearly two decades ago to make sure that retirement plans were more than just tax shelters for well-off individuals who do not need tax incentives to save for retirement. In the case of 401(k)s, the rules apply when 60 percent of a plan's assets are in the accounts of company owners and certain officers and family members. If a plan is "top-heavy," the employer must make contributions equal to 3 percent of pay for all other employees included in the plan who have worked 3 or more years.

These provisions provide employers an incentive to educate their employees about the desirability of making contributions to 401(k) plans. If the educational effort fails, the company owners and officers can still put the full maximum employer-employee contribution (up to $45,000 in the proposed legislation) into their own accounts as long as they put small amounts into 401(k) accounts for their workers. (A typical full-time worker earning $30,000 would get a contribution of $900 a year, or $75 a month.)

Section 203 of H.R. 10 contains a number of provisions designed to effectively nullify many of the top-heavy rules. The most direct assault is on top-heavy 401(k) "safe harbor" plans. Safe harbor 401(k)s are a new kind of savings plan that, unlike other 401(k)s, are not subject to "nondiscrimination" rules designed to protect low and moderate wage earners. Unlike other 401(k)s, the plans are not required to link the average amounts that can be contributed to higher-paid employees to the average amounts put in by other workers. This means that employers sponsoring safe harbor 401(k)s have little incentive to encourage lower-paid employees to contribute to the plan. They can simply offer to match their employees' contributions in a specified amount, and then, even if none of their employees put money into the plan, the employers can match their own contributions, up to the employer-employee limits.[9] The top-heavy rules play a fail-safe role to assure that rank-and-file workers will receive at least some benefits from these heavily tax subsidized plans.[10]

The result of enactment of these measures might well be the creation of *more plans*, but these plans would deliver benefits to fewer people. This could result in a reduction in retirement income security, particularly where employers conclude that a top-heavy 401(k) plan is much cheaper (and more beneficial to the owners), and therefore more attractive, than a plan that provides benefits to workers at all income levels, such as an employer-financed profit sharing plan or a Simplified Employee Pension (SEP).

The General Accounting Office recently issued a report on top-heavy rules documenting the important protections that these rules provide for lower and moderate-income employees in

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9 The required match is a dollar for dollar match on the first 3% of pay contributed by the employee, and 50 cents on the dollar for the next 2% of pay.

10 The bill would also reduce top-heavy protections in other 401(k) plans in several other ways. It would redefine who is in the top-heavy class by including only company officers earning more than $150,000 a year as key employees, and would include employer matches in figuring the 3%. It would also not count employee contributions in figuring whether the plan meets the 60% test, and measure the 60% by only looking at contributions in a particular year, rather than the total account balances.

small firms.[11] We believe that it is critically important that these protections be preserved. In addition, we urge that you consider bringing the enforcement of top-heavy requirements within Title I of ERISA, and give the Labor Department discretionary authority to secure compliance with the rules. We also suggest that you direct the Labor Department to restore the requirement that plans report on their top-heavy status in their annual financial reports (Form 5500s). This information was recently eliminated.

(3) Increasing the "covered compensation cap"

Several commentators have noted that the seemingly inoffensive provision, Section 201(c), could have adverse unintended effects on plan participants.[12] This provision would increase the dollar amount of pay used in calculating an employee's benefit or contribution from $170,000 to $200,000. This would mean that a pension formula providing an employee with a benefit equal to two percent of pay multiplied by years worked would give 20-year executives earning $200,000 a year, annual pensions of $80,000, rather than $68,000.

That alone is not a problem. What is a problem is that, since the executives are also likely to have considerable other retirement income in savings, stock options, and non-qualified plans, the employer could decide to cut costs by continuing the previous $68,000 pension for the executives, and reduce the benefits paid to other employees by changing the plan's formula to one providing only 1.7 percent of final pay for future years worked. Instead of pensions of $12,000 a year, 20-year rank and file employees earning $30,000 a year would get only $10,200, a 15 percent reduction.

This problem could be easily addressed by adding a requirement that plans that are amended to incorporate the increased compensation "cap" not be allowed to reduce future accrual rates for five years after the amendment date.

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[11] *Private Pensions: "Top-Heavy" Rules for Owner-Dominated Plans,"* August 2000, GAO/HEHS-00-141

[12] "Why Pension Reform Legislation Is a Bad Idea," Daniel I. Halperin, 89 *Tax Notes* 958, November 13 2000. "House-Passed Pension Changes Would Overwhelmingly Benefit Corporate Executives and Owners: Provisions Could Lead to Pension Reductions for Low- and Moderate-income Workers," Peter R. Orszag, Iris Lav and Robert Greenstein, Center on Budget and Policy Priorities, August 1, 2000. See also "Beware: The Rich Are Getting Richer, Norman Stein, *Los Angeles Times*, July 31, 2000, and "Pension Protection Astray?" Dianne Bennett', *Washington Times*, September 26, 2000, attached to this statement.

H.R. 10's MOST CONTROVERSIAL PROVISIONS

(1) Disclosure and study of cash balance and hybrid plan conversions

The provision of H.R. 10 that has caused the greatest outcry among employees is Section 504, the provision that acknowledges, but does not adequately address, the extremely unfair practice of reducing the expected pension benefits of older employees by converting their traditional defined benefit plans to "cash balance" or other hybrid plans.

For tens of thousands of employees in hundreds of pension plans, many of them the largest in the country, this change in the rules of the game has cost them more than half of the benefits they had counted on getting – in many cases, hundreds of thousands of dollars. What is particularly shocking about this practice is that these benefits were fully funded and the employers fully intended to pay them – until they were advised by consultants that they could take advantage of a technical maneuver that could save them millions of dollars in benefit payments, while also boosting their companies' bottom lines.

Recognizing that this practice of reaping a windfall at the expense of long-service loyal employees is fundamentally wrong (and likely also illegal),[13] a number of large companies have given their employees the choice of staying under their old plans, and receiving the benefits they had expected. Kodak and Motorola were among the first companies to "do the right thing" in this regard, and last month, 3M followed suit.[14] But most companies are taking the position that their obligation to shareholders is to maximize profits, and will continue the practice until it is stopped.

Rather than stopping the practice, Section 504 effectively gives it a green light. It calls for the Treasury Department to conduct a study of the impact of conversions on older employees, which would duplicate a recently completed GAO study,[15] and to issue regulations that would require employers to give employees in companies with 100 or more employees "sufficient information to understand the effect of the plan amendment" within "a reasonable time before the effective date of the plan amendment."

These provisions are little more than a delaying tactic advocated by lobbyists for large companies hopeful that it will to defuse the outrage of the many employee groups throughout the country that are looking to their elected representatives to resolve this contentious issue for the future by fairly balancing their interests with those of their employers. These groups think that "wearaway" of pension benefits should be prohibited,[16] and that all employees should be given the

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[13] "The Cash Balance Controversy," Edward A. Zelinsky, 19 Virginia Law Review 683, 2000.

[14] "3M Will Offer New Pension Options: Workers Can Stick with Current Plan," Kevin Maler, *Pioneer Planet*, March 16, 2001.

[15] *Private Pensions: Implications of Conversions to Cash Balance Plans*, September 2000, GAO/HEHS-00-185.

[16] Wearaway is a practice where employers set opening account balances in a new cash balance plan at levels that are lower than the amounts the employees have already earned under the old plan. They then freeze those benefits

option of remaining under their old plans. They also want to make sure that no action taken by Congress to protect employees from being hurt by future "hybrid" conversions interferes with the lawsuits they have initiated, and the age discrimination complaints that they have filed.

At the Pension Rights Center we agree that nothing should be done to interfere with pending litigation or agency proceedings. We also think that there is a way that the reasonable benefit expectations of employees can be reconciled with employers' interests in having flexibility to make prospective changes in their plans. We are convinced that a legislative compromise can be quickly crafted that would give employees the full value of the share of benefits they have earned as of the date a plan is amended, to the extent there is funding to pay these benefits, plus full benefits under the new plan.[17] Employers would also continue to be free to terminate their plans,[18] or offer their employees the choice of staying under their old plans.

As for disclosure, notice of an imminent conversion would be of little value to most employees unless those who thought they might be adversely affected were also given the right to make written requests for individualized comparisons of their benefits under the old and new plans, and they received those comparisons before the effective date of the amendment. If a company for some reason did not have the in-house capacity to do the calculations, it could provide the employees with their work records and access to one or more actuaries retained by the employer to do these calculations at no cost to the employees. It is simply unrealistic (and unfair) to expect that employees will have the mathematical skills to calculate what are typically extremely complex formulas, some times involving benefits under a succession of plans.

(2) Elimination of protected benefits after mergers and acquisitions

Large corporations involved in mergers and acquisitions frequently complain that they should allowed to eliminate options from plans they acquire if they provide equivalent benefits under their own plans. This makes sense if the new plan provisions are in fact fully equivalent. However, Section 405 of the bill goes much further than this and could result in the loss of protected benefits.

Section 405(a) would allow plans to eliminate options, including important spousal protections, in defined contribution plans. According to this provision, if employers acquire

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until the amounts the employees would have earned under the new plan's contribution formula (had it been in effect throughout their careers) equals what they had earned under the old plan.

[17] In technical terms, this would be the pro-rata share of any early retirement subsidy provided by the plan, to the extent the share is funded (whether ultimately paid as an annuity or lump sum). This amount would then be "hypothetically" converted to the employees' opening balances in the new plan, and future pay and interest credits would be added to the hypothetical amounts. Since the payments from the old plan would be based on salary at the time of the "conversion," rather than at the time the employees left the plan, they would not be as well off as the would have been had they been allowed to stay under the prior plan, but they would also not suffer the tremendous losses resulting from current practices.

[18] If they terminate the plan, they would, under this approach, be required to pay the full excise tax of 50% on any "surplus" assets in the plan, even if they set up or contributed to a 401(k) or other plan. In addition, if they are defense contractors, a portion of the surplus would likely be claimed by the Defense Department.

money purchase pension plans, which are required to provide joint and survivor options, the employers would merely have to get the participants' consent to have the benefit paid as a lump sum. There is no requirement in Section 405(a) that the spouse also give consent to giving up what could be a very substantial protection. This provision should be modified to include spousal consent.

Section 405(b) would similarly authorize the elimination of protected benefits in defined benefit plans in merger and acquisition situations. It states that subsidized early retirement benefits, among others, can be eliminated or reduced if they "create significant burdens or complexities for the plan and plan participants" and eliminating these benefits "does not adversely affect the rights of any participant in more than a de minimis manner."

This language is more protective of employees than earlier versions of the bill, thanks to strong protests by employees and their representatives. However, additional protection is needed. We urge that consideration be given to adding a provision requiring that employees be notified of the proposed elimination of the benefit, along with a statement of nature of the "burdens and complexities" it creates, and its likely impact on their benefits. In addition, we believe that they should be given an opportunity to comment on whether, in their view, the impact of the provision is burdensome on the plan, and the impact of the change on them is, in fact de minimis. A procedure similar to that in Section 3001(b) of ERISA should be developed so that employees can comment directly to the Treasury, or if they so request, the Labor Department Pension and Welfare Benefits Administration's Office of Participant Assistance and Communications can assist them in effectively presenting their protests to the Treasury Department.

H.R. 10's DISCLOSURE PROVISIONS

(1) Summary Annual Report dissemination

Section 612 of H.R. 10 would allow the electronic dissemination of the Summary Annual Report. We are concerned that that without guidance from Congress, this proposal could defeat the purpose of the "SAR".

The SAR is the only document that participants in traditional pension and profit sharing plans receive that lets them know how well their retirement money is being invested. Typically, one page in length, it tells employees and retirees whether their plans have gained or lost money during a year, and how much they are paying in administrative expenses. It also can alert them to questionable financial arrangements with individuals closely connected to the plan, and let them know if any money loaned by their plan has not been paid back on time. It also tells them that they have the right to request the detailed financial reporting form that their plans file with the government and how to get it.

The Summary Annual Report is an easy-to-fill-in-the-blanks form that is typically distributed at worksites, included with paychecks, mailed, or published in union newsletters. Larger plans disseminate SARs once a year; small plans, every three years. Distribution of the

SAR reminds workers that the money in the pension or profit sharing plan belongs to them, and that they have reason to be concerned about how well it is invested.

Although many participants do not read their SARs, some do with important consequences for themselves, and the Labor Department's enforcement efforts. For example, the *New York Times* reported on the discovery by two Oregon laborers that that their pension and 401(k) plans had lost millions of dollars. They alerted the Labor Department which uncovered extensive mismanagement of their funds. These construction workers were alerted to the problems in their fund solely by reading the SAR.[19]

Electronic dissemination of the SAR may be appropriate in some instances, if it is carefully targeted to assure that the information in the SAR will actually be brought to the attention of employees. Proposed regulations published by the Labor Department prescribing "safe harbor" methods for electronic dissemination of the SAR would fall far short of this standard.[20] If electronic dissemination is to be permitted, it should only be after participants have given consent to a particular form of electronic transmission that is specifically calculated to reach them.[21] Merely sending e-mails to employees telling them that they can use a company computer to access a web site to view (and then print out) the SAR is not, in our opinion, adequate dissemination.

(2) Elimination of certain benefit suspension notices

Section 707(a)(2) eliminates a notice that is particularly important to many workers in the construction trades unions, and other multiemployer plans. These workers are typically encouraged to take generous early retirement benefits, in their early 50's or before. Then, several years into retirement, a significant proportion find that they are unable to make ends meet on their fixed pension benefits, and return to work in union work covered by their pension plan, but for new employers. What many do not know is that consequences can be devastating. Their benefits can be suspended until they reach age 65.

A particularly egregious example of this involved a Minnesota construction worker, who retired to Florida, and then decided to return to work covered by his Minnesota plan, something he had specifically been told he would be able to do. After he returned to work, he learned that the plan had just adopted a new rule, suspending benefits of retirees who came back to work, including those, such as him, who had retired before the adoption of the rule. He learned of the suspension through the very kind of notice that Section 707(a)(2) would eliminate. The notice

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[19] "A Case Sounds a Warning About Pension Safety," David Cay Johnston with Kenneth N. Gilpin, *New York Times*, October 1, 2000. See also, "Playing Catch-Up in Retirement," Julie Trip, *Oregonian*, October 15, 2000.

[20] 64 FR 4506, January 28, 1999. The safe harbor would permit the SAR (and other plan documents such as the Summary Plan Description) to be delivered electronically at work sites if participants have the ability to access electronic documents and convert them to paper form without charge, and if the plan administrator e-mails or otherwise notifies employees about the significance of the document, and that they can access the documents electronically, and request paper copies free of charge.

[21] Final Treasury regulations published on February 8, 2000 require participant consent to the electronic receipt of certain notices.

told him about the suspension, the reasons for the suspension, and the applicable provisions of the plan, and how he could seek review of the plan's action. It made it possible for him to immediately take steps to challenge the suspension.
Without the notice, he might have learned only when he left work covered by the plan and asked for his pension to be started again, that he would receive no additional payments until he reached age 65.

Whatever burdens providing the notice may place on multiemployer plan administrators, they are far outweighed by the consequences to multiemployer plan participants if the notice is not given.

(3) Simplified financial reporting for plans with 25 or fewer employees

Section 606(b) of the bill would allow plans with 25 or fewer participants to filed the same kind of simplified plan that is now filed by plans that only cover one person. Since some of the greatest abuses, both in financial management and plan design, occur in plans of these size, further streamlining the already minimal information they provide the government (and their participants), would effectively undercut enforcement efforts by both the Treasury and the Labor Department.

As noted above, these plans are no longer required to state that they are top-heavy, which means as a practical matter, it will be almost impossible for participants to know if they have been wrongly denied the protections of the top-heavy rules. Participants in these plans, unlike those in larger plans, are not able to find out where their money is invested.

Any employer that finds filing of the minimal amount of information now required of small plans to be too burdensome, is free to set up a SEP (a Simplified Employee Pension), which requires no reporting with the government, because the design is straightforward (and now skewed toward favored employees), and the investment of the money is beyond the control of the employer. We strongly urge the members of the Subcommittee to ask GAO to do a cost benefit study of the consequences of simplification before proceeding with this measure.

(4) Individual benefit statements

Finally, we are very pleased that Section 507 of the bill would assure that, 26 years after the enactment of ERISA, participants in multiemployer plans will finally have the right to request individualized statements telling them how much they have earned in pension benefits. However, Section 507 includes nothing beyond the requirements of current law requiring that the information in these statements, or those provided by other types of plans, be meaningful.

All too often individual benefit statements contain difficult-to-understand technical language, fail to alert employees to likely reductions in their benefits (for early retirement, survivors benefits and Social Security and workers compensation offsets) and contain misleading projections that unrealistically assume that workers will continue to work until retirement age. We suggest that consideration be given to modifying this provision to include language similar to that in Section 401(c) of Congressman Andrews' Retirement Enhancement Act of 2000, which authorizes the Secretary of Labor to prescribe model language for individual benefit statements.

Finally, we think that the provision in subsection (a)(C)(3) of Section 507 specifying that benefit statement information may be provided in telephonic form be deleted, and that the Secretary of Labor be directed to issue an Interpretive Bulletin clarifying the extent to which employees can reasonably rely on information in their individual benefit statements.

In conclusion, I would like to again thank you for the opportunity to appear here today. The issues raised by this legislation affect all working Americans. The Pension Rights Center recognizes that there is an urgent need for a bipartisan, intensive effort to find ways of increasing private retirement plan coverage. It is time to begin closing the great divide in income among the haves and have-nots in retirement. In the coming months we will be launching a campaign to spur a national dialogue on ways of increasing pension and savings plan coverage among low and moderate income workers. We look forward to working with you in this effort.

I would be pleased to answer any questions you may have.

The Washington Times TUESDAY, SEPTEMBER 26, 2000

DIANNE BENNETT

Pension protection astray?

Pension legislation approved by the House and anticipated on the Senate floor in coming weeks, although characterized as liberalization by its sponsors, could have serious, perhaps unintended, adverse consequences that would reduce pension security for millions of working Americans.

Bipartisan supporters claim they are addressing a problem soon to be made more urgent by the aging of the Baby Boomers: Only about half of American workers have any sort of pension or retirement plan beyond Social Security.

But this legislation is unlikely to help those who most need retirement plans and would hurt many. Although the Senate version of the proposed legislation includes some potentially helpful provisions, the vast majority of the benefits go almost entirely to upper-income taxpayers, a relatively small group that is already well prepared for retirement. The sponsors reason that offering bigger tax breaks to business owners and executives will motivate them to sponsor more and better plans to aid their lower-paid employees. But the legislation's incentives simply don't work that way.

At the heart of the proposal are increased limits on tax-advantaged retirement plans. The amount of compensation that can be counted for pension purposes would rise by \$30,000 to \$200,000, and the maximum annual pension payment in a traditional plan would rise \$25,000 to \$160,000. Think of the sort of wage it takes to generate an annual pension of \$160,000.

I looked at random at three retirement plans administered by the law firm where I work. In each case, virtually the only participants pushing against today's limits are those earning more than \$100,000 — in a 60-person plan, four doctors; in an 80-person manufacturing company, three owners and a few others; in the 20-person plan of a distribution company, only the owner.

The proposal also increases the amount an employee can contribute to a 401(k) plan from \$10,500 annually — a limit that fewer than 5 percent of 401(k) participants now reach — to \$15,000.

Under the House version of the bill, the top 5 percent of the population gets 42 percent of the benefits in this bill and the top 20 percent would receive 77 percent of the benefits. What about the others?

Few employees employed by small businesses have retirement plans. The biggest barriers keeping their employers from establishing plans, according to surveys, are low profits that put cash in short supply and the need to pay competitive wages that leads them to offer what extra resources they have in paychecks rather than benefits. The legislation offers nothing to change this.

Instead, the new provisions would substantially increase the limits on contributions to individual retirement accounts, an action the Treasury Department warns would discourage employers from creating company plans because the owners could provide for themselves by relying entirely on more generous IRAs.

When small business owners do set up retirement plans, they must cover the lower-paid employees along with themselves and their managers. The proposed legislation loosens nondiscrimination rules that now prevent plans from concentrating most benefits in the hands of those few at the top of the pay ladder, hardly the incentive congressional backers say they are trying to provide. It also weakens so-called top heavy rules that require some plans to provide minimum benefits.

Many sponsors of small pension plans like those with whom I work contribute fixed amounts to their plans. If business owners can allocate more of this amount for their own personal accounts, as the legislation would allow, the temptation will be to spend less on others.

The most powerful effect of this pension legislation would be to let well-off Americans divert more of their income into tax-deferred accounts.

If Congress believes this backdoor tax cut is appropriate, it should acknowledge what is happening and explain why. But our legislators should not attempt to portray this change as enhanced retirement security for American workers.

Dianne Bennett is a Buffalo lawyer who has been practicing employee benefit law for more than 25 years.

Los Angeles Times

MONDAY, JULY 31, 2000

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Beware: The Rich Are Getting Richer

■ 'Reforms' in the House bill won't much help rank-and-file workers save for retirement.

By NORMAN STEIN

When the siren song of pension reform emanates from our nation's capital, beware: The rich are likely to get richer, and almost everyone else will get poorer.

As a nation, we have invested hundreds of billions of dollars—more than $80 billion last year alone—in tax subsidies aimed at encouraging employers to offer pension plans that would help their employees save for retirement.

Despite this massive national investment in retirement security, fewer than half of the employees in the private-sector work force participate in a pension plan—about the same percentage covered in 1974 when Congress overhauled the private pension system. Seventy million people—mostly low- and moderate-income employees—currently work for employers who don't have pension plans or who have pension plans that fail to cover them.

What's the answer? For House Ways and Means Committee Chairman Bill Archer (R-Texas) and the other committee members who sent pension "reform" measures to the House floor, where they passed overwhelmingly, it is more pension tax breaks for the affluent. The idea, according to the legislation's sponsors, is to dangle juicy tax-shelter carrots in front of business owners and managers who do not currently have retirement plans. When employers take the bait and adopt pension plans, all workers supposedly benefit because all, high and lowly, will be covered.

But look at the imbalance. One provision in the House bill would jack up limits on annual benefits from traditional pension plans, allowing the most affluent employees and entrepreneurs to look forward to more than $160,000 per year at retirement. Other provisions would increase the amount that some of these same people can salt away, tax-free, in profit-sharing or 401(k) plans to more than $45,000 each year—this includes employer contributions—and would create Roth 401(k)s in which a fortunate few could effectively shelter even more.

These provisions are aimed directly at the wealthiest Americans, the only ones who could possibly afford to use them. Little in the bill would directly do any more than existing law to help low- or moderate-income employees save for retirement.

In any case, this misguided trickle-down pension policy is unlikely to result in many new pension plans. According to a study by the Washington-based Employee Benefits Research Institute, the two leading reasons that businesses give for not sponsoring pension plans are not enough business profit and not enough employee interest. So raising the effective annual shelter limits as high as $45,000 and the maximum traditional pension benefits to $160,000 will do little more than lighten the tax burden for the wealthiest Americans, who already participate in pension plans and, in any event, don't need government paternalism to encourage them to save for retirement.

Even worse, some of the changes virtually invite businesses that already have pension plans to reduce benefits for both low- and middle-income employees.

For example, one obscure and seemingly innocuous measure would increase to $200,000 the maximum amount of salary (currently $170,000) that can be taken into account under a retirement benefit formula.

Here is how it works. For a wealthy business owner (perhaps a doctor) to shelter income in a defined contribution plan, special "nondiscrimination" laws require her to contribute a proportionate part of her employees' income. If she wants to shelter the current maximum contribution of $30,000 for herself (17.65% of the current limit of $170,000), then she also may have to set aside 17.65% of the income of each of her employees. But if the salary limit is raised to $200,000, the percentage contribution required for her to shelter $30,000 drops to 15%. This means that if she is satisfied with her own $30,000 contribution, she can correspondingly reduce the percentage contribution for all of her other employees. An employee earning $50,000 a year could lose more than $1,000 in contributions the first year alone. Over the course of a 30-year career, assuming average investment performance, the employee could lose more than $100,000 in retirement savings.

Another provision in the legislative package would gut the "top-heavy rules," a special set of rules requiring certain plans to provide minimum benefits for rank-and-file employees. If enacted, some lower-income people who now get some benefits from their plan will receive smaller benefits or even none at all. Still another provision whittles away at the core of the nondiscrimination tax principle that bars employers from adopting plans that give a handful of wealthy employees enormous pension benefits while providing everyone else with trivial benefits.

What is needed are new ideas. The Clinton administration's plan last year for "USA accounts," in which the government would make direct and matching contributions for moderate- and lower-income workers, is one such idea. And what about conditioning new tax breaks on how well a pension plan actually treats moderate- and low-income workers? With some imagination, we can help all Americans in their quest for retirement security.

Norman Stein is a professor of law at the University of Alabama. E-mail: nstein@law.ua.edu.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name:		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998: Admin. on Aging Grant # 90AM2049 Budget Period: 1-1-98 thru 12-31-98 - $150,000 Admin. on Aging Grant # 90AM2049 - Budget Period: 1-1-99 thru 3-31-00 - $150,000 Department of Labor Contract # B9382726 - $25,000 Department of Health & Human Services Contract # 282-98-0015, Task Order No. 18 PRC - Subcontractor for Westat - $20,000 Admin. on Aging Grant # 90AM2329 - $187,500		
3. Will you be representing an entity other than a government entity?	Yes X	No
4. Other than yourself, please list what entity or entities you will be representing: Pension Rights Center		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: Director		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract: See #3, above		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: _______________ Date: 4-4-01

Please attach this sheet to your written testimony.

APPENDIX H - WRITTEN STATEMENT OF DALLAS L. SALISBURY, PRESIDENT AND CEO, EMPLOYEE BENEFIT RESEARCH INSTITUTE, WASHINGTON, D.C.

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Statement for the Record

Committee on Education and the Workforce

Subcommittee on Employer-Employee Relations

United States House of Representatives

Hearing

On

H.R. 10, The Comprehensive Retirement Security & Pension Reform Act

Testimony of

Dallas L. Salisbury
President and CEO, Employee Benefit Research Institute[1]

Washington, DC

April 5, 2001

[1] EBRI is a private, nonprofit, nonpartisan public policy research organization based in Washington, DC. Founded in 1978, its mission is to contribute to, to encourage, and to enhance the development of sound employee benefit programs and sound public policy through objective research and education. EBRI does not lobby and does not take positions on legislative proposals.

Mr. Chairmen and Members of the Committee:

The Employee Benefit Research Institute (EBRI) is pleased that the House Education and Workforce Committee has convened a hearing on H.R. 10, the Comprehensive Retirement Savings and Pension Reform legislation introduced by Reps. Rob Portman (R-OH) and Ben Cardin (D-MD). While EBRI does not lobby or advocate for or against legislative proposals, our work is intended to assist in evaluating potential results of proposals made by others.

Among companies with fewer than 100 workers, less than half (46 percent) are participating in an employment-based retirement plan. EBRI has studied the issue of retirement plan sponsorship—and nonsponsorship—among small (100 or fewer) employees extensively. Since 1998, we have conducted an annual Small Employer Retirement Survey (SERS) to explore small employer retirement plan sponsorship decisions. The survey is sponsored by EBRI, the American Savings Education Council, and Matthew Greenwald & Associates. The focus of our statement, therefore, will be on the results of the 2000 Small Employer Retirement Survey, the most recent we have analyzed. Results of the 2001 SERS will be released this June.

2000 Small Employer Retirement Survey Findings

Obstacles to Plan Sponsorship

- There are a number of reasons that come up in the Small Employer Retirement Survey on why more small employers do not offer retirement plans—it is not simply a matter of administrative cost and burden. The survey asked small employers to identify the most important reason for not sponsoring a plan, and to state whether a given reason was a "major" factor in evaluation. Twenty-one percent said that the most important reason was that employees prefer wages and/or other benefits. In fact, our value of benefits surveys have found that 76 percent of workers who can have only one employee benefit state a desire for health insurance. Eighteen percent of small employers say that the most important reason for not having a plan is the makeup of their work force, a large portion of workers are seasonal, part time, or high turnover. Twenty-four percent say that revenue is too uncertain to commit to a plan or the business is too new. Cost and administration-related issues do matter, with 20 percent saying that it costs too much to set up and administer a plan; that required company contributions are too expensive; or that there are too many government regulations. For most, therefore, the financial reality of running a small business is the primary impediment to having a plan.

Reasons for Not Offering a Retirement Plan	*Most Important*	*Major*
Employees prefer wages and/or other benefits.	21%	38%
A large portion of workers are seasonal, part time, or high turnover.	18	40
Revenue is too uncertain to commit to a plan.	13	45
The business is too new.	11	22
It costs too much to set up and administer.	9	33
Required company contributions are too expensive.	8	43
Too many government regulations.	3	24
Vesting requirements cause too much money to		

go to short-term employees.	3	35
Don't know where to go for information on starting a plan.	2	5
Tax benefits for the owner are too small.	3	23
Other reasons.	9	6

Employee-related reasons are most often cited as the most important factor for not offering a plan, and business-related reasons, such as profitability, are also a main decision-driver. This may explain why plan sponsorship rates remain low despite repeated legislative efforts to boost them.

H.R. 10 would address several of these issues in the following ways:

- *Employees prefer wages/and or other benefits*—H.R. 10 would encourage education on the value of having a retirement benefit by specifying that retirement advice provided to employees on an individual basis would be a nontaxable fringe benefit to the extent such services are made available on substantially equivalent terms.
- *A large portion of workers are seasonal, part time, or high turnover*—H.R. 10 would permit rollovers from the various types of defined contribution arrangements (i.e., 401(k), 403(b), and governmental 457) to each other without restriction, which would make retirement plans more attractive for these type of workers.
- *Revenue is too uncertain to commit to a plan, the business is too new and it costs too much to set up and administer*—While the current version of H.R. 10 does not contain tax credits for small employer plans, an earlier Senate version of similar legislation that passed the Senate Finance Committee on Sept. 7, 2000, allowed for small businesses with 100 employees or less to be eligible for an annual tax credit of 50 percent on up to $1,000 of administrative costs for the first three years of a new plan. These credits, along with other additional credits for businesses that previously did not sponsor retirement plans, would be a motivator for those not offering a plan to consider sponsoring one.
- *Required company contributions are too expensive*—H.R. 10 would provide for increases in deferral limits in defined contribution plans, making a salary reduction plan more attractive to a small employer.
- *Too many government regulations*—H.R. 10 would streamline and simplify certain reporting and testing regulations to encourage more employers to offer pension coverage.
- *Tax benefits for the owner are too small*—H.R. 10 would provides for increased contribution limits on an employer's deduction for contributions to certain types of defined contribution plans. In addition, H.R. 10 would allow workers over age 50 to contribute up to $5,000 in "catch-up" contributions in 401(k) plans.

Potential Motivators for Retirement Plan Sponsorship

- SERS found that the potential exists for increased plan sponsorship. Those likely to start a plan are somewhat more likely to report that the most important reason they don't currently have a plan is revenue uncertainty and less likely to say it is because a large portion of their workers are seasonal, part time, or high turnover. This therefore suggests that continued improvement in their business conditions will allow them to consider starting a plan in the future.

Likelihood of Starting a Plan in the Next Two Years	
Very likely	16%
Somewhat likely	23
Not too likely	29
Not at all likely	31

- What would lead to increased plan sponsorship? Nonsponsors were read a list of items and asked if any would make them seriously consider sponsoring a retirement plan. The highest percentage, 69 percent, said an increase in business profits. Next, 65 percent said tax credits for starting a plan, and 52 percent said reduced administrative requirements.

Factors That Would Make Non-sponsors Seriously Consider Sponsoring a Plan	
An increase in business profits.	69%
Tax credits for starting a plan.	65
A plan with reduced administrative requirements.	52
Availability of easy-to-understand information.	50
Demand from employees.	49
Allowing key executives to save more in a retirement plan.	5
Lengthening of vesting requirements.	27
Other.	10

Comparative Profiles: Companies With Retirement Plans and Those Without Plans

- Small employers that sponsor retirement plans tend to be distinctly different from small employers without plans, in terms of revenue levels and the composition of their work force.

- Small employers that offer retirement plans tend to have higher revenues than small employers that do not have retirement plans.

Approximate Gross Revenue in Previous Year	*Plan Sponsor*	*No Plan*
Less than $2 million	37%	70%
$2 million or more	41	16
Not reported	22	7

- Small employers offering retirement plans tend to employ different types of workers than those that do not sponsor a plan—their employees tend to be older, have higher earnings, have more formal education, and tend to remain with the company longer.

Age of Most Full-Time Employees	*Plan Sponsor*	*No Plan*
Under age 30	15%	27%
30–39 years	53	38
Ages 40 and older	27	33

Annual Salary of Most Full-Time Employees	*Plan Sponsor*	*No Plan*
Less than $20,000	9%	34%
$20,000–$40,000	71	56
Over $40,000	17	7

Educational Level of Most Full-Time Employees	*Plan Sponsor*	*No Plan*
High school or less	38%	55%
Some college	34	32
College degree or more	27	11

Length of Time Most Full-Time Employees Stay With Company	*Plan Sponsor*	*No Plan*
Less than 3 years	13%	34%
Between 3 and 9 years	56	38
10 years or more	30	24

Implications for the Small Employer Issue

- Major drivers of low retirement plan sponsorship among small employers relate to who they employ and the uncertainty of revenue flows. While issues of administrative cost and burden matter, they are only part of the puzzle. Therefore, the solution is not simply "build it and they will come," by creating new types of retirement plans. Rather, it is build it and make it attractive enough for service providers to decide to work at selling it so that small employers will make the sponsorship decision once the business reaches a certain level of profitability and stability, and once retirement planning and saving is more of a priority for the small employer's workers

- As the SERS finds, 39 percent of small employers without plans say they are very or somewhat likely to start a plan in the next two years. The SERS provides data on what points these employers will primarily focus upon in making that decision. And, SERS provides guidance to policymakers as to what factors can be affected by public pension policy.

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Witness Disclosure Statement,
pursuant to Clause 2(g)(4) of Rule XI of the Rules of the House:

- **The Witness:**

Dallas Salisbury is president and CEO of the Employee Benefit Research Institute (EBRI), Washington, DC. Salisbury has headed the Institute since its founding in 1978.

- **The Organization:**

EBRI is a private, nonprofit, nonpartisan public policy research organization based in Washington, DC. Founded in 1978, its mission is to contribute to, to encourage, and to enhance the development of sound employee benefit programs and sound public policy through objective research and education. EBRI does not lobby and does not take positions on legislative proposals.

The Education and Research Fund (ERF), established in 1979, performs the charitable, educational, and scientific functions of the Institute. EBRI-ERF is a tax-exempt organization (under IRC Sec. 501(c)(3)) supported by contributions and grants. EBRI-ERF is not a private foundation (as defined by IRC Sec. 509(a)(3)).

EBRI-ERF has a number of programs:

American Savings Education Council
Choose to Save® Education Program
Consumer Health Education Council
Defined Contribution Research Program
Fellows Program
Health Confidence Survey Program
Health Security/Quality Research Program
Policy Forums
Retirement Confidence Survey Program
Retirement Security Research Program
Social Security Research Program
Education Programs--Policy Forums, Briefings, Round Tables
Publication Programs--printed and online
EBRI Issue Briefs, EBRI Notes, EBRI Databook on Employee Benefits,
EBRI Health Benefits Databook, Fundamentals of Employee Benefit Programs,
Policy Studies

- **Contracts:**

EBRI does not have any contracts with the federal government in 2001, and did not in 1999 or 2000.

APPENDIX I - WRITTEN STATEMENT OF THE NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS, WASHINGTON,D.C.

STATEMENT FOR THE RECORD

H.R. 10, THE COMPREHENSIVE RETIREMENT SECURITY & PENSION REFORM ACT

THE NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS

BEFORE THE HOUSE EDUCATION AND THE WORKFORCE SUBCOMMITTEE ON EMPLOYEE-EMPLOYER RELATIONS

APRIL 5, 2000

Mr. Chairman and Members of the Committee:

The National Association of Federal Credit Unions (NAFCU) is pleased that the House Committee Education and the Workplace, Subcommittee on Employer-Employee Relations has convened a hearing on H.R. 10, the *Comprehensive Retirement Security and Pension Reform Act of 2000*. This legislation incorporates much needed incentives for retirement savings, including increasing the annual contribution limits for 401(k)s and IRAs and a "catch-up" provision for those age 50 years or older. This legislation also would ease the portability of IRA's as well as ease the restrictions on vesting. An employee would become vested and eligible for employer matching contributions in 3 years, rather than 5, and 401(k)-type pensions would be made portable so workers could more easily roll over and consolidate retirement savings into a new plan when they change jobs.

Seventy million Americans (about half the workforce) do not have a 401(k)-type plan or any kind of pension, and the private savings rate in the United States is at its lowest level in more than 40 years. The major reason for the decreased savings rate is due to the result of deeply ingrained spending habits, in July 2000 personal spending among consumers was double the pace of income.

Credit unions know that saving is a matter of choice and that the most important factor in long-term wealth accumulation is the act of saving itself. Many of NAFCU's member credit unions are actively promoting the value of savings and the value of a dollar. One credit union, Penfield Federal Credit Union in Rochester, New York, teaches students the value of money by "paying" them with play money, showing them how to fill out a deposit slip and depositing the shares in to a savings account.

Again, Mr. Chairman, thank you for holding this very important hearing. NAFCU urges the House to pass the Portman-Cardin legislation.

NAFCU

NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS
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April 18, 2001

The Honorable Sam Johnson
Chairman, Subcommittee on Employee-Employer Relations
Committee on Education and the Workforce
1030 Longworth House Office Building
Washington, DC 20515

Dear ~~Mr. Chairman,~~ Mr. Chairman

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association that exclusively represents the interests of our nation's federal credit unions. I want to express our thanks for your hearing on *The Comprehensive Retirement Security and Pension Reform Act, H.R. 10.*

Attached please find a copy of NAFCU's statement in which we convey our support for this legislation as well as promoting savings in general. I would greatly appreciate it if you could put our statement in the written record of the hearing.

If you have any questions, please contact NAFCU's Associate Director of Legislative Affairs, Kelleen Trauger via email at ktrauger@nafcunet.org, or you may call her at (703) 522-4770.

Sincerely,

Fred R. Becker, Jr.
President/CEO

APPENDIX J - WRITTEN STATEMENT OF THE PRINCIPAL FINANCIAL GROUP, WASHINGTON, D.C.

STATEMENT BY THE PRINCIPAL FINANCIAL GROUP
TO THE
SUBCOMMITTEE ON EMPLOYER/EMPLOYEE RELATIONS
U.S. HOUSE OF REPRESENTATIVES
ON
COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT
(H.R. 10)
April 12, 2001

This statement is submitted by the Principal Financial Group®, a family of insurance and financial services with over $117 billion in assets under management. Its largest member company, Principal Life Insurance Company®, is the ninth largest U.S. insurance company based on 1999 statutory assets. The Principal Financial Group serves more than 13 million customers worldwide, providing retirement plan investment and administrative services to more than 44,000 employers.

The Principal appreciates the opportunity to comment on pending retirement security and pension reform legislation. We congratulate the committee for holding this hearing on H.R. 10, the Comprehensive Retirement Security and Pension Reform Act of 2001. In recent years, Congress has strengthened the employer-sponsored retirement system and improved the retirement security of many American workers. In particular, the pension simplification provisions enacted by the Small Business Job Protection Act of 1996 (Public Law 104-18) and the Taxpayer Relief Act of 1997 (Public Law 105-34) have helped ease plan administration and helped more employers establish retirement plans for their employees. Nevertheless, the Principal believes more can, and should, be done to encourage employers to establish and maintain retirement plans. H.R. 10, introduced by Representatives Rob Portman and Ben Cardin and 280 of their colleagues, will help achieve these goals.

Background

Currently, less than 30 percent of our nation's smaller employers (those with less than 100 employees) sponsor a retirement plan[1]. Why is this number so small? Much of the problem is because Congress has lost sight of the "inspired linkage." Under this concept, the government tells employers "we will allow you certain tax incentives to provide adequate retirement benefits to your key employees. However, you must cover your rank and file employees in your pension plan."

This concept worked well for many years. To remain competitive, employers generally provide key employees with good retirement benefits. As long as the employer was able to provide comparable benefits for all employees under the same plan, everyone benefited. Unfortunately, Congress repeatedly reduced these limits over the past 17 years in order to raise revenue for non-pension related items. This led to the erosion of the "inspired linkage." Employers were no longer able to provide comparable retirement benefits for all their employees under a single retirement plan.

[1] Employee Benefit Research Institute, The 2000 Small Employer Retirement Survey, Washington, D.C.

Why is the concept of comparable benefits so important to employers? Social Security provides a higher percentage of pre-retirement income for lower-income workers than for middle- and higher-income workers. It provides 70 percent of pre-retirement earnings for workers earning $15,000, compared to 42 percent for workers earning $40,000 and 24 percent for workers earning $70,000. Thus, middle- and higher-income workers need other sources of income to provide the 80 percent of pre-retirement income experts say is needed in retirement years. Many employers hope to provide this additional income through their retirement plans.

Tax Incentives

The Principal Financial Group strongly believes tax deferrals for qualified pension plans are essential, both from an individual employee's perspective and an employer's perspective. Tax qualified plans are in the nations' interest and should be promoted and expanded so that more employers--especially growing businesses--offer them to their employees.

Employer plans offer millions of workers important savings vehicles. This in turn increases the national savings rate which in some years would have been negative without tax favored pension plans. Private pension plans are vital in that they provide direct investment in our nation's economy. Funds are invested prudently to ensure a safe fair market return, but also to provide capital for new plants and equipment, which in turn leads to new jobs for more workers.

Tax incentives offered to private pension plans are tax deferrals, not tax losses. The current pension tax expenditure creates a future tax base greater than the original contribution amount. A recent study sponsored by the American Benefits Council show that over $750 billion in taxes on benefits payments will be paid during the next 40 years as the baby boom generation retires.

The "Comprehensive Retirement Security and Pension Reform Act of 2001" (H.R. 10) goes a long way toward recreating the spirit of "inspired linkage." By increasing the various dollar limits under the plan, the bill aims to increase the number of employer sponsored retirement plans by making them more attractive to business owners.

We offer the following additional comments on the provisions in H.R. 10:

Retirement Plan Limits

The Principal Financial Group supports proposed increases in the dollar limits that cap the amount that employees can save or accrue in employer sponsored plans. Increases in the dollar limits will encourage employers to establish plans by allowing them to accumulate benefits in an amount comparable to the amounts accumulated by lower paid employees. Existing nondiscrimination rules-such as the 401(k)/(m) nondiscrimination tests and the 415 maximum benefit limits-will ensure that plans do not discriminate in favor of the highly compensated employees.

We also support repealing the 25 percent of pay limit on annual additions under a defined contribution plan. This limit has little effect on the most highly paid employees while adversely affecting lower paid employees who choose to contribute generously to their 401(k) plans. Repealing the percentage of pay limit would allow lower paid employees to increase their retirement savings.

Administrative Costs

We are pleased H.R. 10 includes provisions to reduce administrative costs and burdens, which have a disproportionate impact on small employers. Specifically, allowing matching contributions to be counted toward satisfying the top-heavy minimum required contribution and modifying the definition of key employee will help small employers comply with these rules. Elimination of the multiple use test for 401(k)/(m) plans will also simplify the nondiscrimination test and reduce the administration burden on plan sponsors. We also strongly support the provisions that promote good faith compliance and correction of plan errors rather than plan disqualification and IRS sanctions. This feature will encourage self-correction without penalizing inadvertent violations of the qualified plans rules.

Portability

We are pleased with the liberalization of the transfer and rollover rules and the modification of the "same desk rule" for 401(k) plans. Corporate acquisitions, mergers, dispositions and voluntary job changes are increasingly frequent today; these incidents can have a huge impact on an employee's retirement savings. As American workers change jobs, keeping track of their retirement accounts from several different plans is often difficult and time consuming. The best way to do this is to make it easier for them to transfer these distributions to qualified plans or roll them over to an IRA. The provisions in H.R. 10 will preserve plan assets by making it easier to transfer benefits between 401(a), 403(b), and 457 plans. The bill also eliminates the "same desk rule" that prevents employees in 401(k) plans from receiving a distribution in certain corporate take-over situations.

Participant Security

The Principal supports requiring faster vesting of employer matching contributions and allowing members age 50 or older to make additional contributions of up to $5,000 per year to 401(k), 403(b), 457, and SIMPLE plans. We also support provisions that would require defined contribution plans members to receive annual benefit statements and defined benefit plan participants to receive benefit statements every three years.

Summary

We believe that more employers will establish and maintain retirement plans if we can make those plans more attractive for the employer and his/her key employees. We believe the pension reform provisions included in H.R. 10 will accomplish much of this and urge Congress to enact these reforms this year.

For More Information

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APPENDIX K - WRITTEN STATEMENT OF THE INVESTMENT COMPANY INSTITUTE, WASHINGTON, D.C.

STATEMENT
OF THE
INVESTMENT COMPANY INSTITUTE

ON H.R. 10,
"THE COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001"

SUBMITTED TO THE COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
U.S. HOUSE OF REPRESENTATIVES

APRIL 5, 2001

The Investment Company Institute (the "Institute")[1] is pleased to submit this statement to the Subcommittee regarding H.R. 10, "The Comprehensive Retirement Security and Pension Reform Act of 2001." This bill would make the nation's retirement plan system significantly more responsive to the retirement savings needs of Americans. The Institute strongly supports its enactment and commends its sponsors and members of this Subcommittee for their interest in enhancing retirement savings opportunities for all Americans.

The U.S. mutual fund industry serves the retirement savings and other long-term financial needs of millions of individuals. By permitting individuals to pool their savings in a diversified fund that is professionally managed, mutual funds play an important financial management role for American households. Mutual funds also function as the investment medium for employer-sponsored retirement programs, including section 401(k) plans, 403(b) arrangements, and the Savings Incentive Match Plan for Employees ("SIMPLE") used by small employers, as well as for individual savings vehicles such as the traditional and Roth IRAs. As of December 31, 1999, mutual funds held about $2.4 trillion in retirement assets, including $1.2 trillion in qualified retirement plans.[2]

The Institute has long supported efforts to enhance retirement savings for Americans, including efforts that would expand savings opportunities, simplify retirement plan administration, and enable individuals to better understand and

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[1] The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,414 open-end investment companies ("mutual funds"), 489 closed-end investment companies and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about $6.937 trillion, accounting for approximately 95% of total industry assets, and over 83.5 million individual shareholders.

[2] *"Mutual Funds and the Retirement Market," Fundamentals,* Vol. 9, No. 2 (Investment Company Institute, May 2000).

manage their retirement assets. In order to achieve these objectives, it is important that Congress: (1) establish appropriate and effective retirement savings incentives; (2) enact saving proposals that reflect workforce trends and saving patterns; and (3) reduce unnecessary and cumbersome regulatory burdens that deter employers – especially small employers – from offering retirement plans. H.R. 10 would achieve these objectives.

The ability of Americans to save for their retirement would be further enhanced if pension plan participants could more easily obtain investment advice from qualified financial service providers. We urge Congress to enact legislation to remove barriers to the provision of investment advice in the retirement plan market.

I. Establish Appropriate and Effective Incentives to Save for Retirement

IRA Contribution Limits. The current limitations on contributions to retirement plans restrict many individuals from saving as much as they need for retirement. Most significantly, the IRA contribution limit remains at $2,000 – *a limit set in 1981*. Inflation-adjusted, the limit would be at about $5,000 today. More than two-thirds of the individuals that make annual contributions to an IRA, based on the most recently available data, contribute the maximum $2,000 amount permitted under the tax code. These individuals come from across all income ranges; for instance, 61 percent of individuals earning between $20,000 and $29,000 and who contribute to IRAs contribute the maximum permitted amount.[3] Moreover, the current limit particularly disadvantages individuals who are not covered by employer-sponsored plans and, therefore, have no other opportunity to save in a tax-qualified retirement account. Accordingly, the Institute strongly supports the provision in H.R. 10 that would increase this limit.

Employer-Sponsored Retirement Plan Contribution Limits. Congress similarly should increase limits on other retirement plan contributions, as provided in H.R. 10. The bill would increase 401(k) plan and 403(b) arrangement contribution limits in stages to $15,000 from the current level of $10,500; government-sponsored 457 plan contribution limits would increase in stages to $15,000 from the current level of $8,000. The bill also would modify the section 401(a)(17) limit on compensation that may be taken into account to determine benefits under qualified plans to $200,000. Another important provision of H.R. 10 would increase the "25% of compensation" limitation on contributions to defined contribution plans to 100% of compensation. These modifications would significantly enhance the opportunity for many individuals to save sufficiently for retirement.

II. Enact Savings Proposals That Reflect Workforce Trends and Savings Patterns

Retirement Account Portability. Americans change jobs frequently. About 54 percent of American workers have been at their current job for less than five years, and

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[3] The data are based on Institute tabulations of the IRS' Statistics of Income Individual Tax Returns Public-Use File for 1995.

the average U.S. worker will have held about 9 jobs by the age of 32.[4] Current rules, however, restrict the ability of workers to roll over their retirement account from their old employer to their new employer. For example, an employee in a 401(k) plan who changes jobs to work for a state or local government may not currently take his or her 401(k) balance and deposit it into the state or local government's pension plan. Thus, the Institute strongly supports the provisions of H.R. 10 that would enhance the ability of workers to take their retirement plan assets to their new employer when they change jobs by facilitating the portability of benefits among 401(k) plans, 403(b) arrangements, 457 state and local government plans, and IRAs. Such legislation would facilitate an individual's management and consolidation of his or her retirement savings.

"Catch-up" Contributions. The laws governing pension plans also must be flexible enough to permit working Americans to make additional retirement contributions when they can afford to do so. Individuals, particularly women, may leave the workforce for extended periods to raise children, re-entering the workforce only when their children are older. In addition, many Americans are able to save for retirement only after they have purchased their home, raised children, and paid for their college education.[5] The catch-up proposal would permit individuals at age 50 and over to save an additional $5,000 annually on a tax-deferred basis. The idea is to allow individuals who may have been unable to save aggressively during their early working years to "catch up" for lost time during their remaining working years. The "catch-up" is a sorely needed change in the law.

H.R. 10 contains a limited version of the "catch-up" concept, which we urge Congress to expand. Specifically, Congress should include a permanent catch-up provision for IRA owners. The current bill, in lieu of providing a permanent catch-up opportunity for IRA owners, merely raises the annual IRA contribution limit immediately for those who have reached age 50, while phasing in the same increase for individuals under age 50 over several years. Additionally, Congress also should consider increasing the proposed catch-up amount applicable to 401(k), 403(b), SIMPLE and 457 plans from the proposed amount of $5,000 to a more adequate amount, such as 50 percent of the annual maximum dollar amount permitted to be contributed to each of these plans. Furthermore, the catch-up provision for employer-sponsored plans could be made significantly more effective by specifying that catch-up contributions are exempt from nondiscrimination testing.

III. Expand Retirement Plan Coverage Among Small Employers

The current regulatory structure contains many complicated and overlapping administrative and testing requirements that serve as a disincentive to employers,

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[4] Rajnes, David. *"A 21st Century Update on Employee Tenure."* Employee Benefit Research Institute Notes No. 3, March 2001.

[5] Tabulations based on data from the EBRI/ICI Participant-Directed Retirement Plan Data Collection Project indicate that participants in their 50s and 60s defer higher percentages of their compensation than participants in their 20s, 30s and 40s.

especially small employers, to sponsor retirement plans for their workers. Easing these burdens would promote greater retirement plan coverage and result in increased retirement savings. Meaningful pension reform legislation must focus on the need to increase pension plan coverage among small businesses. Although these businesses employ millions of Americans, less than one-half of employers with 25 to 100 employees sponsor retirement plans; employers with less than 25 employees are even less likely to sponsor retirement plans.[6]

Unnecessarily complex and burdensome regulation continues to deter many small businesses from establishing and maintaining retirement plans. The "top-heavy rule" is one example of such unnecessary rules. The rule imposes significant compliance costs and is particularly costly to small employers, which are more likely to be subject to the rule.[7] A U.S. Chamber of Commerce survey found that the top-heavy rule is the most significant regulatory impediment to small businesses establishing a retirement plan.[8] Moreover, the rule is unnecessary, because other tax code provisions address the same concerns and provide similar protections. While the Institute believes the top-heavy rule should be repealed, H.R. 10 would make significant changes to the rule that would diminish its unfair impact on small employers.

The Institute also strongly supports expanding current retirement plans targeted at small employers. Specifically, the Institute supports expansion of the SIMPLE plan program, which was instituted in 1997 and offers small employers a truly simple, easy-to-administer retirement plan. The SIMPLE program has been very successful. An informal Institute survey of some of its members found that as of December 31, 2000, these companies were custodians for an estimated 256,500 SIMPLE IRA plans with over 1 million individual SIMPLE IRA participants. The SIMPLE program is especially popular among the smallest employers. Indeed, the vast majority (about 88%) of SIMPLE IRA plans have 10 or fewer participants.

H.R. 10 would strengthen the SIMPLE program by raising the SIMPLE plan contribution limits from $6,000 to $10,000. This would address the current "penalty" on individuals who work for a small employer. Individuals should not be restricted in saving for retirement merely because they work for a small employer. Additionally, the SIMPLE program likely would be more effective in encouraging plan formation by businesses with 25 to 100 employees if a salary-reduction-only formula option were permitted. We urge Congress to add a provision for such a program to H.R. 10. This

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[6] EBRI Databook on Employee Benefits, 4th Edition.

[7] Internal Revenue Code section 416. The "top-heavy" rule requires employers, in situations where over 60 percent of total plan assets represents benefits for "key" employees, to (i) increase the benefits paid to non-key employees, and (ii) accelerate the plan's vesting schedule. The impact of the rule on small businesses is exacerbated because they are more likely to have individuals with ownership interests working at the company and in supervisory or officer positions. These individuals would be considered "key" employees under the "top-heavy" rule.

[8] *Federal Regulation and Its Effect on Business – A Survey of Business by the U.S. Chamber of Commerce About Federal Labor, Employee Benefits, Environmental and Natural Resource Regulations*, U.S. Chamber of Commerce, June 25, 1996.

could further the legislation's overall goal of encouraging plan formation by small employers.[9]

[9] In considering H.R. 10, the Institute recommends that Congress also consider providing various tax credits to small employers seeking to start a retirement plan for their employees.

IV. Enable Pension Plan Participants to Obtain Investment Advice

H.R. 10 contains a provision that would clarify the treatment of retirement planning advisory services provided by employers to their employees as an excludable fringe benefit. We urge Congress to expand the proposal to eliminate the significant impediments that employers encounter when seeking to establish these programs for their employees. Although many retirement plan participants seek investment advice to assist them in making investment decisions regarding their retirement plan accounts, current law as interpreted by the Department of Labor has significantly and unnecessarily limited its availability.

To address this issue, this Subcommittee last year considered and approved H.R. 4747, the "Retirement Security Advice Act." This bill would enable certain qualified financial institutions specified in the bill to provide investment advice to plan participants if (1) any and all relevant fees and conflicts of interest are fully disclosed to the plan participant electing to receive the advice, and (2) the adviser is subject to the strict fiduciary standards of the Employee Retirement Income Security Act (ERISA) with respect to the advice provided. This legislation would enable plan participants to obtain the investment advice they seek and provide them with substantial protections against an institution providing imprudent advice. We urge Congress to enact this legislation this year, either as part of H.R. 10 or as stand-alone legislation.

V. Conclusion

Improving incentives to save by increasing contribution limits and accommodating the saving patterns of today's workforce will provide more opportunities for Americans to save effectively for retirement. Simplifying the rules, such as the top-heavy rule, that discourage small employers from sponsoring retirement plans would result in a higher rate of worker coverage and increased individual savings. The Institute strongly supports the enactment of H.R. 10 and urges Congress to do so this year. In addition, we encourage the members of this Subcommittee to consider provisions that would enable retirement plan participants to more easily obtain the investment advisory services they seek to help them manage their retirement savings.

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