appraisal of such matters as merger proposals or proposals for diversification of a portfolio company's business.[27]

There is, of course, a limit upon how much can be covered—and how extensively—in a two day conference of oral presentations, no matter how carefully prepared. Inevitably this volume will leave the reader dissatisfied and hungry for more information in many areas. This does not detract from the fact that the volume is a lode of both not easily accessible information and fresh thought. It will be useful for present and future reference. It will be more useful if it is read *in toto* before being relegated to the library racks.

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DEFERRED COMPENSATION FOR KEY EMPLOYEES. By Clark C. Havighurst.† Mundelein, Illinois: Callaghan & Company, 1964. Pp. xi, 383.

The stated dual purpose of this book is to provide "a guide for businessmen seeking to educate themselves on a matter of business planning and a lawyer's introduction to the technical aspects of deferred compensation."[1] This is no small order for any single volume work, especially one of such compact proportions. Having taught a graduate law course in the tax aspects of deferred compensation, this reviewer can well appreciate the multitude of problems the author faced with the task of providing lawyers with an insight. Undoubtedly, these problems were compounded by the author's attempt to bridge and satisfy the needs of both the businessman and the lawyer. The book falters and just misses the mark by reason of its attempt to be all things to all men. Possibly, this dual purpose was dictated by the fact that the book is one of a series of investigations into legal problems of small businesses which were undertaken as the result of a grant from the Small Business Administration. If this be the case, one can only speculate whether it would not have been wiser to publish two companion books—

[27] *Id.* at 215. (Emphasis added.)

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[1] HAVIGHURST, DEFERRED COMPENSATION FOR KEY EMPLOYEES at iii (1964).

one for businessmen and one for lawyers—instead of compressing the materials for both groups into one volume.

Nonetheless, the book's format is suited to its onerous task. By addressing the text to both lawyers and businessmen and by providing in addition copious footnotes and "memoranda of law" for the lawyer, the author has designed a workable vehicle. Despite a disclaimer of any intention to provide forms to aid the attorney in drafting a deferred compensation plan, the book contains helpful suggestions.

The book's two-chapter treatment of nonqualified plans and the stock option sections introduced by the 1964 amendments to the Internal Revenue Code is excellent. The material on the self-employed, or so-called Keogh Plans,[2] is well presented, clear and concise. Examples and charts are given the reader to enable him to determine the ultimate question under Keogh Plans—whether the game is worth the candle. The author poignantly brings home the tax effects of two methods of Keogh Plan distribution by comparing taxes imposed on a lump sum payment as contrasted with the taxation of distribution in fifteen annual installments.

The bulk of the book deals with qualified pension and profit-sharing plans for corporate employees and the self-employed. Certainly this is the area requiring concentration. However, it is in the treatment of qualified pension and profit-sharing plans that the book suffers. It is important to establish a solid footing in the fundamentals of these qualified plans.

Thus, the three types of qualified pension plans—flat percentage benefit, unit benefit and money purchase plans—should be illustrated and analyzed at the outset.[3] If the characteristics, similarities and

[2] The so-called Keogh Act of 1962 amended INT. REV. CODE OF 1954, § 401, making it possible for self-employed persons to establish and participate in tax favored retirement plans comparable in some ways with qualified corporate plans. Self-Employed Individual Tax Retirement Act of 1962 (Keogh Act), 76 Stat. 809 (1962).

[3] "In general, apart from union negotiated flat amount benefit plans, there are three types of pension plans. A flat percentage benefit pension plan provides for a retirement benefit by reference solely to a percentage of compensation—for example, forty per cent of average compensation for the last five years before retirement. The unit benefit plan, unlike a flat percentage benefit pension plan, takes into account length of service in arriving at the retirement benefit. Thus if one per cent of salary is the benefit of each year of service, two employees with the same salary, but with different lengths of service, will receive different retirement benefits. The third type of pension plan is a money purchase plan. Under such a plan, a percentage of the participant's compensation is contributed each year and the retirement benefit is that which is purchasable with the amount in the participant's account. A money purchase pension

differences, advantages and disadvantages of the three types of qualified plans are not grasped, it is impossible to achieve the author's major purpose of defining "the limits which may be approached with safety in an attempt to reward key employees." Certain situations will cry out for the use of a flat percentage benefit pension plan as opposed to a unit benefit plan. Nevertheless, the book neither directly mentions nor illustrates a flat percentage benefit pension plan but limits its focus instead on the unit benefit pension plan.[4]

The text presents certain generalizations which may suffice for the businessman but cannot adequately serve the lawyer. Much is made of the point that pension plans are "designed to provide employee security *plus a reward for a long term of service to the enterprise.*" Notwithstanding this, the author states that profit-sharing plans "are expected to offer current incentive supposedly based on the quality of current service." These somewhat countervailing theories can only serve to confuse the novice attorney looking for gnidance. A flat percentage benefit pension plan need not take past service into consideration. If the situation involved a new enterprise with a fifty-five year old man at the helm, he would be better served by a flat percentage benefit pension plan than by a profit-sharing plan. Even more to the point, he can have such a pension plan regardless of the fact that he has had no record of past service with the company.

The author also fails to analyze adequately the pros and cons of various funding mechanisms. Nowhere is there mention of the retirement income contract which is an excellent tool devised by

plan does not differ from a profit-sharing plan, except that the employer is committed to contribute to the former without regard to profits. Flat percentage and unit benefit pension plans are benefit oriented in that retirement benefits are anchored, and contributions to fund these benefits vary in accord with actuarial necessity. Money purchase pension plans and profit-sharing plans are contribution oriented in that their benefits vary and are dependent, *inter alia,* upon the size and frequency of contributions and the rate of investment return." Grayck, *Tax Qualified Retirement Plans for Professional Practitioners: A Comparison of the Self-Employed Individuals Tax Retirement Act of 1962 and the Professional Association,* 63 COLUM. L. REV. 415, 420 (1963).

[4] Presentation of the three types of qualified pension plans would logically lead into the areas of costs, funding and deductions. The first three subsections of Code § 404 (a) (1) are geared for the money purchase, flat percentage benefit and unit benefit type pension plans. INT. REV. CODE OF 1954, § 404 (a) (1). Dramatic differences in contributions and deductions for the same ultimate benefit could be illustrated *if* a thorough grounding in basics had been presented.

the insurance industry for funding qualified pension plans. On the other hand the author carps at self-administration for small to medium sized pension plans because actuarial fees may make them too costly. Even though insurance companies do not charge separately for actuarial service, premiums reflect load charges, and other expenses. Thus, a self-administered plan, even with actuarial costs, may be less.[5]

The book's deficiencies as a "do-it-yourself" kit for qualified plans should not detract from its general usefulness to those practicing in the field of qualified plans. The chapter dealing with the tax benefits of qualified plans is excellent. The material concerned with the contractual aspects of pension plans will cause the draftsman to sharpen his thinking and consider the problem in length and depth. Much of the book's apparent failure must be attributed to its duality of purpose and, yet, both the businessman and practitioner should gain from reading this treatment of the intricacies of deferred compensation.

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[5] In one instance worked on by this reviewer, conversion from a fully insured plan to a self-administered pension trust resulted in a 30% decrease in cost even with actuarial costs thrown in.

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