Department of the TREASURY NEWS

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STATEMENT OF DANIEL I. HALPERIN
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DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON PRIVATE PENSION PLANS AND
EMPLOYEE FRINGE BENEFITS OF THE
SENATE FINANCE COMMITTEE
December 4, 1979

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Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to present the views of the Treasury Department on several bills relating to private pension plans. My remarks will deal with the following bills: S. 209, The ERISA Improvements Act of 1979; S. 511, regarding the treatment of unfunded deferred compensation plans maintained by tax-exempt organizations; S. 989, regarding rollover of distributions from a money purchase plan; S. 1089, the ERISA Simplification Act of 1979; S. 1090, 1091, and 1092, relating to church plans and tax sheltered annuities; and, S. 1240, the Employee Stock Ownership Improvements Act of 1979. We defer to the Department of Labor with respect to S. 1958 regarding investments by a money purchase pension plan in employer property.

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S. 1090, S. 1091 and S. 1092 -- Amendments Relating to Church Plans

S. 1090 and S. 1091

S. 1090 and S. 1091 would amend the definition of church plan in Title I of ERISA and in the Internal Revenue Code.

Under current law, a church plan is defined as a plan established by a church or by a convention or association of churches which is exempt from tax under section 501 of the Code. In addition, a special temporary rule provides that if a plan was in existence on January 1, 1974, it will be treated as a church plan if it was established and maintained by a church or convention or association of churches and one or more agencies of such church (or convention or association), if the church and each such agency is exempt from tax under section 501. However, this temporary rule does not apply for any plan year beginning after 1982. The term church plan does not include a plan maintained by more than one employer, if one or more of the employers in the plan is not a church or a convention or association of churches which is exempt from tax under section 501 of the Code.

S. 1091 would make three changes in this definition. First, a church plan would include a plan established and maintained by an organization, the principal purpose of which is the administration or funding of a plan for the provision of retirement benefits for employees of a church or a convention or association of churches. We understand that this would allow a program of a church pension board to be considered a church plan.

In proposed Treasury regulations issued on April 8, 1977, no provision was made to allow a program maintained by a pension board or other separately incorporated organization to maintain a church plan. Through written comments and at a public hearing held on October 6, 1977 with respect to the proposed regulations, commentators suggested that the term church plan should include a plan which is administered by a separately incorporated organization such as a pension board or a bank. We agree that such a provision is appropriate.

However, S. 1091 would go substantially further by permitting a plan which is established and maintained by the administering organization to be considered a church plan. For the reasons set forth below, we do not feel it is appropriate to expand the definition of a church plan this far.

Second, the bill would define the term "employee," for purposes of determining who may participate in a church plan, to include any duly ordained, commissioned or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation. The term would also include any employee of an organization which is controlled by or associated with the church or a convention or association of churches so long as such organization is exempt from tax under section 501. These provisions would substantially expand the concept of church plan and by allowing church agencies to be included in church plans would effectively make the temporary rule contained in current law permanent.

The effect of the current rule is that employees of church agencies will, after 1982, be entitled to the full protection provided by ERISA. We believe this is beneficial.

While Congress took account of the special status of churches, and of governments, in exempting church plans and government plans from the basic participation, vesting and funding requirements of ERISA, it seems to us that such exceptions should be kept to a minimum. If benefit levels for employees of a church agency remain the same but more employees become eligible to participate and to receive a vested benefit, the cost of maintaining a qualified plan for a church agency will probably increase. However, the policy of ERISA is to provide more assurance that covered workers will receive benefits promised by a plan. One aspect of this policy is a prohibition against using a given amount of contributions to provide a higher benefit for a few employees and nothing or a minimal benefit for others. Therefore, we oppose the provision of S. 1091 which would extend the temporary rule relating to church agencies and which would prevent the full requirements of ERISA from applying to church agency plans. However, it might be appropriate to treat certain agencies, such as missionary boards, as part of a church plan where such agencies are performing functions which one church alone could not afford. Moreover, some representatives of these organizations have indicated to us that they do not seek exemption from the minimum standards but rather they have difficulty with some of the more technical provisions of the Code. The protections afforded by these provisions may be just as important. However, we recognize the necessity to balance the interests. We are prepared to consider each particular rule separately to determine if the peculiar burdens it may place upon the traditional mode in which churches have operated outweigh the benefits provided. However, we see no justification for expansion of the complete exemptions from ERISA.

The third area of change which would be made by S. 1091 relates to the rules of the proposed regulations which would cause a plan to lose its church plan status if one of the churches maintaining the plan fails to meet all the requirements. S. 1091 would provide that in such a case, if the plan corrects it's failure to meet such requirements within a specified correction period, the plan would be deemed to meet the requirements for the year in which the correction was made and for all prior years.

We believe this goes too far. However, we also believe that the rule in the proposed regulations which would cause a plan to lose its church plan status if one of the churches maintaining the plan fails to meet all requirements was unduly harsh. We believe it is appropriate to provide that a plan will be allowed to retain its church plan status if a church which does not meet the requirements disassociates itself from the plan after notice from the Internal Revenue Service of its failure to meet the requirements. This approach would retain substantial incentives to comply with the church plan requirements and yet would relieve the complying members of a church plan from the harsh results which had been proposed in a situation where one church failed to meet the requirements.

S. 1092

S. 1092 would substantially expand the ability of church employees to make relatively large contributions to certain retirement plans during their later years of service.

The bill relates to section 403(b) annuities and would expand the years of service taken into account in computing the "exclusion allowance" under section 403(b)(2). Under current law, a taxpayer may take into account only periods of service with his or her current employer for purposes of computing the exclusion allowance.

We understand that current law may create different treatment for employees of churches organized under a hierarchial basis as opposed to employees of churches organized on a congregational basis. An employee who transfers from one church to another in a hierarchial structure remains with the same employer and, thus, does not lose credit for past periods of service for purposes of computing the exclusion allowance under section 403(b). However, such a transfer in a congregational structure may result in a change of employers and the loss of prior service for purposes of computing the exclusion allowance.

Under S. 1092, all periods of service with all churches would be considered as periods of service for one employer. We do not object to this provision.

The second area of change proposed by S. 1092 concerns the limitations on contributions to section 403(b) plans under Code section 415(c). This section provides in general that the contributions and other additions allocated to a participant in a defined contribution plan may not exceed the lesser of a specified dollar amount or 25 percent of the participant's compensation. Sction 415(c)(4) currently provides more liberal limits for certain employees whose employers maintain section 403(b) annuity plans. The employees subject to these special limitations do not include church employees. The legislative history of this special provision indicates that it was added to the Code in order to enable covered employees to "catch up" on contributions in the later years of their careers to make up for contributions which were not economically feasible during earlier periods.

S. 1092 would extend the special limitations in section 415(c)(4) to employees of churches and, in addition, would create a de minimis allowance under which the limitations of section 415 would not be violated by any contribution of $10,000 or less. Further, the $10,000 amount would be adjusted for increases in the cost of living.

We generally support the policy reflected in section 415 of the Code which seeks to limit the portion of earnings which can be set aside on a tax-favored basis. We also support the general requirement that plans established by an employer must cover a broad cross section of employees in order to receive favorable tax treatment. Since section 403(b) annuity plans are not required to cover a broad cross section of employees, we do not believe the special preference for tax-exempt institutions embodied in section 403(b) reflects sound tax policy, nor do we believe the special exception from section 415 which is available for certain section 403(b) plans is justifiable. Not only are the plans described in section 403(b) given a preference over qualified plans with respect to both coverage and in certain circumstances the application of the section 415 limits, but the special rules in section 415(c)(4) are extremely complex and a burden on employers and employees. Given our concerns with respect to both section 403(b) plans and exceptions from the section 415 limits, we cannot support the changes proposed by S. 1092. However, we would not oppose an expansion of the eligibility for special treatment under section 415(c)(4) if a specific de minimis amount were included in section 415(c)(4) in lieu of the currently complex rules in that section. We would propose that the de minimis amount be $7,500 per year without a built-in adjustment for inflation.