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STATEMENT OF THE PENSION RIGHTS CENTER

ON THE

COMPREHENSIVE RETIREMENT SECURITY

AND PENSION REFORM ACT OF 2001

H.R. 10

BEFORE THE

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

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

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

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

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

H.R. 10's CENTERPIECE PROVISIONS

(1) Increasing contribution limits for savings plans

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

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

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

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

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

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

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

What can be done to modify Sections 201 and 301 to better achieve the objective of increasing retirement savings? A starting point might be a provision introduced by Congressman

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

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

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

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

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

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

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

(3) Increasing the "covered compensation cap"

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

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

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

H.R. 10's MOST CONTROVERSIAL PROVISIONS

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

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

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

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

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

These provisions are little more than a delaying tactic advocated by lobbyists for large companies hopeful that it will to defuse the outrage of the many employee groups throughout the country that are looking to their elected representatives to resolve this contentious issue for the future by fairly balancing their interests with those of their employers. These groups think that "wearaway" of pension benefits should be prohibited,[16] and that all employees should be given the option of remaining under their old plans. They also want to make sure that no action taken by Congress to protect employees from being hurt by future "hybrid" conversions interferes with the lawsuits they have initiated, and the age discrimination complaints that they have filed.

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

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

(2) Elimination of protected benefits after mergers and acquisitions

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

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

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

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

H.R. 10's DISCLOSURE PROVISIONS

(1) Summary Annual Report dissemination

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

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

The Summary Annual Report is an easy-to-fill-in-the-blanks form that is typically distributed at worksites, included with paychecks, mailed, or published in union newsletters. Larger plans disseminate SARs once a year; small plans, every three years. Distribution of the SAR reminds workers that the money in the pension or profit sharing plan belongs to them, and that they have reason to be concerned about how well it is invested.

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

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

(2) Elimination of certain benefit suspension notices

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

A particularly egregious example of this involved a Minnesota construction worker, who retired to Florida, and then decided to return to work covered by his Minnesota plan, something he had specifically been told he would be able to do. After he returned to work, he learned that the plan had just adopted a new rule, suspending benefits of retirees who came back to work, including those, such as him, who had retired before the adoption of the rule. He learned of the suspension through the very kind of notice that Section 707(a)(2) would eliminate. The notice told him about the suspension, the reasons for the suspension, and the applicable provisions of the plan, and how he could seek review of the plan's action. It made it possible for him to immediately take steps to challenge the suspension.
Without the notice, he might have learned only when he left work covered by the plan and asked for his pension to be started again, that he would receive no additional payments until he reached age 65.

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

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

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

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

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

(4) Individual benefit statements

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

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

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

In conclusion, I would like to again thank you for the opportunity to appear here today.

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

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

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

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

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

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

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

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

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

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

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

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

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

[12] "Why Pension Reform Legislation Is a Bad Idea," Daniel I. Halperin, 89 *Tax Notes* 958, November 13 2000. "House-Passed Pension Changes Would Overwhelmingly Benefit Corporate Executives and Owners: Provisions Could Lead to Pension Reductions for Low- and Moderate-income Workers," Peter R. Orszag, Iris Lav and Robert Greenstein, Center on Budget and Policy Priorities, August 1, 2000. See also "Beware: The Rich Are Getting

Richer, Norman Stein, *Los Angeles Times*, July 31, 2000, and "Pension Protection Astray?" Dianne Bennett', *Washington Times,* September 26, 2000, attached to this statement.

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

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

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

[16] Wearaway is a practice where employers set opening account balances in a new cash balance plan at levels that are lower than the amounts the employees have already earned under the old plan. They then freeze those benefits until the amounts the employees would have earned under the new plan's contribution formula (had it been in effect throughout their careers) equals what they had earned under the old plan.

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

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

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

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

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