Testimony of J. Mark Iwry[1]

Before the Subcommittee on Employer-Employee Relations
Committee on Education and the Workforce
United States House of Representatives

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Chairman Johnson, Ranking Member Andrews and members of the Subcommittee, I appreciate the opportunity to appear before you to discuss defined benefit pension plans and their important role in our private pension system.

It is my understanding that the main purpose of today's hearing is to provide the Members of the Subcommittee with background information, an overview, useful perspective and a deeper understanding of the defined benefit pension system, rather than focusing at this time on specific legislative measures. Accordingly, after providing brief background relating to the private pension system, my testimony will address the basic nature of defined benefit (DB) plans and the key differences between them and defined contribution (DC) plans, will discuss the decline in DB plan coverage and its causes, and will evaluate DB plans, including their advantages and disadvantages, within the context of our private pension system as a whole, including a number of policy implications. My testimony today will not address specific legislative proposals.

Because I have been asked to address some of these issues in congressional testimony and correspondence with Congress in the past, certain portions of this testimony draw heavily on my previous writings (often quoting verbatim), as indicated specifically in the footnotes to this written testimony.

I. The Context

In assessing our nation's private pension system, one can readily conclude that the glass is half full and the glass is half empty. The system has been quite successful in important respects. It has provided meaningful retirement benefits to millions of workers and their families, and has amassed a pool of investment capital exceeding $5.6 trillion (excluding IRAs) that has been instrumental in promoting the growth of our economy[2].

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[1] The witness is a lawyer and a Nonresident Senior Fellow at the Brookings Institution. He served as the Benefits Tax Counsel of the U.S. Department of the Treasury from 1995 through 2001. The views expressed in this testimony are those of the witness alone. They should not be attributed to the staff, officers, or trustees of the Brookings Institution or to any other organization.

[2] Board of Governors, United States Federal Reserve System, Statistical Release Z.1, Flow of Funds Accounts of the United States (March 6, 2003), tables L.119, 120. This total is as of the end of 2002. It excludes amounts rolled over from plans to IRAs as well as other IRA balances. It is unclear how much of these accumulated assets in retirement plans represent net national saving (private saving plus public saving), because this dollar amount has not been adjusted to reflect the public dissaving attributable to government tax expenditures for pensions or to reflect any household debt or reduction in other private saving attributable to these balances. See Engen, Eric and William

Some two thirds of families will retire with at least some private pension benefits, and at any given time, employer-sponsored retirement plans cover about half of the U.S. work force.[3] However, the benefits earned by many are quite small relative to retirement security needs. Moreover, moderate- and lower-income households are disproportionately represented among the roughly 75 million workers and spouses who are excluded from the system. They are far less likely to be covered by a retirement plan.[4] When they are covered, they are likely to have disproportionately small benefits and, when eligible to contribute to a 401(k) plan, are less likely to do so. (Fewer still contribute to IRAs.) Accordingly, the distribution of benefits – retirement benefits and associated tax benefits – among households by income is tilted upwards.

Yet providing retirement security for moderate- and lower-income workers – in other words, for those who need it most -- should be the first policy priority of our tax-qualified pension system. This is the case not only because public tax dollars should be devoted to enhancing retirement security as opposed to retirement affluence – minimizing the risk of poverty or near-poverty in old age, reducing retirees' need for public assistance and potentially reducing pressure on the nation's Social Security system.[5] It is also because targeting saving incentives to ordinary workers tends to be a more effective means of promoting the other major policy goal of our pension system: increasing national saving.

Tax expenditures that are of use mainly to the affluent tend to be inefficient to the extent that they induce higher-income people simply to shift their other savings to tax-favored accounts, direct to tax-favored accounts current income that would otherwise be saved in nontax-favored vehicles, or offset additional contributions with increased borrowing. But contributions and saving incentives targeted to moderate- and lower-income workers – households that have little if any other savings that could be shifted -- tend to increase net long-term saving.[6] This enhances retirement security for those most in need and advances the goals of our tax-favored pension system in a responsible, cost-effective manner.

These goals have been articulated by the Department of the Treasury in congressional testimony as follows:

Gale, "The Effects of 401(k) Plans on Household Wealth: Differences Across Earnings Groups." NBER Working Paper No. 8032 (October 2000).

[3] Testimony of J. Mark Iwry, Benefits Tax Counsel, Office of Tax Policy, Department of the Treasury, before the Committee on Health, Education, Labor and Pensions, United States Senate (Sept. 21, 1999)("Sept. 21, 1999 Testimony").

[4] It has been estimated that over 80% of individuals with earnings over $50,000 a year are covered by an employer retirement plan, while fewer than 40% of individuals with incomes under $25,000 a year are covered by an employer retirement plan. See Testimony of Donald C. Lubick, Assistant Secretary (Tax Policy), U.S. Department of the Treasury, before the House Committee on Ways and Means, Subcommittee on Oversight, page 6 (March 23, 1999) ("March 23, 1999 Testimony").

[5] March 23, 1999 Testimony (cited at note 4, above), page 3.

[6] See Engen and Gale (2000), cited at note 2, above.

> "First, tax preferences should create incentives for expanded coverage and new saving, rather than merely encouraging individuals to reduce taxable savings or increase borrowing to finance saving in tax-preferred form. Targeting incentives at getting benefits to moderate- and lower-income people is likely to be more effective at generating new saving….
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> "Second, any new incentive should be progressive, i.e., it should be targeted toward helping the millions of hardworking moderate- and lower-income Americans for whom saving is most difficult and for whom pension coverage is currently most lacking. Incentives that are targeted toward helping moderate- and lower-income people are consistent with the intent of the pension tax preference and serve the goal of fundamental fairness in the allocation of public funds. The aim of national policy in this area should not be the simple pursuit of more plans, without regard to the resulting distribution of pension and tax benefits and their contribution to retirement security….
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> "Third, pension tax policy must take into account the quality of coverage: Which employees benefit and to what extent? Will retirement benefits actually be delivered to all eligible workers, whether or not they individually choose to save by reducing their take-home pay?"[7]

There are a number of reasons why the system is not doing more to address the needs of moderate- and lower-income workers.

First, tax incentives – the "juice" in our private pension system – are structured in such a way that they prove to be of little if any value to lower-income households. An exclusion from income for contributions to a plan, earnings on those contributions, or distributions of the contributions and earnings, and a tax deduction for contributions are worth little to the roughly three quarters of our population who are in the 15%, 10% or zero income tax brackets. (Refundable tax credits – or even nonrefundable tax credits such as the saver's credit for 401(k) and IRA contributions under section 25B of the Internal Revenue Code -- would help address this problem.)

Second, and more obviously, after spending a higher proportion of their income on immediate necessities such as food and shelter; lower-income families often have little if anything left over to save.

Third, lower-income families have less access to financial markets and credit and tend to have little if any experience with tax-advantaged financial products, investing and private financial institutions.

Fourth, the qualified plan rules do not require coverage of many part-time workers.

II. Tax Expenditures for Pensions

Pensions can be viewed as increasing national saving to the extent that the saving attributable to pensions (net of any associated borrowing or other reductions in other

[7] March 23, 1999 Testimony (cited at note 4, above), pages 3-4.

private-sector saving) exceeds the public dissaving attributable to the tax preferences for pensions. Those tax preferences represent a significant investment by the taxpayers. The Treasury Department has estimated the cost of the tax-favored treatment for pensions and retirement savings – the amount by which the pension tax advantages reduce federal tax revenues -- as having a present value of $192 billion. Of the $192 billion total, some $100 billion is attributable to defined benefit plans and defined contribution plans other than section 401(k) plans, $81 billion to 401(k) plans, and $11 billion to IRAs.[8]

This present-value estimate is designed to take into account not only the deferral of tax on current contributions and on earnings on those contributions but also the tax collected when the contributions and earnings are distributed in the future, whether within or beyond the "budget window" period.[9] Because large portions of the defined benefit plan universe are in each of the private sector and the public (mainly state and local government) sector, a significant percentage of the tax expenditure for non401(k) pensions is attributable to the plans in each of those sectors.

III. Defined Benefit Plans and Defined Contribution Plans

A. DB and DC Plans in General[10]

The Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (Code) draw a basic distinction between defined benefit and defined contribution plans. Both statutes define a defined benefit plan essentially as a pension plan that is not a defined contribution plan, and define a defined contribution plan as one "which provides an individual account for each participant and for benefits based solely on the amount contributed to the participant's account and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account."[11]

Under these definitions, in order for a retirement plan to be a defined contribution plan, all assets in the plan must be allocated among the individual accounts which are maintained for each participant. Each year, the allocable share of the plan's investment return is added to a participant's account together with the participant's share of any contributions or forfeitures. The contributions typically will be a fixed percentage of pay for all participants, or may vary in accordance with an employee's cash or deferred election under a 401(k) plan. By contrast, under a defined benefit plan, a participant's benefit is determined under a plan formula and is independent of the investment return. Thus, under a defined benefit plan, the employer bears the risk of investment return; under a defined contribution plan, the employees bear that risk.

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[8] Budget of the U.S. Government, Fiscal Year 2004, Analytical Perspectives, Table 6-4, page 112 ("FY 2004 Budget, Analytical Perspectives"). The budget documents also contain other tax expenditure estimates that are based on alternative methods.

[9] FY 2004 Budget, Analytical Perspectives, page 102.

[10] The material in this section A is quoted essentially verbatim from the witness's Sept. 21, 1999 Testimony (pages 3-4), cited at note 3, above.

[11] ERISA sec. 3(34), 3(35); Code sec. 414(i), (j).

The traditional models used for DB plans and DC plans have given rise to significant economic differences between the types of plans that transcend the legal distinctions. As noted, DC plans provide for contributions allocated each year to each participant, while DB plans typically state a benefit promise in terms of an annual benefit commencing at normal retirement age. This has led to a difference in the pattern under which the ultimate economic value of plan benefits is typically earned or accrued under the two types of plans.

Under a traditional DB plan that provides for an annuity benefit generally based on final average pay (e.g., 1% of highest average pay times years of service), a participant typically will earn the most valuable benefits later in his or her career. The surge in benefit value under a final average pay DB plan occurs for a number of reasons. First, a retirement benefit expressed as a fixed annuity payable at retirement is more valuable to a worker who is closer to retirement age than to a younger worker. This first difference applies both in the case of a final average pay plan and in the less common cases of a career average pay plan or a flat benefit plan.

A second reason for the benefit value surge in a traditional final average pay plan is that the annuity benefit is computed with reference to highest average pay which is typically earned in the worker's final years of employment. As a worker's pay increases, it causes an increase in the plan benefits that were earned in prior years (which were based on the worker's pay in those prior years), and the amount of this increase in prior benefits is proportional to the number of past years of service under the plan. Because older workers tend to have longer service, they will derive the greatest value from this final average pay feature. A third reason is that a DB plan may offer a subsidized early retirement benefit to employees who retire after a specified number of years. When an employee satisfies the eligibility conditions for the subsidy, the value of the employee's benefit can increase considerably.

In contrast, DC plans provide a more ratable accrual. If two employees of different ages receive the same allocation to their individual accounts, the current economic value is the same. In addition, contributions made to an employee's account are based on the current year's pay. Thus, unlike the case of a DB plan that bases benefits on final average pay, in a DC plan there is no retroactive increase in past contributions to reflect the excess of current year's pay over past years' pay. DC plans also do not provide for early retirement subsidies.

Hybrid plans, such as cash balance pension plans are plans of one type – DB or DC – that also have characteristics of the other type. In some respects, cash balance plans resemble DC plans. They are presented to employees using DC plan concepts, with an account that increases over time as a result of interest and compensation credit. In addition, the pattern of economic accrual under a cash balance plan (i.e., each employee is credited with a hypothetical allocation which is a percentage of that employee's compensation for that year) is closer to the economic accrual under a traditional DC plan than under a traditional DB plan design. However, a cash balance

plan is not a DC plan because an individual's benefits under a cash balance plan are not solely derived from the individual's allocated contributions plus attributable investment return. Therefore, cash balance plans are DB plans.

B. Basic Classifications of DB Plans

The universe of defined benefit plans may be classified in various ways. One way is by type of plan sponsor and covered workforce. Three distinctions are helpful here:

- DB plans can take the form of "single employer" or "multiemployer" plans. The former type of plan is the conventional corporate plan sponsored by a single employer for its employees. The latter type, the "multiemployer" plan, is sponsored by more than one employer in a single industry where employees are represented by collective bargaining and where the plans are jointly trusteed by representatives of corporate management and of the labor union. The legal frameworks are somewhat different for the two types of plan.

- Single-employer DB plans can be maintained pursuant to collective bargaining or not. Nondiscrimination standards that are intended to prevent qualified plans from discriminating in coverage or benefits in favor of highly paid employees generally do not apply to collectively bargained plans.

- DB plans can cover employees of employers in the private-sector or in the public sector. DB plans maintained by State and local governments (and by the Federal Government) for their employees comprise a large portion of the DB universe and are generally exempt from ERISA and from some of the tax qualification rules.

As a practical matter, a fourth sponsor-based distinction that can be helpful to bear in understanding the role of DB plans in our system is the informal distinction between larger employers and small business employers. While not invariably the case, typically the dynamics of plan choice and design, operation, duration and other issues bearing on the adoption and administration of DB plans can differ significantly between the small business sector and employers with larger workforces. In formulating policy, it is important to understand the different problems, needs and perspectives of small employers as distinct from larger ones, as well as their employees.

C. DB Plan Termination Insurance[12]

Most participants in terminating qualified defined benefit pension plans receive benefit protection in the form of a plan termination benefit guarantee administered by the Pension Benefit Guaranty Corporation (PBGC), a government corporation created under ERISA.

[12] The material in this section C has been taken verbatim (or nearly so) from an unpublished paper, "Regulation and Supervision of Pensions in the United States", prepared by the witness for the OECD in May 2002.

The PBGC pays vested pension benefits to participants monthly up to specified dollar limits. This PBGC guarantee applies only if a defined benefit plan terminates without adequate funding to pay the benefits and the employer goes out of business or is otherwise financially unable to fund the benefits. In that event, the PBGC generally steps in and takes over trusteeship of the plan and its assets in order to pay the benefits. An employer that is financially capable of fully funding a plan's benefits when the plan terminates is required to do so.

The PBGC, which covers both single-employer and multiemployer plans, is funded by insurance premiums paid by employers that sponsor defined benefit pension plans, by funds received from plans it takes over, by recoveries in bankruptcy from former plan sponsors, and by earnings on the investment of its assets. General tax revenues are not used to finance the PBGC, and it is not backed by the full faith and credit of the United States Government.

In a sense, the PBGC operates as an insurance company for pension plans. However, it has a special public responsibility to protect the interests of plan participants. The agency often acts as an advocate for participants' pension interests in negotiating with corporations that are in financial distress regarding pension plan funding and benefits in connection with corporate bankruptcy.

IV. Why Has Defined Benefit Plan Coverage Declined?

The number of defined benefit plans and the number of defined benefit plan participants have both been declining for years. However, the decline in the number of participants covered by DB plans has been relatively slight, by contrast to the dramatic decline in the number of DB plans. The difference appears to be attributable to the fact that the decline has taken place mostly in the small business sector; larger DB plans (those covering state and local government employees as well as corporate plans) have generally been more durable. Accordingly, many of the plans that have disappeared covered very few workers.[13] In addition, some number of DB plans were merged into other plans – without necessarily reducing the number of workers covered -- in connection with corporate mergers and other business combinations. Actual termination of larger DB plans appears to have been the exception, but for many years now, very few new small or large DBs have been established.

It is commonly asserted that the continuing stagnation and decline of defined benefit plan coverage are mainly attributable to "overregulation" that added unduly to the cost and complexity associated with DB sponsorship. There is some truth to the proposition that DB plans have been made significantly more costly and less attractive to employers by such regulatory constraints as PBGC premiums (during a period when the PBGC was in chronic deficit), legal funding requirements and restrictions, vesting and accrual standards, restrictions on reversion of surplus assets to the employer, and nondiscrimination standards designed to ensure that a reasonable number of average

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[13] D. Rajnes, EBRI Issue Brief Number 249: An Evolving Pension System: Trends in Defined Benefit and Defined Contribution Plans (Sept. 2002).

workers receive a reasonable share of the benefits. The question, of course, is how much of this regulation, if any, has been unnecessary or excessive, and how much of an adverse impact it has had.

In my view, some of the regulation has unnecessarily discouraged employers from maintaining DB plans, partly because Congress and regulators have sometimes struck a questionable balance in seeking to prevent abuses that have arisen in the past. In some instances, abuses that have occurred on occasion in the small business environment have prompted overly broad restrictions equally applicable to larger plans where the particular risk is highly unlikely to arise.[14] In other cases, requirements that might have been reasonable in the larger plan context were imposed equally on small plans where the associated costs, which could not be spread over numerous participants, made the requirements harder to justify.

More generally, employers and their advisers have expressed concern about the volatility and unpredictability of their ongoing DB funding obligations from year to year. Because the funded status of a plan depends on a comparison of its liabilities (calculated based on assumed interest rates, among other things) and its assets, the natural fluctuations of interest rates and asset values, as they interact with statutory or regulatory restrictions, has caused variability in funding.

At the same time, much of the regulation that caused employers to drop DB plans brought about reasonable reforms in the law.[15] A considerable number of plans were appropriately terminated as a result of the Tax Reform Act of 1986 because they were viewed as abusive or not delivering fair “money’s worth” to the taxpayers. The 1986 legislation ruled out or discouraged certain aggressive defined benefit pension practices that had been prevalent for years. This shrinking of the owner’s or employer’s net pension and tax benefit from DB plans (net of the cost of providing benefits to employees and paying PBGC premiums and administrative costs) led to the termination of many plans in the small business sector that had limited most of the benefits to the owner of the business, while delivering comparatively little to ordinary workers. For example, the legislation had the effect of ruling out defined benefit plans covering only a single, highly-paid partner or other co-owner of a professional firm to the exclusion of support staff and other employees. This caused the abandonment of numerous such plans.

The reforms included in the 1986 legislation also prohibited the practice of completely eliminating tax-qualified pension benefits for moderate- and lower-paid workers by “offsetting” their expected Social Security benefits against their plan benefit formula. In

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[14] Testimony of Kenneth Porter on behalf of the American Benefits Council, before the Subcommittee on Select Revenue Measures of the House Committee on Ways and Means (April 30, 2003).

[15] Beginning with this paragraph, the discussion in this section IV includes a number of paragraphs taken verbatim (in whole or in part) from pages 4–6 of a February 7, 2000 letter written by the witness to Senator James Jeffords (I-Vt) (when he was Chairman of the Senate Health, Education, Labor and Pensions Committee and when the witness was the Treasury Department’s Benefits Tax Counsel) in response to questions then Chairman Jeffords had posed to the witness concerning defined benefit plans.

the late 1980s and early 1990s, many employers amended such fully "integrated" defined benefit plans, which had previously "zeroed out" benefits for rank-and-file employees, to conform to the newer, less lenient nondiscrimination standards. But some employers instead chose to terminate plans that involved this or other features that were prohibited pursuant to the 1986 legislation or implementing regulations.

In addition, in the 1980s, many employers terminated defined benefit plans in order to obtain surplus plan assets for use in corporate takeovers or for other general corporate purposes. The Tax Reform Act of 1986 imposed an excise tax on pension reversions to discourage them and to recapture tax benefits that had been obtained on reverted assets. Congress later increased the excise tax. In addition to employers that terminated their defined benefit plans and recovered surplus assets before the 1986 legislation, others took these steps shortly before the excise tax took effect or in anticipation of increases in the excise tax.

It is unclear, however, that regulation – whether justified or excessive – has been the driving factor behind the stagnation and decline of DB coverage. In fact, a variety of causes have contributed to the decline. Broad, secular trends in society, the marketplace, and the workplace appear to have accounted for much of the change.

One such trend has been the decline in the expectation that workers will tend to stay with a single employer for their entire career. To the extent that employees and employers have had a perception that workers tend to change jobs more often and thus stay in each job for a shorter time, there may have been less demand for plans that deliver the preponderance of their value to long-service employees when they approach the end of their career with the employer.

Accordingly, in recent years there appears to have been considerable employee demand for plans that state benefits in the form of an account balance and emphasize "portability" of benefits – the ability to preserve and continue accumulating a pension despite changes in employer or work status. These have included, for example, plans that vest employees in their benefits earlier, provide more substantial benefits to shorter-service workers, and offer lump sum distributions that can be rolled over to a new employer's plan or to an IRA.

Another relevant trend is the change in the mix of jobs in the economy as a whole and the decline in the percentage of the work force that is unionized. Traditionally, defined benefit plans have been commonly maintained in the public sector – particularly plans covering employees of state and local governments – as well as in unionized work forces, typically in industrialized sectors of the economy, such as manufacturing.[16] Employment in manufacturing generally has been outpaced by growth in the service sector, where collective bargaining is less prevalent. Service workers (whether mobile, high-tech workers or lower-paid employees of fast food restaurants or retail outlets who

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[16] The 1998 Pension Benefit Guaranty Corporation Pension Insurance Data Book (Table S-18) showed that over half of the 33 million participants in single employer defined benefit plans insured by the PBGC were covered by plans sponsored by employers in manufacturing industries.

are short on cash) are less likely to ask their employers for defined benefit plans. Many employers in service industries provide no retirement plans to their employees; and when these employers do offer plans, they have tended to sponsor defined contribution plans instead of plans that target benefits to longer-service employees (as traditional defined benefit plans do). Once some of the competitors in an industry fail to offer defined benefit plans, the comparative costs become an issue for other competitors.

In addition, at one time the high correlation between union representation and DB coverage was viewed as indirectly expanding DB coverage for nonunion workers. Some employers might have adopted DB plans in an effort to preempt unionization of their work force, while others adopted DBs for their nonunion salaried employees in order to give them benefits comparable to those bargained for by hourly represented employees. But as the unionized percentage of the work force has declined, employers may have had less reason to adopt DBs for their nonunion employees.

A fundamental demographic trend has raised the cost of funding defined benefit plans, thereby making them harder to afford: increased longevity combined with earlier retirement. It has been estimated that the average male worker spent 11.5 years in retirement in 1950, compared to 18.1 years today.[17] This means that the life annuities provided by defined benefit plans are paid for a far longer period, and the lump sums these plans provide are significantly larger, as they generally are based on the actuarial present value of the life annuity.

This cost increase has occurred while U.S. businesses have faced intense competition from firms overseas (and in this country) that, more often than not, do not incur the expense of offering a defined benefit plan. This would not necessarily have resulted in a decline in DB coverage had there been more broad-based worker demand for DB plans. But the increasing sense of global competition coincided with another powerful trend, which affected employee demand for pensions: the advent of the 401(k) plan and its dramatic growth and popularity beginning in the early 1980s.

Indeed, the trend from DB to DC plans is more meaningfully viewed as a trend from employer-provided, employer-funded pension benefits to employee self-funded individual retirement savings through 401(k) accounts and IRAs – a trend that has broad and significant implications. Employers generally have not switched from DB plans to their closest DC analogues, the employer-funded money purchase pension plan or “profit-sharing” plan (which in fact is not required to be based on profits and can instead provide a fixed percentage-of-pay employer contribution every year). Instead, the move has been to “cash or deferred” salary reduction arrangements under section 401(k) of the Internal Revenue Code.

A switch from to DC money purchase or profit-sharing plans might have been expected if the DB decline had been caused chiefly by DB regulatory costs such as PBGC premiums, funding constraints, and complex rules for DBs; these employer-funded DC

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[17] Testimony of Steven A. Kandarian, Executive Director, Pension Benefit Guaranty Corporation, before the Subcommittee on Select Revenue Measures, House Ways and Means Committee, April 30, 2003, pages 7-8.

plans are not subject to most of those costs, and are governed by a simpler set of rules. But the shift has been of a more fundamental nature: from employer-funded plans of any kind (DB, money purchase, or profit-sharing) to plans funded in large part by employees' own salary reduction contributions.

Economic theory and studies suggest that most retirement benefits ostensibly provided by employers ultimately come out of employees' total compensation package because they tend to be offset, sooner or later, by reductions in other forms of compensation. The timing and extent of these offsets may differ in different labor markets and based on other factors, as may the scope of the offsets – the extent to which they apply on an individual employee-by-employee basis or on a group basis, and the composition of the affected group of employees.[18] Assuming this view is correct, the immediate source of retirement contributions – the employer or their own salary – should not be of ultimate concern to employees collectively. However, individual employees who are eager to save might prefer the individually-driven nature of the 401(k) salary reduction decision because it enables them to avoid "subsidizing" their less interested (and perhaps less influential) coworkers through employer contributions that ultimately reduce everyone's pay and enables them to opt for a higher level of contribution than the employer might otherwise provide.

In fact, common parlance among employers and employees (outside of the collective bargaining context) suggests that many may view (or at least describe) employer-funded benefits as if they are "extra" added compensation that come at little or no cost to the employee. Nevertheless, it has become evident during the past two decades that many employees appreciate and value salary reduction 401(k) plans more than DB plans.

One reason is that traditional DBs tend to provide very small benefits to younger employees who leave the employer. Instead, traditional DBs tend to concentrate the large benefits among a relatively limited percentage of the work force who retire from the employer after a long career there. As the perception has grown that employees are increasingly mobile, interest in "portable" benefits has increased. The 401(k) responds to this interest by giving employees a benefit that they can take as a single-sum payment to spend or save when they leave their current job.

Second, and related, for all but those nearing retirement age, the tangible account balance of a 401(k) can appear to be more meaningful and easier to relate to than the remote prospect of a life annuity that would not begin for many years. The DB plan is harder to understand and can be nearly "invisible" for many employees. (Moreover, if the DB plan provides only small benefits for younger employees, as is often the case, the employer may have little interest in making it visible to the younger segment of the work force.)

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[18] See William Gale and Peter Orszag, "Private Pensions: Issues and Options" (March 2003), forthcoming in Agenda for the Nation, Ed. By Henry Aaron, James Lindsay and Pietro Nivola,(Brookings 2003).

Third, a benefit presented in the form of an account balance may make some employees feel richer: the amount of the account balance may sound significantly larger than an equivalent life annuity to those who are not accustomed to thinking in terms of present values or actuarial equivalents.

Fourth, especially during the bull market of the 1990s, American workers grew increasingly familiar and comfortable with the stock market and mutual funds. Many, especially more sophisticated or higher-income individuals, seemed to derive pleasure or satisfaction from the process of owning and choosing how to invest their own account – at least so long as things were going well in the markets. As a result, there was less demand for defined benefit plans, where all of the investment reward (and risk) resides with the plan sponsor.

Fifth, Congress provided tax-favored treatment of employee contributions to 401(k) plans. Unlike employee contributions to DB plans, 401(k) employee contributions reduced an employee's W-2 income. Outside of the state and local government sector – where DB plans generally have been retained -- employee contributions were not very prevalent in DB plans. But the option of making employee contributions on a pretax basis was a key feature that made 401(k) plans attractive.

Finally, the 401(k) offers liquidity that DB plans cannot provide. Benefit payments from DBs generally cannot be made until an employee terminates employment with the plan sponsor (and in many cases not until retirement age). By contrast, most 401(k) plans allow employees to borrow part of the account balance and to withdrawal amounts during employment in the event of a financial "hardship" (including college tuition payments and purchase of a home).

For these and other reasons, including aggressive marketing by financial services firms providing 401(k) investments, the 401(k) plan acquired an extraordinary "branding" value. Employees came to appreciate, value and demand it far more than the DB plan, even though the DB, for many, might in fact be more valuable. Even if choosing a 401(k) instead of a DB plan did not save the employer costs (for example, because of employer matching contributions to the 401(k)), adopting a 401(k) seemed more responsive to employee demand and seemed to earn the employer more employee appreciation.

But, in some cases at least, the 401(k) would have been perceived as less costly within the employer organization. In addition to saving actuarial fees and PBGC premiums, employee salary reduction contributions might be viewed and treated quite differently from employer contributions for purposes of short-term budgeting and for purposes of the benefits costs that the benefits and human resources function must submit for approval by the CFO. Therefore, when employees seemed value salary-reduction 401(k) plans that they funded from their own current salary more than DB plans, it was not surprising that many employers were quick to respond.

In addition to the striking success of the 401(k), another factor might have contributed to the continued low level of interest in DB plans in the small business sector. This was an increase during the 1990s in the number of highly skewed defined contribution plan designs. "New comparability" and "age-weighted" profit sharing plans marketed beginning in the 1990s could often concentrate just as great a percentage of the retirement benefits in the hands of owners or other highly paid individuals in small businesses as traditional defined benefit plans. For example, under "new comparability" plan designs, higher benefits generally could be provided exclusively to highly-paid employees. And unlike traditional DB plans, new comparability formulas did not permit rank-and-file employees to "grow into" higher levels of benefits as they aged or accumulated more service with the employer. Thus, while the vast majority of defined benefit terminations occurred in the small business sector (as evidenced by the fact that the number of DB participants declined far less than the number of DB plans), it is likely that a number of small businesses that formerly sponsored DB plans – or that might be expected to take an interest in sponsoring one – opted instead for these defined contribution plan designs.[19]

Finally, the downturn in the stock market during the past several years, unusually low interest rates, and the Treasury Department's buyback of public debt and decision to stop issuing 30-year Treasury bonds have combined to convert DB pension surpluses into deficits. Significant DB underfunding has developed because plan asset values have diminished relative to their levels during the late 1990s, while the present value of plan liabilities has increased because the four-year weighted average of interest rates on 30-year Treasury bonds, used as a basis for valuing DB liabilities, has been at an unusually low level.

These developments are imposing sudden, large funding obligations on plan sponsors and are having adverse effects on corporate financial results. As a result, while some have noted that the poor investment performance in DC plans should give employees a new appreciation of defined benefit plans, corporate CFOs have been viewing their defined benefit plans with fresh skepticism, and concern is high in the pension community about the prospect that DB plans will be "frozen" (ceasing further accruals under the plan).

At the same time, the PBGC has seen its financial position transformed from substantial surplus to substantial deficit as a number of major plan sponsors in financial distress have terminated their DB plans.[20]

[19] Treasury regulations adopted in 2001 limited to some degree the extent of the disparity in benefits permitted under new comparability plans.
[20] The complex issues relating to the appropriate way to replace the 30-year Treasury rate for funding and other purposes interest rate have been the subject of extensive legislative activity, discussion and controversy, and are beyond the scope of this written testimony.

V. Evaluating Defined Benefit Plans from a Pension Policy Standpoint

Defined benefit plans have important virtues as retirement programs. While not inherently superior to defined contribution plans -- many of the advantages of a DB can be replicated in a different manner through an appropriately designed DC – DB plans (traditional or hybrid) tend to have certain favorable attributes. These include automatic employer-funded contributions (as opposed to individual salary reduction) and the ability to provide a low-cost annuity.

For public policy purposes, it is not the formal distinction between defined benefit and defined contribution that matters most. It is more useful to examine the specific underlying attributes of a particular plan or plan design (which can be packaged together in different ways) and how they contribute to the desired outcomes.

Accordingly, various types of plans – DBs, DCs, hybrids, 401(k)s -- are all worth encouraging as a matter of policy, provided that they deliver quality coverage, i.e., meet the basic public policy objectives of the system. (In a sense, the Social Security system comes close to the classic paradigm of a defined benefit plan that delivers quality coverage.)

Without attempting to be exhaustive, the discussion that follows is intended to focus the evaluation of DB features in light of key policy objectives, providing a framework for considering how and to what extent particular DB attributes tend to further the ultimate policy goal of enhancing retirement security in a cost-effective manner for those most in need. To that end, it is generally desirable that retirement plans have the following general characteristics:

<u>Provide broadly inclusive automatic coverage</u>.

DB plans are capable of covering an entire work force, if the sponsor so chooses. But this is true of employer plans generally. They are particularly well suited to provide broad coverage (as compared to individual savings accounts such as IRAs).

Within employer plans, automatic (nonmatching, nonelective) benefits or contributions – such as those typically provided by DB plans -- cover all who are eligible. In effect, the employees who have a strong appetite for saving subsidize the more reluctant savers. By contrast, voluntary employee contributions or employer matching contributions that are characteristic of 401(k)s can leave many behind because they are made only for those who choose to participate. Typically, when the plan requires employees to take the initiative to save, those left behind are disproportionately the lower-income employees who benefit less from the tax preferences, who have less disposable income to contribute, and who may feel that they cannot afford to save.

But DB plans are far from unique in providing automatic contributions. Those are also a feature of money purchase pension plans, profit-sharing (and stock bonus) plans, and even 401(k) plans that use automatic enrollment for employee contributions. The key

distinction here is between automatic contributions or benefits and voluntary contributions that require individuals to overcome inertia, myopia, and other obstacles to action. Automatic contributions or benefits ordinarily are provided by employer plans, but Social Security – the ultimate purveyor of universal coverage in our economy -- illustrates that they can also be provided by other means.

It is worth noting that employee contributions to 401(k) plans generally have been subject to nondiscrimination standards designed to give eager savers incentives to encourage saving by their more reluctant coworkers. In contrast, IRAs (and the Administration's recently proposed Lifetime Savings Accounts and Retirement Savings Accounts) involve purely individual saving decisions.

Allocate benefits equitably, in a way that makes efficient use of the tax expenditure and is calculated to increase saving.

A plan satisfies this criterion to the extent that benefits are allocated among individuals in a progressive manner, maximizing the portion of the benefits allocated to those who most need the additional retirement security and for whom (because they are not upper-income individuals) the benefits are most likely to represent additional saving.

Here DB plans are not inherently better or worse than other plan types. However, over the years, in some professional firms and other small businesses, DB plans have often been used to deliver large benefits to a business owner at a rapid pace, in order to "catch up" on retirement saving late in the owner's career, while minimizing benefits for the owner's employees through vesting, past service credit, other aspects of the plan formula, and plan termination soon after the owner retires. Other DB plans – including many covering large work forces -- have delivered meaningful benefits to numerous ordinary workers. In the debate over cash balance plan conversions, it is often pointed out that cash balance plans tend to provide a broader allocation of benefits than traditional final average pay DB plans, less concentrated on a limited group of older employees who retire after spending most of their career with the employer. In the final analysis, the allocation of benefits depends on the particulars of the plan formula and the demographics of the workforce.

Achieve security of income by providing reasonable protection to participants from risks affecting their benefits during the accumulation phase.

The risks to benefits during the accumulation phase include the risks of forfeiture, preretirement consumption ("leakage"), inflation, underfunding by the employer, investment risk, death and disability.

Risk of forfeiture. The risk of forfeiture can be avoided by immediate or rapid vesting. DB and DC plans are not inherently different in this respect. Automatic (nonelective) employer benefits (in a DB) or contributions (in a DC) are often subjected to a longer vesting schedule, although many associate the longer vesting schedules with DB plans in particular.

Risk of preretirement consumption. DB plans, like money purchase pension plans, tend to be quite effective at preventing preretirement consumption of benefits ("leakage") because the law prohibits both types of plan from allowing withdrawals before termination of employment. Moreover, many traditional DB plans (but not cash balance plans) defer payment until retirement age, even for a participant whose employment has terminated. DC plans tend to provide more access to benefits during employment, especially where deemed necessary to encourage voluntary participation, and almost always offer payouts when employment ends.

Risk of erosion by inflation. The goal of protecting benefits from premature consumption can be in tension with the goal of protecting benefits from erosion by inflation. A final average pay DB plan (or a career average pay DB that is periodically updated for cost of living increases so as to approach a final average pay formula) protects active employees' benefits from inflation during the accumulation phase. But employees whose employment has terminated will no longer have pay increases from the employer, so their benefit, if retained in the plan, will typically be vulnerable to inflation. Alternatively, if the benefit is distributed in a single sum and rolled over to a DC plan or IRA, it can be invested so as to keep up with or outperform inflation. A DC plan tends to protect benefits from inflation even for terminated former employees who leave their benefits in the plan, insofar as investment returns provide a continuing opportunity to keep pace with and outpace inflation.

Risk of underfunding. The risk of underfunding affects only DB, not DC, plans. Because DB (unlike DC) plans are not required to be fully funded at all times, participants are exposed to the risk that the plan sponsor will ultimately experience severe financial difficulties leading to termination of the plan while insufficiently funded. However, PBGC insurance protects most DB benefits against the underfunding risk associated with DB plans.

While often cited as a distinct advantage of DB over DC plans, it is not very meaningful to consider PBGC insurance in isolation. A DC participant generally has little need for insurance from the risk that the plan will terminate without being sufficiently funded to pay benefits because DC plans are always required to be fully funded. PBGC insurance may be more usefully viewed as part of a package of DB attributes relating to funding – and a critically important element of that package. The package includes the DB sponsor's flexibility to fund over time -- flexibility that is not necessarily a disadvantage to employees or from a public policy standpoint. Funding flexibility may be a condition that makes employers more willing to sponsor a plan that provides substantial benefits payable as annuities in a promised amount.

Investment risk. Investment risk in a DB plan is borne by the plan sponsor. However, by the same token, DB participants do not share in the benefit of any successful investment performance, and a terminated employee's DB benefit is typically exposed to inflation.

Protection from investment risk is an advantage of DB plans (from the participant's standpoint) that is often cited without noting the lack of opportunity to share in successful investment performance and without noting that similar protection generally can be replicated in a 401(k) or other DC plan through safe investments. Moreover, because DC plan investments can minimize risk while providing reasonable inflation protection, they might be a more efficient way to achieve growth consistent with reasonable safety.

On the other hand, 401(k) plans that allow participants to direct their own investments may expose participants to a different set of risks that are not present in DBs: the risk of investing poorly without the discipline and expertise of professional management; the risk, in many DC plans, of overinvestment in the employer's stock; and the costs of investing on an individualized, "retail" basis (as opposed to the economies of scale associated with collective investing).

Risk of death or disability. DB plans have more flexibility than DC plans to protect employees and their families from the risk that the employee will die or become disabled early in the accumulation phase. DC plans are generally limited to providing the surviving spouse or the disabled participant access to the account balance, which may be small if the death or disability occurs early in the participant's career with the employer.

Achieve security of income by providing reasonable protection to participants from risks affecting their retirement income during the payout (post-retirement) phase.

The analysis of the comparative advantages of DB or DC plans in protecting participants against some of the risks affecting benefits after retirement is fairly similar to the analysis relating to those risks during the accumulation phase (inflation, risk of underfunding, investment risk, risk of death). Some DB plans have protected participants from post-retirement inflation through cost of living adjustments, but DB COLAs have become relatively uncommon.

However, the payout phase brings out a key distinction between traditional DB pension plans and 401(k)s, other DCs and cash balance plans: historically, traditional DBs have been designed to provide retirement income, whereas DCs typically provide wealth accumulation, available as an account balance at termination of employment. Thus, the traditional DB typically provides security of income – by paying an annuity for the joint lives of the participant and spouse (or for the life of the participant) -- at the expense of control and post-retirement inflation protection. The annuitants are protected from longevity risk -- outliving their benefits because they live longer than expected – as well as investment risk. Moreover, although life annuities are sometimes provided by DC plans, DC participants rarely elect them, in part because the DC plan generally must purchase the annuity from an insurance carrier at considerable cost to the participant. So the DB is not unique in its ability to provide an annuity but in its ability to self-annuitize – to pay the annuity out of the DB trust fund without having to incur the often high costs of purchasing an annuity in the individual annuity market.

Having said this, it should be noted that traditional DBs have lost some of their "DB" character insofar as they have been offering and paying lump sum distributions to participants with increasing frequency, not only at retirement age but also at earlier termination of employment. On the other hand, cash balance pension plans – commonly portrayed with considerable plausibility as the best hope for the continued vitality of DB plans – are DC-type asset accumulation vehicles that are designed to pay lump sums.

As a result, the policy arguments in favor of promoting cash balance plans are more aptly focused not on the fact that they are DB plans (and are therefore asserted to be superior to DCs by reason of DB attributes such as PBGC insurance and protection of participants from investment risk), but on the facts that they provide automatic employer contributions (which have become less common in DC plans) while exhibiting some of the advantages normally associated with DCs. (As noted, PBGC insurance, while important in DBs, is not a major advantage over DC plans, which are fully funded, and protection from investment risk can be replicated with safe DC investments.) But cash balance plans tend to allocate benefits somewhat more evenly than traditional DBs by giving more to younger employees, therefore providing benefits to terminating employees that can be larger and more portable than traditional DB benefits. Cash balance plans also tend to keep pace with or exceed inflation by providing interest credits.

From a policy standpoint, the major concern raised by cash balance plans is whether the conversion from a traditional DB is carried out in a manner that provides sufficient protection to older and long-tenured employees who are adversely affected (as discussed briefly below).

Provide reasonable protection to participants' spouses and children.

DB plans, like money purchase DC plans, must make the joint and survivor annuity the default distribution mode for married participants, and profit sharing DC plans are permitted to do so, but tend not to.

Provide benefits that are meaningful in amount (and that are likely to achieve adequacy when combined with other resources).

When it comes to adequacy, no one type of plan necessarily has an inherent advantage. The amount of benefits depends on the plan benefit formula, and often on the participant's salary, age and years of service, or on the amounts contributed and how they accumulate. However, some would note that, when comparing automatic employer contributions to voluntary contributions to an individual retirement savings account, the achievement of adequate benefits through employer contributions does not depend on each individual's financial analysis and consistency over time in saving to the requisite level or, in general, on each individual's investment acumen.

Be “sellable”, i.e., attractive to employers and employees.

Many of the policy advantages described above may be viewed by employers as costs or disadvantages that make plan sponsorship less attractive. One of the fundamental conflicts or tradeoffs in our voluntary private pension system is that features that are policy or participant advantages can discourage employer sponsorship.

Avoid adverse interactions that would reduce saving or do violence to other important policy objectives.

One attribute of traditional DB plans has been their ability to use early retirement subsidies or temporary “window plan” inducements to encourage employees to retire early in circumstances where that was the employer’s objective. Such approaches need to be considered in the wider context of other national policy goals. These include concerns about the impact on the economy of artificial incentives for workers to leave the work force too early, concerns about potential age discrimination (early retirement subsidies have a special exemption under the age discrimination laws), and concerns about protecting workers and their families from the dislocation of changes in the market and employment.

In particular, formulation of policy with respect to particular types of plans needs to take into account the broader implications for national retirement saving policy. This includes sensitivity to potential adverse interactions or substitution effects that could reduce national saving or even private saving on a net basis. For example, proposals to increase dramatically the amounts individuals can contribute on a tax-favored basis to individual accounts can compete with employer plans by undermining employers’ incentive to maintain plans benefiting moderate- and lower-income workers.

Provide reasonable protection for individuals’ reasonable expectations.

It is appropriate for pension policy to provide reasonable protection to individuals who are harshly affected by changes in the market or in the law. Conversions of traditional DBs to cash balance pension plans, for example, have created a need to provide a reasonable measure of protection for older workers adversely affected by the transition. The difficulty of determining how to provide for transition protection without stifling innovation and creativity in the market and in pension design reflects the hard tradeoffs involved in pension policy.

VI. Measuring Specific Outcomes

Whether a particular plan design will be effective in achieving the desired policy outcomes in our voluntary system often cannot be predicted with a high degree of accuracy. One reason is “adverse selection” by employers among alternative plan designs.

- For example, a DB plan that favors older workers might provide substantial benefits in an efficient manner to a large number of moderate-income employees if adopted for a work force that has many such employees who are older or who tend to stay with the employer.

- However, in a work force consisting of an older high-income owner and two young low-paid support staff employees, the same plan design might deliver only modest benefits to those who most need them (and who are mostly likely to save more) while providing large tax-favored pension and tax benefits where they are less needed as a matter of basic retirement security.

- Similarly, a plan with 5-year vesting might benefit many or few average workers depending on the turnover pattern in the particular workforce.

- In our voluntary system, many employers, especially in the small business sector, might be expected to select among plan types so as to maximize the owner's or employer's net after-tax value from the plan – net of the cost of providing benefits to employees.

Thus, whether a particular type of plan delivers fair value for the taxpayers may depend more on the demographic profile of the work force for which it is adopted than on the design of the plan.

One way to address the problem of "adverse plan selection" is to bear in mind that cost-effective retirement income security cannot be measured merely by the number of plans or even the number of people covered. Instead, the outcomes need to be measured with specificity -- what amounts of benefits are ultimately delivered, and to whom – and ideally, such an approach would seek to hold plans accountable for achieving reasonable results. Most plan sponsors would not run their businesses without adequate measurement of results and accountability for them. Yet our private pension system has to a great extent avoided such measurement and accountability, largely because it comes at a price in terms of complexity and administrative cost of data collection and analysis (at least to the extent requirements are imposed on plan sponsors). Since our system is voluntary, this kind of measurement has run up against plan sponsors' natural desire for simplicity and freedom from administrative burden.

Our voluntary pension system is hard to manage and harder to reform because of these sharp tensions among conflicting objectives. But recognizing the tradeoffs clearly is an essential step in doing so.

VII. Conclusion

The nation's qualified plan system represents a major public investment in private pensions. Like an equity investor or lender in a business transaction, the taxpayers – represented by Congress and the regulators -- need to be reasonably assured of an adequate return on their investment. Plan compliance with the nondiscrimination and

other tax qualification standards are the quid pro quo for this continuing infusion of equity in the form of tax-preferred treatment. And the plan qualification standards, ERISA's worker protections, and the individual pension plan documents serve a function analogous, in a sense, to the "deal" documents – the extensive and often complex undertakings and covenants, representations and warranties, and events of default that major investors use to protect their investment in an operating business or industrial enterprise.

The business investor is expected to prepare for the worst (even as it expects the best) through carefully lawyered provisions seeking to provide the most thorough protection from a wide variety of risks to its investment. The quantity and complexity of the documentation in multi-million-dollar transactions is taken for granted: the stakes are high and the need is recognized. By way of comparison, the nation's "pension transaction" involves stakes in the tens of billions of dollars and a special kind of trust: dollars entrusted to government by the taxpayers at large. Yet the "pension transaction" must surmount special challenges that do not confront the parties to transactions of far lesser magnitude or public import.

The terms of the pension "deal", including its specific provisions, must be sufficiently attractive and sellable to employers as potential plan sponsors and ultimately to employees as potential beneficiaries. It must meet demands for simplicity and restraint in its constituent rules and regulatory arrangements – including frequent challenges to the intuitiveness of specific elements viewed in isolation. It must respond to demands for fairness to similarly situated parties, including constant appeals to "level" an invisible and constantly shifting "playing field" on behalf of one interest or another. It must balance employers' and individuals' desires for choice with the risks of "adverse selection" of plans by employers and counterproductive contribution, investment, and withdrawal behavior by individuals. It also must satisfy reasonable expectations of efficiency, administrability and workability on behalf of sponsors, advisers, providers, regulators, and participants. And, in a voluntary tax-subsidized system, plans must occupy that sliver of common ground where they are sufficiently profitable to employers and other private-sector parties while delivering adequate money's worth to the taxpayers as the return on their investment.

Policy needs to keep pushing to maximize this common ground by encouraging creative methods of reducing cost, consolidating administrative functions, multiple-employer or other pooling to realize economies of scale, judicious targeting of tax incentives, and other means. Where the current system cannot create sufficient overlap between the interests of employers and the taxpayers, it may be necessary to consider other approaches or institutional arrangements.

Expanding the common ground is hard, but encouraging creative efforts to do so will help ensure that our employer plan system –defined benefit plans as well as defined contribution plans and hybrids -- continues to play a central role.

Mr. Chairman, I would be pleased to answer any questions you and the Members of the Subcommittee might have.

J. Mark Iwry

J. Mark Iwry served from 1995 to 2001 as the Benefits Tax Counsel at the U.S. Department of the Treasury. During that time, he was the principal Executive Branch official directly responsible for tax policy and regulation relating to the Nation's tax-qualified pension and 401(k) plans and other employee benefits. He is currently a Nonresident Senior Fellow at the Brookings Institution.

Mr. Iwry was previously a partner in the law firm of Covington & Burling, specializing in pensions, executive compensation, health care and other employee benefits.

Mr. Iwry has testified before various congressional committees, chaired the D.C. Bar Employee Benefits Committee, co-authored a volume on 401(k) plans, and spoken before more than 200 professional, industry and other groups. While in government, he was widely recognized for his work with the business, financial, professional and nonprofit communities to expand coverage while simplifying and rationalizing pension and benefits law. In 2001 he received the Secretary of the Treasury's Exceptional Service Award "[i]n recognition of his outstanding leadership and accomplishments ….Widely respected as Treasury's benefits and pension expert, Mr. Iwry excelled at building coalitions of diverse interests… His technical acumen and leadership have garnered praise from colleagues within Treasury, IRS, the Congress, and the employee benefits community at large."

Mr. Iwry played a central role in developing the Saver's Credit to expand 401(k) and IRA coverage of moderate- and lower-income workers (claimed last year on over 3 ½ million tax returns) and the "SIMPLE" 401(k)-type plan for small businesses (currently covering an estimated 1½ to 2 million workers). He also has initiated or orchestrated numerous other significant improvements and simplifications of the Nation's pension system and benefits law and regulation, such as approval and expansion of automatic enrollment in 401(k) and 403(b) plans, the automatic rollover IRA to curtail pension leakage, repeal of the complex section 415(e) combined limit on pensions, simplification and liberalization of the IRA and qualified plan minimum required distribution rules, simplification of highly compensated employee determinations, incentives for immediate 401(k) participation, and development of workable rules for pension portability and for health care portability, anticutback relief, 401(k) safe harbor plans, same desk rule and other benefits in corporate transactions, electronic plan administration, new comparability, COBRA, Social Security taxation of deferred compensation, and cafeteria/flexible benefit plans.

Mr. Iwry received a special award from the IRS (Office of Chief Counsel) in 2001 "[i]n recognition of the collegial working relationship you have fostered between [Treasury] and the IRS Office of Chief Counsel and of your many contributions to our nation's tax system." He has regularly advised Members of Congress and congressional staff on both sides of the aisle, and his views are frequently solicited by and reported in the New York Times, Wall Street Journal, Washington Post and other major media and trade press.

The Benefits Tax Counsel is the principal Treasury Department official directly responsible for tax policy, legislative and regulatory, relating to pensions, retirement savings, employer-provided health care, and other employee benefits, including executive compensation, golden parachutes, cash balance plans, ESOPs, stock options, IRAs, long-term care, and MSAs, and is the principal legal adviser to the Secretary of the Treasury in these areas. The BTC's responsibilities also include worker classification and issues relating to Social Security individual account proposals. The BTC represents Treasury and the Executive Branch in testimony before Congress, in working with industry, labor, and the nonprofit sector, and through public speaking.

Mr. Iwry is an honors graduate of Harvard College and Harvard Law School, and holds a Master of Public Policy degree from Harvard's Kennedy School of Government.

Contacts: J_Mark_Iwry@Post.Harvard.edu. Telephone: 301.526.8028