Pensions

May 15, 1996

NOTE TO: DON BAER
GENE SPERLING
BRUCE REED

FROM: KITTY HIGGINS

FYI.

News Release

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REICH SAYS ADMINISTRATION PLAN WILL HELP BREAK GLASS CEILING OF RETIREMENT SECURITY

On this Mother's Day, American women may find help in undoing the pension inequality that exists in the workplace. Secretary of Labor Robert B. Reich today outlined retirement problems facing women as he argued for new legislation that would aid small businesses and American workers.

In a speech to the Women's Research and Education Institute, Reich said President Clinton's Retirement Savings and Security Act would mean 51 million workers now without pensions would be able to save for retirement. He noted that women would disproportionately benefit from the proposal because they have disproportionately suffered when it comes to pension coverage.

"Women have more catching-up to do in terms of achieving pension parity with men. Although the proportion of women in the private sector covered by pension plans has grown significantly over the past quarter-century, there are many indications that women are not getting the retirement security men have," Reich said.

"The bill will ease many of the current pension rules that, given women's employment patterns, are particularly hard on them," he said.

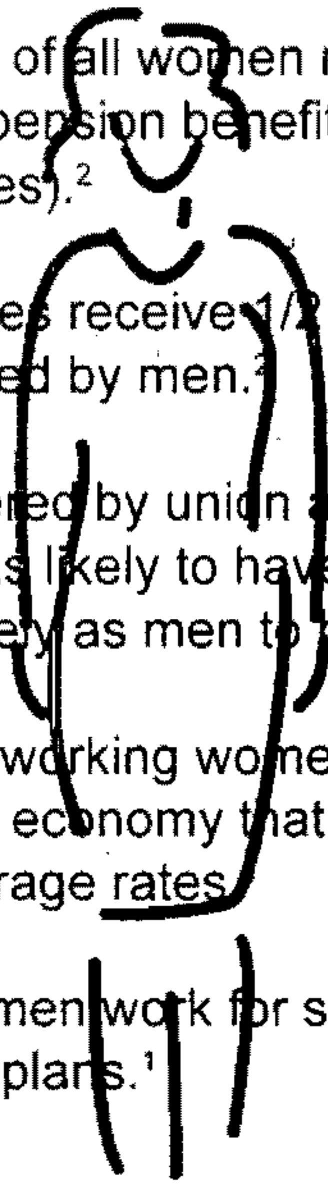
He noted statistics which show:

-- Two-thirds of working women are employed in sectors of the economy with the lowest pension coverage rates.

-- Approximately 12 million women work for small firms which do not offer pension plans.

-more-

Women and Pensions
A Fact Sheet



- Less than 1/3 of all women retirees age 55 and over receive pension benefits (compared to 55% of male retirees).[2]

- Women retirees receive 1/2 the average pension benefit received by men.[1]

- Workers covered by union agreements are nearly twice as likely to have a pension. Women are half as likely as men to be in these jobs.[1]

- Two-thirds of working women are employed in sectors of the economy that have the lowest pension coverage rates.

- 12 Million women work for small firms that do not offer pension plans.[1]

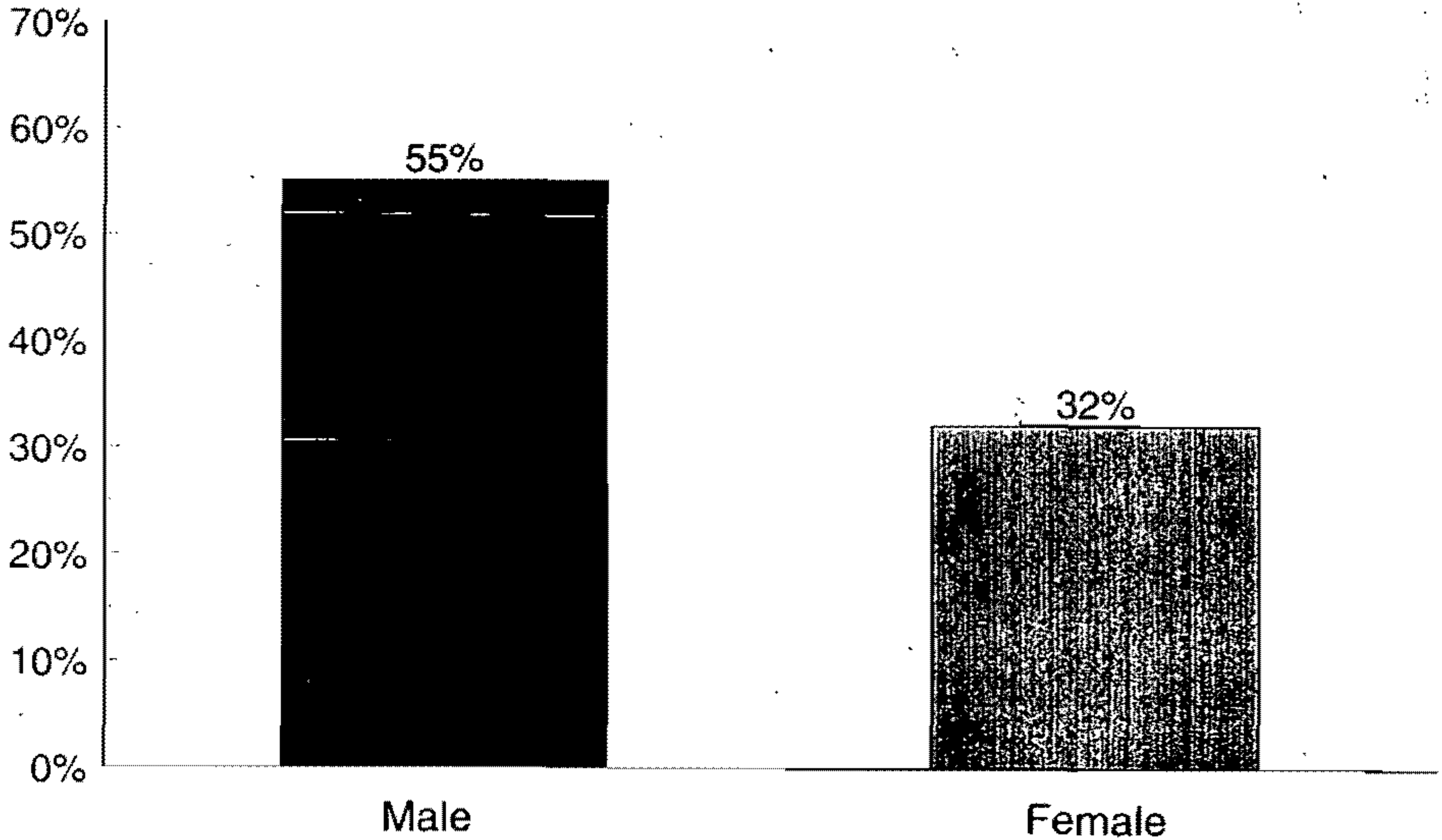
[1] 1993 Current Population Survey Data

[2] 1994 Current Population Survey Data

U.S. Department of Labor
5/96

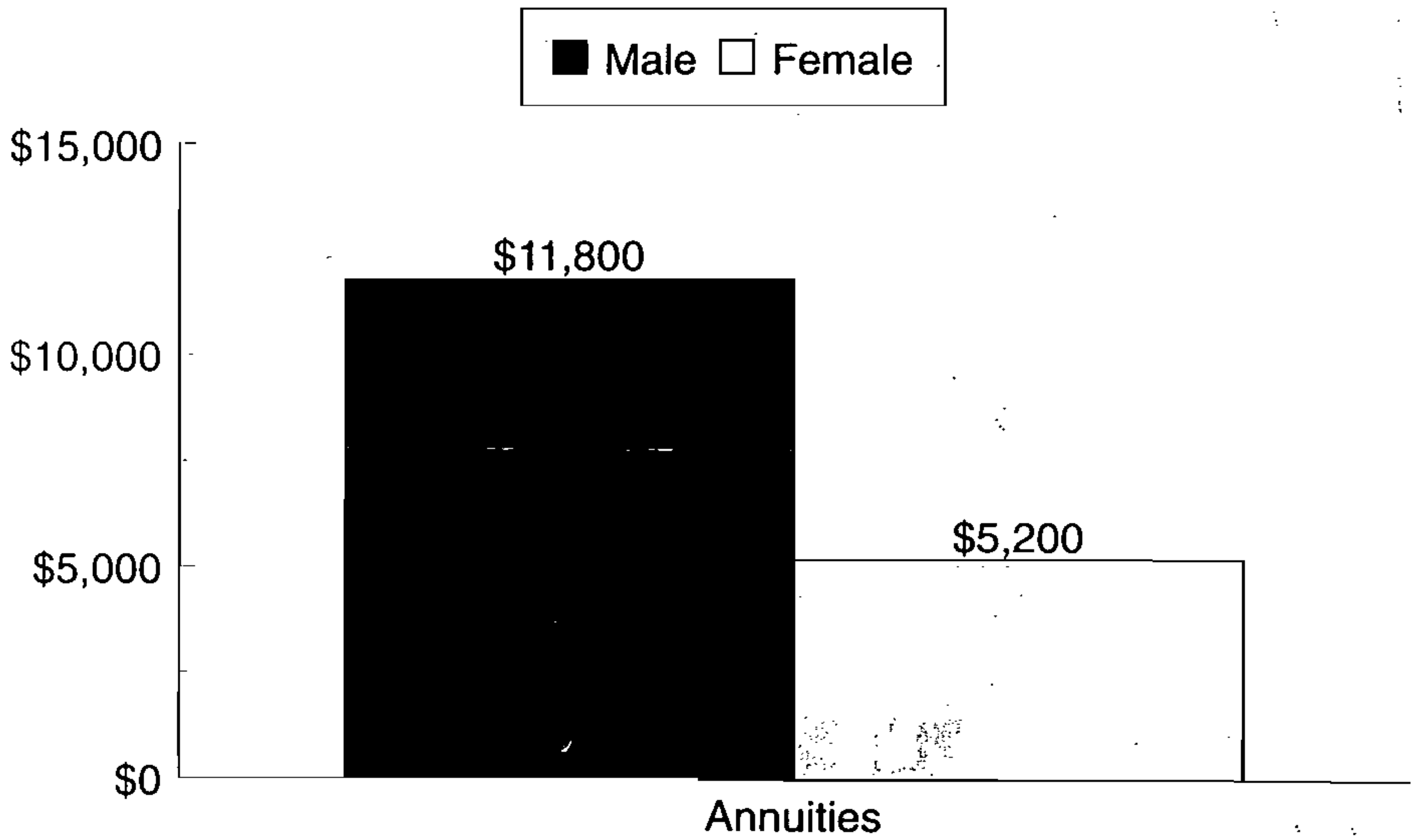
Fewer Women Receive Pensions

Receipt of Benefits - Retirees 55 and Over



Women's Benefits are Lower

Value of Benefits - Retirees 55 and Over



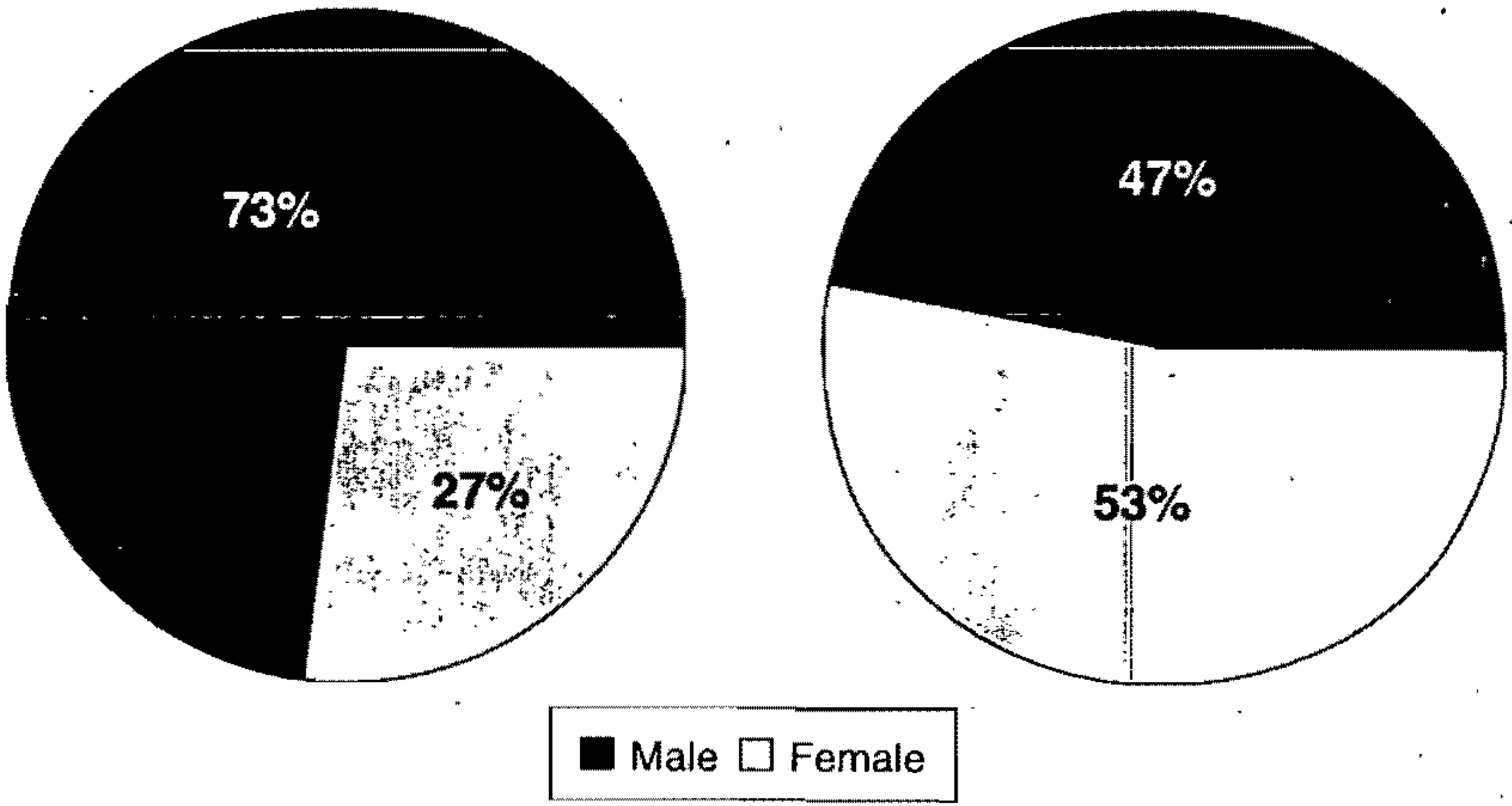
Women Work in Industries with Lower Pension Coverage

Highest Covered Industries

- Mining
- Durable Manufacturing
- Communication

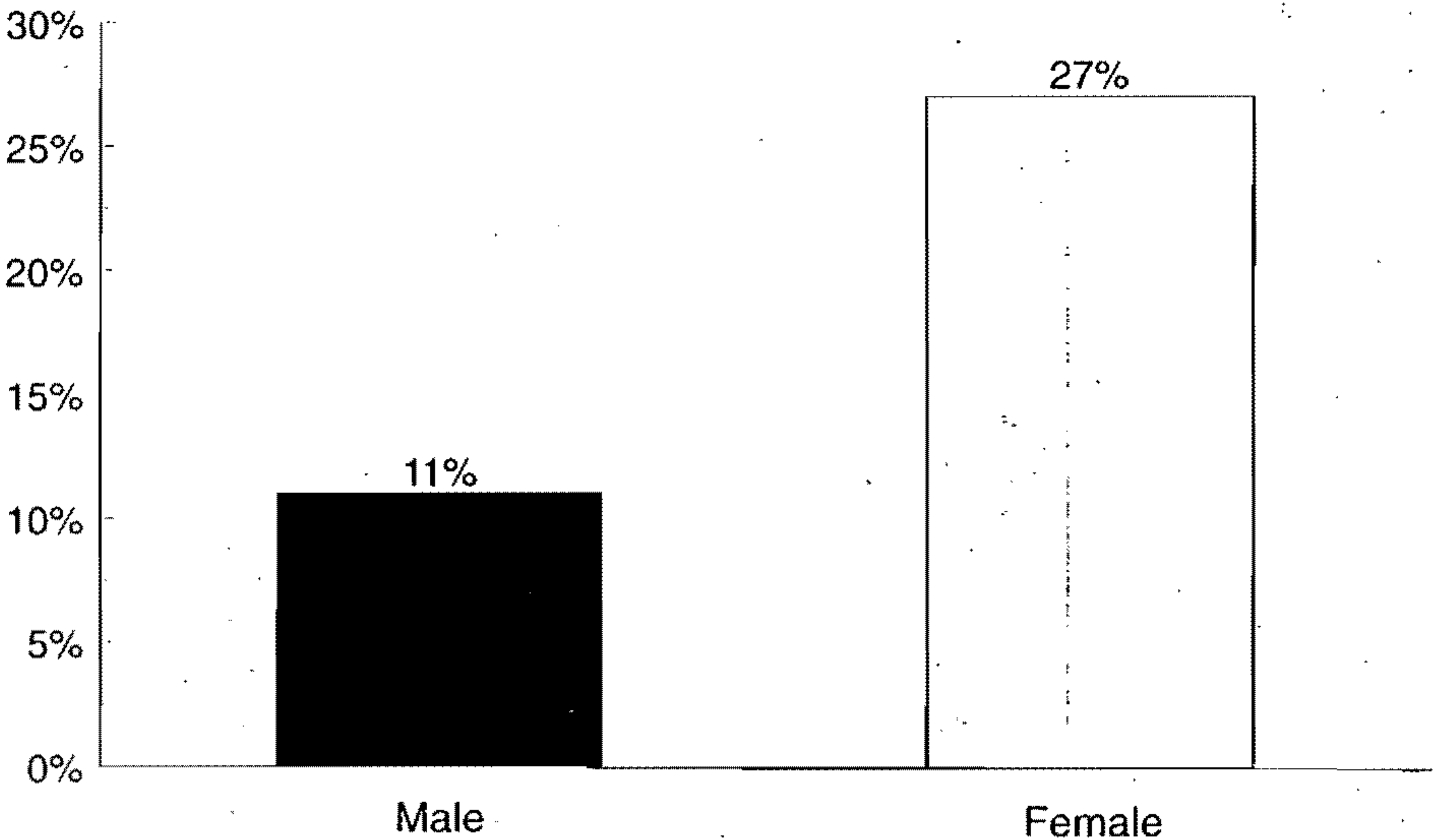
Lowest Covered Industries

- Services
- Retail
- Construction

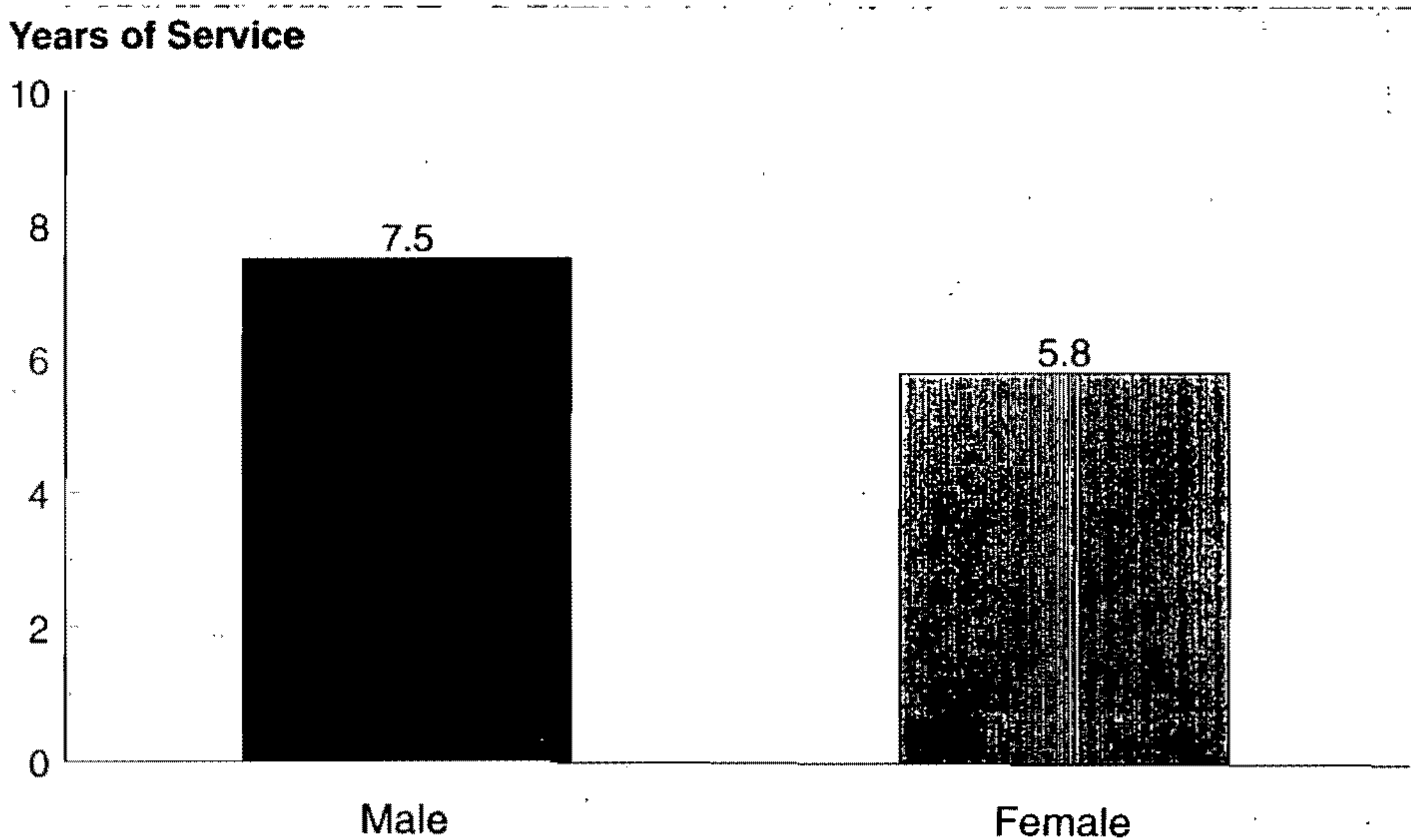


More Women Work Part-Time

Percent of Private Workers by Gender

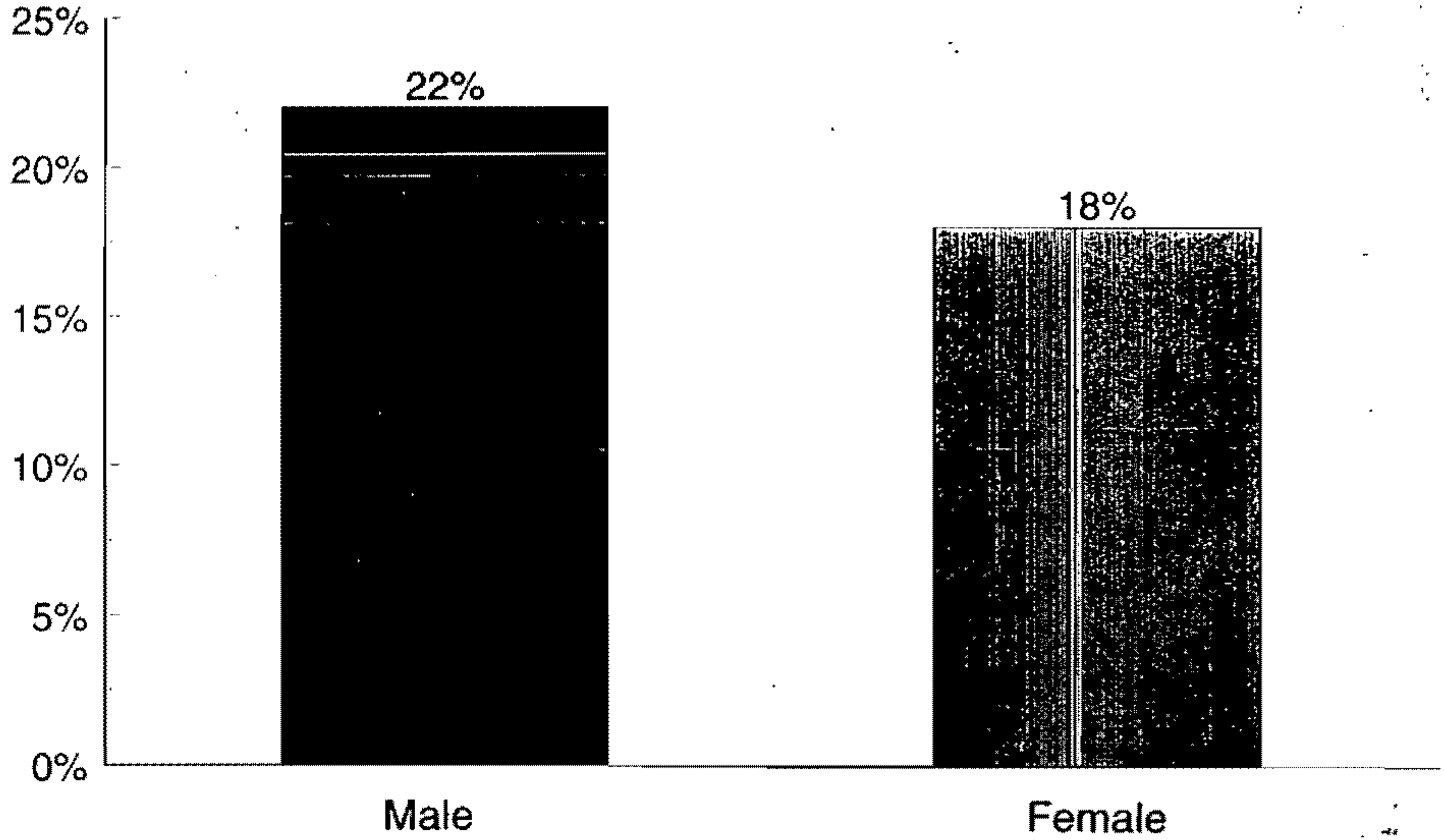


Women Have Shorter Tenure



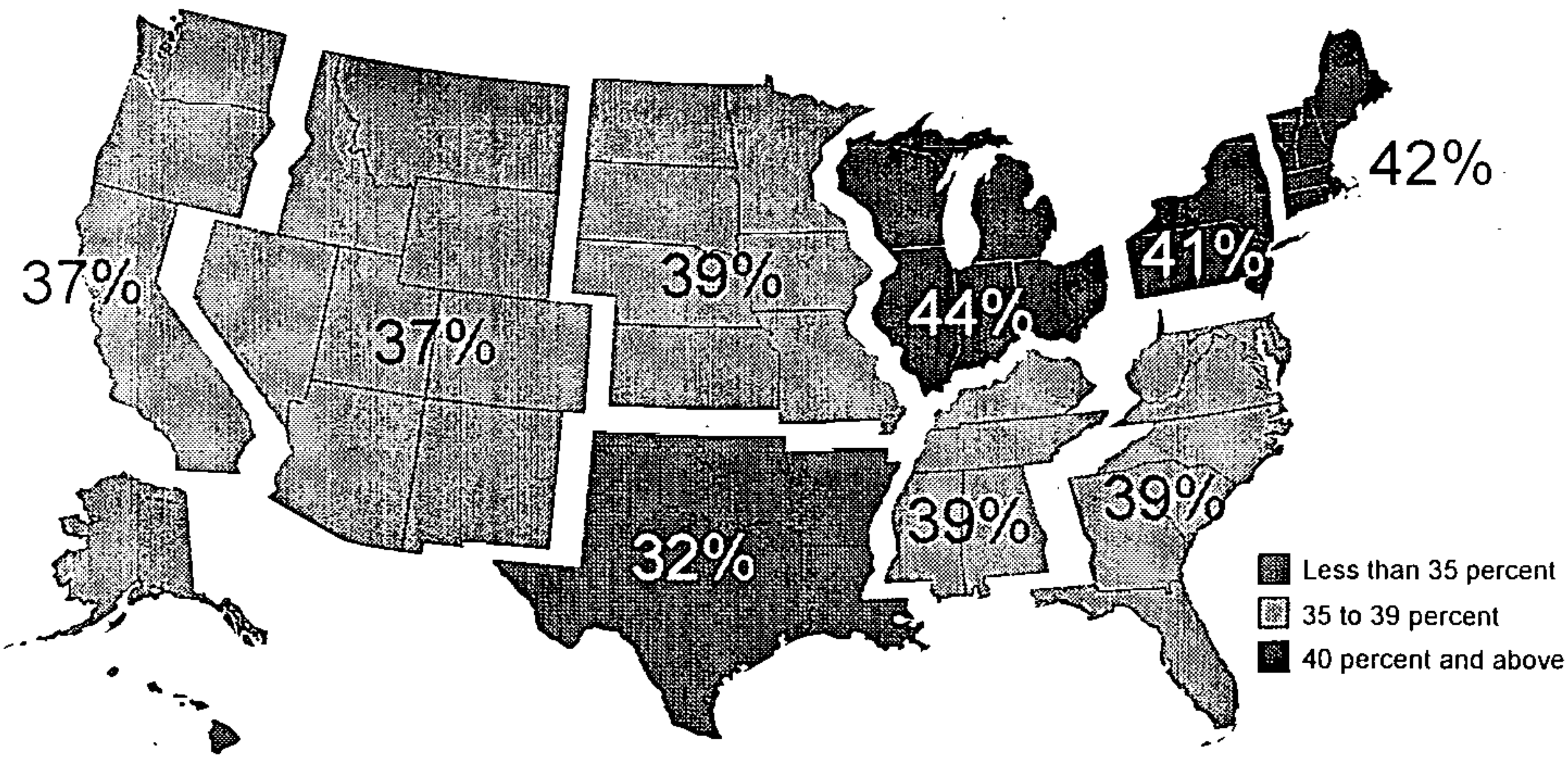
Coverage Gap in Small Firms

Pension Coverage Rates For Firms with Fewer Than 100 Employees



Pension Participation Rates of Women by Region

All Private Wage and Salary Workers 16 or Older



Source: Based on data from the employee benefits supplement to the April, 1993 Current Population Survey.

Pensions

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The Problem:

401(k) plans may be the best savings vehicle that many employees have. The vast majority of plans are administered honestly, responsibly and safely. But we have found that some employers are using or "borrowing" their employee contributions. The law requires employers who withhold employee contributions to turn the money over to the investment plan as soon as possible, yet some employers have held on to this money too long, using the funds as an interest-free loan or for some other inappropriate purpose.

Corrective Actions Taken To Date:

* The continuing nationwide enforcement effort has uncovered the misuse of millions of dollars of employee contributions. 657 investigations have been opened to date. Over $7 million has already been returned to workers -- $5.9 million in employee contributions and $1.4 in employer contributions; 457 investigations remain open, and more complaints are being received.

* Draft regulations were published to reduce the current 90-day maximum holding period for employee contributions. The rule, which will be final in two months, should reduce the temptation for employers to misuse the plan funds.

* The Top 10 Warning Signs that workers should use when monitoring their 401(k) plans were published in an effort to educate workers how to protect their plan contributions from employers who may misuse the money.

* The "Pension Payback Program", a voluntary compliance enforcement program, was implemented in March, allowing eligible employers who agree to restore all delinquent contributions plus lost earnings to their plan within six months to avoid certain civil and criminal sanctions.

Proposed Legislation - The ERISA Enforcement Improvement Act

The ERISA Enforcement Improvement Act would significantly enhance the security of money in pension plans by reforming ERISA's audit requirements. For example, under current law, pension plans with over 100 participants are required to have an annual audit and are required to attach the accountant's opinion when filing their annual report. Current law, however, does not require timely reporting of serious irregularities that the accountant may find. This bill would require both plan administrators and accountants auditing plans of any size, who discover fraud or other egregious ERISA violations, to report them to the Department immediately. Plan administrators who fail to comply with this requirement may be subject to fines of up to $100,000. Plan accountants, who in many respects are the first line of defense against fraud, will be subject to sanctions if they fail to report such offenses.

401(k) Pension Protection
ERISA Enforcement Improvement Act

What are 401(k) Plans:

401(k) plans are individual retirement plans that take their name from the section of the tax code which authorized them in 1978. The plans permit an individual to deduct a portion of his or her pre-tax income every year, invest it, and pay no taxes on the money until it is withdrawn at retirement. Most often the employee's contribution to the plan is matched by the employer. Frequently the employee has an opportunity to direct the investment of the plan assets.

During the past decade, there has been an explosion in the number of 401(k) plans. Nationwide there are 140,000 401(k) plans, covering 22 million people, with combined assets totaling $522 billion.

The Problem:

401(k) plans may be the best savings vehicle that many employees have -- and the 401(k) system is generally sound. The vast majority of plans are administered honestly, responsibly and safely. But investigators have found that some employers are using or "borrowing" their employee contributions. The law requires employers who withhold employee contributions to turn the money over to the investment plan as soon as possible, yet some employers have held on to this money too long, treating the funds as an interest-free loan. While the funds are in the control of the employer, the money can be stolen or used for some other inappropriate purpose. It is hard to estimate the size of this problem; in comparison to the overall universe it may be quite small. Even if the percentage of plans with problems is small, those problems have a devastating effect on the plan participants. Individuals who believe that they have saved for a comfortable retirement find themselves empty-handed.

Actions Taken:

Early 1995, after Labor Department investigators began noticing an increase in the number of complaints about 401(k) plans, an enforcement project was launched to protect employees' 401(k) contributions.

<u>Enforcement Results</u>

To date, the continuing nationwide enforcement effort has uncovered the misuse of millions of dollars of employee contributions. 657 investigations have been opened to date. Over $7 million has already been returned to workers -- $5.9 million in employee contributions and $1.4 in employer contributions; 457 investigations remain open, and more complaints are being received.

Since the beginning of the project, there have been 35 criminal cases opened -- 32 are still pending. Four cases have resulted in guilty pleas and there has been restitution paid totalling $99,804 in employee contributions. One of the most recent cases in which prosecution was initiated is **U.S. v. Brown.** On February 27, Thomas Brown (Flint, Michigan), owner of the Winom Tool and Die Company, was sentenced to 5 years probation and was ordered to make restitution of $199,422 which included $33,229 of diverted employee contributions. He pled guilty in November to falsifying information about his company's 401(k). To date he has paid $76,066 to the plan. The sentencing order also requires him to pay $12,000 quarterly until restitution is paid in full.

Regulatory

Investigators discovered that some employers had misinterpreted the current rule -- which requires employers to transmit the money withheld from employees' paychecks to their plans as soon as reasonably possible, but in no event longer than 90 days -- as allowing them to hold the funds for 90 days even when they could transmit the funds to the plan in a shorter period of time. To correct this problem the Labor Department published revised rules which, when adopted, will significantly reduce the 90-day maximum holding period. The rule, which should be final in two months, should reduce the temptation for employers to misuse the plan funds.

Public Education

Labor Secretary Robert Reich concurrently launched a consumer awareness campaign that included the publication of the top 10 warning signs that workers should use when monitoring their 401(k) plans. This public education campaign is intended to educate workers as a means to protect their plan contributions from employers who may misuse the money.

Voluntary Payback Program

The "Pension Payback Program", a voluntary compliance enforcement program was implemented in March. This program allows employers who agree to restore all delinquent contributions plus lost earnings to their plan within six months to avoid civil and criminal sanctions, including civil injunctions, incarceration or criminal fines, excise taxes, and civil money penalties. Everyone participating in the program must certify, under penalty of perjury, that to the best of their knowledge, they are in compliance with the terms and conditions of the program. Those engaged in the most egregious conduct will not be able to take advantage of the program.

Proposed Legislation - The ERISA Enforcement Improvement Act

The Administration is proposing the ERISA Enforcement Improvement Act which, if enacted, will significantly enhance the security of money in pension plans. Under current law, pension plans with over 100 participants are required to have an annual audit and are required to attach the accountant's opinion when filing their annual report. Current law, however, does not require timely reporting of serious irregularities that the accountant may find. This bill would require both plan administrators and accountants auditing plans of any size, who discover fraud or other egregious ERISA violations, to report them to the Department immediately. Plan administrators who fail to comply with this requirement may be subject to fines of up to $100,000. Plan accountants, who in many respects are the first line of defense against fraud, will be subject to sanctions if they fail to report such offenses.

Additionally, auditors may now exclude plan assets that are held by regulated institutions, such as banks or insurance companies, from the annual audit. The result of this provision is that almost half of the money held in pension plans (more than $950 billion in plan assets out of approximately $2 trillion subject to the audit requirement) are not subject to inquiry by the plan audit. Under the bill assets in regulated institutions will no longer be excluded from annual audits. (See attached description of the Act)

Examples of Cases & Affected Participants

Greystone Technology 401(k) Plan (San Diego, CA)

The Los Angeles Regional Office opened this case in October 1995 days after it was contacted by a participant in the 401(k) plan. This complainant, a former Greystone employee, learned that her contributions to the plan had not been forwarded for several months. When she terminated, she was told that all outstanding financial issues would be resolved in one week. When the matters were not resolved, she contacted the LARO, which opened a case and recovered a total of $95,988 in employee contributions and interest on behalf of 41 participants.

The participant complainant is Janet Carno. She was contacted by the LARO on March 26, and is willing to speak further. Work number: (619) 931-1771, home: (619) 436-0551.

Data-Mate Inc. 401(k) Plan (Nashua, NH)

This case, investigated by the Boston Regional Office, produced a $155,214 recovery. A participant had complained directly to the Boston Regional Office about possible 401(k) abuse. The plan has 47 participants, and $180,630 in assets. The sponsor was scheduled to discontinue operations, and later did so. The delinquency was paid soon after the initial contact by the Regional Office--the total case time was two days. The case was opened in March 1995, and closed in October 1995.

The Boston Regional Office is retrieving the file from archives tomorrow and will search for names of possible complainant/victims.

D'Elia Pontiac Inc., Profit Sharing Plan (Greenwich, CT)

This plan, which has a 401(k) feature, had 40 participants--one of whom complained to the New York Regional Office. The New York Regional Office investigation disclosed that the trustee John D'Elia had diverted over $54,000 in employer and employee contributions from the plan. The NY RSOL obtained a Consent Judgement against Mr. D'Elia, who filed for bankruptcy protection and did not file a proof of claim on behalf of the Plan. The Consent Judgment requires that Mr. D'Elia provide restitution to participants. The NYRO has been receiving restitution payments and forwarding them to the third party administrator (TPA) firm. A total of $32,000 has been recovered to date. The NYRO has also contacted the TPA and the IRS in an attempt to facilitate termination of this Plan and distribution of its assets.

ECP National Coordinator has spoken on several occasions to Shirley Tyminski (husband is participant) at 203-622-1282, and Mr. and Mrs. Frank Collins (914) 227-5431, who have expressed strong interest in the case and have sympathetic stories.

Lunn Industries, Inc. 401(k) Plan (Glen Cove, NY)

This case was opened based on a participant complaint. The NYRO case disclosed that a total of $79,000 in employer and employee contributions had not been remitted to the TPA. To date, the NYRO has recovered $60,198, and is pursuing the balance. The Plan has 129 participants and $1.6 million in assets.

A participant to contact is Rick Batallaf at (516) 883-8000 x. 751 (work).

A SUMMARY OF THE PROVISIONS OF ERISA ENFORCEMENT IMPROVEMENT ACT OF 1995

ERISA's audit requirement was designed to protect employee benefit plan assets and assist the Labor Department's enforcement activities by ensuring the integrity of information disclosed on the annual report filed with the government. The experience of federal law enforcement agencies, however, has been that ERISA audits do not consistently meet professional standards. Enactment of this bill will give workers, plan administrators and law enforcement officials more assurance that the financial statements of ERISA plans are fully exposed to the "sunlight" of an audit.

Faster reporting of egregious violations: ERISA's current reporting rules create a time lag between the detection of a reportable event and the filing of the annual report. The bill would place faster reporting duties on auditors who discover serious violations or who are terminated from an engagement. The new reporting rules apply only to the most egregious violations like theft, embezzlement, bribery or kickbacks. Failure to comply with the new requirements may result in civil penalties of up to $100,000.

Eliminates the limited-scope audit: ERISA requires that plan administrators engage an independent qualified public accountant to conduct an annual audit. But ERISA permits the auditor to exclude assets held in certain regulated financial institutions. Because of this exclusion, auditors cannot render an opinion on the plan's financial statements in accordance with professional auditing standards. This fails to provide assurance that plan assets are secure. The bill eliminates the limited-scope audit exclusion.

Better trained auditors: Twenty-two years after the enactment of ERISA, the Department continues to detect substandard auditing work as part of its reporting-compliance reviews. The bill creates a peer review and continuing professional education requirement for ERISA plan auditors. The bill also gives the Secretary of Labor regulatory authority to insure the quality of plan audits.

Clarifies the anti-alienation rule: ERISA's anti-alienation provision protects pensions from third party creditors. This provision was not intended to protect fiduciaries who breach ERISA and cause a loss to the plan. The bill clarifies that ERISA does not prohibit a plan from offsetting a fiduciary's, or criminal wrongdoer's, benefits when he or she causes a loss to the plan.

Makes discretionary the penalty for breach of fiduciary duty: The bill amends ERISA to provide the Department with discretion to reduce a 20% penalty that otherwise applies to amounts recovered after breaches of fiduciary duty. Without this change, parties have a disincentive to voluntarily settle with the Department because current law automatically triggers the penalty.

Legislative History of the ERISA Enforcement Improvement Bill

- In the last Congress, Rep. Mink (D-HI) and Sen. Simon (D-IL) both sponsored the "ERISA Audit Improvement Act of 1994" (H.R.5226 and S. 2547, respectively; CR S14856). That legislation would have eliminated the limited scope audit, required peer review for Independent Qualified Public Accountants (IQPAs), and contained special reporting provisions. Rep. Mink remains interested in this legislation, which was based on the 1994 Labor Department draft bill.

- Nearly identical legislation, S. 2708, was introduced by Sen. Hatch (R-UT) by request of the Bush Administration on May 13, 1992.

- Sen. Kassebaum introduced a narrower audit bill (S. 269) on January 24, 1991, to repeal the limited scope audit exemption. That bill had six co-sponsors: Sen. Hatfield (R-OR); Sen. Hatch (R-UT); Sen. Garn (R-UT); Sen. Durenberger (R-MN); Sen. Bumpers (D-AR); and Sen. Bryan (D-NV).

- H.R. 4700, the companion bill to S. 269, was introduced by Rep. Hughes (D-NJ) on March 30, 1992. The bill had two co-sponsors: Rep. Boehlert (R-NY) and Rep. Roybal (D-CA).

Current Status

- On July 6, 1995, Secretary Reich transmitted the ERISA Enforcement Improvement Act to the Congress.

- On December 7, 1995, President Clinton wrote to Majority Leader Bob Dole urging swift action on the bill.

- On December 20, 1995, Sen. Simon (D-IL) introduced the Pension Audit Improvement Act, S. 1490. S. 1490 contains provisions identical to those that were contained in the Administration's bill. Sen. Jeffords (R-VT), Boxer (D-CA), and Leahy (D-VT) were original co-sponsors. The bill was referred to the Senate Labor and Human Resources Committee. We have been advised by Senate Labor staff that Chairman Kassebaum (R-KS) intends to examine this legislation as part of pension hearings expected to take place in late April or May.

- The Labor Department is working towards the introduction of this bill in the House. Rep. Mink (D-HI) remains interested in the bill. Other House Members who have expressed an interest in this bill include Rep. Pomeroy (D-ND), Durbin (D-IL), and De Lauro (D-CT). The Department's most recent efforts on this bill have been focused on obtaining a GOP Member of the Economic and Educational Opportunities Committee that will co-sponsor the bill with Rep. Mink.

- Staff of the House Economic and Educational Opportunities Subcommittee on Employer-Employee Relations have advised the Department that Chairman Fawell (R-IL) intends to examine this bill as part of a pension hearing expected to take place this spring.

TARGET LIST OF MAGAZINES & JOURNALS

Money Magazine
Nancy Perry

Inc. Magazine
Robyn Gangemi

Institutional Investor Magazine
Fran Hawthorne

Smart Money Magazine
Laura Holson

Business Week
Christina DelValle

Newsweek
Jane Bryant Quinn

Forbes Magazine
Bob Lindsor

Fortune Magazine
Terence P. Pare'

Time Magazine
John Dickerson

HR Magazine
Sue Montgomery

Entreprenurial Magazine
Mark Hendrick

CFO Magazine
Julia Homer

Financial World Magazine
Stephen Taub/Ronald Fink

Plan Sponsor Magazine
Robert England

Kiplinger Magazine
Melynda Wilcox

Media Contacts

Associated Press
John McClain

Reuters
Peter Szekely

Money Magazine
Nancy Perry

Washington Post
Steve Pearlstein/Clay Chandler

Wall Street Journal
Ellen Schultz/Vanessa O'Connell

USA Today
Ann Willette

New York Times
David Cay Johnson

Los Angeles Times
Bob Rosenblatt/Kathy Kristoff

U. S. News & World Report
Bruce Auster

BNA Pension & Benefits Reporter
Ursula Himali

Pensions & Investments
Patty Limbacher

Commerce Clearing House
David Hamilton/Brendan Frost

CNN
Brooks Jackson/Lou Dobbs

ABC
Sheila Kast/Lisa Stark

NBC
Janet Janghelian

CBS
Ray Brady

Nightly Business Report
Darren Gersh

ABC Radio
Herb Kaplow

AP Radio
Kate McKenna/Alan Schaertel

NPR Radio
Les Cook

Interested Organizations

Organization	Contact	Telephone	Comment
AFL-CIO	Denise Mitchell	(202)637-5340	+
American Ass'n of Retired Persons	David Certner	(202)434-3760	+
Pension Rights Center	Karen Ferguson	(202)296-3776	+
American Institute of Certified Public Accountants	Lynn Drake/Barry Melancon (Pres.)	(202)434-9214	+
American Council of Life Insurance	Ken Vest/Dan Mica	(202)624-2416	+
Ass'n of Private Pension and Welfare Plans	Jim Klein	(202)289-6700	-
Nat'l Fed'n of Independent Business	Jackson Faris (Pres.)	(202)554-9000	-
ERISA Industry Comm'ee	Mark Ugoretz	(202)789-1400	-
Nat'l Ass'n of Manufacturers	Jerry Jasinowski	(202)637-3106	-
Financial Executives Institute	Jim Kaitz	(202)659-3700	-
Profit Sharing/401(k) Council of America	David Wray	(312)441-8555	-

401(k) Project

and

Audit Legislation

PERSONAL FINANCE

KATHY M. KRISTOF

Spotting the Warning Signs of Employer 401(k) Abuse

Fraud involving 401(k) retirement savings programs is a growing problem, but employees can take several basic steps to protect their funds and minimize their risk, experts say.

The Labor Department announced this week that a six-month investigation found that some financially troubled small- and mid-size companies have violated 401(k) plan rules—and federal pension laws—by delaying transmission of money to plan administrators, instead using the funds to pay other corporate expenses, and that some stole employee money outright.

"In the early part of the year, we noticed an increase of complaints coming from all regions of the country," Labor Secretary Robert B. Reich said Wednesday. "What we are seeing now ranges from carelessness to outright fraud. Some companies are using these funds like checking accounts."

Government officials acknowledge that labor investigators cannot look at every plan and that there is no way to protect workers unless they take steps to protect themselves.

There are now 140,000 or so 401(k) plans operating in the United States, with $650 billion in assets, making them one of the most popular and fastest-growing retirement savings vehicles around.

With a 401(k) plan, workers save and invest their own money for retirement through automatic savings programs set up at work. When the plans are operated correctly, employees decide how much to contribute and the employer then withholds the amount from a worker's paycheck and sends it on to a plan administrator, who then invests the contribution, usually in a mutual fund or insurance contract.

As of Oct. 6, the Labor Department had launched more than 300 investigations of suspected 401(k) plan abuses. About 100 of the probes have been closed, resulting in payments of $2.6 million to plan participants. (There are no figures available on how much employee money has been lost.) Officials say they began to see the problem during the late-1993 recession but that it has become worse even as the economy has improved.

"The violations are fairly easy to substantiate," said David Ganz, regional director of pension and welfare benefits administration at the Labor Department office in Los Angeles. "The thing that is hard is finding the money."

In many cases, diverted 401(k) money was simply spent to pay company suppliers, to meet the payroll or to handle some other daily expenditure. Once a company dips into worker retirement funds to make such payments, the company's financial woes tend to snowball, Ganz added. The company's chances for long-term survival erode every month the practice continues. The chances for workers to recover their money diminish too.

"That's why it is particularly important for participants to be alert," Ganz says. "Once there is a large diversion, it is hard to find enough money to pay participants. But if we get in early—within the first three months—you have a much better chance."

The Labor Department will hold a news conference Tuesday to publicize warning signs that should help workers spot problems with their 401(k) plans.

"I don't want to unduly alarm employees who are relying on 401(k) plans for retirement," Reich said, pointing out that the Labor Department has not spotted any problems with large companies diverting worker funds and that the vast majority of small firms handle their worker retirement programs properly. Still, Reich said he fears that the problems the department has encountered so far could mean there are many, many more.

"Industry experts tell me that the problems may be far greater," he said. "Employees should take some reasonable precautions."

What are the warning signs?

• **Severe financial distress:** The vast majority of problems have been detected at small to mid-size companies that were experiencing some degree of financial woe, labor officials say. If the company is publicly owned and issues financial statements, these woes are easy to spot. They are spelled out in annual reports to shareholders and in auditors' opinions.

However, many of the small companies that have had pension problems are private and don't issue such reports. In these cases, look for more subtle signals. Are payroll or expense checks frequently late? Have checks bounced? Are suppliers complaining about past-due bills? Have equipment orders been canceled without explanation? Do former workers complain that the company is slow to send severance or retirement checks?

• **Mismatches:** Monitor your accounts, adding up your contributions and, when applicable, company contributions during each 401(k) plan reporting period. If there is a mismatch—particularly when the plan administrator reports that the contributions have been less than you expect—call the company or the plan administrator to find out why, labor officials suggest.

Federal labor laws say that companies must forward worker contributions to 401(k) plan administrators promptly, but companies are not technically in violation of the law unless contributions are more than 90 days late, Reich said. So some mismatches can be the result of a delay that's not a legal violation. Nevertheless, if the company consistently holds on to worker payments until the last possible moment, consider it a warning sign.

• **Delays:** If former workers tell you they're having trouble getting the company to remit pension payments when they are due, consider that a serious red flag. In addition, pay attention to when periodic 401(k) statements are sent out. If these statements are late—or come at inconsistent intervals—check further to see if the company is making payments in a timely fashion.

If you suspect there are problems with your plan, call the plan administrator and ask about your account. Are the payments being made? Does the amount of each payment correspond with the amount that's deducted from your check, plus any promised employer matching contributions? If not, call a local Labor Department office immediately. These offices are listed in the government section of the white pages of the phone book.

Today's debate: PROTECTING 401(k) PLANS

Dreams die when bosses plunder pension plans

OUR VIEW The 401(k) honeypot is just too tempting to some employers. Workers need more protection.

If you're among the 20 million Americans with a 401(k) plan, here's something to keep you awake at night.

Three hundred workers in 28 states for Job Shop Technical Services Inc. of Farmingdale, N.Y., dutifully contributed to their 401(k) plans for years. But now their savings cupboard is bare. Their employer stands accused of siphoning $2.7 million of their contributions for his own use. Whether they'll get their money back is uncertain.

What happened to them is no isolated case. The Labor Department last month disclosed 400 investigations of employers, both large and small, for misappropriating workers' 401(k) contributions.

It's the same kind of abuse that led to pension insurance and other reforms in the 1960s. Then, many large employers drained funds out of their traditional defined-benefit plans, treating their contributions to such funds as a bank account to be drawn down at will. In doing so, they left thousands of retirees with nothing when the companies went bankrupt.

For workers, the abuse of 401(k)s may be worse. Not only is there no insurance for 401(k) plans, but it's the employees' own money the employer is taking. That is nothing less than outright theft.

Most of the theft is preventable. All that's needed is a little extra vigilance by employees, a little tightening of federal rules and a little more help from plan administrators and accountants to keep employers honest.

The Labor Department is promoting employee vigilance with an education campaign. It has produced a list of warning signs 401(k) participants can spot and has made 401(k) complaints a top priority of the department's 15 regional offices.

The agency also is rewriting regulations to make clear to employers that they must make deposits into the accounts as soon as feasible, not simply within 90 days as many now wrongly assume. That will help remove a temptation to misuse funds.

But the agency needs help from Congress to secure timely information from the accountants and administrators who audit and oversee 401(k) plans. That help is vital, considering the number of plans has skyrocketed to 140,000 from 17,000 in 1984.

Court decisions have severely limited the overseers' liability, even in cases of collusion. And audits, required for plans with more than 100 employees, aren't submitted for more than seven months.

That delay cost the employees of Job Shop Technical Services at least $800,000.

Congress should require accountants and administrators to report irregularities when they find them and punish any who knowingly fail to report criminal acts.

Those who contribute to retirement accounts shouldn't have to lose sleep worrying whether the money will be there when they need it.

Where to get help

If you can't resolve concerns about your employer's handling of your 401(k) funds, call Pension and Welfare Benefits regional offices:

Atlanta	404-347-4090
Boston	617-424-4950
Cincinnati	606-578-4680
Kansas City	816-426-5131
Dallas	214-767-6831
Philadelphia	215-596-1134
San Francisco	415-975-4600
New York	212-399-5191
Los Angeles	818-583-7862
Chicago	312-353-0900

PWBAnews

Division of Public Affairs

Publication: Miami Herald (Editorial)

Date: 30 November 95

Rocky road to security

THEFT AND THE 401(K)

It's too easy to steal from these savings. Congress must order quicker transfers and raise penalties for violators.

Urged to save and to take personal responsibility for their retirement rather than rely on Social Security or government largess, Americans are trying — within their means. Some 18.5 million have, with their employers, established 401(k) investment savings accounts to augment their pensions. They earmark a portion of their pretax income, some proportion of which may be matched by employers, to be invested or saved. Collectively, 401(k) assets total about $500 billion.

Still, there's a boulder blocking this road to economic security: It's theft.

The relatively unprotected 401(k) funds are too easy pickings for financially stressed employers. They may delay or stop making transfers to investment agents and divert the money collected to pay their company's bills. Unless business quickly picks up, the "loan" becomes embezzlement. The employee takes the loss.

Unlike pension funds, investment accounts are unprotected by federal insurance or a guarantee program. Moreover, Congress has yet to recognize diversion as a serious problem. While federal law requires that 401(k) funds be "segregated" from general assets and transferred as soon as practical, employers have a 90-day window and face fines of only $25 a day.

Contrast that with the Internal Revenue Service's deposit schedules on Social Security withholdings. The larger the amount at stake, the faster employers must remit or face penalties of 2 to 15 percent of what is owed.

Labor Secretary Robert Reich reports that some 300 of the 416 complaints of job-benefit thefts currently under investigation involve 401(k) investments. That's not a large number, but it reflects a worrisome trend. Nor is it surprising, given that 401(k) funds are so poorly protected. As one victim, who lost $11,000, lamented to The New York Times, "The government makes it easy to steal your money."

Congress must correct that. It must set more realistic fines and, in this day of electronic banking, require immediate transfers of 401(k) funds to investment managers.

Mr. Reich says that Labor now has trained 50 investigators to pursue criminal cases. That's a welcome deterrent, but it won't return victims' savings. Better to prevent theft, to put 401(k) funds out of easy reach of employers, be they hard-pressed — or simply thieving. To do that takes an act of Congress — and the sooner it's done, the better.

■ If you can't resolve with your employer your concerns about the handling of your 401(k) funds, call the Miami district office of the Pension and Welfare Benefits Administration at (305) 651-6464, weekdays 8:15 a.m. to 4:45 p.m. The office is at 111 NW 183rd St., Suite 504, in North Miami.

PWBA news Division of Public Affairs

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Company 401(k)s ripe for picking

JANE BRYANT QUINN

The fastest-growing retirement-savings plans in America are company-sponsored 401(k)s. In just 14 years of existence, they've amassed $525 billion for 18.5 million employees.

Yet there's no guarantee that your money is safe. 401(k)s run pretty much on the honor system. Companies in financial trouble can easily "borrow" some of your funds. By the time you find out, your money may not be recoverable.

That's exactly what happened to die maker Brian Edwards of Flint, Mich. He had around $15,000 in his account at Winom Tool & Die. But, facing business problems, Winom's owner, Thomas Brown, started using his workers' 401(k) funds.

The company went broke, owing its 401(k) more than $192,000.

A 401(k) is set up by a corporation for its employees. Your contribution is tax-deferred until you take the money out; ditto the earnings on your funds. Around 80 percent of employers add to the money you put in, reports Access Research in Windsor, Conn., most often giving you 50 cents for every dollar you invest.

Size of problem unknown

There are three ways the employer can get this money: (1) Deduct money from your paycheck and not deposit it in the plan. (2) Take an illegal loan from the plan. (3) Illegally invest plan assets for the employer's benefit.

At this point, the size of the 401(k) fraud problem isn't known. Last week, the Department of Labor's Pension and Welfare Benefits Administration (PWBA) disclosed an anti-fraud campaign that has so far recovered $3.5 million that was taken illegally from employee plans. Five prosecutions are under way; 310 investigations remain open. None are big companies. The problems so far have been found at mid-size and small firms.

As a check on whether the money is there, the government imposes some modest auditing and reporting requirements. For example, you're supposed to receive an annual summary of your plan's financial condition.

But what you really need are the details of the gains and losses in your account. But your company doesn't have to disclose that unless you ask.

Good companies automatically provide reports. The bad guys typically don't report, making some excuse that they hope the employees will believe.

Clearly, more regulation is needed — but exactly how much? Secretary of Labor Robert Reich says that oversight should be light, so as not to "discourage small businesses from setting up these plans because of abuses by a few." Here are the reforms on Reich's mind, ranked according to their chance of taking effect:

Require faster deposit

- Stop firms from using your money as a 90-day checking account: Your 401(k) contributions are supposed to hit your account on the "earliest reasonable" date or, at most, within 90 days. Some firms routinely wait 90 days, reasonable or not.
- Require faster information from audits: Believe it or not, if an auditor checks your 401(k) plan and notes a possible fraud, it might take a year to hit the PWBA's computer screens. Reich has proposed legislation to require prompter reporting. But he's leaving one big loophole open: Companies with fewer than 100 workers don't have to audit the plans at all.
- Install independent trustees: Trustees certify that the money in your 401(k) is being handled properly. But employers can name themselves trustee — which won't help much if they're the ones diverting funds.
- Require more frequent employee reports: A year is too long to wait to see if the money withdrawn from your paycheck really was deposited in your 401(k).

Jane Bryant Quinn is an author and syndicated personal finance columnist. Her column appears on Saturdays. *Readers with questions may write in care of Washington Post Writers Group, 1150 15th St. NW, Washington, D.C. 20071-9200.*

RETIREMENT

Savings at Risk

Without the right information, you can't do much to protect your own 401(k) funds. But can Congress give you the help you need? Yes. Here's how.

BY JANE BRYANT QUINN

EIGHT YEARS AGO, AT 28, DYEMAKER Brian Edwards began to attend to his future. His employer, Winom Tool & Die in Flint, Mich., offered a 401(k) retirement plan, and Edwards signed up. When he left for another job, he figured he had about $15,000.

He figured wrong. Thomas Brown, who owned Winom Tool & Die, deducted the money from plan members' paychecks but didn't reserve it for their accounts. The company went broke, owing its 401(k) more than $192,000. Brown pleaded guilty to a criminal charge of lying about the plan's condition and will be sentenced in February. Cold comfort for Edwards and his fellow employees. "I trusted everybody," he says, "but you have to forget about trust."

Copy that sentence and tack it to your office door. Most 401(k)s are safe, but only because the companies that run them voluntarily follow the rules. For your so-called protection, the government imposes some modest auditing and reporting requirements. At bottom, however, it's little more than an honor system that works for most savers at the expense of a defrauded few. A big company in financial trouble could "borrow" your 401(k) funds just as readily as Winom Tool & Die did.

At this point the size of the 401(k) fraud problem isn't known. Secretary of Labor Robert Reich says that twice the number of 401(k) complaints from the public turn out to be true compared with complaints about other problems in the workplace. Last week the Labor Department's Pension and Welfare Benefits Administration (PWBA) disclosed an anti-fraud campaign that has so far recovered $3.5 million for employee plans. Five prosecutions are underway; 310 investigations remain open. But some of the money is gone for good. More discussion is needed about securing 401(k)s—now the nation's fastest-growing pot of retirement savings.

Big money: A 401(k) is set up by a corporation for its employees. Your contribution is tax-deferred until you take the money out; ditto the earnings on your funds. About 80 percent of employers add to the money you put in, reports Access Research in Windsor, Conn., most often giving you 50 cents for every dollar you invest. In just 14 years of existence, 401(k)s have amassed $525 billion for 18.5 million employees.

As a check on whether the money is there, the law requires only that you receive a summary of your plan's annual report. To us amateurs, that generally means zip. What you need, instead, are the details of the gains and losses in your account, which your employer needn't disclose unless you ask—in writing and only once a year. Good companies, however, usually contract with outside providers to send reports automatically, sometimes as often as once a month.

The bad guys provide no reports at all, and that's often where the trouble starts. By the time the workers get worried enough to send up flares, their retirement money may be gone. Or it may be poorly invested, in real estate or other inappropriate assets.

Clearly, more regulation is needed—but exactly how much? Reich says that the government doesn't want to "discourage small businesses from setting up these plans because of abuses by a few." Cost-benefit judgments have to be made. How many Brian Edwards families can be thrown to the wolves so that luckier folks can have plans of their own? Here are the reforms on Reich's mind, ranked according to their chances of taking effect:

■ *Stop firms from using your money as a 90-day checking account.* Your 401(k) contributions are supposed to hit your account on the "earliest reasonable" date or, at most, within 90 days. Some firms routinely wait 90 days, reasonable or not. That not only deprives you of earnings. In troubled firms, you're also at risk that the company will fail with your money in its pocket. Reich plans to shorten the period dramatically. (It's not clear if he'll change employer contributions, which often are paid only once a year.)

■ *Require faster information from audits.* Believe it or not, if an auditor checks your 401(k) plan and notes a possible fraud, it might take a year to hit the PWBA's computer screens. Reich has proposed legislation to require prompter reporting. But Congress has weightier things on its mind (like cutting the fraud-enforcement budget). Incidentally, if you work for a company with fewer than 100 workers, its 401(k) plan doesn't have to be audited at all.

■ *Install independent trustees.* Trustees certify that the money in your 401(k) is being handled properly. But employers can name themselves as trustees—which won't help much if they're the ones diverting funds. The Labor Department's independent advisory council suggested this year that 401(k)s have outside trustees.

■ *Require more frequent employee reports.* A year is too long to wait to see if your money has arrived, and many employers agree. Some 74 percent of 401(k) plans offer quarterly reports. A small but growing percentage give you daily access, by phone.

The government is publicizing ways you can watch the plans yourself. Among them: check your pay stubs, to see if the sum deducted from your check actually made it into the plan; go on red alert if contributions don't arrive within 90 days; screech if your 401(k) reports are late.

But let's get real. Most reports don't show when money went into the plan. As for screeching, it might cost you your job—

especially in smaller firms. It's unreasonable to expect the workers to boss the boss.

Watchdogs needed: But watchdogs are on hand, if Congress would only deputize them. A 401(k) plan often employs an outside trustee, a recordkeeper or an investment manager—any of whom will know when an expected contribution doesn't come. But as things now stand, no one has to tell you or, for that matter, the PWBA. This professional *omertà* multiplies your loss. Had you known the truth, you'd at least have stopped putting new money in.

At International Technical Services (ITS; now defunct, but formerly in Melville, N.Y.), suspicious employees sought information for months after their 401(k) reports stopped. The boss wore the trustee's hat. So they called the plan's recordkeeper and its investment manager, to find out if their money was safe.

As is typical, they learned nothing at all. The investment manager, Equitable Life Assurance Society, first said the plan was OK but later clammed up, says Leonard Cummings Jr., formerly an ITS contract engineer. Equitable's James Lacey says that, as a matter of policy, the company doesn't respond to employees' questions about their individual accounts. ITS's rooked plan members are suing everyone in sight, for losses of $3 million or more. Cummings himself says he's out $10,000 to $15,000.

On the "who, me?" principle of civic responsibility, most firms that service 401(k)s want nothing to do with the job of unmasking crooked plans. Except the "father" of 401(k)s, Ted Benna of the 401(k) Association in Langhorne, Pa. His contract with clients says he'll squeal to the PWBA if money doesn't arrive on time. To get around secretive bosses, employees should get reports that are mailed to them at home, says Robert Liberto, vice president of the New York actuarial consulting firm the Segal Co.

Most of all, plans need outside trustees whose duty it is to shout aloud. By all means complain to the PWBA about missing 401(k) reports (call 202-219-8776). But if business and government expect us to finance retirement ourselves, they have the duty to make the system more secure.

WITH TEMMA EHRENFELD and MARTHA BRANT

Safety in Numbers?

401(k)s are growing faster than any other retirement plan, and they're riskier than traditional pensions. Future retirees, particularly those in smaller* companies' plans, are in danger of having their pockets picked.

Total plans	242,000
In smaller companies	233,700
Total participants	18.5 million
In smaller companies	5.47 million
Total assets	$525 billion
In smaller companies	$132 billion
All plans	
Average account balance	$27,000

*WITH FEWER THAN 500 EMPLOYEES
SOURCE: ACCESS RESEARCH, INC.

Finance

Foot-dragging firms take bite out of 401(k)

Linda Stern WT

In the six months between January and July last year, the average stock mutual fund earned 22.53 percent, according to Lipper Analytical Services.

But not John Drexler's retirement portfolio. Mr. Drexler thought he was harvesting the stock market's gains, but instead he was earning a mere 2 percent on money his employer had parked in a money-market fund.

Mr. Drexler (not his real name) estimates he missed out on $600 in earnings while his large Northeastern employer ruminated about where to put the money.

He's not a happy camper, and complaints like his have the Labor Department breathing down the throats of slow-investing employers. A proposal from the department would have companies racing to invest employee retirement contributions within a few days of payday.

What's the problem? There are a few.

The most serious are the usually small employers that "borrow" their workers' 401(k) retirement assets to fill cash-flow needs and fail to invest the funds for the worker in a timely manner or, in some cases, at all.

Ted Benna, president of the 401(k) Association, reports that he has received about a dozen calls from workers whose small companies went out of business without ever depositing their retirement contributions.

The Labor Department is investigating more than 600 complaints of companies not depositing the money in time and takes them seriously enough that it has instituted an amnesty program for employers delinquent in deposits.

Until Sept. 7, companies that have played fast and loose with their employees' retirement funds can pay up and avoid criminal and civil penalties.

The program is not available to employers under investigation or more than a year in arrears.

There are other reasons why retirement investments are not made in time.

The current Labor Department rules, which require companies to deposit the money as quickly as possible but no later than 90 days, have been interpreted too often by too many companies to mean 90 days, says Rich Koski of Buck Consultants.

Some employers habitually wait as long as possible to float their cash flow. Then there are the companies, like Mr. Drexler's, that tie the money up even longer while they switch 401(k) providers.

This is happening with increasing frequency as the benefits field gets more crowded and brokers and mutual fund firms vie for the 401(k) business.

Mr. Drexler's chief complaint is not that his employer switched carriers, but that it didn't tell anyone until many months after the event and dragged its feet during the process.

What can employees do about this?

At least find out the truth about where your money is. Don't approach your employer as if you don't trust him or her, Mr. Koski says; the overwhelming majority are honest and trying to do the right thing in a confusing market.

Instead, make your employer aware that the 401(k) market has gotten much more competitive and that some providers would be happy to provide quarterly statements or even daily valuations directly to you, without putting any added burden on your benefits department.

If you work for a very small company and have serious concerns about your employer's integrity and organizational skills, you can do an end run without seeming suspicious.

Tell your employer that you are doing personal financial planning and that your adviser needs a statement from your 401(k) plan to help you plot other investments. Ask your employer to put you in touch with the company administering the plan.

If your employer refuses to provide timely information about where your funds are, contact the Labor Department while investigators there are on the warpath.

• Linda Stern answers questions only through her column. Write to her at Reuters, Suite 410, 1333 H St. NW, Washington, D.C. 20005 or send e-mail to 72160.1546@compuserve.com.

REUTERS NEWS AGENCY

WALL STREET JOURNAL

Semiannual Report
Office of Inspector General
U.S. Department of Labor

U.S. Department of Labor
Office of Inspector General

April 1 - September 30, 1990

Office of Inspector General

CONTINUING CONCERNS OF THE INSPECTOR GENERAL

Several serious concerns of the Office of Inspector General (OIG) that can have a substantial impact on the effectiveness of Department of Labor programs and operations remain in the category of "unfinished business."

Improving Criminal Enforcement Actions

The OIG testified on several occasions before the Congress about the need for criminal sanctions against perpetrators of egregious white-collar crime involving laws protecting American workers. In response to the OIG's continuing criticism and a series of some eight hearings during the last 13 months, as well as considerable press and media attention, the Department formed a task force to study the problem and make recommendations to the Secretary.

While the Task Force's September 1990 report made several recommendations emphasizing voluntary compliance and information sharing, which may improve the general enforcement program, in our opinion, the report failed to address effectively the central issue of criminal enforcement. The report ignores the problem of clarifying Department of Justice's Office of Legal Counsel's March 1989 opinion which severely limits the OIG's investigative ability and limits the Secretary's ability to delegate authority for investigations. In addition, it does not acknowledge the OIG's responsibility to coordinate investigations as specified in the Inspector General Act. The OIG will be closely reviewing and monitoring the Department's efforts and progress in this area.

Fraudulent Health Insurance Schemes

The OIG also testified during this period about the problem of fraudulent multiple employer welfare arrangements or MEWAs. These schemes continue to result in tragic consequences by holding thousands of employers and their workers personally liable for unpaid medical bills even though they believed there was health coverage.

The OIG will continue to conduct Federal criminal investigations and assist the States in addressing the MEWA problem. A continued Federal role is necessary because the multi-State operation of most of these fraudulent MEWAs severly hampers the ability of individual States to reach the culpable individuals.

In an attempt to deal with this problem, PWBA has proposed a registration scheme for MEWAs in legislation which was introduced in the closing days of the 101st Congress. We will watch closely to see the extent to which this proposal will effectively help address the MEWA problem and the extent to which it illuminates the various State and Federal issues.

Inadequate Pension/ Welfare Plan Audits

The OIG testified several times about the nation's private pension and welfare plans' vulnerability to fraud and abuse. This vulnerability is caused primarily by inadequate audit work by independent public accountants and a lack of effective Federal law enforcement through the Department's PWBA.

Since the OIG raised this issue, some progress has been made. The Department developed Employee Retirement Income Security Act (ERISA) legislative proposals to address some of these concerns. However, significant delays were experienced in obtaining OMB clearance, and at the close of the reporting period they were not yet cleared. The OIG strongly urges the Department to renew this effort vigorously early in the next Congress in order that the bills may be reintroduced and considered quickly.

In addition, the American Institute of Certified Public Accountants (AICPA), working with the OIG and PWBA, has produced a draft revised Employee Retirement Income Security Act (ERISA) audit guide which highlights the auditor's responsibility to detect and report serious wrongdoing. However, problems still remain to be resolved, including the oversight of plan audits only by the plans' managers and the need for direct reporting by the plans to the Department of signficant ERISA violations. Until these deficiencies are resolved and the draft AICPA audit guide is finalized, pension plan assets remain at risk.

Abuses Affecting Job Training Funds

The OIG has testified before the Congress about problems in the administration and operation of the JTPA program. Since the program's inception, it has been, and continues to be, plagued by abuses on many levels.

Legislation of needed amendments to JTPA was passed overwhelmingly by the House and sent to the Senate where it was never introduced in the 101st Congress. The OIG recommends that this critical legislation be reintroduced next Congress in order to improve the Department's JTPA program and better ensure that its resources are effectively utilized.

Concerns about DOL Financial Management

The OIG's oversight of the Department's new general ledger accounting system (DOLAR$) identified adverse conditions which prevent the Secretary of Labor from reasonably assuring the Department's compliance with statutory requirements.

United States General Accounting Office

GAO

Report to Congressional Requesters

April 1992

EMPLOYEE BENEFITS

Improved Plan Reporting and CPA Audits Can Increase Protection Under ERISA

GAO/AFMD-92-14

controls for compliance with laws and regulations, and then providing the reports to regulators, participants, and others, would help ensure that adequate controls are established and maintained.

Requiring auditors to review plan administrators' reports on internal controls would help protect plan participants' interests by helping to ensure that plans maintain strong internal controls, adhere to laws and regulations, and properly report their financial condition. Such reviews could also provide early warnings of potential problems. Similarly, reviews of internal control reports would benefit the federal government, which, as insurer of defined benefit pension plans, faces a significant liability if plans with large unfunded liabilities terminate.

Further, GAO believes that auditors have a basic public responsibility and must consider the government's interests when auditing federally insured employee benefit plans. Auditors should be required to play a more active role in assisting regulators and plan administrators in identifying, preventing, and correcting problems in financial reporting and internal controls. This expansion of the auditor's role is in keeping with GAO's belief that auditors must recognize that they have greater responsibilities when accepting audit engagements for federally insured entities. Similar provisions, which are important reforms in auditing and reporting for federally insured financial institutions, were recently enacted in the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102-242).

Third, legislation should require auditors to report fraud and serious ERISA violations directly to the Department of Labor. While both plan participants and Labor have significant interests in ERISA violations, there is no requirement in ERISA or Labor's implementing regulations that either be promptly and directly informed by the auditor when fraud or serious fiduciary breaches are discovered. Such a provision would increase protection of plan participants.

Fourth, legislation should require all audit firms which audit employee benefit plans to obtain a peer review. Peer review programs essentially entail the verification by other audit firms that the firm reviewed has a system of quality controls that reasonably ensures that audits meet established standards. Requiring all audit firms which audit employee benefit plans to participate in a peer review program that includes at least one plan audit would help ensure that audit firms performing plan audits adhere to auditing standards and perform quality audits.

Recommendations

GAO makes recommendations to the Department of Labor, the AICPA, and the Congress in chapters 2, 3, and 4. Of particular importance are the legislative recommendations that the Congress amend ERISA to: (1) eliminate the provision that permits limited scope audits, (2) require reports by plan administrators and auditors on internal controls, (3) require reporting by auditors of fraud and serious ERISA violations, and (4) require peer review of auditors conducting plan audits.

Agency Comments

Both the Secretary of Labor and the Chairman of the Board of the American Institute of Certified Public Accountants commented on a draft of this report. (See appendixes II and III.)

Labor agreed with many of GAO's recommendations but expressed concerns with the recommendations on internal control reporting and direct reporting to Labor of serious ERISA violations. However, Labor did agree that significant internal control weaknesses can lead to fraud and abuse of plan assets. Labor stated that it is currently assessing alternative approaches for the identification and reporting of significant internal control weaknesses. With respect to direct reporting, Labor is considering whether plan administrators should be required to report to Labor information related to certain criminal acts involving employee benefit plans covered by ERISA. However, this does not utilize the resource of the independent auditor to help protect against criminal acts by plan administrators.

The AICPA stated that it is considering many of GAO's recommendations. It also stated that it supports cost beneficial efforts and suggestions to increase the protection of plan participants but has concern about creating unrealistic expectations relative to the role and work of independent accountants. GAO believes implementing its recommendations would allow the profession to better meet the public's existing expectations. The AICPA expressed serious concerns with direct reporting of fraud and serious ERISA violations to Labor because of its view of client confidentiality. GAO disagrees with this view and believes the auditor should be required to report fraud and serious ERISA violations when the plan administrator fails to do so.

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In an attempt to deal with this problem, PWBA has proposed a registration scheme for MEWAs in legislation which was introduced in the closing days of the 101st Congress. We will watch closely to see the extent to which this proposal will effectively help address the MEWA problem and the extent to which it illuminates the various State and Federal issues.

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PRESIDENT'S PENSION INITIATIVE

DRAFT 4/2/96 3:00 PM

Pensions

1. **PORTABILITY**

    --Expanding Pension Access and Portability
    --Promoting Portability and Coverage for Workers in Transition

2. **IRAs**

    --Expanding Individual Retirement Accounts
    --How IRAs Promote Savings and Provide Portability

3. **THE NEST**

    --Stimulating Retirement Savings by Owners of Small Businesses and Their Workers
    --The NEST: A Simple Retirement Plan for Small Business

4. **BACKGROUND**

    --Administrative Actions Already Taken

5. **VIGNETTES**

    --Making Pensions More Widely Available: The Administration's Expanded 401(k) Proposal
    --Saving for College Made Easier for Families: The Administration's Expanded IRA Proposal

6. **OUTLINES OF NEW PROPOSALS**

    --Filling Gaps in Retirement Coverage
    --Making Rollovers Easier (Qualification)
    --Making Rollovers Easier (Nondiscrimination)
    --Preventing Employers from Forcing Departing Employees to Withdraw Pension Savings or Risk Poor Earnings

7. **BUDGET PROPOSALS**

    --Providing More Pensions for More People
    --Access to Pensions Through Simplification
    --March 1996 "Green Book" (not included in current distribution)

8. **PENSION FACTS**

9. **BUDGET ROLL-OUT**

    --Q & A's on Pension Simplification and IRAs

10. **PREVIOUSLY USED SUMMARIES**

PORTABILITY

EXPANDING PENSION ACCESS AND PORTABILITY
HELPING WORKERS IN TRANSITION

Background

- [About 40 million] Americans have retirement benefit accounts in defined contribution plans (such as 401(k) plans) in which employers maintain individual accounts on behalf of their workers. Once an employee has "vested", i.e., earned the right to the amounts accumulated in the account, the account balance and earnings belong to the worker. Workers are immediately vested in their own contributions to the plan and usually are vested in employer contributions after working a certain number of years. Defined contribution plans enhance employee mobility -- if the worker changes jobs, the account balance still belongs to the worker and the accumulated balances in the worker's accounts provide the ultimate source of retirement benefits.

- Workers who change jobs as part of downsizing or restructuring may want to take their accounts with them when they leave while preserving the funds for retirement. Those who face longer periods of unemployment between jobs, or who need additional education and training for new jobs, may benefit from additional access to these retirement funds.

- Workers who have held several jobs over their career might prefer to consolidate all their retirement accounts into a single account held by their current employer. However, [about half of participants in 401(k) plans are in plans] that do not accept rollovers of account balances from previous employers.

Proposal

The President's proposal makes pensions work for workers who move from one job to another. It will:

- Significantly expand IRA coverage-- helping people save both while employed and while between jobs -- and increase penalty-free access to IRA funds for special needs such as education and training;

- Establish a new plan for small business, the National Employee Savings Trust ("NEST") which combines the most attractive features of the IRA and 401(k), and makes it easier for small employers to provide a portable plan for their workers;

- Permit employees to tap retirement savings without penalty to support themselves and their families during extended periods of unemployment;
- Provide faster vesting in multiemployer (collectively bargained) pension plans;
- Amend the tax code to implement laws that guarantee veterans of continued pension coverage when they return to their jobs after military service;
- Add flexibility so that new employees may more easily participate in retirement plans as soon as they start their jobs;
- Make rollovers between pension plans and IRAs more widely available;
- Prevent employers from forcing employees to withdraw pension funds or risk poor earnings; and
- Expand the PBGC missing participant program to make it easier for all workers entitled to benefits under terminated plans to locate the benefits when they retire, even if the employer has gone out of business.

PROMOTING PORTABILITY AND COVERAGE FOR WORKERS IN TRANSITION

ADDENDUM

Expand Portable Retirement Vehicles: IRAs and the NEST

To increase portability, the President's proposal expands deductible IRAs, adds Special IRAs, and adds a new simple and portable retirement plan for small business, the NEST.

For IRAs, the proposal:

- Doubles (over time) the income limits for tax-deductible contributions to IRAs, permitting millions of additional Americans to make tax-deductible IRA contributions;

- Allows IRA withdrawals in the event of extended unemployment, and to pay for educational expenses, first-home purchases, and catastrophic medical needs, without imposing the 10% penalty on premature distributions;

- As an additional option, establishes new special IRAs ("backloaded IRAs") under which contributions are not tax-deductible but all earnings can be withdrawn tax-free if retained in the IRA for at least five years .

The NEST is a new portable voluntary retirement savings plan for small business that has no red tape and no complicated employer filing, testing, forms or calculations.

- The NEST is designed to expand pension coverage for low- and middle-wage workers in small businesses, not only the highly-paid.

- It combines the most attractive features of the IRA and the 401(k) plan, minimizes administrative and compliance costs, and eliminates employer involvement with the government.

Helping Employees Who Move Between Jobs

Workers are changing jobs to keep up with the changing structure of the American work place, and to pursue new opportunities.

- The average American worker changes jobs roughly [five] times in their lives.

During periods of transition, workers may need funds to support themselves and their families while looking for new work or undergoing training.

- The President's proposal provides a financial safety net for workers in transition. It eliminates the 10 % early withdrawal tax on IRA withdrawals for workers who are unemployed and receive unemployment compensation for 12 weeks or more, allowing workers to use retirement savings to pay expenses incurred during these periods of transition.

Employees who change jobs, or who serve in the military, can sometimes lose benefits. The President's proposal:

- Accelerates vesting in multiemployer collectively bargained plans, to assure that employees who work for 5 years or more obtain vested rights in their benefits; and

- Amends the tax code to implement laws that guarantee veterans continued pension coverage when they return to their jobs after military service.

Filling Gaps in Retirement Coverage

The proposal provides flexibility so that employers can more easily offer 401(k) plans to their employees from the first day on the job.

- Currently, many employers do not permit employees to make salary reduction contributions or receive matching contributions until the employees meet age and service requirements for participation in the plan (usually age 21 and 1 year of service). Some employers are concerned that if these employees were allowed to participate, they could cause the plan to fail "discrimination" tests that compare benefits provided to the high-paid with benefits provided to other employees. But because of waiting periods, employees may not get into, or continue, the habit of saving for retirement through payroll deduction.

- The proposal makes it easier for employers to allow new hires to participate in plans by providing that nonhighly compensated employees who do not meet age and service requirements for plan participation would not need to be counted in running the nondiscrimination tests.

Making Rollovers Easier

- Many workers who change jobs want to move their retirement accounts to the new employer, to make it easier to keep track of all their retirement savings.

- [About half of participants in 401(k) plans are in plans] that do not accept rollovers. Some employers do not want to take rollovers because they fear that this will adversely affect statutory plan nondiscrimination testing, or that their plan may be subject to disqualification or sanctions for inadvertently accepting amounts that prove not to be rollover-eligible.

- The President's proposal would encourage more employers to permit rollovers into their plans by:

    - Providing assurance that an inadvertent error in determining that an amount was eligible for rollover would not disqualify the plan that accepted the rollover; and

    - Clarifying that acceptance of rollovers from new hires who receive no benefits under the plan will not adversely affect a plan's nondiscrimination tests or impose additional contribution requirements.

To make it easier for workers to move their funds when they switch jobs, the Administration recently issued rules that:

- Allow workers to waive the 30-day notice period available in which to consider their distribution and rollover options, if the workers know they wish to move the funds sooner; and

- Made it easier to apply statutory rights allowing workers to directly roll over their account balances to another retirement plan (or an IRA). (These rules also allow employees to request that a plan loan be transferred to a new plan that is willing to accept it, which allows workers in transition to preserve loaned amounts as retirement savings.)

Preventing Employers from Forcing Departing Employees to Withdraw Pension Savings or Risk Poor Earnings

- Employers generally are prohibited from forcing former employees to take a distribution of their plan benefits prior to normal retirement age (or age 62 if later). Distributions before this time may be made only if the participant consents. A plan that imposes a significant detriment on a participant who does not consent to a distribution may in effect undermine the participant's right to leave his or her retirement savings in the plan.

- The Administration will issue a ruling making clear that a former employee who has been laid off or otherwise terminated cannot, in effect, be forced to withdraw his or her retirement savings by unduly restrictive investment options. For example, a plan with a broad range of investment choices available to active employees could not mandate that the account balances of former employees be invested only in a money market fund.

Locating Benefits at Retirement

Expanded rollover options and protection of rights to retain funds in employer plans will help employees maintain their pension benefits until retirement. In addition, to help retiring workers find all of their benefits, including benefits from plans of employers that have gone out of business,

- The President's proposal will use the facilities of the Pension Benefit Guaranty Corporation to make it easier for all workers entitled to benefits under terminated plans to locate the benefits when they retire, even if the employer has gone out of business. This proposal makes the PBGC's "missing participant" program, now in effect for traditional defined benefit pension plans, available to defined contribution plans, such as 401(k) plans.

IRAs

EXPANDING INDIVIDUAL RETIREMENT ACCOUNTS

The President's Proposal

Expands Availability of IRAs To Millions Of Additional Americans

Today, a person can put up to $2,000 of wages or self-employment income into an IRA and receive a tax deduction. However, a deduction may not be available if the person (or a spouse) is in an employer-sponsored retirement plan. For couples filing a joint tax return, the deduction starts to be reduced if their income exceeds $40,000, and it disappears if income reaches $50,000. For individuals, the deduction "phases out" where income is between $25,000 and $35,000.

The President's proposal doubles these income thresholds, in two stages. For 1996, the deduction is phased out for couples with income between $70,000 and $90,000, and for individuals with income between $45,000 and $65,000. In 1999, the income thresholds are $80,000 to $100,000 for couples and $50,000 to $70,000 for individuals. The income thresholds and the $2,000 amount that each person can put into an IRA will be indexed for future inflation.

Gives People Another IRA Option

The proposal gives taxpayers a choice between putting money into a traditional IRA and receiving an immediate tax deduction, or saving the money in a new type of IRA. Contributions to the new type of IRA are not tax deductible, but all income is tax-free when withdrawn if the contributions remain in the IRA for at least 5 years. Existing IRAs could be converted into these new IRAs.

Gives Access to IRA Funds When People Need it Most

The proposal encourages families to save for college or buy a first home by allowing everyone with an IRA to withdraw money for these purposes without being subject to the early withdrawal penalty tax. To further help taxpayers who are saving to pay for education expenses, the proposal allows money in IRAs to be invested in State prepaid tuition programs. The proposal also allows early withdrawals from IRAs so workers can pay expenses to retrain and reeducate themselves, to cover long-term unemployment expenses, or to defray financially devastating medical expenses, including expenses incurred by grown children for long-term medical care for their parents.

HOW IRAs PROMOTE SAVINGS AND PROVIDE PORTABILITY

The Proposal

The President's proposal significantly expands IRAs by:

- Doubling the income thresholds for making tax-deductible IRA contributions, and indexing these thresholds and the $2,000 maximum annual contribution amount for inflation.

- Providing Americans with a new way to save by making after-tax contributions to a Special IRA, and allowing earnings to be withdrawn tax free.

- Permitting early withdrawals from IRAs to pay for education and training, first-time home purchases, unemployment, and financially devastating medical expenses, including expenses for long-term medical care.

Promoting Savings

IRAs provide a simple vehicle for workers to save for retirement.

- The President's proposal will allow 35 million additional workers to have tax-deductible IRAs.

- This expanded eligibility would enable many two-earner families to reduce their taxes by as much as $1,120 a year if they make the maximum allowable IRA contributions.

- If a working family sets aside [$5,000], the cost of a family vacation trip, that money could accumulate to [$ 84,000] by retirement 30 years later.

- If a family put aside $2,000 a year in an IRA, by retirement 30 years later, that money could accumulate to $445,000.

A Financial Safety Net for Workers in Transition

- The American work place is changing; workers shift jobs as new industries develop and old technologies are transformed.
- The average American worker changes jobs roughly five times during his or her career.
- IRAs are particularly important for workers in transition between jobs.
  - Workers covered by a pension plan, who change jobs for advancement or who lose their jobs in downsizing or corporate restructuring, may not be immediately covered by the pension plan of a new employer.
  - The President's proposal will expand availability of tax-deductible IRAs to middle-income workers who are unemployed for part of a year or move from one job to another and are covered by a pension plan for only part of a year.
- During periods of transition, workers may need funds to support themselves and their families while looking for a job or training for new opportunities.
  - The President's proposal eliminates the premature distribution penalty tax on IRA withdrawals for workers who are on unemployment for 12 weeks or more. This makes more of a worker's retirement savings available to those who need them during these periods of transition.

Investing in Ourselves and in Our Children

As industries change, workers need to retrain and reeducate themselves to prepare for the jobs of tomorrow.

- The President's proposal eliminates the premature distribution penalty tax on IRA withdrawals used for education of the IRA owner, to facilitate retraining and attainment of the additional education that is so important in a technologically advanced society.
- The proposal also eliminates this penalty tax for IRA withdrawals to provide funds for education for other family members.

- The proposal also would make clear that IRA assets could be invested in State prepaid tuition programs, helping families save for their children's education. If a new, "backloaded" IRA is used for this investment, then the IRA owner can invest after-tax dollars and avoid having to pay income tax on the tuition plan's earnings when the child attends college and the education expenses are paid under the pre-paid tuition program.

Promoting Portability

IRAs provide a simple vehicle workers can use to move their tax-advantaged retirement funds when they switch jobs.

- Many workers do not want to leave their retirement funds with former employers when they change jobs.
- Workers can move their retirement funds to IRAs and self-direct the investment, or use the IRAs to hold the funds until they can move the money to a new employer's retirement savings plan.

THE NEST

STIMULATING RETIREMENT SAVINGS BY OWNERS OF SMALL BUSINESSES AND THEIR WORKERS

The Need

Pension coverage of employees in small businesses is significantly lower than the pension coverage of employees in big business.

- In 1993, for example, only 24 percent of full-time workers in private firms with fewer than 100 employees were covered by employer retirement plans. In contrast, 73 percent of full-time workers in firms with 1,000 or more workers were covered.

There is currently no adequate "starter plan" for small business.

- The complexity associated with traditional qualified retirement plans often discourages small businesses from sponsoring these plans.

- For employers with few employees, the fixed administrative costs of maintaining the plan may be large when compared to the benefits provided to employees.

The current programs which were designed for small employers, SEPs and SARSEPs, are perceived by many employers as overly complicated and impractical.

- SEPs and SARSEPS do not permit employers to encourage employees to make elective contributions by offering to match employee contributions . The inability to offer matching contributions makes it difficult for the employer to satisfy the SARSEP nondiscrimination test, limits the amount of compensation the high-paid employees can defer, and generally makes the program unattractive to employers and employees.

The NEST

The President's proposal would allow employers with 100 or fewer employees to adopt a new simple retirement plan. The new plan, which addresses many of the drawbacks of SEPs and SARSEPs, would be known as the National Employee Savings Trust, or "NEST." The NEST:

- Combines the most attractive features of the IRA and the 401(k) plan;

- Has no red tape and no complicated employer filing, testing, forms or calculations;

- Is designed to expand pension coverage for low- and middle-wage workers, not only the highly-paid; and

- Simplifies plan administration by allowing the employer to make contributions for all employees to IRAs in a single financial institution.

THE NEST
A SIMPLE RETIREMENT PLAN FOR SMALL BUSINESS

The Problem

Pension coverage of employees of small employers is significantly lower than pension coverage of employees of larger employers. In 1993, for example, only 24 percent of full-time workers in private firms with fewer than 100 employees were covered by employer retirement plans. In contrast, 73 percent of full-time workers in firms with 1,000 or more workers were covered.

There currently is no adequate "starter plan" that allows a small business to establish a retirement plan for their employees with a minimum of employer cost and effort. The complexity associated with traditional qualified retirement plans often discourages small employers from sponsoring these plans. For employers with few employees, the fixed administrative costs of maintaining the plan may be large relative to the benefits provided to employees.

SEPs and SARSEPs, which were designed for small employers, are perceived by many employers as overly complicated and impractical. SEPs and SARSEPS do not permit employers to encourage employees to make elective contributions by offering to match employee contributions dollar-for-dollar or otherwise. The inability to offer matching contributions makes it difficult for employers to satisfy the SARSEP nondiscrimination test, limits the amount of compensation the high-paid employees can defer, and generally makes the program unattractive to employers and employees.

The Solution

The President's proposal would retain SEPs and SARSEPs but would, in addition, provide employers with 100 or fewer employees the opportunity to adopt a new simple retirement plan. The new plan would be known as the National Employee Savings Trust, or "NEST" and would combine the best features of IRAs and 401(k) plans.

Like other IRA accounts, investment in NEST accounts would be directed by each employee. To simplify plan administration for employers, an employer could require that its participating employees use a designated financial institution's IRAs as the recipient of NEST contributions, but only if each employee were notified in writing that an employee could move his or her account balance to another IRA at any time without charge.

NESTs would offer employees the opportunity to make pre-tax contributions up to \$5,000 per year. The employer would inform employees of their opportunity to make pre-tax contributions and agree either to make either a 3% of pay contribution for each employee, or to contribute 1% of pay plus a matching formula. These simple plan designs would eliminate or greatly simplify many of the rules that apply to other types of qualified retirement plans. In addition, the NEST would have the following features:

<u>100-employee limit</u>. Any employer, including a tax-exempt organization or governmental entity, would be eligible to make a NEST program available to its employees in a given year if the employer had no more than 100 employees who received at least $5,000 in W-2 pay in the prior year.

<u>Two-year eligibility</u>. Each employee of the employer (and other employers under common control) who reached age 21 and completed two consecutive years of service with the employer in which the employee earned at least $5,000 in compensation would be eligible to participate in the NEST. Each eligible employee with at least $5,000 of compensation from the employer for the year would receive a nonelective employer contribution for that year, even if the employee terminated mid-year.

<u>Portability/100 percent vesting</u>. All contributions would be 100 percent vested immediately and would be fully portable, even during the two-year holding period (described below).

<u>Nondiscrimination tests not applicable</u>. NESTs would not be subject to: the "top-heavy" rules; the nondiscrimination rules that apply to elective contributions under a 401(k) plan (the "ADP" test); the nondiscrimination rules that apply to employer matching contributions (the "ACP" test); or the nondiscrimination rules that apply to SEPs and SARSEPs.

<u>Design-based safe harbors</u>. Instead of top-heavy and nondiscrimination rules, every employer using a NEST would choose to satisfy one of the following two design-based safe harbors:

(1) The employer makes a nonelective contribution of at least 3% of pay for each eligible employee and may permit employees to make pre-tax contributions.

(2) The employer makes a nonelective contribution of at least 1% of pay for each eligible employee and allows employee elective contributions. The employer also provide a 100% matching contribution on the employee's elective contributions up to 3% of pay and a matching contribution of at least 50% (and no greater than 100%) on employees' elective contributions up to

the next 2% of pay.

<u>Reporting and Disclosure</u>. An employer maintaining a NEST would not be subject to any qualified plan reporting requirements (e.g., Form 5500 filing). The NEST trustee or issuer would be required to report NEST contributions in the same manner as other IRA contributions are reported. Employees would be required to be notified annually in writing of their rights under the plan, including, for example, the right to a matching contribution and information from the NEST trustee or issuer.

<u>Section 404 deduction limit not applicable</u>. The employer would be permitted a tax deduction for the elective, matching, and nonelective contributions described above without being subject to the deduction limits normally applicable to qualified plans.

<u>Two-year holding period</u>. NEST contributions (and attributable earnings) would have to be held in the IRA for at least two years (beginning on the first day of the calendar year for which the contribution was made). This two-year restriction on withdrawals would apply whether or not the participant had terminated employment.

In all other respects, distributions from NEST IRAs would be subject to the same rules as distributions from IRAs generally. During the two-year holding period, contributions and earnings could be rolled over to another IRA, and the original two-year holding period would continue to apply to the rolled-over amounts in the recipient IRA.

<u>Rollovers</u>. NEST IRAs could originate and receive transfers from other IRAs (whether NESTs, SEPs, SARSEPs, or other IRAs). NEST IRAs could also receive rollovers from qualified plans. All movement of NEST funds to other IRAs, whether or not during the two-year holding period, would take the form of a trustee-to-trustee transfer. Amounts rolled over or transferred to a NEST IRA would not be subject to the two-year holding period unless they were amounts transferred from a NEST for which the two-year holding period had not yet elapsed.

<u>SEPs and other plans permitted</u>. An employer that maintains a NEST could also maintain tax-qualified plans or SEPs, other than a plan that allows for elective contributions or matching contributions.

BACKGROUND: ADMINISTRATIVE ACTIONS ALREADY TAKEN

What administrative guidance has the Administration provided recently to promote retirement savings and to allow retirement plans to provide benefits to workers affected by downsizing?

1. Portability through rollovers. In October of 1995, regulations were issued setting out the right of a participant to elect to have his or her retirement benefits paid directly to the plan of a new employer or to an IRA. These regulations make it easy for employees to keep their savings intact for retirement by providing simple rules for direct rollovers under which no tax withholding is required and enhance portability by protecting qualified plans from the risk of plan disqualification because the plan accepts a direct rollover which proves to have been ineligible for rollover. In addition, qualified plans are permitted to accept a direct rollover of any plan loan that has been made to the participant, so that the participant can repay the loan to the new plan, rather than having to treat the loan as a taxable distribution at the time of a rollover and reducing retirement savings.

2. Plan loans during a leave of absence. Plan loans to employees allow them temporary access to their retirement savings for immediate needs. When the employee repays the loan, the savings return to the plan and continue to grow until retirement. In December of 1995, Treasury clarified the rules for plan loans, making it easier for plans to make loans available. The new rules set forth clear and administrable standards regarding a variety of plan loan issues, including a new standard under which a plan can allow a participant who is on an unpaid leave of absence (or on a leave at a reduced pay that does not cover the debt service) to suspend repayments for up to 12 months. In addition, the guidance allows a plan to give employees a grace period for overdue loans: a plan can postpone the time when it must deem a loan to be distributed due to default until the end of the quarter following the date the employee stopped repaying the loan.

3. Consent waiting period. In September of 1995, regulations were issued under which participants are allowed to waive their right to have 30 days in which to consider benefit or rollover options before payment of plan benefit may be made. This change gives a plan the flexibility to provide a prompt payout of benefits when requested by a participant, e.g., due to a hardship or other emergency need for funds, so long as the participant is fully informed of his or her rights.

4. Educational campaign. The Administration has launched a major educational campaign, together with businesses and financial firms, to encourage workers to save and, in particular, to take advantage of tax-advantaged retirement savings plans, whether through an employer plan or an IRA.

VIGNETTES

MAKING PENSIONS MORE WIDELY AVAILABLE
THE ADMINISTRATION'S EXPANDED 401(K) PROPOSAL

In 1995, Jill Johnson, her husband Bob, and their two young children lived in Louisiana. Jill and her husband had both been working at an oil refinery and were enrolled in the company's pension program. In the fall, they were laid off and at the beginning of this year, they decided to move to another state where Bob found a job as an engineer at a construction consulting firm and Jill was employed doing data entry at the same firm.

They expect their combined income this year to be $52,000, about the same as their 1995 earnings. But, as is the case with three out of four other Americans working in firms with fewer than 100 employees, Bob and Jill's new jobs do not have a pension plan.

Bob and Jill's employer, B & R construction, is a small, family-owned and operated business. The brothers who operate the company have determined that the administrative cost and complexity is too high to warrant offering a salary reduction pension plan. The Administration's new National Employee Savings Trust (NEST) program is designed to simplify the procedures for IRA-based pension plans for smaller companies and make it easier and cheaper for small firms like B & R construction to offer their employees retirement savings options.

The Administration's NEST proposal tremendously simplifies the labyrinth of rules and regulations governing our current pension system and, in so doing, would save thousands of small businesses time, money and hassles. First, if B & R construction guarantees its employees a certain contribution, then it will be exempt from complex nondiscrimination rules. Second, the current rule which treats the brothers as a single entity and thereby dishonors the hard work of each of them, would be done away with. Third, following simple guidelines is all that would be necessary when determining pension eligibility.

B & R construction adopts a NEST. Bob and Jill make salary deferral contributions and receive a match. They remain as long-term employees of B & R construction. They accumulate significant retirement savings over the years.

SAVING FOR COLLEGE MADE EASIER FOR FAMILIES
THE ADMINISTRATION'S EXPANDED IRA PROPOSAL

Kate and Jim have two sons and work at an aerospace subcontractor in southern California. Their combined income is $55,000 per year. As a senior last year at the regional technical high school, their oldest son Bill set his sights on a career in electronics. This spring he was accepted to a local, private four-year college specializing in his areas of interest.

Even though he would be able to live at home, the costs of attending the school would be prohibitively expensive for Bill and his family. The small amount Bill has been able to save from his part-time job and the limited amount of additional financial resources in the form of grants and loans he has been able to pull together will still leave Bill with a significant unmet financial need. His parents have some savings in an individual retirement account that they would be willing to give to their son, but they could not afford to pay the penalty for early withdrawal.

Under the Administration's plan, the ten percent early withdrawal tax would not apply if the amount withdrawn is used to pay qualified higher education expenses of, in this case, the taxpayer's dependent child.

Bill's parents would like his eleven year-old brother Jeremy to go to college. Under the Administration's proposed Special IRA, Bill's parents could begin now to put away the $1,500 a year they have budgeted for Jeremy's college by investing in the State's qualified prepaid tuition program. Assuming the money is held for at least five years, the family could begin to take tax-free distributions from the IRA to pay Jeremy's tuition.

OUTLINES OF NEW PROPOSALS

FILLING GAPS IN RETIREMENT COVERAGE

Eliminate barriers to immediate entry in section 401(k) plans

Current Law

The actual deferral percentage (ADP) test applicable to section 401(k) plans compares the average rate of elective contributions (typically made by salary reduction) made by nonhighly employees who "benefit" under the plan with the average rate of elective contributions of highly compensated employees who benefit under the plan. For this purpose, an employee is considered to benefit under the plan if the employee is eligible to make elective contributions. A similar actual contribution percentage (ACP) test applies to employer matching contributions and employee after-tax contributions under section 401(m).

In general, a plan need not permit employees to enter a plan prior to the attainment of age 21 and the completion of 1 year of service. For purposes of testing nondiscrimination (including the ACP and ADP tests), an employer that chooses less restrictive entry conditions (e.g. age 18 rather than age 21) may choose "separate testing" under which all employees who have not met the statutory age and service entry rules are disregarded, provided the plan satisfies the nondiscrimination rules looking solely at the universe of employees whose age and service is less than the statutory age and service rules. Thus, in applying the ADP test for employees who are over age 21 with 1 year of service, the plan can disregard the rates of elective contributions for newly hired nonhighly compensated employees, provided that the plan would satisfy the ADP test looking solely at the rates of elective contribution for employees under age 21 or who have not completed 1 year of service.

Reasons for change

Many employers do not permit employees to make salary reduction contributions or receive matching contributions until the employees meet age and service requirements for participation in the plan (usually age 21 and 1 year of service). Some employers are concerned if these employees were allowed to participate, they could cause the plan to fail "discrimination" tests that compare benefits provided to the high-paid with benefits provided to other employees. The separate testing option under current law does not solve this problem. But waiting periods can men that employees don't get into or continue the habit of saving for retirement through payroll deduction.

Proposal

For purposes of applying the ADP and ACP tests, an employer would not have to take into account the rate of elective contribution of the nonhighly compensated employees who are eligible to make elective contributions but who have not yet met the statutory age and service requirements for entry. To get this relief the employer generally would have to offer the right to make elective deferrals to all employees (both highly compensated and nonhighly compensated) who would otherwise be eligible for the plan except that they have not yet satisfied the statutory age and service requirements for entry.

MAKING ROLLOVERS EASIER

(Qualification)

Current Law

A qualified plan can receive a rollover of a distribution from another qualified plan, or from an IRA where the IRA balance consists entirely of amounts attributable to distributions previously rolled over from a qualified plan. Amounts received in a rollover are not treated as annual additions for purposes of the maximum limits on benefits and contributions and are not taken into account for nondiscrimination rules.

If a qualified plan accepts an amount as a rollover contribution and the amount is not eligible to be rolled over into the plan, these exclusions do not apply and the plan may be subject to disqualification. However, regulations issued last fall have provided protection from this risk for "direct rollovers" (rollovers received directly from another plan). Under the regulations, a qualified plan that accepts a direct rollover from another qualified plan will not be disqualified merely because the plan making the distribution is in fact not a qualified plan, if, prior to accepting the rollover, the receiving plan reasonably concluded that the distributing plan was qualified under section 401(a).

Reasons for Change

The risk that a plan will be disqualified by reason of accepting an improper rollover is a strong disincentive for plans to accept rollovers.

Proposal

The rule in the recently issued regulation protecting a qualified plan that accepts a direct rollover from disqualification would be expanded to include all types of rollovers from all types of plans (not just direct rollovers from qualified plans). Thus, for example, a qualified plan would not be disqualified because it accepts an employee contribution of an amount distributed from another qualified plan within the previous sixty days, if the receiving plan reasonably concludes that the amount involved is eligible to be rolled over.

MAKING ROLLOVERS EASIER

(Nondiscrimination)

Current Law

If a qualified plan provides for it, an employee can make a tax-free rollover to the plan of a distribution from another qualified plan or certain IRAs.

Need for Guidance

Many qualified plans do not accept rollovers from other plans. One reason cited by employers is a concern that accepting a rollover, especially from a newly hired employee who has not met the plan's eligibility requirements for participation, might adversely affect the plan's compliance with nondiscrimination or other requirements as they apply to plan participants generally.

Proposal

The Treasury Department would issue administrative guidance making clear that the acceptance of rollovers from employees, including employees who have not yet satisfied the plan's eligibility requirements for participation, would generally not have an adverse impact on the plan's satisfaction of the nondiscrimination requirements as they apply to the employees who have met the plan's eligibility requirements.

PREVENT EMPLOYERS FROM FORCING EMPLOYEES TO WITHDRAW PENSION SAVINGS OR RISK POOR EARNINGS

Prohibit Certain Investment Restrictions on Former Employees

<u>Current Law</u>

Under current law, a participant who has not attained normal retirement age cannot be forced to receive his or her benefit from a retirement plan without consent unless the participant's account balance is less than $3,500. Consent given under duress is not valid and IRS regulations provide that a plan will not satisfy the consent rule if the plan imposes a significant detriment on a participant who does not consent to the distribution.

<u>Reasons for Change</u>

Some 401(k) or other defined contribution plans that give active employees a wide range of investment choices mandate that a former employee's benefit be invested in a money market fund or other fixed income fund. These restrictions may discourage deferrals and force payouts.

<u>Proposal</u>

A revenue ruling will be issued prohibiting a plan that has a broad range of investment choices available to active employees from severely restricting the investment choices of former employees, for example by limiting them to a money market fund.

BUDGET PROPOSALS

Providing More Pensions For More People

Complexity Limits Pension Access and Coverage

- The current pension system works well for many, particularly those who work for large organizations, where almost three quarters of workers are covered by employer retirement plans.

- But millions of Americans, particularly those who work for small employers, do not have the opportunity to participate in an employer retirement plan, in part because their employers find it complex, expensive, and frustrating to maintain these plans.

- Moreover, employers that do maintain retirement plans want more of the money they spend on these plans to go to retirees, rather than to pay administrative expenses.

Expanding Retirement Savings by Simplifying the Rules

The President's Budget contains proposals to expand pension coverage and access to retirement savings by making it simpler and more cost effective for businesses, tax-exempt organizations and state and local governments to provide retirement plans for their workers. The proposal would:

- Expand eligibility for tax-deductible IRAs, create a new type of IRA that allows earnings to be withdrawn tax free, and increase IRA flexibility by permitting early withdrawals for special circumstances.

- Create the National Employee Savings Trust (NEST), a simple, voluntary retirement savings plan for small organizations, including businesses, tax-exempt entities, and governments.

- Provide a 401(k) safe harbor to make meaningful benefits available to low- and middle-wage workers, as well as the higher-paid, without complicated testing of the plan.

- Allow all non-governmental tax-exempt organizations to sponsor 401(k) plans for their employees.

- Repeal the family aggregation rules, so that spouses and children who work in the same business can earn their own retirement benefits.

- Repeal the complex combined limit on benefits and contributions for employees covered by both defined benefit and defined contribution plans of the same employer.

The Budget would also simplify the pension system and reduce the administrative costs of maintaining retirement plans for all employers through a variety of proposals, including:

- Simplifying the definition of "highly compensated employee" to make larger benefits available to more middle-income Americans;
- Repealing the requirement that actively working employees begin receiving pension distributions at age 70 1/2;
- For state and local government plans, requiring that the assets of previously unfunded retirement savings plans be held in trust, and simplifying the limits on pension contributions and benefits; and
- For industry-wide collectively bargained plans, eliminating slower vesting and partial termination rules, simplifying the limits on benefits, and allowing more pre-funding of benefits.

Access To Pensions Through Simplification

Problem: Complexity Limits Pension Access and Coverage

- The current pension system works well for many, particularly those who work for large organizations, where almost three quarters of workers are covered by employer retirement plans.

- But millions of Americans, particularly those who work for small employers, do not have the opportunity to participate in an employer retirement plan, in part because their employers find it complex, expensive, and frustrating to maintain these plans.

- Moreover, employers that do maintain retirement plans want more of the money they spend on these plans to go to retirees, rather than to pay administrative expenses.

Solution: Expand Retirement Savings by Simplifying the Rules

The President's Budget contains proposals to expand pension coverage and access to retirement savings by making it simpler and more cost effective for businesses, tax-exempt organizations and state and local governments to provide retirement plans for their workers:

<u>Expanded IRAs</u>. The Budget expands eligibility for tax-deductible IRAs, creates a new type of IRA that allows earnings to be withdrawn tax free, and expands IRA flexibility by permitting early withdrawals in special circumstances.

<u>NEST</u>. The National Employee Savings Trust (NEST) is a new simple, voluntary retirement savings plan for small business.

<u>Simplified, design-based alternative for 401(k) plans</u>. The 401(k) plan generally allows employees to contribute toward their retirement savings on a tax-favored, salary reduction basis. These plans often provide for the employer to make contributions that "match" the employee contributions. Yet in order to ensure that lower paid workers get reasonable contributions compared to those received by the highly paid, extensive and often costly nondiscrimination tests apply.

The Budget allows employers (regardless of size) that sponsor 401(k) plans to avoid these 401(k) nondiscrimination tests by making specified "safe harbor" contributions for employees. The Budget also makes two important simplifications for employers who use more complex plans and therefore still continue to perform the tests.

<u>Make 401(k) plans available to tax-exempt organizations</u>. We propose to allow all tax-exempt organizations (other than state and local governments) to sponsor 401(k) plans.

Repeal the family aggregation rule. We propose to repeal the so-called family aggregation rule. Currently, family members employed by the same firm are penalized if one of them either owns 5% or more of the firm, or is one of the ten highest paid employees. This unfairly prevents each family member from receiving the full retirement benefits the employee could have if they were not related. In addition, the family aggregation rule greatly complicates nondiscrimination testing, particularly for family-owned or operated businesses.

Repeal of section 415(e). We propose to repeal section 415(e) -- an excessively complex limit on contributions and benefits for employees who participate in a defined contribution plan and a defined benefit plan of the same employer.

Protecting Retirement Savings. The Budget requires assets of retirement savings plans sponsored by State and local governments to be held in trust, protecting the assets from creditors in bankruptcy. This will be an important protection for the employees of governments in financial difficulty, such as occurred in Orange County.

Additional coverage changes are also included in the proposal:

- Certain benefit limitations on retirement plans will not apply to State and local governments. This will help local governments provide disability protection for their police and fire fighters through the pension system.
- Retirement plan contributions are allowed for all disabled employees.
- Special restrictions on plans maintained by the self-employed are repealed.

The proposal would also simplify the pension system and reduce the administration costs of maintaining retirement plans for all employers, including:

Simplifying the definition of "highly compensated employee" to ease plan administration. We propose to simplify radically the definition of "highly compensated employee." Virtually every nondiscrimination test for pension plans (and health and welfare plans) involves identifying the employer's highly compensated employees. This term is currently defined by reference to a complicated seven-part test that considers pay for both the current and preceding year. In addition, this test classifies many middle-income workers as "highly compensated employees" who are, as a result, prohibited from receiving better benefits.

Our proposal replaces the seven-part test with a simple two-part test: a highly compensated employee would be anyone who either owns more than 5% of an employer or is paid more than $80,000, based on pay in the prior year. The $80,000 threshold would save many middle-income Americans from being disadvantaged by nondiscrimination rules that were originally meant to help them.

Simplified rules for multiemployer plans. For multiemployer plans, we propose to eliminate the special vesting schedule and partial termination rules, simplify the limits on contributions and benefits, and allow more pre-funding of benefits.

Repeal of requirement that older employees begin benefits before retirement. We propose to repeal the requirement that actively working employees begin receiving pension distributions at age 70 1/2. This will allow them to continue accumulating new benefits without simultaneously being required to receive distributions.

The Budget also contains a variety of other simplifying and cost-saving proposals, such as:

- Defined contribution plans are exempted from 50-employee "minimum participation" requirements.
- The definition of "leased employee" is modified to better target the abuses that were originally intended to be addressed by the leased employee rules.
- Certain restrictive rules regarding retirement savings plans of governmental and tax-exempt employers are eliminated.
- Annuity taxation rules are simplified.
- Information reporting penalties are made uniform.
- The requirement that a copy of the ERISA summary plan description be filed with the government is repealed.
- The rules regarding benefits for substantial owners upon plan termination are simplified.
- Half-year requirements are eliminated, so that rules applicable at age 59 1/2 and 70 1/2 will be applicable at 59 and 70.
- Compensation used for maximum contribution limitations includes 401(k) and similar pre-tax contributions.
- The Social Security retirement age can be treated as a uniform retirement age to facilitate compliance with nondiscrimination rules.
- Every employees' tax-sheltered annuities purchased under an employer plan are not jeopardized if a single employee's annuity violates the applicable dollar limit.
- 401(k) distribution rules are conformed for rural electrical cooperatives and cooperative telephone companies.

PENSION FACTS

Pension Facts

Coverage and Participation

- Over the last twenty years, the percentage of people covered by pensions has remained roughly the same at slightly under 50 percent.

- In 1975, 67 percent of plans were defined contribution plans with 31 percent of participants; in 1991, 86 percent of plans were defined contribution plans with 55 percent of participants.

- Only one in 10 workers in firms with fewer than 10 employees participated in a pension plan, while roughly two-thirds in firms with 1,000+ employees participated.

- 3 percent of workers earning under $5,000 participated; 80 percent for workers earning $50,000+ participated.

- Three-fourths of all private wage and salary workers covered by pension plans in 1993 were vested.

Benefits

- In 1994, 42 percent of private sector retirees (roughly 15 million people) received benefits.

- Only one in ten retirees with final year earnings under $10,000 received a benefit; while over two-thirds of people with earnings over $40,000 got a benefit.

- Eleven percent of retirees from firms with fewer than 25 workers received a benefit; 68 percent from firms with more than 1,000 workers got benefits.

- For people retiring in 1993 or 1994, the median annuity payment was $8,400, which replaced about 27 percent of earnings received in the pre-retirement year.

401(k) Defined Contribution Plans

- In 1983, only 3 percent of full-time wage and salary workers participated in a 401(k) plan; by 1993, 27 percent participated.
- Over half the workers in firms with 1,000 or more employees were offered 401(k) plans in 1993, while only 5 percent of workers in firms with fewer than 10 workers were offered these plans.
- Only 10 percent of workers earning less than $10,000 were offered a 401(k) plan, while seven out of ten workers earning $75,000 or more were offered such a plan.
- 17 percent of workers under 25 were offered 401(k) plans; 40 percent of workers aged 30-54 were offered such plans.

<u>Sources:</u>

Coverage and Participation:

Private Pension Plan Bulletin, U. S. Department of Labor, No. 5, Winter 1996; *Employment-Based Retirement Income Benefits: Analysis of the April 1993 Current Population Survey*, Employee Benefit Research Institute, September, 1994.

Benefits:

Retirement Benefits of American Workers, New Findings from the September 1994 Current Population Survey, U. S. Department of Labor, 1995.

401(k), Lump Sum Distributions, IRAs:

Pension and Health Benefits of American Workers, New Findings from the April 1993 Current Population Survey, U. S. Department of Labor, 1994.

BUDGET ROLL-OUT

Q & As on Pension Simplification and IRAs

SAVINGS/PENSIONS & IRAs

Question

What does the President's Budget do to promote savings?

Answer

- We must make it easier for people to save.
- Our budget includes several important proposals to encourage savings, especially for retirement:
  - We expand IRAs in a significant way.
  - We simplify the private pension system rules.
  - We offer a new simple retirement savings plan for small business.
  - We make 401(k) plans available for tax-exempt organizations and Indian tribes.
  - We provide protection for State and local government workers' retirement savings.
  - We improve vesting for multiemployer collectively bargained pension plans.

PENSION SIMPLIFICATION

Question

What is in the Budget's Pension Simplification package?

Answer

Pension Simplification

- The President's Budget includes a set of proposals to simplify rules (and expand coverage) for pension plans sponsored by businesses of all sizes, nonprofit organizations and state and local governments, as well as multiemployer collectively bargained plans.

- The Budget reflects initiatives announced by the President in June of 1995 at the White House Conference on Small Business.

NEST

- The Budget includes a new, simple, voluntary retirement savings plan (the National Employee Savings Trust or NEST) for small business. This is the simple retirement plan that the President referred to in his State of the Union message.

- The NEST has no red tape and no complicated forms or calculations. It is designed to encourage retirement savings by middle- and lower-wage workers, not only the high paid.

PENSION SIMPLIFICATION

Question

How would the Budget simplify the pension rules?

Answer

The Budget proposes to simplify the design and administration of retirement plans through various measures, including:

- providing a 401(k) safe harbor to make meaningful benefits available to low- and middle-wage workers, as well as the higher-paid, without complicated testing;
- removing the ban on sponsorship of 401(k) plans by tax-exempt organizations;
- simplifying the definition of "highly compensated employee" to make larger benefits available to more middle-income Americans; and
- repealing the complex combined limit on benefits and contributions for employees covered by both defined benefit and defined contribution plans of the same employer.

PENSION PORTABILITY

Question

How does the Budget address the pension portability problem?

Answer

To make retirement benefits more secure and portable when workers leave their jobs, the Budget includes:

- significant expansion of IRA coverage, including special tax relief for withdrawals from IRAs in the event of unemployment;

- amendment of the tax code to implement laws that guarantee veterans continued pension coverage when they return to their job after military service;

- faster vesting in multiemployer (collectively bargained) pension plans; and

- expansion of the PBGC missing participant program to make it easier for all workers entitled to benefits under terminated plans to locate the benefits when they retire, even if the employer has gone out of business.

SMALL BUSINESS PENSION COVERAGE

Question

How will the Budget affect pension coverage for small business?

Answer

- **THE NEST**

  The Administration has proposed a very simple, new, voluntary, retirement savings plan for small business (the National Employees Savings Trust, or "NEST") that has no red tape and no complicated employer filing, testing, forms or calculations.

  - The NEST is designed to expand pension coverage for low- and middle-wage workers, not only the highly-paid.

  - It combines the most attractive features of the IRA and the 401(k) plan, minimizes administrative and compliance costs, and eliminates the need for employer involvement with the government.

- **FAMILY AGGREGATION**

  The Administration has also proposed repeal of the family aggregation rules that can prevent family-owned businesses from providing meaningful benefits to all family members.

- **OTHER SIMPLIFICATIONS**

  The budget also includes other pension simplification proposals that are designed to expand the number of small business employees who have retirement savings.

NUMBER OF PRIVATE SECTOR EMPLOYEES POTENTIALLY ELIGIBLE FOR NESTS

Question

How many private sector employees would be potentially eligible to participate in the new NEST plan?

Answer

The group of individuals most likely to benefit from NESTs are employees who work for small private sector businesses that do not have pension plans for any of their employees. About ten million adults have worked for such businesses for at least two years. These employees would be eligible to participate in NESTs adopted by their employers.

Additional Information:

Fifteen million people work for small private sector businesses that do not have pension plans for any of their employees. This group includes individuals that have worked less than two years for their employer, as well as, individuals aged 16 to 21.

Participation among the ten million adults is likely to be low. As a result, revenue estimates are based on participation much lower than the ten million estimate.

Self employed individuals that do not have a pension plan would also be potentially eligible for NESTs. Because these individuals currently have access to Keogh's, they have not been included in the count. However, employees of self-employed individuals have been included in the count.

In addition, individuals that work for employers that have defined benefit plans would also be potentially eligible for NESTs, as well as, some employees of small state and local governments.

PENSIONS -- PRIOR PACKAGE vs BUDGET

Question

What are the differences between the pension simplification provisions in the Budget and the pension provisions that were included in the Administration's previous pension simplification package?

Answer

The Budget includes almost all of the items that were included in the Pension Simplification package that President Clinton introduced at the June 1995 White House Conference on Small Business. Certain provisions were added, to address additional retirement needs, and to incorporate some elements of the budget reconciliation act passed by Congress as part of a bipartisan effort to enact pension simplification. For example, the proposal includes:

- a provision requiring assets of 457 government plans to be placed in trust for the exclusive benefit of employees;
- an amendment of the tax code to implement laws that guarantee veterans continued pension coverage upon return to a job after military service; and
- repeal of the special five-year forward averaging rules for pension distributions.

Background

[The other differences are generally minor technical changes, and elimination of two minor items (on reversion of pension assets with respect to government contractors and on church plans) that were determined to be no longer needed. In addition, some proposals were modified in certain ways to conform more closely to elements of the Balanced Budget Act with which the Administration agreed. (The Balanced Budget Act was passed by the Congress and vetoed by the President in 1995.)]

PENSION SIMPLIFICATION COMPARED TO BALANCED BUDGET ACT

<u>Question</u>

How do the pension provisions of the 1997 Budget compare to the pension simplification proposals contained in the vetoed budget reconciliation bill?

<u>Answer</u>

- The Administration's main goal in advancing its pension simplification proposal in June of 1995 was to initiate a bipartisan effort to enact pension simplification legislation in the near future.

- Such a bipartisan effort has, in fact, ensued: the budget reconciliation bill passed by Congress has many provisions in common with the Administration's 1995 proposal and our FY 1997 Budget.

- Both the President's FY 1997 Budget and the pension proposal included in Congress' budget reconciliation bill include a simplified plan for small business and a safe harbor testing provision for 401(k) plans, although the Administration's proposal does more to encourage retirement savings for middle- and lower wage workers.

- We look forward to working with Congress, on a bipartisan basis, to enact pension simplification, including measures to encourage increased pension coverage and savings for retirement, by employees of all businesses, large and small.

PENSION SIMPLIFICATION

KEY DIFFERENCES BETWEEN PRESIDENT'S BUDGET AND BBA

<u>Question</u>

What are the key differences between the President's Budget and the Balanced Budget Act with respect to pension simplification?

<u>Answer</u>

There are far more similarities than differences between the Budget proposals on pension simplification and the BBA proposals. We look forward to working with Congress on a bipartisan basis to enact these measures. We do differ in some ways, especially because of our commitment to promote pension coverage for middle- and lower-wage workers, not only the high paid. For example, our proposal includes:

- A different simplified definition of "highly compensated" employees, to assure that certain companies with a large percentage of high-paid employees cannot provide benefits only to those earning hundreds of thousands of dollars while failing to provide any benefits to middle- and lower-wage workers.

- Safe harbors in the NEST and pension simplification that provide better benefits to middle- and lower-wage workers than the BBA.

- IRA limits that better target benefits to middle-income taxpayers than those earning over $100,000 per year.

IRAs AND THE BUDGET

<u>**Question**</u>

How would the budget change the IRA rules?

<u>**Answer**</u>

The Budget would:

- double (in two steps) the income limits for tax-deductible contributions to IRAs (permitting millions of additional Americans to make tax-deductible IRA contributions)

- exempt from the 10% premature distribution tax those IRA withdrawals that are made for unemployment, educational expenses, first-home purchases, and medical needs..

- as an additional option, establish new special IRAs under which contributions are taxable but all earnings accumulate tax-free if retained in the IRA for at least five years ("backloaded IRAs).

DO IRAs STIMULATE SAVING?

Question:

Do IRAs really stimulate saving?

Answer: Although no definitive answer is possible, a well-designed IRA proposal should generate substantial amounts of new savings.

- Targeting IRAs to new savers. By expanding eligibility for deductible IRAs and new backloaded IRAs to taxpayers with incomes up to $100,000 (whether or not the taxpayer or spouse participates in an employer plan), the President's proposal targets taxpayers whose IRA contributions are most likely to represent new savings. Contributions to IRAs by high-income taxpayers are much less likely to represent new savings than contributions from middle-income taxpayers.

  -- High-income taxpayers are more likely than middle-income taxpayers to finance their IRA contributions by diverting assets from non tax-favored sources.

- Providing incentives for non-retirement savings should stimulate savings. Since their inception in 1974, IRAs have provided saving incentives only for retirement savings. Individuals, however, save for many purposes other than retirement. By expanding the flexibility of IRAs to meet a wider variety of savings needs, such as first-time home purchases and higher education expenditures, the President's proposal should prove more attractive to many taxpayers than accounts limited to retirement savings. In addition, the knowledge that IRA assets are available to deal with possible family crises, like unemployment or illness, will make middle-income families more comfortable with beginning a commitment to IRA savings.

- Advertising should stimulate new saving. The President's proposal will dramatically increase the number of middle-income taxpayers eligible for IRAs. As IRAs become more widely available, financial institutions will have an increased incentive to vigorously advertise and promote tax-preferred savings accounts. Wide-spread advertising and media attention to IRAs should be effective in increasing awareness of the importance of saving and encouraging IRA contributions, especially among moderate-income taxpayers.

WHY SHOULD IRAs BE EXPANDED?

Question

Why should current law IRAs be expanded?

Answer

<u>To stimulate more savings</u>. The Administration believes that increasing the savings rate is essential. Tax policies can provide significant savings incentives.

-- Increased saving provides resources for increased private investment which in turn promotes economic growth and makes the U.S. more competitive in the international market.

-- Without additional savings many households will have inadequate income to provide for long-term needs such as retirement and education.

-- The personal saving rate has declined compared to previous decades. Personal saving was about 4 1/2 percent of Gross Domestic Product (GDP) during the 1960s and 5 1/2 percent during the 1970s. In contrast, during the early 1990s personal saving averaged about 3 1/2 percent with the most recent years continuing on a downward trend.

<u>To provide savings incentives to more middle-class taxpayers</u>.

-- Under current law, savings incentives in the form of deductible IRAs are not available to all middle income taxpayers. The President's proposal would greatly expand IRA eligibility for middle-class taxpayers.

<u>To provide savings incentives for more purposes</u>. Broadening the tax incentives for saving for reasons other than retirement can increase the nation's savings rate.

-- Expanding IRAs to meet a wider variety of savings needs, such as first-time home purchases, higher education expenditures, long term unemployment and catastrophic medical and nursing home expenses, should make IRAs more attractive to many taxpayers than accounts limited to retirement savings.

-- Individuals with moderate incomes and those below the age of 35, who are now doing very little saving, should find the expansion of IRAs particularly attractive.

HOW SAVINGS INCENTIVES WORK

<u>Question</u>:

Exactly how do incentives designed to increase the rate of savings work?

<u>Answer</u>: Savings incentives, such as the President's IRA proposal, stimulate savings in three ways:

- <u>Increase the rate of return</u>. The net impact of all savings incentives is to increase the rate of return on savings.
  - -- Savings incentives will increase savings if earning a higher after-tax rate of return induces people to save more.
- <u>Provide an immediate tax cut</u>. Many taxpayers find the deductibility of IRA's a particularly attractive feature.
  - -- IRA contributions are often made just prior to the filing of income tax returns. This suggests that the ability to directly reduce one's income tax liability by placing money in an IRA encourages saving among taxpayers who might otherwise not save.
- <u>Advertising</u>. If saving incentives become more widely available, financial organizations will heavily advertise tax-preferred savings accounts.
  - -- Wide-spread advertising and media attention to savings can encourage saving, especially among moderate income taxpayers.

<u>Background</u>:

Under the regular income tax, deposits in a savings account are not deductible, earnings from the account are taxed as earned, and withdrawals at any time are completely free from any additional tax. All saving incentive proposals provide a higher after-tax return than fully taxable savings. With "front-loaded" IRAs, contributions (up to some specified limit) are deductible when made, earnings on IRA account balances are exempt from current income tax, and penalty-free withdrawals for allowable purposes are subject to ordinary income tax. With "back-loaded" IRAs, contributions are taxable, but earnings are not taxed and, if funds are left in the IRA for five years (Clinton proposal), withdrawals for allowable purposes are tax-free and penalty-free.

PREVIOUSLY USED SUMMARIES

THE ADMINISTRATION'S PENSION SIMPLIFICATION PLAN

— Summary of Major Provisions —

In recent years, maintaining a retirement plan has become more complicated and costly, particularly for small employers. While 73 percent of full-time workers in private firms with 1000 or more workers were covered by retirement plans in 1993, only 24 percent of those in firms with fewer than 100 employees were covered. Fifteen million people working for these small employers are not covered by a retirement plan.

The Administration's Pension Simplification Plan will enable more employers to help their employees save for retirement. These proposals will especially help small employers increase the number of workers receiving retirement benefits, by giving small employers new, less costly ways to provide retirement benefits for their employees.

The major legislative and administrative reforms in the Administration's Pension Simplification Plan will:

Expand retirement savings opportunities for small employers

- Create the National Employee Savings Trust (NEST), a simplified voluntary retirement savings plan for small businesses as well as tax-exempt organizations and governments (with up to 100 employees).
    - Employers make all contributions directly to each employee's IRA. Employers could either contribute at least 3% of pay for each eligible employee, or contribute 1% of pay, and match elective employee contributions up to 5% of pay.
    - Employees can contribute up to $5,000 per year on a tax-favored basis.
    - No employer filing and testing requirements (no annual employer reporting, complex testing, "top-heavy" rules, or IRS determination letters).
- Repeal the family aggregation rule that prevents family-owned businesses from providing meaningful benefits to all family members.

Promote retirement savings through improved and expanded 401(k) plans

- Allow employers to use a simple plan design that assures that benefits are equitably provided for workers at all wage levels without complicated and expensive testing.
- Permit tax-exempt organizations to maintain 401(k) plans.

Remove barriers for pensions by reducing administrative costs

- Eliminate the combined limit on contributions and benefits for employees covered by both defined benefit and defined contribution plans of the same employer.
- Replace the current seven-part definition of "highly compensated employee" with a two-part test that will make larger benefits available to more middle-income Americans.
- Allow most workers to wait until they stop working before they start getting benefits.
- For multiemployer plans, eliminate the special vesting schedule and partial termination rules, simplify the limits on contributions and benefits, and allow more pre-funding of benefits.
- For state and local government plans, simplify the limits on contributions and benefits.
- Streamline the Department of Labor's processing of routine exemptions from the rules limiting a pension plan's financial transactions (prohibited transactions).

Strengthen protection of workers' benefits

- Allow plans to transfer the accounts of missing participants to the Pension Benefit Guaranty Corporation (PBGC., making it easier for workers to locate their benefits.

Streamline reporting and disclosure requirements

- Simplify annual pension plan reports (Form 5500) administratively by streamlining the form and the filing process.
- Eliminate the required filing of summary plan descriptions with the Department of Labor.

Prepared by: Department of Treasury, Department of Labor and Pension Benefit Guaranty Corporation, 7/13/95

Simplifying

PENSIONS

NATIONAL PERFORMANCE REVIEW

PRESIDENT BILL CLINTON

VICE PRESIDENT AL GORE

JUNE 1995

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OVERVIEW

"The most important job of our government in this new era is to empower the American people to succeed in the global economy. We've got to have a government that can be a real partner in making this new economy work for all of our people. We ought to foster more savings and personal responsibility."

President Clinton -- January 24, 1995

Introduction

In the twenty years since Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA) to protect the pension promises made to employees, the pension laws and regulations have become extremely complicated. There are many reasons: the desire of employers to have a high degree of flexibility in designing plans that best suit their work force; policy decisions to try to ensure that all employees receive similar tax and savings benefits from retirement plans as are available to highly compensated employees and business owners; the need to prevent specific tax-shelter abuses; and limitations on pension accumulations to raise revenue.

While each of these may be good causes, and the private sector pension system has been greatly strengthened as a result of ERISA, the cumulative result -- together with virtually annual legislative changes -- had been to raise compliance and administrative costs to a level where many small employers, in particular, feel they cannot offer retirement plans to their employees. For example, while 73% of full-time workers in private firms with 1000 or more workers were covered by retirement plans in 1993, only 24% of those in firms with fewer than 100 employees were covered.

It is time to cut through complex rules that are outmoded, redundant, or no longer necessary to achieve policy goals. With these changes, more employers, both large and small, can make the smart decision: to provide their employees with a simple, tax-advantaged way to save for retirement. And, by reducing administrative expenses, more of the money spent by employers to maintain pension plans can go to benefits, rather than to lawyers, accountants, consultants and actuaries.

We can do this without opening the system to abuses or breaking the bank:

- We can tell employers with 401(k) plans that if they make a meaningful contribution on behalf of each employee, or provide a smaller contribution plus a significant match, we'll give them a safe harbor from antidiscrimination testing that is so complex and expensive that the federal government exempted its own pension plan from the requirements.

- We can make life even simpler for the smallest employers -- those with 100 or fewer employees. We can let them combine the advantages of both IRAs and 401(k) plans to provide a new, simple plan -- we call it the National Employee Savings Trust or NEST -- where no discrimination testing is required, there are simple limits on contributions, and employees manage their own accounts.

- We can stop treating family employees like mere appendages of a business owner, letting wives and husbands, and sons and daughters who work hard in family businesses earn pension benefits of their own.

- We can turn the seven-part definition of "highly compensated employee" into a two-part definition that's so easy an employer could figure it out without a lawyer or accountant.

- We can get rid of a limit on contributions and benefits for employees who have two types of plans with the same employer, leaving in place a simpler rule enacted in 1986 to replace it. The limit is so complicated that virtually no one computes it correctly.

- We can reduce the application to defined contribution plans of rules meant primarily for defined benefit plans. And we can reduce the application to multiemployer plans of rules meant primarily for single employer plans.

- We can give employees of tax-exempt organizations the opportunity to participate in the 401(k) defined contribution plans available to other employers.

- We can make sure that all participants in pension plans will get the benefits they have earned when their retire, even if their employer terminates the plan -- or even goes out of business -- and the employee has years to retirement.

- We can repeal a provision of ERISA that requires employers to send us copies of plan documents we simply warehouse — only to have us ask them for another copy when an employee asks us for one!

These changes, and most of the other proposals in this report will require legislation. However, over the years there has been strong bipartisan support in Congress for pension simplification, and we are hopeful that our sensible, cost-effective proposal will be adopted.

But there is simplification that we can do administratively too:

- We can significantly simplify both the content and the means of filing the annual report that pension and health and welfare plans file with the government to enable us to check compliance with the law.

- We can make it much easier for plans to get permission to enter into transactions that are in the best interest of the plan but that technically are prohibited transactions.

- We can make certain that employers don't have to send employees duplicative notices or notices of plan changes that don't affect them.

Increasing the retirement income security of American workers is important, and increasing retirement plan coverage and benefits is a logical and effective way for the public and private sectors to work together with individual workers to achieve this goal. The package we are presenting today is a cost-effective beginning. We intend to continue to work with all concerned parties and with the Congress to ensure greater simplification of our pension system and greater retirement income security for all American workers.

Highlights of the High Priority Actions

Although this report proposes 29 High Priority Actions for pension simplification, six of these actions are of particular importance in achieving the goals of simplification.

- **Offer the "National Employee Savings Trust" – NEST – A simplified pension plan for small businesses**

  Small businesses are least able to deal with the complexity of current law, and their employees are the least likely to be covered by a retirement plan today. Therefore, we propose a new, simple retirement plan for employers with 100 or fewer employees. As many as 15 million workers who have no employer retirement plan could become eligible for the new plan, which would be known as the National Employee Savings Trust, or "NEST."

The NEST would operate through individual IRA accounts for employees, and would incorporate the most attractive features of the 401(k) plan, the fastest growing employer retirement plan in America today. By eliminating or greatly simplifying many of the rules that apply to other qualified retirement plans, including 401(k)s, the NEST would remove the key obstacles that currently deter many small employers from setting up retirement plans.

For example, for purposes of the NEST, this proposal **would eliminate:**

- the special nondiscrimination test that applies to employees' 401(k) salary reduction contributions;
- the special nondiscrimination test that applies to an employer's matching contributions;
- the top-heavy rules;
- the limit on profit-sharing plan deductions; and
- employers' reporting requirements.

The proposal **would simplify:**

- the limits on contributions;
- the rules governing employees' eligibility to participate; and
- employers' disclosure requirements.

A NEST could provide for employer contributions and for 401(k)-type tax-favored employee contributions by salary reduction. And employers could use their contributions to encourage each of their employees to contribute by offering to "match" employees' salary reduction contributions dollar-for-dollar for the first 3% of employee compensation and at least 50 cents on each contributed dollar for the next 2% of employee compensation. All NEST contributions would be made to an IRA established for each participating employee, and employers would contribute according to either of two "safe harbor" formulas.

- **Provide a simplified, design-based alternative for 401(k) defined contribution plans, for all employers**

  The 401(k) plan generally allows employees to contribute toward their retirement savings on a tax-favored, salary reduction basis. These plans often provide for the employer to make contributions that "match" the employee contributions. Yet in order to ensure that lower paid workers get reasonable contributions compared to those received by the highly paid, extensive and often costly nondiscrimination tests apply.

  We propose two important simplifications to the complex nondiscrimination tests that apply to 401(k) plans. In addition, we would allow employers (regardless of size) that sponsor 401(k) plans to avoid the nondiscrimination tests altogether by making the same type of safe harbor contributions that would apply to the NEST.

- **Repeal the family aggregation rule and the combined limits on contributions and benefits for those with multiple plans, and eliminate or simplify other unnecessary or overlapping requirements**

  <u>Repeal the family aggregation rule</u>. We propose to repeal the so-called family aggregation rule. Currently, multiple family members employed by the same firm are penalized if one of them either owns 5% or more of the firm, or is one of the ten highest paid employees. This unfairly prevents the family members from receiving the full retirement benefits they could have if they were unrelated employees. In addition, the family aggregation rule greatly complicates nondiscrimination testing, particularly for family-owned or operated businesses.

  <u>Repeal the combined limit</u>. We propose to repeal the excessively complex "combined limit" that currently applies to an employee's contributions and benefits when an employee participates in both a defined contribution plan and a defined benefit plan of the same employer. The calculation of this limit -- often referred to as section 415(e) of the Internal Revenue Code -- is exceedingly cumbersome. It requires information concerning a plan participant's entire work history, and it is commonly performed incorrectly. The goals of the combined limit are already adequately met by an excise tax enacted by Congress in 1986.

  <u>Simplify the definition of "highly compensated employee" to ease plan administration</u>. We also propose to simplify radically the definition of "highly compensated employee." Virtually every nondiscrimination test for pension plans (and health and welfare plans) involves identifying the employer's highly compensated employees. This term is currently defined by reference to a

complicated seven-part test that considers pay for both the current and preceding year. In addition, this test classifies many middle-income workers as "highly compensated employees" who are, as a result, prohibited from receiving better benefits.

Our proposal replaces the seven-part test with a simple two-part test: a highly compensated employee would be anyone who either owns more than 5% of an employer or is paid more than $80,000, based on pay in the prior year. The $80,000 threshold would save many middle-income Americans from being disadvantaged by nondiscrimination rules that were originally meant to help them.

Exempt defined contribution plans from the minimum participation requirement. Every qualified defined benefit plan and defined contribution plan currently must cover at least 50 employees or, in smaller companies, 40% of all employees of the employer. This minimum participation rule was generally intended to prevent the use of individual defined benefit plans to give high paid employees better benefits than those provided to others under a separate plan. Because the abuses addressed by the rule are unlikely to arise in the context of defined contribution plans, the rule adds unnecessary administrative burden and complexity for those plans. We would repeal the requirement for defined contribution plans.

- **Streamline Form 5500 reporting for all pension plans**

Each year, over 750,000 pension and welfare benefit plans are required to file the Form 5500 with the Internal Revenue Service (IRS). The form provides detailed information concerning a plan's financial condition, funding, investments and operations, and allows the pension enforcement agencies to evaluate compliance with the complex pension rules. This form is filed and processed as if it were a tax return, although it is an annual information report. In accordance with a National Performance Review (NPR) recommendation, we propose to significantly simplify and shorten the form and to develop software that will allow plans to file the form electronically, using a self-editing program. The new form will be available for public comment before the end of 1995 and completed early in 1996. The revised filing system will be implemented for 1996 plan years, for which returns must be filed in July 1997.

- **Simplify and expedite the prohibited transaction exemption process**

A "prohibited transaction" is generally any transaction between a plan and a person who is considered a "party in interest" or a "disqualified person." Prohibited transactions may trigger an excise tax and civil and criminal liability.

On the other hand, many transactions that are technically prohibited are inconsequential or are completely consistent with a plan fiduciary's responsibilities to participants, and so the Department of Labor (DOL) grants exemptions in most cases. However, the current DOL process, which treats each requested exemption as unique and entitled to all statutory procedural protections, can take up to two years. We would, administratively, guarantee a DOL response within 45 days for transactions DOL determined to be substantially similar to exemptions previously granted to the same or other plans. In addition, we would simplify the process for exempting another class of prohibited transactions -- involving self-directed accounts -- that both the IRS and DOL currently must act on, by designating DOL the primary decision-maker and limiting the time within which the IRS must object or concur.

- **Expand the Pension Benefit Guaranty Corporation's missing participant program to enable more of those promised a pension to get it, even if their company goes out of business**

Under the Retirement Protection Act, enacted in December, employers who are terminating defined benefit plans guaranteed by the PBGC must register "missing" participants -- participants the plan sponsor cannot locate, who have often left the company's employment years earlier -- with the PBGC and either transfer funds to the PBGC or purchase annuities for these participants. Previously missing participants who learn of a plan's termination can then contact the PBGC rather than having to trace the funds of an often-defunct employer. In addition, the PBGC has developed a fairly effective system for tracing such participants and providing them benefits. We propose to expand this program to defined benefit plans (other than governmental plans) that are not guaranteed by the PBGC and to defined contribution plans.

HIGH PRIORITY ACTIONS

SIMPLIFY PENSION PLANS FOR SMALL BUSINESS

1. The NEST — A Simplified Plan for Small Business

Action: Create a new, simple retirement savings plan targeted to small employers and designed to encourage coverage of all employees. The new plan would be known as the National Employee Savings Trust ("NEST").

Background: The administrative cost and complexity associated with traditional qualified retirement plans often discourage small employers from sponsoring these plans. For employers with few employees, the cost of maintaining the plan may even exceed the benefits provided to employees. As a result, pension coverage of employees of small employers is significantly lower than the pension coverage of employees of larger employers. Existing plans designed for small employers are generally perceived as overly complicated and impractical. Where these plans are used, there is significant noncompliance with the statutory requirements.

Description: A NEST is a tax-favored retirement savings plan designed to provide small employers with a simple, cost-effective means of providing a retirement plan for their employees. It achieves these goals primarily by eliminating several complex nondiscrimination tests that apply to traditional qualified plans and, instead, simply requires an employer to make NEST contributions in accordance with one of two specified plan designs. The key features of the NEST are:

- Any employer with 100 or fewer employees would be eligible to maintain a NEST.

- Each employee, age 21 or older, who completed two years of service with the employer would participate in the NEST. However, an employer would not be required to make nonelective contributions for an employee with less than $5,000 of compensation for the year.

- The NEST would have to be designed to satisfy one of the following two formulas:

(1) The employer contributes at least 3% of pay for each eligible employee. In addition employees *may* be given the opportunity to make salary reduction (or "elective") contributions.

(2) The employer contributes at least 1% of pay for each eligible employee. In addition, employees *must* be given the opportunity to make elective contributions. Employee elective contributions of up to 3% of compensation must be matched by the employer dollar-for-dollar. The employer match for elective contributions above 3% of compensation (and up to 5% of compensation) must be at least 50 cents per dollar of elective contributions. No employer matching contribution is allowed for elective contributions in excess of 5% of compensation.

- All contributions would be made to an IRA and would be immediately 100% vested. However, withdrawal of any NEST contribution would be restricted for two years.

- An employee's annual elective contributions to a NEST would be limited to $5,000. Employer nonelective contributions would be limited to 5% of an employee's compensation (of up to $150,000). No other contribution or deduction limits would apply to the NEST.

- An employer would generally be allowed to make contributions for all employees to the same financial institution. However, an employee could subsequently move the NEST funds to an IRA at another financial institution.

- NEST accounts would be portable -- NESTs could originate and receive rollovers from any other IRA, and NESTs could receive rollovers from qualified plans.

Pensions

	6/95	3/96	NEW
COVERAGE			
Expanded IRAs - increasing the number of people eligible, and inclined, to save through IRAs - includes expanded eligibility, expanded uses, backloaded IRAs	Announced 2/95	X (but not as pension item)	
NEST - simple plan for small businesses	X	X	
401(k) safe harbor - simplified defined contribution plan for all businesses	X	X	
401(k) eligibility for tax-exempt organizations, and repeal of restrictive 457 rules for tax-exempts	X	X	
Repeal family aggregation rule, making it easier for family-owned small businesses to establish plans	X	X	
457 trust for government plans - provide for state and local government 457 plans to be kept in trust, protecting the assets from creditors in bankruptcy (e.g., Orange County)		X	
Repeal complex limitations on combined contributions and distributions (415(e))	X	X	
Eliminate special restrictions on plans maintained by the self-employed	X	X	
Provide consistent treatment for disabled employees	X	X	
[Direct deposit to IRAs of tax refunds]			

DRAFT Pensions

PRESIDENT CLINTON'S PENSION SECURITY AND SAVINGS PLAN

Millions of Americans do not have adequate retirement savings and are worried about their retirement and being a burden on their children. The President's pension proposals would empower more Americans to save for their retirement by expanding pension coverage, portability, and security.

- **Expands Coverage** to help the 51 million working Americans not currently covered by an employer-provided plan to save for their retirement.
- **Increases Portability** by removing the obstacle course facing many workers when they change or lose their job and want to maintain their retirement plan.
- **Enhances Security** so hard-working Americans do not have to worry whether their retirement savings will be there when they need them.

President Clinton's Proposal Addresses These Challenges With A Five-Part Plan:

1. **NEW SMALL BUSINESS PENSION PLAN -- TO INCREASE COVERAGE:** The lack of a simple pension plan for small businesses has led to a disturbing statistic: while 76% of workers in large businesses have employer-provided pensions, only 24% of workers in small businesses do. That is why the President proposes to establish a simple small business plan:

5 m covered by plan change jobs every yr.

   - **$5,000 Tax Free Contributions.** Workers could deduct up to $5,000 a year through automatic payroll deductions.
   - **Employers Contribute 3% of Salary or 1% Plus a Match of Up To 5%.**
   - **One-Page Form.** It cuts through the red tape with a simple, one-page form without complicated employer forms, filing, calculations, or testing.
   - **100% Portable.** All contributions would by immediately vested and fully portable.

2. **EXPANDED IRAS -- TO INCREASE COVERAGE AND PORTABILITY:** Currently, deductible IRAs are available only to families making under $50,000, and can be withdrawn penalty-free only for retirement purposes. The President's proposal expands IRAs in two ways:

$11 Billion

   - **Allows Savings for Training, First Time Home Purchases, Major Medical Expenses, and During Long-Term Unemployment:** Allows penalty-free withdrawals for major life expenses, such as the purchase of a first home or college education.
   - **Doubles Income Eligibility:** More middle class families -- especially those with two incomes -- will be eligible for this expanded IRA because the income limits will be lifted from $50,000 to $100,000 for married couples.

3. **PENSION PORTABILITY REFORM:** Today workers who change jobs and want to take their savings with them and keep saving for retirement, faces a multi-faceted obstacle course. Employers may force them to withdraw from the pension plan or accept unattractive investment options, and 50% of workers in 401(k) plans are in plans that do not permit them to roll-over their earlier savings into the plan, and most must wait 1 year to begin saving again.

- **Take Away 1 Year Wait for New Jobs:** Millions of workers are forced to wait 1 year before they can enter their new employer's pension plan. This provision repeals the law that causes employers to impose a 1-year waiting requirement.

- **Green Light for Employers to Accept Rollovers:** Today, 50% of workers in 401(k) plans are in plans that do not accept rollovers from new employees. Treasury will issue regulations that will end outdated and confusing regulations that prevent portability.

- **Expanded IRAs and the New Small Business Pension Plan Will Increase Portability:** The new small business pension plan and the expanded IRAs are both fully portable.

- **Ensure Portability for Veterans:** Ends disturbing reality that veterans who serve their nation are not assured of continued pension coverage when they return from service.

- **Prevent Coerced Distributions or Discriminatory Investment Options for Departing Employees:** Will make clear that laid-off employees cannot be forced to withdraw their retirement savings by unduly restrictive investment options.

4. **PREVENTS PENSION RAIDING:** In the 1980s, companies raided more than $20 billion from over 2,000 pension plans covering 2.5 million workers and retirees. Legislation in 1990 sought to curb pension raiding by imposing a stiff excise tax of up to 50% on these pension reversions.

- **No Legislation Weakening Current Anti-Reversion Rules:** The Administration will not agree to any legislation that calls for pension reversions.

- **New Worker Protected by Reporting Requirement:** To ensure that current rules are adequate to prevent against the abuse that became common in the 1980s, this act would require twice-yearly reporting by Labor Department and Treasury Department as to any activity in this area.

5. **401(k) SECURITY:** Today, there are 22 million Americans covered by 401(k) plans with combined assets of $522 billion. To address the problem of employers using worker pension contributions as "interest free loans," the Labor Department has launched 657 investigations as well as a voluntary compliance, "Pension Payback Program."

- **Require Prompt Reporting and Action on Misuse of Pension Funds.** The ERISA Enforcement Improvement Act would require administrators and accountants auditing plans who discover fraud or other egregious ERISA violations to report them, with fines up to $100,000 for violations. Funds held in regulated institutions -- such as banks and insurance companies -- would be included in such annual audits for the first time.

	6/95	3/96	NEW
PORTABILITY - 1			
5-year vesting for multi-employer plans - give union members vested rights to pensions five years earlier	X	X	
Returning veterans - make technical corrections that implements 1994 law enabling returning veterans to rejoin pension plans		X	
Extend PBGC missing participant program to defined contribution plans, so retirees can locate pensions even when the company has disappeared	X	X	
Remove barriers to direct rollovers to and from 401(k) [and 403(b)] plans for new employees still in waiting period for new plan by: (i) clarifying nondiscrimination testing relief for and (ii) mitigating risk of disqualification of new plan to protect it against receipt of bad assets (51% of workers in 401(k) plans are in plans that do not accept rollovers)			**THIS CAN ALL BE DONE BY REGULATION** (i) X (ii) X - '95 regulation addresses issue for qualified plans, consider expanding to 403(b)s and feasibility of more targeted sanction to retain compliance incentive

	6/95	3/96	NEW
PORTABILITY - 2			
[Eliminate requirement for conduit IRAs, thus facilitating movement of IRA money, and 401(k) and 403(b) money into a new employer's 401(k) or 403(b) plan]			**X for people currently under 60; more work needed for others because those over 60 have special benefits**
Remove a major barrier to encouraging employers to allow new employees to make salary reduction contributions while still in plan waiting period (e.g., remember when you had to wait to join TSP?) by not adversely counting such non highly-paid employees for nondiscrimination testing			? - signifi-cant concern about disciminat-ion
Further improve NEST portability			X - need to coordinate with 2-year holding rule

	6/95	3/96	NEW
COST-SAVING/ SIMPLIFICATION			
Simplify definition of highly compensated employee	X	X	
Exempt defined contribution plans from minimum participation rules	X	X	
Simplify substantial owner rules relating to plan terminations	X	X	
Facilitate nondiscrimination testing and corrections	X	X	
Conform 401(k) distribution rules for rural coops	X	X	
Simplify deduction rules for multiemployer plans and allow triennial actuarial valuations for multiemployer plans	X	X	
Eliminate partial termination rules for multiemployer plans	X	X	
Simplify contribution and benefit limits for government and multiemployer plans	X	X	
Repeal rule requiring employer plans to commence minimum distributions at age 70-1/2 to those still working	X	X	
Simplify taxation of annuity distributions	X	X	
Provide uniform information reporting penalties	X	X	
Streamline ERISA summary plan description filing requirement	X	X	
Eliminate half-year requirements	X	X	
Extend date for adoption of plan amendments	X	X	
Repeal 5-year averaging for receipt of lump sum distributions		X	

	6/95	3/96	NEW
ENFORCEMENT			
ERISA Enforcement Improvement Act	Previously introduced as Administration-sponsored legislation; to be included in new package also		

	6/95	3/96	NEW
REVERSIONS			
[Ban reversions/require report to employees/require Treasury or Labor annual report]	Our previous activity has been opposition to Republican proposals to enable more reversions; we have not previously made a positive proposal		

	6/95	3/96	NEW
IMPROVED GUARANTEES			
[Raise the guarantee level for multiemployer plans from about $6,000 annually to about $13,000 annually (single plan guarantee is $31,700)]	Annual report on multiemployer system will indicate significant surplus forever; guarantee level has not been raised since 1980; current guarantee causes 50% of workers to lose benefits (compared with 20% in single-employer plans).		