PAPERWORK REQUIREMENTS OF THE PENSION REFORM ACT OF 1974

JOINT HEARINGS

BEFORE THE

SUBCOMMITTEE ON PRIVATE PENSION PLANS

AND THE

SUBCOMMITTEE ON FINANCIAL MARKETS

OF THE

COMMITTEE ON FINANCE

AND THE

SELECT COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

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PAPERWORK REQUIREMENTS OF THE PENSION REFORM ACT OF 1974

MONDAY, FEBRUARY 2, 1976

U.S. SENATE, SUBCOMMITTEE ON PRIVATE PENSION PLANS AND SUBCOMMITTEE ON FINANCIAL MARKETS OF THE COMMITTEE ON FINANCE, AND THE SELECT COMMITTEE ON SMALL BUSINESS,

Washington, D.C.

The subcommittees and the select committee met at 9:35 a.m., pursuant to notice, in room 2221, Dirksen Senate Office Building, Senator Floyd K. Haskell presiding.

Present: Senators Haskell, Byrd, Jr., of Virginia, Brock, Nunn, and Curtis.

Senator HASKELL. The hearing of the Senate Select Committee on Small Business and the Financial Markets Subcommittee and the Private Pension Plans Subcommittee of the Senate Finance Committee will commence.

I will now put statements in the record for Senators Nelson, Bentsen, and Nunn.

[The press release announcing these hearings and the statements of Senators Nelson, Nunn, and Bentsen follows:]

FINANCE SUBCOMMITTEE ON PRIVATE PENSION PLANS AND ON FINANCIAL MARKETS ANNOUNCE HEARINGS ON THE PAPERWORK REQUIREMENTS OF THE PENSION REFORM LAW

Senator Gaylord Nelson (D.-Wisc.), Chairman of the Subcommittee on Private Pension Plans and Senator Lloyd Bentsen (D.-Tex.) announced that the Subcommittees will hold joint hearings with the Small Business Committee on the burdens on small business of the reporting requirements of the Pension Reform Act. The hearings will be held February 2 and 3 beginning at 9:30 a.m. in Room 2221, Dirksen Senate Office Building.

In announcing the hearings, the Senators said, "our inquiry was prompted by numerous complaints that the cost of administering smaller pension plans would double, and in some cases triple, because of the length of forms and other regulatory requirements proposed to implement pension reform. The law instructed the Department of Labor and the Internal Revenue Service to draw up regulations to implement its mandates of the Pension Reform Act of 1974. These regulations and proposed reporting forms are the cause of the complaints."

Senator Nelson stated, "Congress completed a major reform of the private pension plan law in 1974. Among the chief accomplishments were to give each employee more rapid vesting in his pension, and to provide that pension rights can be preserved if the employee shifts jobs.

"These provisions were responses to evidence that millions of workers were losing all pension rights when they changed jobs even after 10 or 15 years' service, and that in some cases veteran employees with as much as 30 years' service had lost their pensions when the company went out of business or changed hands," Senator Nelson said.

Senator Bentsen said, "approximately 98% of all retirement plans have less than 100 participants, and about 93% of the plans have 25 participants or less. The Pension Reform Act gives the Secretary of Labor the authority to issue simplified reporting requirements for small plans. It was the clear intent of the Congressional sponsors of this legislation that this authority be exercised.

"Simplified reporting requirements for smaller pension plans will relieve thousands of small businessmen across our Nation from unreasonably burdensome and costly paperwork. Detailed reporting requirements that may be applicable to our Nation's largest private pension plans are simply not needed for the smallest pension plans. In fact, many small businessmen may be forced to terminate their retirement plans if the paperwork burden becomes too costly and overwhelming," stated Senator Bentsen.

In discussing the need for hearings, the Senators said that the agencies' initial proposals included a document to collect basic information about smaller plans (Form EBS-1) that was 16 pages long. The draft annual report (Form 5500) was 5½ pages long, and required attachments. The agencies have added a requirement for an accountant's opinion extending beyond normal audit boundaries. Senator Nelson said that witnesses at hearings on other subjects have complained about the cost and time that would be involved under these proposals. "Many owners of small businesses said they would seriously consider dropping their plans if the proposals went through," Senator Nelson said.

In response to these concerns, Senators Nelson and Bentsen introduced a bill (S. 2344) to mandate simplified reporting for smaller plans. Last November Senator Russell B. Long (D.-La.), Chairman of the Finance Committee, joined these two Senators in asking the Department of Labor and the Internal Revenue Service to speed the process by simplifying reporting requirements without the mandate of legislation.

Senators Bentsen and Nelson said that it was desirable to hold a hearing to monitor the agencies' simplification efforts to see whether compliance problems had developed among smaller retirement plans, whether there have been terminations in significant numbers, and to determine whether legislation is required.

The scheduled witnesses to date are:

February 2.—

Department of Labor: James D. Hutchinson, Administrator for Pension and Welfare Benefit Programs.

The Pension Benefit Guaranty Corporation: (representative to be announced.)

American Institute of Certified Public Accountants: George Vogt, CPA, Chairman, Pension Task Force, New York City.

American Society of Pension Actuaries: Robert D. Conkel, Pension Reporting Forms Member, Washington Affairs Committee, Richardson, Texas; and William W. Hand, MSPA, ERISA Member, Washington Affairs Committee, of Houston, Texas.

National Association of Pension Consultants, and Administrators: John W. Baker, C.L.U., President, of Atlanta, Georgia.

February 3.—

Internal Revenue Service: Honorable Donald C. Alexander, Commissioner, and Alvin D. Lurie, Assistant Commissioner for Employee Plans and Exempt Organizations.

Opening Statement by Senator Gaylord Nelson

These hearings arise out of a concern that small businesses across the country are terminating retirement plans because of additional time and costs of reporting to the new Pension Reform Act (Employee Retirement Income Security Act of 1974).

In September of last year, we heard testimony that costs of administering plans under the new Act had doubled and tripled for smaller plans. We now have figures from a government agency indicating that 5,000 defined benefit and 2,500 profit sharing plan terminations took place in 1975.

The hearing is to be jointly conducted by:

—The Select Committee on Small Business
—The Private Pension Plans Subcommittee of the Senate Finance Committee
—The Financial Markets Subcommittee of the Senate Finance Committee

We are pleased at the fine cooperation in preparing for these hearings among these and other Senate and House committees and subcommittees.

The Pension Reform Act was aimed at protecting the retirement security of American workers by halting abuses, whether they were found in large or small pension systems. According to the Small Business Administration, more than one-half of all private employees (52%) work for small businesses.

It is therefore in the interests of all parties that legislation affecting routine pension and retirement matters, as well as extraordinary problems, be rationally conceived and efficiently administered.

The impact of the Pension Reform Act falls upon all of the 500,000 or 600,000 plans, large and small. We are informed that about 93% of such plans have less than 25 participants and 98% possess less than 100 participants.

Because of these distinctions, Congress placed in Section 110 of the Pension Reform Act a provision enabling simplified pension reporting for smaller plans.

Unfortunately, when the original reporting forms were proposed, the plan description (EBS-1) ran to more than a dozen pages, with attachments, and the Form 5500 Annual Report extended to 5½ pages, plus exhibits. Moreover, no distinction was made between larger and smaller plans.

In response, I joined with Senator Bentsen to introduce S. 2844, which would mandate simplified reporting for smaller plans of less than 100 persons, rather than leaving it as a matter of discretion.

We also joined with Senator Long in sending to the Department of Labor and the Internal Revenue Service a critique of the proposed forms and recommendations for simplification. This letter appeared in the announcement of these hearings, which will be included in the hearing record following my statement.

We hope that these hearings provide insight into the desirability of legislation such as S. 2844, but beyond that, into the whole process of what happens when a regulatory statute is enacted on Capitol Hill and then sent to executive departments for implementation.

We hope to review the mechanisms which have recently been set up to give small business an opportunity for commenting upon the development of forms and recommendations before they are set in concrete, and must thereafter be changed with an inordinate expenditure of time and energy by the small businesses affected. We have a distinguished list of witnesses, from the government agencies administering the Pension Reform Act and from among the accountants, pension consultants, attorneys and others who specialize in advising smaller businesses on their retirement systems. We look forward to their testimony.

[From the Congressional Record, Jan. 21, 1976]

NOTICE OF HEARINGS ON REPORTING BURDENS OF SMALL PENSION PLANS

Mr. NELSON. Mr. President, I wish to announce that a public hearing will be held on the burdens imposed on small businesses in reporting and otherwise complying with the Employee Retirement Income Security Act of 1975—ERISA.

These will be joint hearings of the Senate Small Business Committee and the Financial Markets and Private Pensions Subcommittees of the Senate Finance Committee.

BACKGROUND

About 98 percent of all retirement plans have less than 100 participants, and approximately 93 percent of the plans have 25 or less participants. When Congress considered this landmark legislation, it envisioned that there should be lesser compliance burdens for smaller plans and enacted section 110 of the act to permit such simplified reporting.

Nevertheless, the form proposed for the collection of basic information about smaller plans—the EBS-1 form—was 16 pages long when first proposed and the draft annual report—Form 5500—extended to 5½ pages, plus certain exhibits.

Later, a requirement for an accountant's opinion extending beyond normal audit boundaries was announced to the public.

In testimony before a joint session of the Senate Small Business Committee and the Financial Markets Subcommittee of the Senate Finance Committee, witnesses complained that the costs of administration of smaller pension plans under ERISA would be double or triple those under the previous law. (See "Cost of Administering Pension Plans of 10 Small Corporations," statement of Bruce G. Fielding, "Small Business Tax Reform, part 2," page 1188, at page 1150.)

The committee has heard reports that many small business owners were considering termination of their pension plans because of such problems.

In an effort to respond, I joined with Senator Bentsen in introducing a bill in mid-1975 (S. 2344) which would mandate the more simplified pension reporting for smaller plans which Congress authorized in section 110.

LETTER REQUESTS SIMPLICATION OF PROPOSED FORMS

Because of the urgency of these matters, a joint letter from Senator Long, chairman of the Senate Finance Committee, Senator Bentsen, chairman of the Financial Markets Subcommittee, and myself, was sent to the Department of Labor and the IRS on November 18, 1975, asking that the proposed forms be shortened and simplified; that the requirement for an auditor's opinion be modified for smaller plans; and that several short notice provisions of the proposed regulations be mitigated.

I ask unanimous consent that the letter be printed in the Record at the conclusion of my remarks for the information of all concerned.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

RESPONSE BY DEPARTMENT OF LABOR AND IRS

Mr. NELSON. We are pleased to report to the Senate that some results of these efforts are already evident. Just before Christmas, the Department of Labor confirmed that the EBS-1 form would be reduced from 16 to 6 pages and that the joint form 5500 would be cut from 5½ to 2 pages. The requirement for an auditor's opinion, the Department announced, would also be waived for smaller plans. For information purposes, I ask unanimous consent that the press release of the Department of Labor on this subject also be printed in the Record following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

OBJECTIVES OF HEARINGS

Mr. NELSEN. While the agencies concerned are in the process of finalizing their forms and regulations on this subject, the committees concerned felt it desirable to hold a public hearing to monitor their efforts. We hope to learn the extent to which shortening of the forms has resolved the cost, time, and other reporting burdens of smaller plans, and whether legislation such as S. 2344 is desirable. We also want to know whether serious compliance problems continue to exist for smaller retirement plans under ERISA, and whether, as a result, terminations are in fact taking place in significant numbers.

The witnesses for the hearings will be as follows:

Department of Labor: James D. Hutchinson, Administrator for Pension and Welfare Benefit Programs;

Internal Revenue Service: Hon. Donald C. Alexander, Commissioner, and Alvin D. Lurie, Assistant Commissioner for Employee Plans and Exempt Organizations;

The Pension Benefit Guaranty Corporation: (representative to be announced);

American Institute of Certified Public Accountants: George Voght, CPA, chairman, pension task force, New York City;

American Society of Pension Actuaries: Robert D. Conkel, Esq., pension reporting forms member, Washington Affairs Committee, Richardson, Tex.; and William W. Hand, MSPA, ERISA member, Washington Affairs Committee, of Houston, Tex.; and

National Association of Pension Consultants and Adiministrators: John W. Baker, C.L.U., president, of Atlanta, Ga.

Upon completion of the record, it is expected that we will submit a report of findings and recommendations for the information of the Senate.

The hearings will begin at 9:30 a.m. on February 2 in room 2221 of the Dirksen Senate Office Building and will be open to the public.

Anyone wishing further information may contact the committee or subcommittees concerned.

[EXHIBIT 1]

(Letter to Department of Labor and IRS from Senators Long, Nelson, and Bentsen)

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C., November 18, 1975.

Hon. JOHN T. DUNLOP,
Secretary of Labor,
Washington, D.C.
and
Hon. DONALD C. ALEXANDER,
Commissioner, Internal Revenue Service,
Washington, D.C.

DEAR MR. SECRETARY AND MR. COMMISSIONER: During the course of our inquiry on small business tax reform, the Select Committee and the Financial Markets Subcommittee of the Senate Finance Committee heard testimony in our September hearings about the intention of some small employers to terminate their employee retirement plans because of increased costs and administrative requirements. One study showed that, in several instances, costs had risen to over $1,000 per employee, or over 10 percent of the income to the plan. We have have also received extensive correspondence about the reporting requirements of the proposed extensive correspondence about the reporting requirements of the proposed EBS–1 and the Joint Form 5500.

As a result, we have become increasingly concerned over the impact of cost and reporting burdens of complying with the Pension Reform Act and possible termination of the smaller employee benefit plans, those with less than 25 participants.

One expression of this concern is the recently introduced legislation regarding simplified reporting for smaller plans (S. 2344). Our understanding of the intent of the Congress in enacting the Employee Retirement Income Security Act of 1974 was that lesser burdens would be imposed on the smaller plans.

The Department of Labor and the Internal Revenue Service have made commendable efforts toward that objective, as indicated by the agreement upon a joint annual return/report, which in our view is a major accomplishment.

However, in a further effort to respond to the contentions of the small business community about the specifics of the proposed EBS–1 Plan Description and Form 5500 Annual Report, we have examined the proposed forms in the light of the views they have expressed to us. Despite considerable hesitation because of the technical complexities of these matters, we would offer the following suggestions for your consideration:

1. *Periods for Comment and Evaluation.* It appears that the comment period, and perhaps especially the evaluation period of less than three weeks, ending November 18, is somewhat compressed. The schedule has generated doubt as to the thoroughness of the evaluation of the views and recommendations submitted by the small businesses and professional affected.

Since the ultimate information requirements have now been disclosed to all interested parties, we feel it would be advantageous to extend the comment and evaluation periods if this can be done without changing the ultimate filing deadlines. Such extensions should provide additional time for analysis, and changes if necessary. The would have the additional advantage of assuring business community of the orderly consideration of its contentions.

2. *Goals of the Forms.* Examination of the forms raises the question as to whether all the information sought by the EBS–1 and the Joint Form 5500 Annual Report from the small plans can be physically processed, reviewed, and acted upon within the forthcoming year.

Small business spokesmen have advocated that the basic identification material should be emphasized in the first reporting year for smaller plans, as a basis for setting up computer files which could then readily absorb additional information. If this is feasible, it might reduce the quantity of information required at the outset.

An analysis of the two forms attached reveals several questions which are common to the two forms. Although some of the information, such as the number of participants, tends to change, we would ask whether additional consideration could be given to the opportunity to report changes in the items concerned, and to the use of retrieval techniques to recover basic information. A related question involves the possible usefulness of Form 4848 for 1975 for the existing small plans in this context.

Perhaps your experts could also re-examine appendix items closely with a view to restricting any duplication which may occur.

3. *Furnishing of Plan Descriptions.* Businesses have complained that the Summary Plan Descriptions which must be provided to participants and filed with the EBS–1 form, must be completed at a time when significant amendments required to bring many plans into conformity with the Act may still be in preparation. Businessmen state further that, in many instances, amendments must await the publication of regulations, which may not yet have been used.

They argue that a second summary plan description would have to be prepared after the filing amendments. Because of this, employers would incur additional expense and participants might become confused. It has been agreed that it would be more valuable to employees to receive a single description which does take into account the new standards of the Act.

There thus appears to be some logic in suggesting that the Summary Plan Descriptions be deferred for some period, perhaps until 30 days subsequent to the required amendment date under the regulations. We so recommend, but only on the condition that the substance of the Act, requiring disclosure to employees, is honored by providing all plan participants as early as possible with an explanation of their rights and benefits. Perhaps this could be done by distributing applicable provisions of the EBS–1 form itself.

4. *Requirement of Accountant's Opinion.* The recently announced requirement for accountants' opinions for all small-and medium-sized plans under Section 103(a) have been described to us as going far beyond a normal audit. It would therefore reportedly be costly, especially for the smaller plan. In view of the fact that other agencies, such as the Securities and Exchange Commission, draw distinctions for accounting requirements by size of companies, we would hope similar differences could be recognized in this area.

As you know, we have supported and worked for an effective Pension Reform Act, and certainly do not wish to see it weakened in any way. However, in our view, it seems to us reasonable to explore possibilities of this kind in order to alleviate some of the shortnotice provisions of the required reporting, simplify initial reporting for smaller plans, and phase in the furnishing of information in such a way as to mitigate the paperwork burdens and costs of obtaining and processing the required information for both the business community and the government.

Because of our interest in these matters, we would welcome any reaction you might have to the practicability of these suggestions, and would appreciate the opportunity of having your throughts in this area. Our Committees plan to hold joint hearings on the questions discussed in this letter at a later time, and we shall be pleased to confer with your staffs to determine a timetable that would be in the best interests of all concerned. Please be assured of our cooperation in bringing about the effective and reasonable application of this very important legislation.

Very truly yours,

GAYLORD NELSON,
Chairman, Senate Select Committee on Small Business.

LLOYD BENTSEN,
Chairman, Subcommittee on Financial Markets, Senate Finance Committee.

RUSSELL LONG,
Chairman, Senate Finance Committee.

[EXHIBIT 2]

[News Release of Department of labor]

LABOR DEPARTMENT REDUCES PAPERWORK REQUIRED OF PRIVATE EMPLOYERS UNDER PENSION REFORM LAW

The Department of Labor announced today its intent to make changes to reduce paperwork pressures on the 600,000 private pension and welfare plans required to file government reports each year. The reports must be filed with the department under the Employee Retirement Income Security Act of 1974.

Four revisions of the requirements were spelled out by James D. Hutchinson, pension and welfare benefits administrator. He said they result from comments received from the public on annual reporting forms and regulations proposed earlier.

The revisions are:

The Internal Revenue Service and the department developed the first change, an annual report from 5500C for non-Keogh pension and funded welfare plans with under 100 participants. (Keogh plans are for the self-employed.) This form is three pages shorter than the five-page form 5500 required of larger plans.

Waiving the requirement for an opinion by an independent certified public accountant for plans with fewer than 100 participants throughout the plan year. This approach should reduce the burden and costs to small plans while still providing adequate protection to their participants.

Only defined benefit plans subject to the minimum funding standards for the year actually being reported on are required to provide actuarial information and a statement by an enrolled actuary as part of their annual reporting obligation. As a result, very few plans will be required to file such data for the first year the new report forms are in use.

The department is giving filers more time. Annual report forms must now be filed seven months after the end of the plan year rather than the four-and-one-half-months previously proposed.

COMPARISON OF EBS-1 PLAN DESCRIPTION AND FORM 5500 ANNUAL REPORT

	EBS-1	5500
1. Name, address, other identification of employer/sponsor	1(a)-(e)	1(a)-(c)
2. Identification of administrator	2(a)-(c)	2(a)-(c)
3. Differences from prior report		3
4. Structure of the plan	3(a)-(d)	4(a)-(d)
5. Name and number of plan	4(a)-(b)	5(a)-(b)
6. WP file number	5	
7. Initial effective date of plan	6	
8. Year ending date	7	
9. Administrator agent for process	8	
10. Type of plan	9(a)-(b)	6(a)-(b)
11. Number of participants	10(a)-(f)	7(a)-(f)
12. Persons performing selection functions	11(a)-(n)	
13. Whether derived from collective bargaining agreement	12	
14. Documentary basis	13	
15. Type of employees participating	14	
16. Sources of contributions	15(a)-(g)	
17. Method of accumulation and disbursement	16	11
18. Claims procedure	17(a)-(e)	
19. Pension eligibility criteria	18	
20. Vesting provisions	19(a)-(b)	
21. Portability or reciprocity	20(a)-(b)	
22. Computation method for length of service	21(a)-(c)	
23. Break-in service rules	22	
24. Type of benefit/requirements therefor	23(a)-(e)	
25. Ineligibility/forfeiture	24(a)-(b)	
26. Annuity conditions	25	
27. Disposition of contribution not paid	26(a)-(d)	
28. Welfare plan provisions	27	
29. Loss of welfare benefits	27(a)-(d)	
30. Summary plan description—furnished to participants	29	
31. Summary plan description—filed	30	
32. Plan amendment information		8
33. Termination during past year		9
34. Merger or consolidation within year		10
35. Identification of fiduciaries		12
36. Change in personnel		13
37. Compensation of fiduciaries, etc		14(a)-(f)
38. Assets and liabilities		15(a)-(c)
39. Income statement		16
40. Explanation of 3-percent transactions, defaults, etc		17
41. Bonding		18(a)-(f)
42. Plans with 5 percent shareholder participant		19(a)-(b)
43. Employee stock ownership plans		20
44. Master or prototype		21
45. Qualification/determination		22
46. Percentage test of 410 of Internal Revenue Code		23
47. Integration		24

Opening Statement of Senator Lloyd Bentsen

This morning the Senate Financial Markets and the Private Pension Subcommittees of the Senate Finance Committee and the Senate Small Business Committee begin two days of hearings on the paperwork burden imposed on small private pension plans by the new pension reform act, the Employee Retirement Income Security Act of 1974 (ERISA).

I am deeply concerned that unreasonably burdensome and costly reporting requirements for smaller private pension plans will be counterproductive and result in the cancellation of many good plans. Every effort must be made to achieve a reasonable balance between the necessity of protecting all pension plan participants from abuses and the necessity of avoiding a situation where many good small retirement plans terminate simply because they are being buried in an avalanche of paperwork and redtape.

Nobody can doubt that effective pension legislation is needed to prevent the countless tragic abuses that have occurred in the past. Take, for example, the case of a Wichita Falls, Texas woman who retired at the age of 65 after 17 years of service with the same employer. She was earning a pension during these years and she confidently approached retirement age expecting to receive her hard-earned pension benefits upon retirement. However, due to a technicality in this woman's pension plan she lost her entire pension—every single cent of it. Because she had missed two years of service due to family illness during her employment, this worker lost her entire pension. Economic tragedies such as this will be prevented in the future by this new pension legislation.

However, American workers will suffer greatly if employers begin cancelling retirement plans simply because of unnecessarily complicated Federal forms, particularly for smaller businesses.

The new pension law gives the Labor and Treasury Departments sufficient discretionary authority to issue simplified reporting requirements for smaller pension plans. It was the clear intent of the Congressional sponsors of this legislation that this authority be exercised. Detailed reporting requirements that may be applicable to our Nation's largest private pension plans may not be appropriate for the smallest pension plans. Many small businessmen may be forced to terminate their retirement plans if the paperwork burden becomes too costly and overwhelming.

In response to this serious problem, last September I introduced legislation along with Senator Nelson (S. 2344) to mandate simplified reporting and disclosure for pension plans with less than 100 participants. Then in November Senator Long joined Senator Nelson and me in urging the Department of Labor and the Internal Revenue Service to speed the process of simplifying and shortening the pension forms.

I am very pleased that both the Labor Department and the Internal Revenue Service have responded favorably to our actions.

The Labor Department has simplified and shortened the EBS–1 plan description form. This form as originally proposed would have been about 12 pages long and would have required businessmen to answer lengthy essay questions. EBS–1 has been reduced to a 6 page form of much more concise questions. A simplified annual report form 5500C for small plans was developed which is three pages shorter than the five-page form required of larger plans. The Labor Department has also wavied the requirement for an opinion by an independent certified public accountant for plans with fewer than 100 participants throughout the plan year. This approach should reduce the burden and costs to small plans. In addition, only defined benefit plans subject to the minimum funding standards for the year actually being reported on are required to provide actuarial information and a statement by an enrolled actuary as part of their annual reporting obligation. As a result, very few plans will be required to file such data for the first year the new report forms are in use. The Labor Department is also giving filers more time. Annual report forms must now be filed seven months after the end of the plan year rather than the four-and-one-half months previously proposed.

These actions by the Labor Department and the Internal Revenue Service are favorable developments. The purpose of these hearings is to insure that implementation of the new pension law is simplified to the maximum extent possible without jeopardizing the retirement benefits of plan participants.

The paperwork and redtape imposed by the new pension law is just one small portion of the overall Federal paperwork burden confronting all taxpayers.

Government agencies presently churn out billions of sheets of paperwork for the American people each year, probably enough to fill several major league baseball stadiums. Just to print, shuffle, and store all this paper costs government at all levels an estimated $18 billion annually.

And, at the receiving end of the redtape tangle, it costs the American people, businessman, and worker alike, another $18 billion to fill out the mass of forms: Internal Revenue forms, wage and price forms, unemployment forms, health forms, accident forms, social security forms, quarterly this and monthly that.

For many small businesses, this added expense proves to be the final straw that drives them out of business. And for those giant corporations that can afford accountants and lawyers to deal with all this paperwork—well, they are forced to pass the cost along to the consumer.

In terms of dollars and cents, or frustration and irritation, the endless tangle of paperwork imposed by the government has become unbearable.

There are well over 5,000 forms in use in the Federal Government, excluding all tax and banking forms. There are 10 forms to be filled out each year for every man, woman, and child in the United States. The private citizen is very literally inundated with requests for information.

Some have referred to the endless series of forms and documents as "strangulation in triplicate". Others call it "Federal forms pollution".

It is particularly difficult for small firms to absorb the cost of this paperwork. Small businessmen must employ outside accountants and lawyers to fill out complex forms and keep the extra recordkeeping involved. Professional assistance, of course, is expensive. Having few employees, the small firms find it more difficult to spread the cost. A rise in per unit cost to cover paperwork can result in loss of sales and loss of competitive standing for small enterprises.

Small businesses, especially the mom and pop-type operations, must fill out numerous reports, as many as 52 tax forms in a single year. This is not an example of a Government which is concerned and responsive to the needs of its people. It is not a government which is protecting free enterprise. It is instead a government which favors only those large concerns that can satisfy repetitious requests for data, statistics, and information.

I began, in the spring of 1973, to move against this slow and steady strangulation by redtape. I introduced legislation creating a Federal Paper Commission to study the massive paperwork burden and make recommendations to eliminate much of it. That Commission has begun its work. But, even as it examines the overall problem, we cannot afford to sit still when countless instances of redtape are begging to be simplified. We can and should make the fight against excessive paperwork an ongoing battle.

For example, I introduced the legislation to relieve small businessmen from the costly and complex paperwork under the new pension law.

In this same spirit, I have introduced another measure to insure that Congress gives much closer attention to the paperwork requirements on small businessmen by new legislation. My bill would require that all Congressional Committee reports on new legislation include a rundown on the form and recordkeeping burden it entails. Such rundowns would include the estimated costs of required paperwork—in terms of dollars and cents, in terms of time and in terms of frustation.

Last month Senator Long and I introduced the Federal Paperwork Reduction Act which would create a system of Federal tax credits to force all Federal agencies to eliminate unnecessary paperwork requirements and greatly simplify essential forms.

The Federal Paperwork Reduction Act would provide all taxpayers with refundable income tax credits of between $1 and $3 for every form the Federal Government requires them to fill out. If possible Congress should make the specific government agencies that generated the forms responsible for paying for such credits out of their own budgets. Because forms and documents and questionnaires would be translated into dollars and cents, Federal agencies would begin thinking and hesitating before they issue unnecessary and frivolous paperwork. They would become aware of their responsibility to request only really vital information.

Under the Federal Paperwork Reduction Act, individuals would receive a tax credit of 10 cents for every item of information asked for, but not less than $1 per form. Small businesses would get 30 cents per question with a $3 minimum per form. Corporations and state and local governments would fall in the middle, getting 20 cents per question with a $2 minimum per form.

The problem of excessive Federal paperwork and redtap demands priority in Congress this year. These hearings will help us formulate effective approaches for alleviating this problem with respect to the new pension law.

OPENING STATEMENT OF SENATOR SAM NUNN

Mr. Chairman, I am very happy to be here today at this Joint Public Hearing on the Reporting Burdens under the Employee Retirement Income Security Act of 1974. The federally-imposed paperwork burden on our nation's businessmen is one of my favorite "pet peeves," and I am particularly pleased that today's hearing will focus specifically on a most important area of this problem, small pension plans.

One again, I fear that the intent of Congress is being buried by an avalanche of paperwork requirements. As we all know, one of the main purposes of the Pension Reform Act was to ease the reporting burdens on smaller plans. This was necessary to ensure that the workers of our nation who belong to such programs received their scheduled retirement benefits.

Now, however, there is a very real possibility that just the opposite will happen. Instead of reducing reporting costs, it has been estimated that the proposals will double or triple the costs of administration of smaller pension plans. Instead of reducing the paperwork that already threatens to crush our small businesses, yet another detailed and complicated form has been imposed upon them. It is no wonder, then, that many employers with small plans are contemplating their termination.

Clearly, this was not the intent of Congress in passing this law. I believe it is juest as clear that Congress must not allow this to continue. No one will benefit—neither the employees who depend on these pensions, nor their employers, nor, least of all, our nation's taxpayers.

Form 5500–C is just the tip of the iceberg. Federal forms currently take up 4½ million cubic feet of space. They cost the economy an estimated $40 billion dollars per year. Simply producing, handling and managing the forms costs $18 billion dollars per year. That's almost as much as we spend on health care. This has simply got to stop. The Senate Government Operations Committee has already launched a major study of the problems with federal regulations and the need for regulatory reform. I believe that today's hearings will provide yet another brick in a sound foundation for the development of legislative recommendations which will bring a common-sense approach back to our government.

I am pleased that the Labor Department and the Internal Revenue Service have pledged to significantly shorten the ERISA reporting forms. I hope that this joint hearings will impress upon not only these two agencies, but on all our federal regulators, the seriousness with which the Congress views the need for a reduced paperwork burden. I appreciate the opportunity to join with my colleagues in making clear the importance of today's session. It is a much-needed step in the right direction.

Senator HASKELL. I will ask Senator Brock if he has a statement.

Senator BROCK. No.

Senator HASKELL. I understand Mr. Fielding, a member of the Commission on Federal Paperwork, has to get back to California. For that reason we will ask him to step forward.

STATEMENT OF BRUCE G. FIELDING, MEMBER, COMMISSION ON FEDERAL PAPERWORK

Mr. FIELDING. I am Bruce Fielding, a member of the Commission on Federal Paperwork, which was established by Public Law 93–556. Our goal is to minimize the paperwork burden imposed by Government on the American public, while assuring the Government's needs for information to set policy and operate its programs are met.

Although our Commission is still in its formative stages, it is becoming evident that our legislative process is a major contributor to the paperwork burden that has exploded geometrically in the last 10 years. The public demands protection and Congress reacts. Too often the reaction is overreaction, resulting in "overkill."

ERISA (Employees Retirement Income Security Act) is a prime example of this. Congress sincerely attempted to create legislation which would protect the American workers so that they would have security when they retired.

What is happening? Just the opposite. Many employers are terminating their plans and many more are threatening to terminate. Terminations just for the sake of termination is creating undue hardship on employees. IRS is presently taking the position that a plan which is terminated because they can no longer comply with the cost of ERISA, the benefits will be taxable as ordinary income to the employees. They are not even allowing them to have the shelter of an IRA. This is within your jurisdiction to change.

In December alone there were 1,300 terminations. So Congress in its overreaction created a law which imposes a tremendous burden on the small employees by requiring reports which are costly and time consuming to prepare and plans which are costly and impractical to administer.

We have a law which contains numerous effective dates, dates which must be complied with before regulations have been issued to tell us how to comply.

We have a law which is extremely complex, containing language which, in some instances, is deliberately vague. We heard testimony last Thursday from one of the authors in the House of Representatives that the language is deliberately complex and deliberately vague.

Congressional intent which is vague imposes an undue burden on those who have the responsibility of interpreting this intent through the promulgation of regulations.

Today we have ERISA with its complex and, in some areas, vague language, requiring reports, compliance with various effective dates, a deadline for all employers for filing amended plans, and no regulations.

Is not the solution obvious? The effective dates of changes in these pension laws, which impose different operating or reporting requirements, should not be earlier than 6 months after final regulations are issued, a very simple commonsense approach to a very complex problem.

Let me repeat: The effective date of changes in these pension laws which impose different operating or reporting requirements should not be earlier than six months after final regulations have been issued. This particular solution should not be limited to ERISA. I think it should be applied to all instances in our legislature and every bit of our code which requires public response as far as reporting requirements are concerned.

We cannot have regulations issued, we cannot have effective dates before the regulations are promulgated before we understand how they work, before Congress understands their intent, and whether Congress knows this intent has been carried out. However, regulations themselves are not a panacea. We must still start with Congress.

We now know that of the 600,000 pension and profit-sharing plans on file with the Internal Revenue Service, less than 10 percent have over 100 participants. Ninety percent or more are plans of small businesses.

However, the law was written for large employers and for large unions. Congress failed to study and analyze the size and composition of the pension industry prior to enacting ERISA. The result: Congress authorized simplified administration for small plans; it did not mandate it.

Without this mandate the agencies involved in administering ERISA, Department of Labor, Internal Revenue Service, and Pension Benefit Guaranty Corporation have been reluctant to assume the responsibilities which "authorized" implies. I think we see it time and time again when the agencies have the responsibility of interpreting the intent of Congress through authorization and not mandating, that they tend to stick to the letter of the law to the ultimate conclusion, which makes it a very impractical code to interpret, or regulations to apply.

Accordingly, because of this attitude, and this authorization implication, several months ago, the Department of Labor issued the now infamous EBS-1 (Plan Description Form).

Senator HASKELL. Do you happen to have copies of those forms?

Mr. FIELDING. They were supposed to have been brought here this morning.

Senator HASKELL. I just sent somebody from the staff. I don't know why the forms are not here. Is that your only copy?

Mr. FIELDING. They didn't come this morning unfortunately.

Senator HASKELL. Excuse me, Mr. Fielding. I want to have this in front of me while you are talking.

Mr. FIELDING. That is quite all right.

This EBS-1 which was proposed was for all employers, regardless of size, would have imposed an impossible paperwork burden on small employers. Remember, the law says we can distinguish plans with less than 100 participants. There is still no distinction on the EBS-1. The form was ambiguous, vague, unstructured and demanded information that the Department of Labor could not use or absorb. This form was approved by the Office of Management and Budget.

On the upper right-hand corner we see "OMB approval." We find that you will find that no matter how many times it comes out. It is an automatic approval. OMB, which has been in effect since 1942, which has had the responsibility of approving forms of our agencies, has approved 95 percent of all forms since it has been in existence. It is like the Good Housekeeping Seal of Approval.

Employers, accountants, attorneys and pension consultants were united in their demands that this form be withdrawn or simplified. The form you have now is the simplified form. Why was it ever published in the first place? Why did it get to the point where the public had to stand up and shout and scream to be heard? Why aren't we consulted before these forms are published? Why is it always done afterward, after a short notice in the Federal Register gives us 30 days to reply?

Senator HASKELL. You are suggesting that your commission really should be consulted before forms are promulgated. Is that correct?

Mr. FIELDING. That would be one solution, Senator. Another solution, we will get to it further, would be citizens' advisory groups made up of people affected by the law.

Senator BROCK. The problem, if I may interject, with submitting it to a commission on which I happen to serve as well, is that these commissions have limited life. I think you might comment at some point about the possibility of advisory groups which would be more permanent.

Mr. FIELDING. Yes. Permanent advisory groups.

I think I might just digress a little bit. One of the things that horrifies me about the EBS-1 form is a statement at the end just before you sign, the employer signs. Remember, most of these plans are voluntary plans. I am an employer. I don't have to give my employees retirement benefits. I do it because I think they deserve retirement benefits.

When you sign that form, you sign under the threat of perjury. You sign under a threat of a $10,000 fine. You sign under a threat of imprisonment if you make a false statement. It is a fine thing to make an employer sign who is doing this voluntarily to help his employees. In a way it is a deterrent to ever have a plan.

The IRS and the Department of Labor developed a joint annual report form known as form 5500. As proposed, this form would have to be filed by all employers, regardless of size, again remembering the Secretary of the Treasury and the Secretary of Labor have the authority to distinguish between plans with 100 participants.

The preparation of this report, in most cases, would have required the outside services of accountants, attorneys, actuaries, and pension consultants. This costly burden was to be imposed regardless of the size of the plan.

A statement was made to me by an agency official that they were proud of form 5500 and it was so condensed and simplified that there was no need to have a different form for smaller employers. Neither agency was aware of the burden being imposed on small businesses.

Fortunately IRS has a Small Business Advisory Committee which was able to promptly react to the proposed form 5500. We now have another form for plans with less than 100 participants, form 5500-C, consisting of only two pages.

Why was the original form published in the first place? Why do we have to go to this extreme extent that we had only a 30-day period to bring to the attention of the Internal Revenue Service the costly burden they were imposing on small plans?

It is my conservative estimate that this new form, along with DOL's dropping of an audit requirement for small plans, will result in over $500 million of annual savings in accounting fees alone. I feel the form itself, the simplification from five and a half to two pages with its required schedules, which will save $250 at a minimum in accounting fees and a dropping of the requirement for an audit by a certified public accountant, and will save at least $750. I think we are having $1,000 saved for every small plan in this country, which results in this huge saving in accounting fees.

I don't know what it will save in attorneys' fees and actuarial fees.

Those who are the most affected by paperwork are the last to know. The agencies need advisory committees to help develop the regulations and reporting forms. These committees should help in the formation of the forms. There is no need to have them published and revise them.

These committees must be comprised of representatives from those areas most affected. The IRS Small Business Advisory Committee consists of 19 individuals who are small business persons, consultants to small businesses. The committee advising DOL with respect to pension plans has only one small business representative and yet 90 percent of the plans are small plans. How can DOL get proper objective guidance?

We need advisory committees comprised of the people which the laws affect. If they affect small business, we should have small business advisory committees. We don't need academicians and large business and labor unions. We need representation from small business.

What we really need now, in order to reduce the reporting and compliance burdens imposed on small business by ERISA, there is urgently needed a representative advisory committee which can work with a special joint task force. This task force would be solely concerned with all reporting, disclosure, and other administrative requirements for plans with less than 100 participants. The advisory committee should consist of employers who have plans, accountants, attorneys, and pension planners who specialize as consultants to small business.

In order to have an effective advisory committee it has to be made up of people affected by the law.

Thank you for this opportunity.

Senator HASKELL. Thank you, Mr. Fielding.

Basically your suggestion is that before promulgation give some advisory committee the opportunity to review and comment?

Mr. FIELDING. That is correct. Also, I think we need legislation which requires the postponement of effective dates for at least 6 months after the promulgation of regulations in order to properly interpret and meet the requirements of the law without rushing into it as we have done in the case of ERISA, which is a prime example of overreaction.

Senator HASKELL. Thank you very much, Mr. Fielding.

Senator Brock?

Senator BROCK. I would like to just comment, first, that Mr. Fielding is a member of the Commission on which I serve on paperwork, and one of the most important and creative members of that Commission. It is a pleasure to serve with you.

I would like to make two comments. First of all, you serve now on the Commissioner's Small Business Advisory Committee?

Mr. FIELDING. Yes.

Senator BROCK. Under IRS?

Mr. FIELDING. Yes.

Senator BROCK. Just give me a basic description of how it works.

Mr. FIELDING. There are 19 of us on the advisory committee. We are all representatives of small business. We are all practitioners, accountants, attorneys, pension consultants. Our clientele are made up of small businesses. We meet the—the plan is we meet once. We are going to meet at least 3 to 4 times a year with Donald Alexander, the Commissioner of Internal Revenue, and his staff. He has allowed us to explore all of these issues. He has allowed us to be very effective in changing the form 5500.

I would say it was the IRS Small Business Advisory Committee which really brought to the forefront the problems created by 5400 and which cam) up with 5500–C for small business. It was Commissioner Alexander's relative eagerness to cooperate with this committee. He didn't realize what this was creating.

Last Thursday Assistant Commissioner Alvin Lurie stated this in his testimony, that they were not aware until we brought this to their attention, the tremendous cost this was imposing upon small business.

Senator BROCK. Before I go on, do you have another 5 minutes for questioning? Are you that tight?

Mr. FIELDING. No. I am fine.

Senator BROCK. In sum and substance the advisory commission in your particular experience works?

Mr. FIELDING. Absolutely.

Senator BROCK. How do we solve the problem where one law is administered by two agencies and is an advisory commission for one of the agencies? Should we create an advisory commission for the—for advising about the implementation of the law generally? Should we have a separate advisory group for DOL?

Mr. FIELDING. I think that what we should have in this particular instance when we have two and three agencies, including the Pension Benefit Guaranty Corporation, is a task force made up of the personnel of the agencies which would work in conjunction with one advisory committee made up of representative citizenry.

Senator BROCK. Is there any reason in your experience as a business consultant that we should not have one form for both agencies? Can it be done without requiring an overly complicated form? Let's say one for large and one for small businesses.

Mr. FIELDING. There should be a distinction definitely made.

Senator BROCK. I am not talking about large and small. I am talking about the two agencies.

Mr. FIELDING. There should be a consolidated report for both of them. Some of the information contained in EBS–1 is also contained in the application an employer files with the IRS for a determination letter. There is complete duplication in many of the areas.

I asked Mr. Hutchinson last Thursday why is it necessary to file an amended EBS–1 when the same information is contained in the amendments that you file with the IRS in the determination letter. He stated that he would look into this matter.

I don't think there is enough of this being done. I think we should encourage it, we should encourage the agencies to work together in this particular instance. It is like running a business with two owners.

Senator BROCK. You mentioned the 1,300 plans that had been terminated in December.

Mr. FIELDING. Yes.

Senator BROCK. Do you have the figures on terminations since the enactment of the law?

Mr. FIELDING. I believe it has been approximately 5,000.

Senator BROCK. That was my recollection, 5,000 defined benefit plans and 2,500 profit sharing for a total of 7,500.

Mr. FIELDING. Yes. I think it is difficult to determine from the applications for termination as to their specific reason for terminating.

If they say in their letter for termination that they are specifically requesting a termination ruling because they can't afford to comply with ERISA, all of the benefits are going to be automatically taxed as ordinary income to the beneficiary. You are going to get reasons other than the actual reasons for termination.

We can't say that the reasons specified in the termination letter are absolutely accurate.

Senator BROCK. I have seen figures where the cost of compliance on the very small plans can run as high as $1,000 per beneficiary, on very small plans.

Mr. FIELDING. That is correct. We made a study of our own plans, and we had a range under the old law from a low of $64 per participant to a high of $1,400 per participant.

Senator BROCK. $64 over a period of 30 to 40 years of employment begins to take on a rather sizable——

Mr. FIELDING. It does. It absorbs all of the income that the plans generate.

Senator HASKELL. Let me pursue that.

Senator Brock said $64 versus $1,000. What were the amendments of the law that caused these problems?

Mr. FIELDING. This was the cost that we determined under the old law.

Senator HASKELL. I understand the old law. What are the changes from the old law that give rise to this particular problem?

Mr. FIELDING. We anticipated that the original EBS-1, which was some 17 pages long—is now 12—the form 5500, which is 5½ pages long——

Senator HASKELL. Excuse me. I haven't made myself clear. What were the changes in the law that precipitated these additional reports? Or is it sheer bureaucracy?

Mr. FIELDING. It is the interpretation that the agencies have placed upon the code requiring these voluminous reports.

Senator HASKELL. We will ask the agencies.

Senator BROCK. I have testimony you have given previously in which you extend plans ranging from 1 employee to 30.

Mr. FIELDING. Yes.

Senator BROCK. Your high cost is $1,427 per employee; your low cost is $143.

Mr. FIELDING. Yes.

Senator BROCK. To deal with Senator Haskell's question, let's take the 30-employee plan—30-participant, where the cost per participant is $143 per employee. How much of that $143 was previously being expended for administration of the plan and what is the difference? In other words, how much have we increased the burden?

Mr. FIELDING. We went from $64 under the old law to $143.

Senator BROCK. Your net increase was $79?

Mr. FIELDING. Yes, over a 100 percent increase.

Senator BROCK. There is a smaller increase here on the 20-employee plan, $50.

Mr. FIELDING. Yes.

Senator BROCK. What I am reaching for is this: If we have some increased costs per participant so that there is no income into the plan, that the income is all expended for administrative purposes, then you almost demolish the argument for a pension plan?

Mr. FIELDING. That's right. The security in—the security in the employees' income security retirement account is gone. We are taking it away by requiring these costly reportings.

Senator BROCK. What would you suggest, Mr. Fielding? I think the Congress has a responsibility to try to see that these plans are administered for the true benefit of the beneficiary. How can we do it in a fashion that will be cost-effective?

Mr. FIELDING. I think that the solution would be to get away from the theory that the only way you get compliance is to require reports. If it is clearly spelled out what the employer's responsibility is in the law, and if the employer so constituted, keeps these reports, they are made available for audit, this, I think, in my opinion, should be sufficient.

Reports do not make an honest businessman.

Senator BROCK. You would suggest that we have no reports for smaller firms?

Mr. FIELDING. I would suggest that we have a one consolidated annual report for small business, which would encompass the requirements of both the DOL, the Pension Benefit Guaranty Corporation and IRS. It would be a report which consists of the basic information that is required of any plan, and it should be required only once, because it should be computerized so that the profile—they should be able to file on each employer. You shouldn't have to ask the employer's social security number every time, shouldn't have to ask the address, shouldn't have to ask the basic information that should be inputted into the computer, to begin with, to give you a profile or file on each employer.

The 5500–C now, which is only two pages long, which is very simplified, has one question where it wants you to list all the assets in the plan. I defy—I don't know how—I would like to know how the Department of Labor is going to take that information and put it in their computer and what are they going to do with that information that lists every asset you have in your plan?

I say "so what". You don't need that information. You must know the plan is in existence and that the employer is complying with the law to the best of his ability. You determine this through audit and not through reports.

Senator BROCK. So your answer is we have one report for small businesses?

Mr. FIELDING. Yes.

Senator BROCK. It would be a joint report to the effective agencies and be a simple report and be backed up by a spot audit?

Mr. FIELDING. That is correct.

Senator BROCK. Thank you.

Senator HASKELL. We thank you very much, Mr. Fielding.

Mr. FIELDING. We thank you for the opportunity, Senator.

[The prepared statement of Mr. Fielding follows:]

STATEMENT OF BRUCE G. FIELDING, COMMISSIONER, COMMISSION ON FEDERAL PAPERWORK AND SECRETARY, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

I am Bruce Fielding, a member of the Commission on Federal Paperwork, which was established by Public Law 93–556. Our goal is to minimize the paperwork burden imposed by government on the American public, while assuring that government's needs for information to set policy and operate its programs are met.

Although our Commission is still in its formative stages, it is becoming evident that our legislative process is a major contributor to the paperwork burden that has exploded geometrically in the last ten years. The public demands protection and Congress reacts. Too often the reaction is over-reaction, resulting in "over-kill."

ERISA (Employees Retirement Income Security Act) is a prime example of this. Congress sincerely attempted to create legislation which would protect the American workers so that they would have security when they retired.

In order to reduce the reporting and compliance burdens imposed on small business by ERISA, there is urgently needed a representative advisory committee which can work with a special joint Task Force. This Task Force would be solely concerned with all reporting, disclosure and other administrative requirements for plans with less than 100 participants. The advisory committee should consist of employers who have plans, accountants, attorneys, and pension planners who specialize as consultants to small business.

What is happening? Just the opposite. Many employers are terminating their plans and many more are threatening to terminate. There were over 1,300 known terminations in December.

Congress, in its over-reaction, created a law which imposes a tremendous burden on the small employers by requiring reports which are costly and time consuming to prepare and plans which are impractical and costly to administer.

We have a law which contains numerous effective dates, dates which must be complied with before regulations have been issued to tell us how to comply.

We have a law which is extremely complex, containing language which, in some instances, is deliberately vague. Congressional intent which is vague imposes an undue burden on those who have the responsibility of interpreting this intent through the promulgation of regulations.

Today we have ERISA with its complex and, in some areas, vague language, requiring reports, compliance with various effective dates, a deadline for all employers for filing amended plans, and no regulations.

Is not the solution obvious? The effective dates of changes in these pension laws, which impose different operating or reporting requirements, should not be earlier than six months after final regulations are issued.

Regulations themselves are not a panacea. We must still start with Congress.

We now know that of the 600,000 pension and profit-sharing plans on file with the Internal Revenue Service, less than ten percent have over 100 participants. Ninety percent or more are plans of small businesses. However, the law has been written for large employers and for large unions. Congress failed to study and analyze the size and composition of the pension industry prior to enacting ERISA. The result—Congress authorized simplified administration for small plans; it did not mandate it.

Without this mandate, the agencies involved in administering ERISA, Department of Labor, Internal Revenue Service, and Pension Benefit Guarantee Corporation, have been reluctant to assume the responsibility which "authorized" implies.

Accordingly, several months ago, the Department of Labor issued the now infamous EBS-1 (Plan Description Form). This proposed form for all employers, regardless of size, would have imposed an impossible paperwork burden on small employers. The form was ambiguous, vague, unstructured, and demanded information that the Department of Labor could not use or absorb. This form was approved by the Office of Management and Budget.

Employers, accountants, attorneys and pension consultants were united in their demands that this form be withdrawn or simplified. It has been simplified. Why was it ever allowed to get to the publication stage in the first place?

The IRS and DOL developed a joint Annual Report Form known as Form 5500. As proposed, this form would have to be filed by all employers, regardless of size. The preparation of this report, in most cases, would have required the outside services of accountants, attorneys, actuaries and pension consultants. This costly burden was to be imposed regardless of the size of the plan.

A statement was made by an agency official to me that they were proud of Form 5500 and it was so condensed and simplified that there was no need to have a different form for smaller plans. Neither agency was aware of the burden being imposed on small business.

Fortunately, IRS has a Small Business Advisory Committee which was able to promptly react to the proposed Form 5500. We now have another form for plans with less than 100 participants, Form 5500-C, consisting of only two pages.

It is my conservative estimate that this new form, along with DOL's dropping of an audit requirement for small plans, will result in over one-half billion dollars of annual savings in accounting fees alone.

But, just as in the case of the original EBS-1, why was the original Form 5500 published in the first place? We must be doing something wrong.

Those who are the most affected by paperwork are the last to know. The agencies need Advisory Committees to help develop the regulations and reporting forms. These Committees must be comprised of representatives from those areas most affected. The IRS Small Business Advisory Committee consists of 19 individuals who are small business persons, consultants to small business.

The committee advising DOL with respect to pension plans has only one small business representative and yet, ninety percent of the plans are small plans. How can DOL get proper objective guidance?

Senator HASKELL. We will now hear from James D. Hutchinson, Administrator of the Department of Labor.

I understand you are accompanied by Mr. Strickler.

Mr. HUTCHINSON. That's right.

Senator BROCK. Before you begin, may I insert in the record as part of my questioning of Mr. Fielding a chart which shows the cost of administering pension plans of ten small corporations, and at the conclusion of my questioning I would like to insert into the record a letter from Senator Robert Griffin to Senate Finance Committee Chairman Russell Long with regard to this matter.

Senator HASKELL. It will be included preceding this testimony.

[The letter and chart referred to by Senator Brock follows:]

UNITED STATES SENATE,
THE ASSISTANT MINORITY LEADER,
Washington, D.C., January 2, 1976.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee, Russell Senate Office Building, Washington, D.C.

DEAR RUSSELL: It is my understanding that the Subcommittee on Private Pension Plans may be holding hearings early next year with respect to the impact of the Employee Retirement Income Security Act of 1974 on small pension plans.

While I have long supported the effort to enact pension reform legislation, I am concerned by reports that some of the regulations issued under the new law have resulted in excessive paperwork and administrative burdens, particularly for small firms.

Furthermore, I am troubled by a sharp increase in the number of pension plans which have folded since enactment of the 1974 law. There is need for close examination into the reasons for such terminations and the extent to which they are related to provisions of the new law.

Obviously, there has been little time to evaluate the effect of this legislation. But, its importance requires continuing Congressional oversight so that timely action can be taken to prevent unnecessary regulation and to correct deficiencies in the law.

Accordingly, I wish to support any effort by your Subcommittee to review these matters and to urge that you proceed as promptly as possible.

With best wishes, I am

Sincerely,

ROBERT P. GRIFFIN,
U.S. Senator.

COST OF ADMINISTERING PENSION PLANS OF 10 SMALL CORPORATIONS

Plan No.	Number of participants	Net assets plan	Employer's taxable income	Annual cost before ERISA				Estimated annual cost after ERISA			
				Total cost	Cost as percent of net assets	Cost per participant	Cost as percent of col. 3	Total cost	Cost as percent of net assets	Cost per participant	Cost as percent of col. 3
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	30	$208,397	$43,021	$1,912	0.9	$64	4.4	$4,302	2.1	$143	10.0
2	20	288,902	140,890	3,069	1.1	153	2.2	4,055	1.4	203	2.9
3	19	278,557	116,058	2,679	1.0	141	2.3	3,938	1.4	207	3.4
4	4	139,110	105,885	1,473	1.1	368	1.4	2,266	1.6	567	2.1
5	2	98,270	17,701	782	0.8	391	4.4	1,931	2.0	966	10.9
6	2	59,431	50,234	559	0.9	280	1.1	1,737	2.9	869	3.5
7	2	25,498	35,839	723	2.8	362	2.0	1,506	5.9	753	4.2
8	2	24,062	31,181	334	1.4	167	1.0	1,495	6.2	748	4.8
9	1	23,591	20,272	747	3.2	747	3.7	1,427	6.0	1,427	7.0
10	1	8,400	11,251	455	5.4	455	4.0	1,313	15.6	1,313	1.7

Note.—Costs include actual trustee fees where a bank is trustee or estimated trustee fees of ½ percent of net assets (minimum $250) where an officer of the employer acts as trustee.

Senator HASKELL. You may proceed. Mr. Hutchinson.

STATEMENT OF JAMES D. HUTCHINSON, ADMINISTRATOR, PENSION AND WELFARE BENEFITS, U.S. DEPARTMENT OF LABOR; ACCOMPANIED BY MITCHELL STRICKLER, DEPUTY ASSOCIATE SOLICITOR, PLAN BENEFITS SECURITY DIVISION

Mr. HUTCHINSON. Senator, it is a pleasure for me to be here today. I would like to take this opportunity to comment on reporting and disclosure under the Employment Retirement Income Security Act of 1974, commonly called ERISA.

The reporting and disclosure requirements of the ERISA are the mechanisms by which the Department of Labor, the Internal Revenue Service, the Pension Benefit Guaranty Corporation. and plan participants and beneficiaries, can learn essential facts in many areas. The Government can learn the terms of covered pension and welfare benefit plans, whether or not requirements of the act have been met, the effect of the changes resulting from ERISA, and the need for changes in the administration of the law. Plan participants and beneficiaries can learn the terms of their plans, whether they are entitled to benefits, and the manner in which their plans are being administered.

To assist affected employees, employers, unions and related financial and service organizations to understand ERISA's complex provisions, the Department of Labor has begun to make extensive use of videotape and slide-sound presentations as well as more traditional communication vehicles such as publications and public meetings. We believe that the results of data are quite encouraging and that our efforts in this area will provide all parties with a better understanding of what this massive new law means and the benefits and obligations it will produce.

Admittedly the reporting and disclosure requirements of ERISA are complex and extensive.

Senator HASKELL. At some point, maybe after you are through, I wish you would comment on the question I asked Mr. Fielding. My question was, is there anything in the basic reporting law that makes reporting unnecessarily complex?

Mr. HUTCHINSON. I would be delighted to.

In administering these provisions we must constantly be aware of their potential effects—both intended and unintended. They can provide the right information, at the right time, to the right people, so that the protective provisions of ERISA will really work. They can also produce burdensome administrative costs that could eat into benefits. Reporting and disclosure programs that do not inform the statutory beneficiaries, or that collect information the Government cannot and does not intend to use, cannot be justified. The Department is striving for the minimum reporting requirements consistent with our legitimate needs to protect the rights of participants and beneficiaries.

Although we are committed to meeting the challenge of minimum reporting and disclosure requirements, our efforts are complicated by factors which include very short statutory effective dates, and a high degree of specificity in the statutory provisions which set out the type of reporting and disclosure which is necessary, and what information must be included.

In addition, any new program requires initial "startup" time to attract and use the particular kinds of expertise necessary in a sophisticated regulatory effort.

Public comment and congressional input have been helpful to the Department of Labor in working to implement the reporting and disclosure provisions of ERISA. They have aided us in estimating what various requirements will cost, and in determining what can be done to hold down administrative costs. Decisions already have been made and announced which:

1. Exempt well over 500,000 small employee welfare plans from most of the reporting and disclosure requirements;

2. Modify requirements with respect to the EBS-1 plan description and the summary plan booklet such that:

(a) Plans were required to file only the first two pages of EBS-1 by August 31, 1975;

(b) The filing date for the full EBS-1 and the summary plan description was extended until May 30, 1976; and

(c) The EBS-1 has been modified into a check-box found one-third the length of the original proposed form;

3. Allow plans wishing to amend prior to May 30, 1976, to do so through a special reliance procedure that has been issued by the Department and the Internal Revenue Service;

4. Extend the comment period on the annual report form 5500 beyond the normal 30 days to permit additional input, particularly on the issue of whether an accountant's opinion would be required for small plans;

5. Establish a Small Business Impact Work Group to the ERISA Advisory Council.

Consistent with these decisions, the Department, on December 24, 1975, announced its intent to take several additional actions, including:

1. Working with the Internal Revenue Service to develop simplified annual report forms for small plans—a 5500-K for Keogh Plans and a 5500-C for pension and welfare plans with fewer than 100 participants;

2. Prescribing financial data to be contained in the summary annual report such that only one accountant's opinion is needed from that plan;

3. Waiving the requirement of an accountant's opinion for plans with fewer than 100 participants; and

4. Extending the 5500 series filing deadline to 210 days after the end of the plan year, so that no annual report filings are required prior to the end of July 1976.

The Department also has a proposal under consideration which would establish a procedure whereby plans that have not been amended by May 30, 1976, will be able to make use of previously prepared plan description booklets with proper explanation of ERISA's requirements, until such time as the plan is amended to comply with the act's specific provisions.

In this regard I believe that it is particularly important to place ERISA's reporting requirements into proper perspective. Prior to the ERISA, numerous reports and forms were required to be filed with the Department of Labor and the Internal Revenue Service pursuant to the Welfare and Pension Plan Disclosure Act and the Internal Revenue Code.

As the data in the appendix to my testimony demonstrates, given the massive new protections provided by ERISA and its increased coverage, we believe that a rational, objective analysis of ERISA's "paperwork burdens" shows that much of the criticism in this area may be exaggerated, although the administrative agencies must continually strive to keep reporting burdens to a minimum.

To help assure that the administering agencies will coordinate their efforts in this area, we have worked closely with the IRS and PBGC. Specifically, the three agencies have formed an ERISA Policy Board, made up of the top program officials, to enable us to deal as quickly and effectively as possible with issues of joint concern. I believe that this cooperative effort will help us over time to further reduce the burdens of reporting and disclosure, while increasing the benefits of these requirements.

I hope that this brief overview has been helpful. I would be happy to respond to any questions you might have.

[The appendix to the foregoing statement follows:]

APPENDIX

COMPARATIVE REPORTING REQUIREMENTS

Number of participants in plan	Pre-ERISA							Post-ERISA			
	D-1 (10 pp)	D-2 (16 pp)	4848 (1 p)	4848 schedule A (2 pp)	4848A (2 pp)	4849 (2 pp)	Pages	EBS-1 (6 pp)	5500 (9 pp)	55000 or K (4 pp)	Pages
1 to 25[1]			X	X	X	X	7	X		X	10
25 to 99[2]	X		X	X	X	X	17	X		X	10
100 or more[3]	X	X	X	X	X	X	34	X	X		15

[1] 1 to 25, 640,000 plans, 1,580,900 participants.
[2] 26 to 99, 45,000 plans, 2,100,000 participants.
[3] 100 and more, 25,000 plans, 30,000,000 participants.

Senator HASKELL. I wonder if you could respond to my question of Mr. Fielding.

Mr. HUTCHINSON. Could you frame it again, Senator?

Senator HASKELL. I am trying to find out whether there is anything in the basic statute that unduly requires reporting? Would you give us your opinion?

Mr. HUTCHINSON. If I could eliminate the word "unduly," let me try to place it is perspective and offer opinions and conclusions.

I believe ERISA is a classic example of a piece of legislation where the purposes are relatively easy to articulate and quite sound, but where the statutory provisions at times are highly specific and technical.

As I noted in my testimony, the one section of one part of one title of a four-title law that runs over 200 pages long is seven pages long in itself, and it sets out very specifically that which must be included in an annual financial statement prepared by a plan. When the law becomes that specific, it gives the agencies much less discretion in terms of deviation and choosing additional courses of action, even if we might assume that they would be more practical and pragmatic.

I think there are complications in a law when it is that specific, yes.

Senator HASKELL. Would it be possible for you to submit for the record your recommended changes in the basic law? In other words, maybe the basic law is too complex, or perhaps it is not. We certainly want the Department's suggestions. Can you do that?

Mr. HUTCHINSON. We will do that, Senator.

Senator HASKELL. Within 10 days?

Mr. HUTCHINSON. Yes.

Senator HASKELL. Senator Byrd?

Senator BYRD. Thank you, Mr. Chairman.

I supported the pension reform law. I think the vesting rights as applied by the new law were necessary and desirable and many other provisions were. I do think reporting requirements have gotten so complicated for the businesses to handle that I hear more and more businessmen, as I go around Virginia, say that they are going to cut out their plan if they have to go to the time and expense necessary to file all these reports.

Do I judge from your response to the chairman's question that much of this is inherent in the law itself?

Mr. HUTCHINSON. Senator, I believe a certain amount of it is inherent in the specificity of the statute. Let me make another comment, if I may.

I believe a great deal of the outcry concerning the massive reporting and additional administrative burden of this statute grows from misinformation. I believe that the same advisers and consultants that worked with small plans have at times been hypervolatile in their comments about what the new law requires, such that small plans have indeed been misled as to the impact of this statute from an administrative point of view.

Shortly after I joined the Department of Labor in April of this past year I was visiting in Atlanta during the summer of 1975. A commentator asked me whether it was true, as the local newspapers were reporting, that the massive paperwork burden of ERISA was producing a great number of small plan terminations. In response to that question, I used my prerogative to ask a question: I said, "Are you aware of the total number of pages that have so far been required to be filed under this act?"

The response was "no," but I assume it has been massive. The fact of the matter was as of August 1975 there had not been one single page required filed with the Department of Labor under this law. We did, indeed, have to administratively delay some of the statutory filing requirements.

Finally, EBS-1 and the first summary plan booklet were required to be filed by April 30, 1975. This law was signed in September 1974, and many of the provisions became effective on January 1, 1975, with a requirement that initial reporting begin in April.

We thought that was unrealistic. We deferred it. I think there has been a fair amount of misunderstanding about the law.

Senator BYRD. Well, I hope that is correct, but my observation about filing in general is that Government asks for more and more reports on.

every conceivable phase of business. I am just wondering whether once the reports are made out, in many cases at heavy expense, whether the Government does anything about the damned reports.

Mr. HUTCHINSON. I think that is a very valid question, Senator. As a matter of fact, that precise consideration was one of the reasons why, within a matter of weeks after I joined the Department in April 1975, we withdrew the original EBS-1. It seemed to me it was a document we could not use.

Senator BYRD. The committee has a lot—this is not addressed to me, it is addressed to Senator Nelson as chairman.

This letter is signed by Mr. John H. Morse. He says this:

"In 1971, I established a non-contributor pension plan for the employees on my dairy farm in southern Virginia, which has six participants. Contributions of $2,500–$3,000 per year are held in a trust, and accrued benefits are fully funded.

"After studying the pervasive and complex provisions of ERISA and the mass of regulations and requirements emanating from the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation. I threw up my hands and terminated my plan on December 31. A copy of my notice of termination is enclosed."

Mr. Chairman, I ask unanimous consent that this letter and the enclosure be inserted at this point in the record.

Senator HASKELL. It will be so inserted.

[The letter with enclosure referred to by Senator Byrd follows:]

ONE CHASE MANHATTAN PLAZA,
New York, N.Y., January 27, 1975.

Hon. GAYLORD NELSON,
Chairman, Small Business Committee, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR NELSON: I note that joint hearings will be held on February 2 and 3 on the problems of small pension plans under ERISA.

I doubt that you will get to the heart of the problems with the witnesses scheduled, most of whom appear to have a vested interest in continued bureaucratic control. Pension consultants, actuaries and accountants all stand to profit from the requirements and complexities of ERISA, and it is too much to expect of them to recommend the drastic surgery that is necessary to keep small pension plans alive.

In 1971, I established a non-contributor pension plan for the employees on my dairy farm in southern Virginia, which has six participants. Contributions of $2,500–$3,000 per year are held in a trust, and accrued benefits are fully funded.

After studying the pervasive and complex provisions of ERISA and the mass of regulations and requirements emanating from the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation, I threw up my hands and terminated my plan on December 31. A copy of my notice of termination is enclosed.

I estimated that the cost of maintaining and administering the plan would double or triple and that the burden of attempting to comply with all the complex regulations under ERISA would be unbearable.

You talk of "simplifying reports", but the fact is that no amount of simplifying is apt to relieve sponsors and administrators of small plans of enough burdens to make continuation of their plans worthwhile. The truth is that this is a monster of a law which has gone far beyond any need for remedy. Rather than protecting employees, it will end up undermining and destroying thousands of plans which were established, maintained and administered in good faith without any assistance from government.

Respectfully yours,

JOHN H. MORSE.

GOLDEN RIVER FARM PENSION PLAN

NOTICE TO ELIGIBLE EMPLOYEES

DECEMBER 12, 1975.

I regret to inform you that the pension plan that I established in 1971 for eligible employees of our farm will be terminated effective December 31, 1975. A notice of intent to terminate has been filed with the Pension Benefit Guaranty Corporation in Washington.

This action has been forced on me by a law enacted by Congress in 1974, popularly known as ERISA, which has created an administrative nightmare for all private pension plans.

The provisions of that law and the regulations issued under them are so complex, and the burdens placed on plan administrators are so severe and costly, that it is virtually impossible for any small pension plan such as ours to survive.

This has to be one of the most atrocious laws of all time. It was enacted purportedly to protect the interests of employees under private pension plans. Instead, it has forced the termination of benefits for employees under thousands of small plans, such as ours, which are not able to survive.

This law is a perfect example of the disastrous results that flow from government and bureaucratic interference with the private affairs of the citizens.

The funds that I have contributed in the last five years to the pension trust will be applied to the payment of deferred benefits accrued to the end of this year.

JOHN H. MORSE.

Senator HASKELL. Senator Brock?

Senator BROCK. Mr. Hutchinson, I know you are familiar with the problem and I know you are sympathetic. I hope you understand the questions I asked are couched in that context.

Mr. HUTCHINSON. Certainly, Senator.

Senator BROCK. I noticed in one part of your statement you said you are reporting requirements before ERISA—I have before me a list of some 21 such requirements, only two of which have been terminated. Now this includes a lot of different things. When I look at the new requirements—not just from labor—seven additional requirements from IRS, nine from the Labor Department, six from the Pension Benefit Guaranty Corporation, plus the additional recordkeeping requirements under the law, sufficient to determine the benefits of present and even past employees for the past 6 years, there isn't any question in my mind that there is an awesome increase in the burden placed on the small business by the bill.

I have two objectives. One is to do whatever I can to encourage you and IRS and the corporation to simplify your own forms, but also I am very sympathetic and desire to have from you suggested areas of change in the law where we have created a burden on you that is obviously passed on, but may not be necessary for adequate implementation of the law itself.

Let me ask you one specific question: Why can't IRS and DOL have one form?

Mr. HUTCHINSON. For financial reporting we do, Senator.

Senator BROCK. Well, you have EBS-1 and 5500. Those are not the same form.

Mr. HUTCHINSON. Let me clarify that, if I may.

The 5500 series is a joint series. We will accept one form with the Treasury Department and the IRS. EBS-1 is another form specifically provided for in the legislation separate and apart from the annual financial statement. We could not totally disregard that provision of the statute which requires a plan description to be prepared.

Senator BROCK. Why can't they be in the same report?

Mr. HUTCHINSON. I believe they probably could, but the type of information we collect for financial reporting purposes and for auditing purposes and enforcement purposes is not the same kind of information which describes plan provisions.

I think you would wind up with a vehicle that would be so confusing it probably would be counterproductive.

I might add another note to that, too, Senator. That is that pursuant to the statutory requirements, the times for filing the different forms with the different types of information are indeed different.

Senator HASKELL. If I may interrupt, this is the kind of thing that I think probably both Senator Brock and I have in mind for your memorandum to us on legislative changes. There may be a lot of other things, too.

Mr. HUTCHINSON. Senator, I think it would be much fairer given the representations I can make at this table today to indicate we would be delighted to provide you with a critique of the legislation as it operates and where we see the incidences or difficulties as opposed to any specific proposals for change.

I think it would be more constructive to do the former and we could do it in a much briefer period of time.

Senator BROCK. I think there are things which are obvious. Why should we have different reporting dates, for example? Is there some particular administrative logic to that or is it that the Congress came up with a date and found it attractive, Washingon's Birthday?

Mr. HUTCHINSON. I would like the opportunity to respond to that in writing. I must confess on its face I don't see the reason now.

Mr. STRICKLER. Senator, on the particular forms you are referring to, one is a description in general of the terms of the plan and the other, having financial information shown, is made an annual report. The plan description is required only every 5 years, or if there has been no change in the plan, every 10 years. It does serve a different function and that is one explanation of the different time schedule.

Senator BROCK. You could put on your annual financial report just a box to indicate whether you had any change in your plan. That would serve the same purpose wouldn't it?

Mr. HUTCHINSON. That is correct.

Senator BROCK. In looking at the small versus large problem, particularly in your financial report which has been more extensive——

Mr. HUTCHINSON. I think there would be more time needed to prepare it and more outside assistance needed.

Senator BROCK. What about the suggestion of Mr. Fielding that—for at least small businesses—there be virtually no report at all and just an audit? Would that not be in compliance with the law or would that not be in compliance with the regulations?

Mr. HUTCHINSON. Neither. It is fair to state that the statute permits the Department of Labor, for instance, to waive certain filing requirements for welfare plans. As I indicated in my testimony, we have done that for half a million plans. It does not permit the total waiver of financial reporting for pension plans. We have a mandate that we may provide for simplified or alternative means of compliance, but we do not have the authority under the statute to completely waive that type of plan.

Senator BROCK. In the case of—he was talking about the listing of all assets. He said you couldn't put that in the computer anyway. Is that a fair statement?

Mr. HUTCHINSON. I am not sure I draw the same conclusion. I should state for the record we are reevaluating that particular requirement even within the 5500–C, to see if it could be eliminated. I think one point that ought to be made here, which often is overlooked, is that as sympathetic as I am toward the burden of reporting—and I must say that as a very candid assessment. I think there is overreporting at times—we as a department have been given the responsibility to weigh against that our obligations for the protection of participants and beneficiaries.

The statute doesn't say that a participant is entitled to certain protection if he is in a plan which is large, but he doesn't have that protection if he is in a plan which is small. We must be aware of that balance.

I suggest here, too, that to the extent that reporting is totally disposed of, it would probably require a greater expenditure of Federal resources to monitor on an individual basis those plans, to conduct the audit that Mr. Fielding was referring to. It is a tradeoff if you really wish to have compliance.

Senator BROCK. IRS does a spot audit now. There is no reason that couldn't include this kind of an audit at the same time?

Mr. HUTCHINSON. It looks for different things. The service is auditing for the purposes of determining whether deductions are appropriate, whether the plan is covered as provided for.

Senator BROCK. Again, I am not trying to be harsh. If 5,000 pension plans and 2,500 profit-sharing plans have, in fact, been terminated, I would assume that there would be at least three or four people on the average affected by each of those plans. I think it would be a good deal more. Let's say three or four.

What are you talking about? 60,000–80,000 people who lost plans?

Mr. HUTCHINSON. Let me do some quick math.

Senator BROCK. I am sorry. I started to say 30 or 40 and I dropped a decimal. Is it fair to say that 50,000 people have lost benefits?

Mr. HUTCHINSON. I just did a rough calculation. If we assumed an average of five as opposed to three, it would be 37,500. I think that is a fair assessment.

Senator BROCK. Plus or minus 50,000, a whole lot of people. I have been told that the highest figure—at least one individual cited to me of people who might have been damaged by improper management of these funds, the type we are searching for in this new law, might be 20,000 people.

Mr. HUTCHINSON. I have no way to assess the accuracy of that last figure.

Senator BROCK. It isn't a pervasive problem with every one of these plans obviously. We are dealing with a pretty small problem where we are trying to protect all employees. That is a valid objective. If we are protecting 20,000 who might have been in some fashion damaged, it does seem to raise the question of the cost versus the benefit.

Mr. HUTCHINSON. I heard it recently described as destroying the village to save it. I am not sure I characterize it that way, but you are right, there is a problem in doing something for what might be a smaller problem.

Senator BYRD. What the figures suggest to me is that if Government is not reasonable and practical, that the people who are going to be hurt by this are the employees, the precise people that the Congress has been trying to protect.

Senator BROCK. That is exactly right.

Let me approach it from a different point of view. Let's not talk about people being hurt and helped in terms of fraud or something like that. Let's talk about the broader aspect of it.

How many people are now covered by pension plans in the United States?

Mr. HUTCHINSON. Our current estimate is in the neighborhood of 600,000 plans and coverage is about 35 million workers.

Senator BROCK. 35 million people.

Mr. Fielding testified that the cost increase per beneficiary for small plans would run at least $50 per participant. Now let's run that out and see what we get.

You can't multiply that times 35 million because a lot of those are large plans and the costs would go down there.

Let's say that 600,000 plans which cover small plans, what do they average—five people per plan? Three million people would be in the small group?

Mr. HUTCHINSON. The best data we have now indicates that the number of plans with between one and twenty-five participants is approximately 640,000, with 1,580,000 participants.

Senator BROCK. 1,580,000. That is an increase of $75 million a year, minimum?

Mr. HUTCHINSON. That is correct.

Senator BROCK. I haven't been very familiar with pension plans. I have had some experience with them, but a pension plan is a program in which management and the individual usually participate. They put money in, and the purpose of the plan is to set aside that money so that it can, tax-free, accumulate by investment additional value over the life of the employee, and then the value is taxed at retirement.

That is a fair statement. The employee goes into a lower tax bracket, so the value to the individual is that he gets a tax-free set-aside which then earns money by investment so that at retirement, when he goes into a lower tax bracket, he is advantaged by having money that has accumulated and has earned money.

It is hard for me to believe that these small funds of less than 25 employees are going to earn $75 million a year. If that is true, have we taken away any reason whatsoever for the existence of a small plan in trying to protect the individual?

I don't question the Department's dedication to doing what is right and I sure don't question the Congress. But, sometimes in trying to do what is right, we do it in the wrong fashion and we do it in a fashion that really does damage the individual. Is it possible for you to try to analyze that possibility, to find out for us what the earnings of those 640,000 firms are and then the additional 25,000 with between 25 and 100 employees, and see if the additional cost that we are imposing does, in fact, eliminate all of their earnings so there is no reason for the existence of a pension plan? and, if so ERISA has cost an awful lot of people an opportunity for a pension that means anything.

They may keep the plan just because it is good management-labor relations, but the plan won't be anything to them because it cannot earn enough to really accumulate anything of value. The individual could take this money, set up his own plan, and come out better. You can do that with a savings and loan here in Washington, D.C. and get 5.25 percent for your money tax-free and be better off than you would with the plan that normally would have a much better prospective rate.

I don't want to pose you with an impossible task, but I think that is what the Congress ought to do when it writes legislation. I think we ought to have that analysis before we write the legislation; then we won't make mistakes.

To the extent that you can give us some factual information I would be very grateful for it.

Mr. HUTCHINSON. We shall try. I know a great deal of the data to make those figures reliable was not required to be submitted to the IRS before this new law. We shall make an attempt to collect the information.

Senator BROCK. I think maybe you could do a spot check with random sampling and project out what your outcome might be.

Thank you for your testimony.

Mr. HUTCHINSON. Senator, may I make a comment to follow up Senator Brock's questioning?

In the area of termination I think it is important to indicate that if the number of approximately 5,000 defined benefit terminations is correct—and we believe it is very close—there are additional factors that ought to be considered in assessing what that means. For instance, the termination notices that are filed with the Pension Benefit Guaranty Corporation, which are the source of that figure of 5,000, deal only with defined benefit plans. In many cases those termination files reflect nothing more than a shift from providing a benefit in the form of a defined benefit to another type of plan.

We can't necessarily assume that individuals that were covered are to lose. We can't necessarily assume that the plan and/or the company involved has folded. In addition, a sizable number of the 5,000 that were terminated this year were fully sufficient in the sense that the assets in the plan were fully sufficient to purchase the benefits that were owing to the employees involved.

We with the Internal Revenue Service and the Pension Benefit Guaranty Corporation are trying to compare that data with data on the new plans created in calendar year 1975, or at least those that filed with the IRS, to match that to see if some of the plans terminated are shifting and to make better sense out of the 5,000. It is a figure that although small, if you are talking about 50,000 people compared to 30 million, may even be smaller.

Senator BROCK. One other thing you might comment on, if I may pursue one other point. I forgot to ask you: While Mr. Fielding was testifying he talked about the existence of that Small Business Advisory Group for the IRS. Would you describe the advisory group that you have? Is it adequate? Would you favor a permanent Small Business Advisory Group?

Mr. HUTCHINSON. Senator, we have a 15 person advisory council created by the statute. The statute even specifies the precise areas of expertise from which we must draw representatives. Among them is not a designation of a representative of small business or small plans. In the appointments made this past fall we attempted to select an individual who as a public member had clear expertise in the area of small plans. He is chairing a work group within our council that does nothing but worry about and comment to the Department on the problems of small plans.

That is not to say it would not have been a good idea in the first instance to have a small business impact group. I think we have created the best alternative we can.

Senator BROCK. Would you favor having a separate small business group to advise you on the problems raised by the legislation, particularly the provision which authorized you to have separate reporting requirements?

Mr. HUTCHINSON. I am not sure it is necessary, but I am not suggesting it is not a good idea. I think we have a vehicle to get the same expertise.

The Small Business Work Group is meeting with representatives of our plan.

Senator BROCK. If the small business community feels they only have one member out of a 15 person board, they may feel that is not adequate.

Mr. HUTCHINSON. I think that is a realistic appraisal by them.

Senator BROCK. You have no limitation on setting up your own advisory group?

Mr. HUTCHINSON. Absolutely not.

Senator BROCK. I suggest you consider that. It might be good politics.

Senator HASKELL. Just before I ask Senator Nunn for his questions. may I ask you your opinion on something?

There has been a lot of testimony, particularly by Mr. Fielding, of the numerous terminations due to the increased paperwork. Assuming increased terminations would take place, do you think in any regard some terminations might have resulted from the change in vesting requirements?

Mr. HUTCHINSON. I think that is a very viable suggestion. Many of the terminations occurring in 1975, and particularly the number that occurred in December of 1975—I believe the number was slightly over 1300 in that one month alone—came in during a period immediately before the time when the vesting participation and benefit accrual provisions of the new statute became effective. It was almost the closest thing that I can find to the last free lunch in the sense you can come in, terminate your plan under the old vesting rules, have the benefit of the Government Insurance System and never have to change over to the new rules.

I think those provisions may well have been part of it.

Senator HASKELL. Senator Nunn?

Senator NUNN. Mr. Hutchinson, when will the new EBS-1 and 5500-C forms that were announced before Christmas be released?

Mr. HUTCHINSON. We believe the EBS-1 form, which is only the responsibility of the Department of Labor, will go to the printer befor the end of this week. The 5500-C, we are meeting with the Internal Revenue Service this week to finalize that form based upon additional public input we had. We are reconsidering the asset question as well.

Our best expectation is it will go to printing sometime in February and be distributed in March.

Senator NUNN. What is your review process prior to these forms being released for publication? Are they reviewed by the Labor Advisory Council?

Mr. HUTCHINSON. The original EBS-1 to the best of my recollection did not undergo extensive advisory council review. I say "to the best of my recollection" because that was a process that occurred before I arrived at the department.

The revised EBS-1, the shortened version, has been extensively worked over with the Recordkeeping Work Group and the Small Business Work Group of our advisory council.

Senator NUNN. How about the Small Business Advisory Council? Have they had a chance to review this?

Mr. HUTCHINSON. You are speaking of the Small Business Advisory Council to the IRS?

Senator NUNN. Yes.

Mr. HUTCHINSON. Not formally, but many of their members were involved with the process with the Department of Labor.

Senator NUNN. Has the public had a chance to comment or will they?

Mr. HUTCHINSON. They have already had a chance to comment. The shortened version was published in, I believe, October. Let me double-check.

In October and following the reduction of that form from 20-some pages down to 5 it was then released again so the public could comment on the new 5-page version. I guess it is fair to say that the type of comment we got the second time around indicated we were much closer to being on the money.

Senator NUNN. How about OMB? Has OMB reviewed the form?

Mr. HUTCHINSON. Yes; both times. They reviewed the original and, indeed, had a public hearing on the original EBS-1, the 20-page—I believe it was characterized as a monster.

Senator NUNN. I have no other questions.

Senator BYRD [presiding]. Senator Brock?

Senator BROCK. No questions.

Senator BYRD. Thank you, gentlemen, very much.

Mr. HUTCHINSON. Thank you, Senator.

Senator BYRD. The next witness will be John W. Baker, president of the National Association of Pension Consultant and Administrators. He will be accompanied by Staney H. Hackett, associate member of the council.

Mr. BAKER. Mr. Hackett is presently over at the Labor Advisory Board looking at the new 5500-C, therefore, because that meeting is scheduled at the same time as this, and wasn't to be originally, he will not be here today. He may be here later, but not for this conversation.

Senator BYRD. Thank you. You may proceed as you wish.

STATEMENT OF JOHN W. BAKER, PRESIDENT OF THE NATIONAL ASSOCIATION OF PENSION CONSULTANTS AND ADMINISTRATORS, INC., ATLANTA, GA.

Mr. BAKER. Thank you. I am John W. Baker, president of the National Association of Pension Consultants and Administrators, Inc. In my private life, I am consultant and administrator of employee benefit plans. Both my company, Retirement Plans, Inc. of Atlanta, Ga., and members of the association, primarily provide services to small pension plans—those with under 100 participants.

It has been estimated that there are nearly 500,000 such plans throughout the United States and that they account for approximately 90 percent of all plans.

We have the administrators and consultants to go across the country and give us those statistics whenever we wish them.

The great bulk of small plan sponsors are small businesses; businesses which have neither the in-house facilities nor the expertise to undertake the administrative and actuarial tasks necessary to properly establish and maintain an employee benefit plan.

Accordingly, they retain firms like those represented by our association to handle all aspects of administrative and actuarial functions, ranging from assistance in initial plan design to the full scope of continuing administration. (See exhibit b for an illustrative list of functions performed by consultants and administrators.) Indeed, many small plans would not even be in existence today had not our members, and others in the profession, made concerted efforts over a long period of years to convince employers of the multiple advantages of employee benefit plans.

Unfortunately, the incentives granted by Congress to encourage the development of the private pension systems are simply too complex in operation to be availed of by most small businessmen without professional assistance.

I give you this background so you will understand my purpose in being here today, and the very strong concern that our association has for the continued viability and growth of the private pension system.

With this in mind, I would like to briefly comment on two subjects, both of which have utmost importance to the continuance of a strong private pension system, and both of which will have a substantial impact on the ultimate costs of maintaining that system. The two areas are reporting and disclosure and certain prohibited transactions.

In the area of reporting and disclosure, our primary concern is and has been with encouraging simplification and ease of administrative burden, particularly in reporting form design. I am certain that this committee is familiar with the statistics released by the Pension Benefit Guaranty Corporation in January of this year, indicating that the termination rate of defined benefit pension plans was running more than four times the expected rate. Well over 5,000 defined benefit plans have terminated since enactment of ERISA, and approximately 1,200 filed notices of intent to terminate in December 1975, alone.

The PBGC's statistics indicate that the average number of participants in these plans for 30, not 5. There are a number of reasons for this increase in terminations, including the general state of the economy.

However, it is our view that this high rate is due to some extent to the burdens of compliance with ERISA, and more specifically, to a fear of what those burdens might be. If these fears are not alleviated, the termination rate could well increase.

I woud like to digress and say that the general consensus of opinion with the administrator consultants and accountants throughout the land is that the 5,000 is but a small piddling amount as to the number every day that I try to, and our association tries, to keep in business until ERISA gets straightened out. We have calls in my office—and ours is not a large office—every day asking if they should terminate.

Every day we convince them time after time that terminations are not in order, that we will get it straightened out.

The statistic was also brought up that this covered 37.5 million people, but there are 80 million employed, which means there are still half the people in the United States that need a pension plan.

If we cannot get ERISA straightened out, they will not have the plans either.

On April 30, 1957, we testified before the House Labor Standards Subcommittee during oversight hearings on ERISA. As preparation for part of our testimony, we informally surveyed a number of accounting firms, consulting firms and banks to obtain estimates for basic costs of reporting and disclosure. The survey reflected cost figures of $1.50 to $2.00 per page just to fill out forms after all the information had been gathered and analyzed. These cost figures contemplated the use of clerical help, and I want to emphasize that these were cost figures, not billing figures.

I would like to say that the cost before ERISA and after ERISA has just about doubled. It has gone from $200 to $400 depending upon the number of plans, from $350 to $700. That was the figure given to us by those who do nothing but small plans.

Our association has primarily focused on two ways to attempt to alleviate the fear of the burden of compliance with ERISA.

First, we have continually advised our clients that when the dust settles, ERISA will not be unworkable, overly burdensome or overly expensive. We have advised them that ERISA will be administered by good men acting in good faith who will make every effort to ease unnecessary administrative burdens, complexities and costs.

I strongly say we believe that to the degree. There are just certain problems that have to be worked out.

Second, to help fulfill this prophecy, we have not hesitated to offer our assistance to the Labor Department and the IRS in developing sensible, nonduplicative and inexpensive forms which meet the requirements and purposes of ERISA. Furthermore, where we have met resistance, we have not hesitated to petition the Congress for assistance.

Indeed, a number of Members of Congress, including members of these committees, have taken a leadership role in encouraging simplification and in easing the paperwork burden. We believe some success has been achieved, although only after an expensive and concentrated effort on the part of a number of concerned individuals.

The primary reporting requirements of ERISA are the plan description (form EBS-1) and the annual report.

When form EBS-1 was originally proposed last spring, it consisted of some 16 pages. I will not go through that because I believe we have gone through that with Mr. Hutchinson before.

The form 5500 was originally proposed last fall as a single form for all plans. Let me stress one point at the end of the page on page 5.

As this committee knows, ERISA, section 104(a)(2)(A) authorizes the Secretary of Labor to prescribe simplified annual reports for any pension plan covering less than 100 participants. ERISA section 103(a)(3)(A) permits the Secretary of Labor to waive the requirements for an annual accountant's opinion only in situations where, by reason of ERISA section 104(a)(2)(A), the plan is required to file only a simplified annual report. Since only one report form was proposed for all plans, the Secretary had no discretion to make the waiver. The agencies originally took the position that the form was as simplified as it could be, and that therefore no further simplified form for small plans was necessary.

A similar problem existed in connection with the actuarial report. The Secretary of the Treasury is granted no discretion to waive this requirement.

Again, after enormous efforts and loud protests, it was finally announced that the annual reporting requirements as originally proposed would be modified. In December 1975, the IRS and the Labor Department announced that they were developing an annual report form 5500-C for plans with under 100 participants. The form is to be two pages as opposed to the five page form 5500 required of large plans.

Furthermore, the requirement for an accountant's opinion has been waived for plans with fewer than 100 participants, and the actuarial statement is only to be required for a defined benefit plan subject to the minimum funding standards. We have not had an opportunity to review the 5500-C, as we finally were able to achieve in connection with the form EBS-1, and I will comment as to certain specific items we hope will be modified on the form before final approval.

This gets back to Mr. Fielding's comments that these forms need to be looked at with people such as administrator's, accountants, actuaries, who are in the field every day testing out the water. Until we can get a look at these forms before they get into concrete, I do not think our problem is going to be solved. I believe Mr. Fielding, in the paperwork commission on Thursday, addressed himself to that. You were there, I believe. I think his idea has to be promulgated. Until it is accomplished, I do not think we will really accomplish what you gentlemen are here today trying to find out. How to simplify it, how to get the costs down.

In connection with the forms 5500 and 5500-C, which at this state I understand have not been finalized, I would like to point out a few areas of specific concern to us.

One, while we recognize the responsibility of the Labor Department to monitor plan investments for diversity and prudence, we would hope that a method of rules could be developed which would not require a total li... g and description of each and every asset held at the end of the year.

I understand from Mr. Hutchinson, they are continuing to look at this.

For that matter, unless the agencies really intend to computerize and examine the information on each and every form submitted on an annual basis, some method of selective questioning spot checking or auditing of a sample of plans each year would seem entirely adequate to accomplish the agency's purpose while at the same time holding costs to a minimum.

Two, with reference to schedule A (insurance information), we continue to maintain the position that this schedule is not mandated by ERISA for all plans which purchase insurance. Rather, ERISA section 103(e)—which is reproduced for you as the last page of this statement—only requires it for plans which have benefits "purchased from and guaranted by" an insurance company.

Examination of the various drafts of the bills which ultimately became ERISA indicates that the drafters did distinguish between the reports required when benefits were "purchased from" insurance companies and the reports required when benefits were "purchased from and guaranteed by" an insurance company.

We have raised this matter with the Labor Department before and will not belabor it now. The point is, we do not believe ERISA requires schedule A for the vast majority of small plans with insurance, most of which are split-funded pension plans with no benefits guaranteed by an insurer.

Let's assume they do not do away with schedule A, which I believe is probably in the works. An area of specific concern with respect to the form as originally proposed deals with the provision of information regarding insurance fees and commissions paid to general agents, other agents, brokers, and other persons. You read the law which you wrote, it says agents, brokers and other persons and does not indicate general agents; but the Labor Department decided to put general agents in that definition.

This is part of the problem we keep having. The distribution systems of most life insurance companies fall into one of two main categories—the general agency system and the managerial or branch office system. In the former, the company does business through a number of general agents who are independent contractors and who are compensated through so-called "override" commissions on business sold by agents they recruit and manage.

In the case of the branch office companies, there are no general agents. Instead, the companies have branch office managers who are direct employees of the company and who are compensated on a salaried basis plus bonus arrangements which vary considerably from company to company. Indeed some companies use both methods of distribution in that they have, at least from time to time, some agencies which are managed by branch managers and others which are managed by general agents.

Because of the many different approaches to field force compensation in use in the life insurance industry, even comparisons between two general agency companies, or two branch office companies, may be somewhat misleading.

However, the problem becomes extremely serious when a general agency company is compared to a branch office company on the basis of the information required in schedule A as originally proposed. It must be recognized that while general agents and branch managers have different methods of compensation, this difference does not necessarily have any bearing on the net costs to a plan or a participant. A manager's salary is obviously built into the premium structure just as the general agent's commission is.

However, the reader of schedule A in the originally proposed form would be virtually compelled to conclude that since the general agent's company is paying commissions to an additional person while the branch office company is not, the latter must be offering its products as a lower cost. This unwarranted conclusion will obviously and unfairly hurt general agency companies and at the same time will mislead the public.

I want to emphasize that we have no objection to total disclosure of fees, commission and compensation structures. However, if such information is to be elicited, it should be done so in a form that is not misleading. If there is some way to isolate meaningful comparable figures for the top two types of distribution systems, that would be a feasible alternative.

However, in our view, the complexities of field force compensation are so great that this could not be done within the confines of an understandable and useful reporting form. We would also like to note that general agent commissions, by themselves, as well as some field agent commissions, are based on a number of factors including prior experience, and vary considerably from company to company. As a practical matter, it would be extremely difficult, and in some cases impossible, to properly allocate specific dollar amounts to specific plans for any particular year.

I tried to illustrate that on schedule D for your benefit.

I would like to go to an insert that I did after I typed this speech up on Friday, to get to a specific item, one which brings out what we feel the Labor Department is doing in actual reading into the law things that are not there.

I would like to draw your particular attention to the possible ramifications of the facts I have just cited. They specifically bear on question three of schedule A of form 5500-C, and we are particularly concerned about the disruptive effect of question three with respect to plans with fewer than 100 participants.

ERISA itself does not cause any problems by itself—it is when the Labor Department interprets one paragraph of section 103(e)(2) (exhibit F) that brings out the consequences I am about to explain. We are at odds as to why the Labor Department is unwilling to accept suggestions as to how this paragraph might be implemented in a practical way.

From now on, with schedule A, not only will the employer know the compensation paid to each agent or broker, but the employees will know because the form must be supplied to each employee annually. Is this any of the employee's business when the employer of a small plan usually is contributing all the money? It is likely to bring up more questions, more headaches for the employer and the agent, which means more people will not start new plans. Why put up with the hassle? Will it add to the termination of existing plans, as well, and if so, I do not believe Congress will like the consequences.

Furthermore, since a great many agents' and brokers' commission contracts are very complicated and based on many factors that are not related to a particular sale, we understand that Labor might say only to include the easily definable commission items on schedule A. That would be unfair discrimination against the insurance companies that have developed simple agents' and brokers' contracts.

And even that is not all. The Labor Department, apparently attempting to interpret everything as broadly as possible, seems determined to extend the reporting of agents' and brokers' commissions to include earnings of general agents who in the end results are really distributors—not the salesman. As I mentioned earlier, many life insurance companies have the manager system so that all the distribution costs are absorbed in home office expenses which go into premium rates rather than being singled out as in general agency companies. Even if a method could be developed for allocating the very complex and multifactored general agents' compensation to particular plans—which I doubt—requiring such reports would be unfair discrimination against life insurance companies that use the general agency system of distribution and once again, this is not called for by ERISA but rather is Labor's idea.

You logically might wonder:

Is there a simple solution to carry out ERISA's requirements while not creating chaos, causing plan terminations and stunting the future growth of the pension delivery system? We believe that there is an excellent answer, and we have recently suggested it to the Labor Department. We also believe that this solution is specifically suggested by certain language contained in the latter part of ERISA section 103(e)(2) (exhibit F). Unfortunately so far the Labor Department seems intent on ignoring this suggestion.

The solution is to eliminate question three from schedule A but require that each insurance company file with the Labor Department and possibly with each plan sponsor, a copy or a summary of its salesmen's commission contract. This would give disclosure in a practical manner that everyone could live with. Furthermore, except for any commissions a general agent might receive as a salesman, the Labor Department should not require income information from general agents since they are merely distributors just like the management type agencies of the many insurance companies that use the management type of distribution system whereby all costs are absorbed in home office figures.

It is imperative that the Labor Department solve the problems in respect to question three in schedule A—as they finally did with the EBS-1—in order to enforce ERISA's provisions but not "throw out the baby with the bath water." Question three of schedule A must be omitted and a substitute method of disclosure adopted. This is essential even if the Labor Department wants more time to work out a substitution and, therefore, has to delay this one particular item to apply only for plan years ending after December 31, 1976.

A second area of major concern to us lies in the area of prohibited transactions. Specifically we are concerned with the provisions of ERISA which, as of June 30, 1977, will put every pension consultant in America who also sells insurance, annuities, variable annuities or mutual funds, out of business unless an appropriate exemption and sensible fiduciary regulations are issued. I am speaking of what has come to be commonly known as the "multiple services" and "fees and commissions" problem. Due to the interaction of ERISA section 406 and 408, and their Internal Revenue Code counterpart, section 4975, as of June 30, 1977, consultants and administrators will be prohibited from providing administrative services to a plan for a fee while at that same time receiving commissions on the sale of insurance or annuities on the plan.

The prohibition would obviously have a detrimental economic impact on consultants and administrators, since they would be prohibited from receiving either initial or renewal commissions from plans for which they also provide consulting and administrative services. Furthermore, the prohibition could result in severe disruption of the pension delivery system. Since the affected consultants and administrators could receive neither initial commissions nor renewal commissions, it would seem that every insurance policy in effect which had been sold to a plan by an affected consultant or administrator would have to be cancelled effective June 30, 1977, and a new policy with a different agent written.

Such disruption of the pension delivery system would cause hardship and potential economic loss to plans, participants and beneficiaries. Additional costs would be incurred in canceling old insurance and annuity policies and obtaining new policies and such costs would be a direct drain on plan assets.

Furthermore, plans would be required to establish new, cumbersome, and expensive procedures to deal with multiple parties providing singular services. In essence, as a result of the prohibition, at least two persons would be required to perform a function that previously was performed by one.

There is an obvious potential for abuse in this area. However, we do not believe that a blanket prohibition is a sensible solution. Indeed, in drafting ERISA, Congress specifically recognized that a number of business practices, technically prohibited by ERISA, should be allowed to continue. The exemption procedure was authorized for this purpose. Our association has had an exemption application pending since last June which would resolve the problem. Essentially, the exemption application would permit the continuation of traditional compensation structures, on condition that the transactions were conducted on an arm's-length basis, after full disclosure to interested parties that the administrator or consultant was providing multiple services to the plan for a fee and also receiving commissions on the sale of life insurance or annuities to the plan. We are most anxious that consideration of this application be accelerated. The problem is acute for us for obvious reasons. However, our problems are also of concern to small plans and small businesses, since our members and others in the profession design, establish and administer the great majority of small plans in the country.

Mr. Chairman, I have made specific suggestions in the area of reporting and disclosure and prohibited transactions which our association believes will ease administrative burdens and costs of compliance with ERISA without derogating its basic purpose of protecting plan participants. I think it would be helpful if I could give you some general observations which we have learned from our experience in dealing with the regulatory agencies over the past year.

In the first place, I think the basic problems encountered by the pension industry in attempting to comply with ERISA, and at the same time make it workable, are the same problems encountered by every citizen or group subject to governmental regulation. Too often there is a lack of coordination and communication between the regulated and the regulator, and too often the regulator, in his legitimate desire to protect the public in some specific manner, ignores or simply does not understand the costs incurred to deliver that protection. Furthermore, the regulators suffer from the same human foibles of the rest of us—in particular, they are extremely reluctant to admit they are wrong or to change a position once taken.

How do we correct these problems? Initially, I think we all recognize that there must be some restrictions on dealings between the regulated and the regulator. There are invariably conflicting interests on an issue, and all interests should have an opportunity to be heard. The basic provisions of the Administrative Practice and Procedures Act provide these restrictions, in the case of substantive rulemaking, essentially by requiring notice, opportunity for hearing, and a public record.

However, the Administrative Practice and Procedures Act breaks down in the area of forms, and particularly forms under a new law. The forms issued by an agency have perhaps the most direct psychological and cost impact on the public of any agency decision made.

However, to my knowledge, there is no general requirement for public review prior to publication. There was no such review in the case of the original EBS–1, but after much effort, such review was obtained in connection with its replacement. There was opportunity for comment on the 5500; there apparently will be no such opportunity in connection with the 5500–C. We believe there should be such opportunity. If the normal regulatory process is too cumbersome or expensive, we would suggest that at least the public advisory councils, of which every agency has an abundance, should have this opportunity.

We further suggest that the review should come at an early stage, before an agency has developed such pride in its draftsmanship that it is reluctant to change. I have enormous respect for Jim Hutchinson and the Labor Department for withdrawing the original EBS–1 after it was published. However, I believe Jim is a unique individual and that the situation was unique.

Furthermore, we would suggest that there should be some requirement for an analysis by the agencies of the cost impact of regulations in general, and forms in particular. I do not believe an "Economic Impact Statement" is necessarily required in every case, but at least some effort should be made to specifically determine the economic burden of a decision and whether the burden is worth the benefit.

Mr. Chairman, perhaps ERISA is unique as a new and complex law subject to multiple agency jurisdiction. However, I know the problems we have encountered. and I know how those problems could have been avoided, or at least minimized. I offer our experience for what it is worth, and hope that it will be helpful to the committee's deliberations on the problems of small business. I will be pleased to respond to any questions you or the other members of the committees may have.

Senator NUNN [presiding]. Thank you, Mr. Baker.

We are delighted to have you with us today.

Mr. BAKER. Thank you, Senator Nunn.

Senator NUNN. In your testimony you say, "Well over 5,000 defined benefit plans have terminated since enactment of ERISA and approximately 1,200 have filed notices of intent to terminate by December of 1975 alone." You go on to say that your statistics "indicate the average number of participants in these plans was 30."

Mr. BAKER. That is the PGBC statistics, sir. They do the termination of plans.

Senator NUNN. According to your calculations then based upon these statistics that would be 150,000 people?

Mr. BAKER. Plus the 36,000, which brings it close to 200,000 people really.

Senator NUNN. Do you have any comments about the breakdown of reasons? Could you give us a ballpark guess as to reasons for the termination? We heard Mr. Hutchinson say the general economy was one. He also made mention that the vesting requirements under the new law could have been a cause. Also the paperwork could have been a cause.

Do you have any way of knowing what caused this massive withdrawal?

Mr. BAKER. I think all three of those have a great cause in terminations. I believe fear of what the future holds has the greatest reason for it. I think the accountants particularly are telling their prospective client or clients that if they don't want to be bothered with all the paperwork, et cetera, which is going to have to be set up, if they don't want this 30-percent rule against their assets to come about because of termination of a stated benefit plan, defined benefit plan which is in ERISA, if they don't want all these things to happen, why don't they get out and see what happens in a year or two? Maybe they can get back in.

Some plans are changing from defined benefit to defined contribution. That is also a reason. I don't think those statistics, to be honest with you, are any cause by themselves for everybody to get up and shrink down to nothing. I think the real fear is to come, if we don't get it worked out—because 5,000 or 500,000 is peanuts. I think you will see 50,000 or 100,000 plans terminated if we don't get something done.

I think we will not see very many new plans instigated if we don't get this problem worked out, of paperwork and cost in these plans. Everybody—and another reason. I might say, for some plan terminations is that the employer said, "Well, it is going to cost so much. I will terminate and let everybody go into an ERISA." That is a possibility.

In some instances that is a better thing than to carry on the plan. Maybe the employer could only put in $200 for a participant, but a participant could put $1,500 in for himself. That is another reason that we see.

Senator NUNN. I want to get down to the cost, particularly to the small plans with the new requirements. I think Senator Brock has already pursued that. Why don't you follow that up, Senator? If you don't cover it, I will come back to it.

Senator BROCK. I think you were here when I was asking Mr. Fielding some questions about some testimony he earlier submitted, referring to the costs of compliance with ERISA. I wondered if you would just take a moment to give me some estimates—do you have that in your backup documentation?

Mr. BAKER. Exhibit C, sir, if you would look at that. It is the survey we did and gave to the House hearing on November 20. We reproduced there a copy of that hearing. You will note that we have it broken down as a survey, if there is 1 person in the plan, 10 persons, 25 people, or 100 people, and we have it broken down before ERISA and as of now. We have it broken down in defined contribution and defined benefit plans.

You will note in almost every case that the cost before ERISA and now, no matter how many people were involved, just about doubles. In the first—on page 55 of their report, which is the first page of my report, on the top there, you will see that it went from—in this particular person's survey—from $150 for one person to $450 now for the defined contribution plan.

For defined benefit plan, from $150 to $450 is indicated. As more people get involved, the less doubling it becomes, because you can always do the same procedures and have the same costs in certain instances for 100 people as you do for 1 person. The form still has to be filled out. The cost for 1 person doubles to triples the cost for 25 people, usually doubles.

Senator BROCK. If you had to give me a ballpark figure, what would you say it cost? About $5 per employee over 100 employees?

Mr. BAKER. Sir, we don't really get into the over 100 employees. You are going to have actuaries that can give you statistics on that.

Senator BROCK. I think you included the chart in your statement that shows a cost as high as about $1,300 for a one-person plan.

Mr. BAKER. That would be very high.

Senator BROCK. Unacceptable?

Mr. BAKER. That is unacceptable. That probably included the fact—that was not my survey, but Mr. Fielding's, I believe. It probably included the fact that there would have to be an accountant's statement included in there. When you have one life, you—an accountant's statement costs anywhere from $500 to $1,500 to put in a plan.

We have done away with it. The minimum fee, generally speaking, for one person—a one-person plan is like $300–$350, but then you have usual cost factors that go like $350 plus $10 per participant and so forth. If you have 10, it only goes to $450.

Senator BROCK. What I am reaching for, is there any way for us to estimate the per-employee cost increase as a result of ERISA for a 25-person plan, 50-person plan?

Mr. BAKER. Those statistics are in that exhibit C. If you just divide the 25 into it——

Senator BROCK. You are talking, at least on one of the charts I saw, about an increase of $25 per employee?

Mr. BAKER. Yes. Before where it cost $400, before ERISA, and it now costs $800, and that was, generally speaking, for a 10-man case. It costs $40 and went to $80. I don't think the cost—dollar cost so much worries me as the—it is doubling in price. If it doubles again, we are in real trouble.

Senator BROCK. The thing that bothers me is that these costs are the charges to the company resulting from your services. They don't include the company's costs, do they?

Mr. BAKER. Well, that is what we charge to administer the plan.

Senator BROCK. The company has to contribute employees time.

Mr. BAKER. It doesn't include that nor does it include the fees for buying an asset, securities charge, real estate charge, whatever asset they put in there. It doesn't include the cost of holding a meeting for all employees, et cetera, et cetera.

That is just bare, administrative workpaper burden.

Senator BROCK. I grant you that cost is not the only factor, but it is something tangible that we can get our hands on. Some of the others are more intangible and difficult to evaluate, the psychological burden of fear of compliance, and so forth.

Here is something fairly tangible that you can quantify. You can run out what the actual cost to the employee is, because he ultimately pays this. When the charge is made against the pension trust, it is the employee who loses ultimate benefits. It is not the employer. It is the employee who gets less money when he retires than he would have otherwise.

What I am trying to reach for is how much is ERISA reducing his pension?

Mr. BAKER. It is reduced a little bit. The problem is if it keeps increasing, there is an economic point, a crossover point at which the employers, as you know, are just going to say to heck with it. Where that point is, of course, is different with every employer.

Senator BROCK. It looks to me like most firms under 100 employees might be better to tell their people, "Well, we are sorry, but you ought to go find an IRA* and the employee might be better off."

Mr. BAKER. It is reduced a little bit. The problem is if it keeps high. Where an employer can only put in a small amount of money, let's say $5,000 and he has ten people in the plan, he probably should drop the pension plan and put it into an IRA, unless that contribution he can foresee will be greater than in the future, where he can put in more money, because if he can only put in $500 for the employee, and they can put in $1,500, they can probably work out something economically that will be better for the employee than the pension plan.

That is not generally the case. That is a small number of companies, usually companies are putting in a substantial amount of money for their employees and should continue the plans, but the cost of administration is just getting too high, unless we can keep it down.

Senator BROCK. There are a million and a half people involved in firms of less than 25 employees. I think that is what Mr. Hutchinson said.

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*Individual retirement account.

Mr. BAKER. That's the figure he used.

Senator BROCK. I guess what I am reaching for is where is the break point. If the break point is 25 employees, maybe we should modify the law to allow treatment similar to IRA for the less-than-25-employee plan.

Mr. BAKER. The majority of businesses in the United States are under 25 employees.

Senator BROCK. It is also a heck of a lot of people who are affected.

I just don't believe—I know it wasn't the intent of Congress, and certainly is not the intent of the administrative agencies, to damage any individual, but I think that's the effect of what is happening.

Mr. BAKER. Well, I think we are getting to a point where that might be the effect.

I don't really think we are there yet if we can solve some of the problems we are talking about. Let's just take the one item I brought up. That's question three about agents, general agents and commissions.

If the companies have to report on schedule A agent's commissions, there's not one company that I know of or contacted that has that on their computers now.

That means every insurance company is going to have to recomputerize their complete commission structure to give that information out. That is millions of dollars.

Senator BROCK. You raised another point. When you mentioned computers, we discussed that earlier, too. That is the applicability or utility of the information derived from the reports.

Of what possible purpose is information if it cannot be put on a computer so that you can message it and use it for some purpose?

Mr. BAKER. That's my exact question.

Senator BROCK. To what extent are these forms subject to computer programing?

Mr. BAKER. The EBS one is now after we finished with it. The 5500 was not in that type of form. We have not yet seen the 5500–C so we do not know.

The Labor Department mentioned to me that it will probably have to be changed next year, which means it probably is not computerizable, or it won't have to be changed next year.

We have to change the form already. If they know next year they are going to change it, I say it is worthless to begin with.

Senator BROCK. Mr. Fielding and I both serve on the Paperwork Commission. That body received some testimony of one agency which admitted to receiving reports which could not be computerized.

It admitted to never having used them. They still require a weekly report from all contractors in the United States who have any business, do any work that involved any Federal money whatsoever.

It costs $200 million a year. That's the sort of thing that drives you out of your mind.

You can't seem to understand why we can't come to grips with that sort of thing and deal with it in a more rational fashion.

You, I understand, supported the proposal Mr. Fielding made that we literally eliminate all but one annual, very simple report for the small firm and do our checking by audit.

Mr. BAKER. Yes. I think if I understand Mr. Fielding's testimony which I read and spoke to him about before this meeting, I don't think he wants to eliminate the report per se. He wants it to be as simple and as nonduplicative with check boxes for computerization and then on audit have available all the facts and figures IRS and Labor needs to see that the man is being properly administered.

I think everybody is in favor of that. I think it is a very simple——

Senator BROCK. Except the agencies.

Mr. BAKER. I think the agency would like to but can't find it within the law to do it. I think there would have to be changes in the law to do it, as Mr. Fielding said.

Senator BROCK. I am not sure that that's true, but it may be. If it is, hopefully, we can accommodate that.

Thank you very much.

Senator NUNN. Mr. Baker, one other question.

Senator Williams coudn't be here today and I am asking this question on his behalf.

Only three major provisions of ERISA took effect in 1975: reporting provisions, fiduciary provisions and insurance provisions.

In short, only two pages of reports were required to be filed in 1975. Now, if this is correct, what would be the specific limits of the cost increases that caused so much trouble.

Mr. BAKER. You still had the reports to file, the same reports that you had before. In other words, the new reports came about and supplemented or were in place of the old reports.

You still had to file old reports, 4848 and so forth, which are under the old ERISA. You have one thing that came about: Your fiduciary responsibility of the administrator's consultants. They had to go out and get insurance to cover themselves so if they got sued, which is easy under the law, the administrator's consultants now have to protect themselves against such things.

There is an additional cost that has to be passed on, which is insurance coverage, liability insurance coverage.

There is the gearing up of information which we now have to get that goes well back into the plan 10, 15 years to get the information from when the plan started.

All of that information has to be gotten and accumulated and put on our computers, et cetera.

We have to do everything now by hand because the new forms coming out have not yet been able to be computerized.

Therefore, before we are getting information off the computers and putting them down, now we don't have that information because the forms were different; therefore, a lot more handwork was being done.

There are actuarial reports which have to be done on defined benefit plans, which will give additional costs. It is just little things like this that keep adding up, adding up, more personnel, et cetera.

I don't think it is any one particular thing. I think much of it is needed, but there's a ceiling to which it can go.

Senator NUNN. Thank you very much, Mr. Baker. We appreciate your being here.

Mr. BAKER. Thank you, Senator.

[The exhibits submitted by Mr. Baker and a letter subsequently received from Mr. Baker follow. Oral testimony continues on p. 56.]

[Exhibit A]

PENSION TRUST DETERMINATION LETTER STATISTICS ON CORPORATE TYPE EMPLOYEE BENEFIT PLANS ISSUED BY INTERNAL REVENUE SERVICE JULY 1, 1970 TO JUNE 30, 1974

	Plans by type			Number of plans in each range of participants				Number of participants all plans
	Profit sharing plan	Pension or annuity plan	Total	1 to 25	26 to 100	Over 100	Total	
July 1, 1970 to June 30, 1971:								
Individually designed....	14,597	14,825	29,422	25,976	2,335	1,111	29,422	1,241,421
Master and prototype....	2,415	4,588	7,003	6,894	104	5	7,003	38,625
Total..............	17,012	19,413	36,425	32,870	2,439	1,116	36,425	1,280,046
July 1, 1971 to June 30, 1972:								
Individually designed....	15,575	17,787	33,362	30,268	2,120	974	33,362	724,686
Master and prototype....	3,486	7,068	10,554	10,385	162	7	10,554	55,911
Total..............	19,061	24,855	43,916	40,653	2,282	981	43,916	780,597
July 1, 1972 to June 30, 1973:								
Individually designed....	18,956	21,041	39,997	36,289	2,546	1,162	39,997	1,254,879
Master and prototype....	5,466	12,073	17,539	16,942	567	30	17,539	313,014
Total..............	24,422	33,114	57,536	53,231	3,113	1,192	57,536	1,567,893
July 1, 1973 to June 30, 1974:								
Individually designed....	20,534	21,071	41,605	37,808	2,642	1,155	41,605	1,296,357
Master and prototype....	6,780	12,492	19,272	18,868	379	25	10,272	108,578
Total..............	27,314	33,563	60,877	56,676	3,021	1,180	60,787	1,404,935
Grand total 4 yrs.: July 1, 1970 to June 30, 1974..............	87,809	110,945	198,754	183,430	10,855	4,469	198,754	5,033,471
Percent of plans..............				92.3	5.5	2.2	100	....

[Exhibit B]

REPRESENTATIVE "ORDINARY FUNCTIONS" OF CONSULTING AND ADMINISTRATIVE FIRMS

1. Presentation of what a qualified plan can do for the client in terms of:
   (a) Tax savings.
   (b) Employee moral.
   (c) Retirement Benefits, getting the employee off his back at age 65.
   (d) What the administrative firm can and will do for the client, his lawyer and accountant.
2. Data gathering from the client—date of birth, compensation, etc.
3. Design of the plan to accomplish desired retirement and cost objectives.
4. Presentation of Plan Design with fine tuning needed to meet final requirements of both client and his advisors and the law.
5. Opening account, Trust Document, signing up individuals, etc.
6. Presentation of plan to participants in group meetings to gain maximum employee good-will for client.
7. Supervising enrollment process.
8. Assistance to corporate counsel in preparation of instruments.
9. Final Employee Data to get plan ready for IRS submission.

IRS Submission Package (Forms 5301, 4573, or 4462).—RPI will assist in completion of IRS forms that are necessary to qualify a plan. However, by law, they must be submitted by the employer. This service must be provided by RPI or not offered to the client.

Plan Description (EBS-1) For The Employer/Trustee.—RPI will assist in preparation of Form EBS-1 for the employer/trustee to file with the Department of Labor. By law, this form must be on file within 120 days of the effective date of the plan. It is filed initially and at any time when a substantial change is made in the plan.

Employee Communication Brochure.—ERISA requires employers to provide plan summary descriptions to all eligible participants and beneficiaries receiving benefits. New summaries must be issued every 10 years, and if there are any plan changes, revised summaries must be distributed every 5 years. RPI will prepare these plan summary brochures to meet ERISA requirements.

10. Annual Administration Records.

Plan Records and Individual Record Keeping.—ERISA has made record keeping a strict legal requirement and greatly expanded its scope. RPI will set up plan and participant records in newly installed plans and maintain them according to ERISA requirements if renewal service is elected.

New Insurance Calculation.—This will be done as a routine procedure based on census updates.

Renewal Illustration.—This report goes to the employer and shows prospective plan anniversary changes.

Maintenance of Records.—In respect to breaks in service, 1,000 hour rule, related and controlled companies, survivorship benefit obligations.

Plan and Individual Participant Records.—ERISA states that an employee has the right to know his accrued benefit once a year. RPI automatically prepares the participant's statement that shows these accrued benefits.

Actuarial Valuation/Certification.—RPI provides a Valuation Report, including a summary of data and actuarial assumptions used, evaluation of the reasonableness of underlying assumptions, determination of funding standard account and general funding adequacy, fund withdrawal analysis and actuarial certification of the plan when appropriate.

PREPARATION OF IRS REGISTRATION STATEMENT FOR VESTED EMPLOYEE TERMINATION

Annual Report.—RPI will assist in preparation of the Annual Financial Report required by the Department of Labor and IRS, including commission reporting.

Additional IRS Forms.—RPI will assist in preparation of IRS forms: W2-P, W-3, 4848, 4849, 990-P, and 1099-R or their successors.

Verification of Plan Information (Financial Statement).—Produced 90 days after the plan anniversary, this statement includes all plan information that has been computerized and is sent to the field office to be reviewed for accuracy.

11. Additional Services.

These services are not required on a routine basis. They will be provided when needed if the total administrative service is purchased from RPI.

Actuarial review upon a participant's termination for "Substantial Owner" reporting.

Advice in collective bargaining negotiations.

Notification of potentially reportable events is made to plan administrator.

Processing of: Terminations of vested participants; Retirements; Death benefits; Disabilities; Plan level changes, to include production of a new plan description and summary when required and may require additional service charge; Plan termination assistance, subject to a separate service charge; and Response to questions.

For defined benefit plans only, actuarial service will provide a Valuation Report including summary of data and actuarial assumptions used, evaluation of the reasonableness of the underlying assumptions, determination of the funding standard account and general funding adequacy, and actuarial certification where appropriate.

For defined contribution plans only RPI will provide calculation of side fund deposits and new insurance and allocation of forfeitures, gains and losses and new deposits to each participant's individual account.

12. Collecting data from client for year-end administration.

13. Presentation of year-end data first to client, then to participant if wanted.

14. Personal contact for retiring employees and new participants. Submission of options at retirement, etc.

15. Be available to client and his advisors during year for questions and answers in event of: 1. Changes in clients business status; 2. Audit of plan by regulatory authorities; 3. New regulations affecting plan; and 4. Service required by terminating employees.

[Exhibit C]

EXAMPLES OF COSTS TO ADMINISTER A RETIREMENT PLAN BEFORE ERISA AND AFTER ERISA AS RECEIVED FROM ADMINISTRATIVE FIRMS THROUGHOUT THE COUNTRY

Item as appears on 5500 form	EBS-1 form	5300 form (defined benefit plans)	PBGC	5301 (defined construction plans)
4 type of plan entity (a through d).	3 structure of plan, same information.	....	8 filing entity (a through 3).	
6 type of plan: (defined benefit plans defined construction plans) (entire items covered in No. 6).	9 type of plan. Same information, all plans.	10 type of plan (defined benefit).	....	10 type of plan (same as 6 ii DC plan).
7 number of active and retired participants and beneficiaries and end of plan year (all).	10 number of active and retired participants, etc. Same information.	....	....	
8 amendment information (items c and d only).	A and B.	....	....	
11 type of funding entity (all)..	16 method of accumulation of assets.	20 type of funding entity (item a).	....	20 administration: (a) funding type of entity.
12 name and address of trustee.	(Basically same information).	20 name and address of trustees (items b and c).	....	20 b and c name and number of trustee or account.
	14a general eligibility requirements.	14 eligibility requirements (same basic information).	....	14 eligibility requirements (same basic information).
	19 vesting (all information).	19 vesting provisions (corresponds exactly).	....	19 vesting schedule (corresponds exactly,.
	21 benefits (items a through c).	23 type of benefit (corresponding information, different format).	....	
	15 employers contribution (g through l). 15 employees contribution (a through f).	....	....	17 employers contribution (basic information is same). 16 employees contribution basic information is same).

To Jack Baker

The following is the best estimate in my shop of the cost to administer a plan of—

	Before ERISA		Now	
	Defined contribution	Defined benefit	Defined contribution	Defined benefit
1 person....................................	$150	$150	$450	$450
10 people....................................	250	25	725	725
25 people....................................	400	400	837.50	837.50
100 people....................................	(²)	(²)	(²)	(²)

[1] Defined contribution assumed to be money purchase and figures include actuarial certification cost estimate. Profit sharing plans would range $100 to $200 less.
[2] No plans with this number.

Please assume you filled out the forms before ERISA and now must fill out the forms through Form 5500. Include your cost for liability insurance.

Also assume that the Accountant's Statement just announced with the postponement of Form 5500 is not included in your figures above. *If* you have asked your accountants as to their estimates of the accountant's statement, please put that estimate here $———.[1]

Thank you.

---

[1] Several accountants who hadn't done any real investigation on their own indicated a range of $500–$1,500. Another firm stated they don't want to assume the liability.

To Jack Baker.

The following is the best estimate in my shop of the cost to administer a plan of—

	Before ERISA		Now	
	Defined contribution	Defined benefit	Defined contribution	Defined benefit
1 person	$100	$200	$250	$400
10 people	250	300	350	600
25 people	350–500	400–600	500–600	800
100 people	400–660	600–800	600–800	1,200–1,500

Please assume you filled out the forms before ERISA and now must fill out the forms through Form 5500. Include your cost for liability insurance.

Also assume that the Accountant's Statement just announced with the postponement of Form 5500 is *not* included in your figures above. If you have asked your accountants as to their estimates of the accountant's statement, please put that estimate here $1,200–$1,300 for small plans.

Thank you.

To Jack Baker.

The following is the best estimate in my shop of the cost to administer a plan of—

Please assume you filled out the forms before ERISA and now must fill out the forms through Form 5500. Include your cost for liability insurance.

	Before ERISA		Now	
	Defined contribution	Defined benefit	Defined contribution	Defined benefit
1 person	$255	$255	$435	$485
10 people	300	300	500	575
25 people	375	345	615	725
100 people	750	750	1,150	1,500

COST OF ADMINISTERING PENSION PLANS OF 10 SMALL CORPORATIONS

Plan No.	Number of participants	Net assets plan	Employer's taxable income	Annual cost before ERISA: Total cost	Annual cost before ERISA: Cost as percent of net assets	Annual cost before ERISA: Cost per participant	Annual cost before ERISA: Cost as percent of col. 3	Estimated annual cost after ERISA: Total cost	Estimated annual cost after ERISA: Cost as percent of net assets	Estimated annual cost after ERISA: Cost per participant	Estimated annual cost after ERISA: Cost as percent of col. 3
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	30	$208,397	$43,021	$1,912	0.9	$64	4.4	$4,302	2.1	$143	10.0
2	20	288,902	140,890	3,069	1.1	153	2.2	4,055	1.4	203	2.9
3	19	278,557	116,068	2,679	1.0	141	2.3	3,938	1.4	207	3.4
4	4	139,110	105,885	1,473	1.1	368	1.4	2,266	1.6	567	2.1
5	2	98,270	17,701	782	.8	391	4.4	1,931	2.0	966	10.9
6	2	59,431	50,234	519	.9	280	1.1	1,737	2.9	869	3.5
7	2	25,498	35,839	723	2.8	362	2.0	1,106	5.9	783	4.2
8	2	24,062	31,181	334	1.4	167	1.0	1,495	6.2	748	4.8
9	1	23,591	20,272	747	3.2	747	3.7	1,427	6.0	1,427	7.0
10	1	8,400	11,251	455	5.4	455	4.0	1,313	15.6	1,313	11.7

Note: Costs include actual trustee fees where a bank is trustee or estimated trustee fees of ½ percent fo net assets (minimum $250) where an officer of the employeer acts as trustee.

Also assume that the Accountant's Statement just announced with the postponement of Form 5500 is not included in your figures above. If you have asked your accountants as to their estimates of the accountant's statement, please put that estimate here Minimum of $500.

Thank you.

To Jack Baker

The following is the best estimate in my shop of the cost to administer a plan of—

	Before ERISA		Now	
	Defined contribution	Defined benefit	Defined contribution	Defined benefit
1 person	$125	$150	$250	$350
10 people	175	225	350	425
25 people	200	250	400	500
100 people	350	400	700	900

Please assume you filled out the forms before ERISA and now must fill out the forms through Form 5500. Include your cost for liability insurance.

Also assume that the Accountant's Statement just announced with the postponement of Form 5500 is not included on your figures above. If you have asked your accountants as to their estimates of the accountant's statement, please put that estimate here $———.

JACK: These are my costs before mark-up. This is a reasonable estimate.

Thank you.

To: Jack Baker

The following is the best estimate in my shop of the cost to administer a plan of——

	Before ERISA		Now	
	Defined contribution	Defined benefit	Defined contribution	Defined benefit
person	$100	$125	$200	$250
10 people	150	150	250	350
25 people	200	200	300	450
100 people	400	450	500	750

Please assume you filled out the forms before ERISA and now must fill out the forms through Form 5500. Include your cost for liability insurance.

Also assume that the Accountant's Statement just announced with the postponement of Form 5500 is not included in your figures above. If you have asked your accountants as to their estimates of the accountant's statement, please put that estimate here not yet asked but previous conversation was indicating at least $200 to $300 because of liability they anticipate—probably would be higher now unless forms are simplified and risks limited.

Thank you.

To Jack Baker

The following is the best estimate in my shop of the cost to administer a plan of—

	Before ERISA		Now	
	Defined contribution	Defined benefit	Defined contribution	Defined benefit
1 person	$125	$125	$350	$375
10 people	150	150	400	450
25 people	250	250	500	600
100 people	750	750	1,200	1,500

Please assume you filled out the forms before ERISA and now must fill out the forms through Form 5500. Include your cost for liability insurance.

Also assume that the Accountant's Statement just announced with the postponement of Form 5500 is not included in your figures above. If you have asked you accountants as to their estimates of the accountant's statement, please put that estimate here $400.00–$1,000.00.

Thank you.

To Jack Baker

The following is the best estimate in my shop of the cost to administer a plan of—

	Before ERISA		Now	
	Defined contribution	Defined benefit	Defined contribution	Defined benefit
1 person	$150	$100	$300	$350
10 people	270	250	450	500
25 people	400	400	675	775
100 people	1,150	1,000	2,000	2,500

Please assume you filled out the forms before ERISA and now must fill out the forms through Form 5500. Include your cost for liability insurance.

Also assume that the Accountant's Statement just announced with the postponement of Form 5500 is not included in your figures above. *If* you have asked your accountants as to their estimates of the accountant's statement, please put that estimate here $——.

Above are, as requested, *costs* not necessarily what we will charge. We anticipate adding an increased "loading" to post ERISA admin.

Thank you.

To: Jack Baker

The following is the best estimate in my shop of the cost to administer a plan of—

	Before ERISA		Now	
	Defined contribution	Defined benefit	Defined contribution	Defined benefit
1 person	(1)	(1)	$350	$450
10 people	(1)	(1)	350	450
25 people	(1)	(1)	465	565
100 people	(1)	(1)	1,025	1,125

1 No charges for renewal services.

Please assume you filled out the forms before ERISA and now must fill out the forms through Form 5500. Include your cost for liability insurance.

Also assume that the Accountant's Statement just announced with the postponement if Firm 5500 is *not* included in your figures above. *If* you have asked your accountants as to their estimates of the accountant's statement, please put that estimate here—$300 up depending on where funds inv. and extent of work in ascertaining their value, etc.

To Jack Baker

The following is the best estimate in my shop of the *cost* to administer a plan of—

	Before ERISA		Now	
	Defined contribution	Defined benefit	Defined contribution	Defined benefit
1 person	$50	$50	$250	$350
10 people	100	150	250	400
25 people	150	200	300	500
100 people	200	250	350	600

[Exhibit D]

STATEMENT OF JOHN W. BAKER, PRESIDENT OF THE NATIONAL ASSOCIATION OF PENSION CONSULTANTS AND ADMINISTRATORS, INC.

This is a specific example of a General Agent's contract, that of The National Life of Vermont, but is submitted only as an example of the total system and may or may not be typical in all instances.

1. Basic overrides—Computed as a percent of commissions paid to the agent on each policy, each year. This percent changes each year.
2. Manpower development fee—Computed as a percent of commissions paid to the agent in the second and third policy year.
3. In-force allowance—Percentage of annual premiums in force plus fee per policy in force.
4. Basic allowance—Percent of the first year agency commission based on a band of commission volume. Not on a per policy basis.
5. Growth bonus—Percent of increase in Agency's first year commissions over a running average of the last five years. Paid on a quarterly basis.
6. Productivity allowance—Percent of the agent's first year commission in excess of $3,000 first year commission in different contract years.

As can be seen from the previous page, the National Life's General Agent's compensation is made up of six formulas. The first 2 formulas, Basic Override and Manpower Development Fees are based on a percentage of commissions paid per policy. The Basic Override Commission is computerized not by plan, but by policy, and, therefore, to get the override commission paid to the General Agent, it would take a searching process and a reprogramming of the present computer printout to get that particular amount of money. Although the Manpower Development Fee is computed in a similar manner, it is based only on the second and third policy year commissions of the contract.

The third part of the formula based on an In Force Allowance is a percentage of the annual premiums in force plus a fee per policy in force. These three sections of the formula have the possibility and capability of being figured for Schedule A, but most companies would have to completely reprogram their computers which would take many months and many dollars and the administrative time involved to come up with the answer for each Schedule A would be more expensive than the pension business is worth, especially for companies who do only a modest amount of pension business.

The last three portions of the formula, Basic Allowance, Growth Bonus, and Productivity Allowance, are based not on a per policy formula but on a basis that is impossible to detail which policy is involved in a particular case. The Basic Allowance is based on a band of commissions, and the question arises as to whether a particular policy in a particular plan fits into which band of commissions. Because each band has a different percentage commission to the General Agent, and the bands are per $50,000 of first year commissions, it, therefore, creates a problem impossible to compute as per policy computation.

The Growth Bonus being a percentage of increase in first year commissions averaged over the last 5 years are paid on a quarterly basis which creates the same problem. You cannot designate where the commissions on a particular policy fit into the formula; therefore, it is an impossibility to compute the commission for the policies in a particular plan.

The Productivity Allowance is a percentage of the agent's first year's commissions in excess of $3,000. Some of the commission on a particular policy may be before the agent received $3,000 and some commissions on over $3,000; therefore, again the particular policy which had commissions paid under the Productivity Allowance would be an impossibility to compute as a specific amount on a specific plan.

We, therefore, submit that the General Agent's Commission is not only unfair because it discriminates in favor of the management type company where obviously salaries cannot be detailed on a per policy basis, but is also impossible to compute on a per policy basis because the formulas are so intricate and are based on factors which take in total production and manpower increases not specifically allocated to a particular plan.

One possible solution to the whole commission problem, both agent's and General Agent's is for the companies doing pension business to submit to the Labor Department the Compensation Agreements as a master copy and not to submit detailed information per plan for every plan. This would alleviate a lot of paperwork for the Labor Department and also alleviate a lot of cost which eventually must be passed through to the consumer by the insurance companies and/or the administrators of plans. Master contracts of banks and mutual funds could also be done in this same manner, and we submit that this is both more equitable and certainly less costly to the plan sponsors and the plan participants.

[Exhibit E]

Act Sec. 103. (e) If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the fiscal year and enumerating—

(1) The premium rate of subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) The total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this pargraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service, or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

* * * * * * *

(5006) Act Secs. 103 and 104. Law at 1014 and 1019. CCH Explanation at 803, 804, 806, and 922.

CONFERENCE COMMITTEE JOINT EXPLANATION

With respect to persons employed by the plan the annual report is to include the name and address of each fiduciary; the name of each person who receives more than minimal compensation from the plan for services rendered along with the amount of compensation (or who performs duties which are not ministerial), the nature of the services, and the relationship to the employer or any other party in interest to the plan. Also, the reasons for any changes in trustees, accountant, actuary, investment manager, or administrator are to be provided in the annual report.

(The above section is only a partial statement of the complete explanation.)

THE NATIONAL ASSOCIATION OF PENSION CONSULTANTS AND ADMINISTRATORS, INC.,
Atlanta, Ga., February 10, 1976.

Mr. RUSSELL B. LONG,
United State Senate,
Washington, D.C.

DEAR SENATOR LONG: I wish to thank you for allowing me to testify before the Joint Senate Committees on ERISA last Monday. I also wish to thank you for the copy of the testimony which I received in the mail today.

The Senate appears very concerned about ERISA and rightfully so, and I realize that the question at hand is what is the best way to attack the problem now that the bill is 1½ years old. There were a couple of suggestions both at the Paperwork Commission on January 29 and the Hearings on Febraury 2 which I would like to reemphasize:

1. In order to keep the cost of administration of small plans at some reasonable figure, the reporting forms which have to do with those small plans must be short, easy to fill out, and practical in nature. I believe the theory behind them must be that the IRS and/or Labor can get the data upon audit, but need not have all the information year in and year out from the forms themselves. Small firms must get their expertise from outside sources such as administrators and consultants and the owners of those businesses must get on with their business and not be worried about whether a form is filled out correctly or that they reported 100 shares of AT&T properly. They are struggling every day in the marketplace and feel that this pension or profit sharing plan is a fringe benefit for themselves and their employees which is coming directly from their efforts.

This is a very different philosophy than the large employer who has inside expertise to do all the accounting and ERISA requirements and whose purpose of the plan is for the retirement of his employees, but because he is so large, he cannot directly relate that benefit to this individual efforts.

As you can see, therefore, the philosophy for both putting in the plan and the year-in and year-out administration of the plan is a different approach in the two cases. Also, within the large firms, government paperwork is a way of life, whereas for the small employer government paperwork is a threat to their livelihood and a cost they feel is unjustified. Therefore, unless we can keep both the amount and the cost of paperwork down for small plans, many thousands will go out of business this year. As I pointed out in the meeting on February 2, Congress and the Labor Department have not begun to see the terminations which are on the horizon. Our organization and others like us have been pleading with the small employers to keep their plans, and to this point have been fairly successful; but unless ground is given on areas where the cost to administer the plan overshadows the economics of keeping it, we will not be able to hold back the tide by the end of this year.

As just one minor thing which is symbolic of many other things, that being the commissions to General Agents and Agents the inexpensive way to do it would be to have the companies put their contracts on file with the Labor Department. The expensive way to do it is to have the figures put on Schedule A every year. It is expensive because the figures are not available, the recomputerization to get the figures will cost in the millions, and even when it is prepared, the figure for General Agents' commission is inaccurate because of the compensation structure, and the only people who really want the figures are the Labor Department. Be assured that the employer and employees could care less. The form which asks for the figures is by the Labor Department's own admission not a permanent form; therefore, it will have to be changed next year and when you add all these things up and know that in the end result the participants of the plan will ultimately pay the cost, you can see that taking just one small item out of the hundreds we can cite as reasons for the plan administration being too expensive is frustrating for the employers.

I don't believe that anyone feels that the information which ERISA asks for should not be forthcoming either on the form if it is immediately necessary or through audit when asked for, but to put information down on forms every year just so the Labor Department can have some more statistics and hire more people to file those statistics defeats the purpose of ERISA if it means terminations of plans.

The suggestion that Max Weil, Bruce Fielding and I made at the hearings that forms need to be designed not by Washington bureaucrats in the ivory tower but by practitioners working along with them in the beginning of the design of the form will probably correct 90% of the ills which we have experienced in the last year regarding reporting and disclosure under ERISA. It would not cost the government anymore money to do so, and, in fact, would end up costing much less as all the putting forth and withdrawing of forms, along with Congressmen having to read thousands of letters pertaining to those forms would be eliminated. I think it is one place where the public working in conjunction with the government could add the needed dimension to carry out the will of Congress.

2. It is quite obvious that the input through the Labor Advisory Board or the IRS Advisory Council on small plans is inadequate for them to do the proper job necessary in this area. To come up with an entire new board would be improper and expensive, but to insist that more representation for small plans on the present boards, I believe, would help everyone to get a better handle on the situation. Knowing all about big corporate or labor pension plans gives you absolutely no insight in the small plan area and for most items in ERISA, the big plan advisors cannot transfer their expertise down to the small plan area. As more than 90% of the plans are small plans, it would seem imperative that the 15 man Labor Advisory Board have more than one person that is an expert in the small plan area giving it the input that the Labor Department needs.

In conclusion, I would like to say that I have great confidence and respect for Jim Hutchinson and think that he has done a tremendous job in less than a year with one of the most complicated pieces of legislation yet enacted. I do not think the problems stem from his not wanting to do the job, but more from his feeling that he will get called on the carpet later down the road if things are not done in complete detail and in the comprehensive manner at the present time. For this reason, we have seen the forms come out with too little time for comments, a rush to get them printed in order to be of use for this year and all the things that go into making for confusion and expensive detail, when with just a little more time things could be done more permanently, less expensively, and satisfactory to everyone's concerns.

As this letter expresses my deep concerns about this whole subject, I am sending a copy to Senators Bentsen and Nelson who joined you as Chairmen of the Senate Hearing on February 2, and also to interested Senators such as Senators Nunn, Brock, Haskell and Dole, and House Members Dent, Erhlenborn, Pickle and Vanik.

Our organization and its members are most anxious to help in anyway we can and hope that you will call on us in the future when the need arises. We will be in Washington for a Congressional Reception to honor and become better acquainted with Congress on the evening of March 11 at 7 o'clock at The L'Enfant Plaza, and I would be very honored if you could find valuable time in your schedule to drop by and meet with our membership so that you can get the feel of how dedicated we are in this area. I would also like to extend the invitation to your aides who are working on ERISA such as Herb Spira who did such a tremendous job at the last hearing and any others whom you feel would gain from our association.

Cordially yours,

JOHN W. BAKER,
President.

Senator NUNN. Our next witness is Mr. Steven Schanes, executive director of the Pension Benefit Guaranty Corporation.

STATEMENT OF STEVEN E. SCHANES, EXECUTIVE DIRECTOR, PENSION BENEFIT GUARANTY CORPORATION; ACCOMPANIED BY HENRY ROSE, GENERAL COUNSEL

Mr. SCHANES. I am Steven Schanes, executive director of the Pension Benefit Guaranty Corporation.

We have submitted a short statement which indicates our experience with regard to the defined pension benefit plans. The statistics have been quoted to this committee before and they are, I know, referred to in the testimony of other witnesses.

I am not sure it helps for me to repeat them again. I would like to point out that we have made an effort, I think, to simplify the reporting procedures which relate to our agency.

I call these specifically to your attention.

Reading from the bottom of the first page of my statement, if I may—may I assume that's all right?

Senator NUNN. Certainly.

Mr. SCHANES. In administering title IV of the act, we have made positive efforts to minimize the burden of employers and plan administrators. Our forms and procedures are few in number, particularly for ongoing plans. As you know, defined benefit plans, with a limited number of exceptions not covered by title IV, are required to pay an annual premium of $1 per participant for single employer plans and 50 cents per participant for multiemployer plans.

The plan administrator has 30 days after the beginning of the plan year to estimate and pay the premium. Then he has a full year and 30 days after the end of the plan year to reconcile that estimate with the actual experience.

The only other regular reporting for ongoing plans, pursuant to statutory requirements, is a two-line annual report as to whether any reportable events or other events requiring notice to PBGC occurred within the preceding plan year.

All three of the above requirements, the premium estimate, the premium reconciliation and the PBGC annual report, may be met through the use of a two-page form called the PBGC-1.

These forms are to be completed by the plan administrators, with no requirement for any independent certification of any sort.

The details of reportable and related events, if they do occur, must be reported to us within 30 or 60 days, depending on the type of event.

Terminating plans, of course, are required to submit extensive data about plan assets and benefit liabilities.

Throughout our operations we have been mindful of one of the key purposes Congress included in title IV: to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants. We respect the years of experience reflected in the private pension system and have made positive efforts to tap its expertise and invite input at all stages of our evolving program.

We have attempted to keep our procedures simple and clear and to keep the pension community informed. One of our methods for example, is to answer letters by telephone. We have had a gratifying response to this effective and economical technique.

I will be pleased at this point to answer any questions you may have.

Senator NUNN. Turning over to your appendix——

Mr. SCHANES. I should say that we do have our annual report with us. The appendix you see here is taken from the annual report.

Senator NUNN. Do you think this is actually the survey that will be representative of the national experience?

Is that what it is designed to be?

Mr. SCHANES. The survey you see here was taken in May of a very limited number of terminations before us. We have a new survey going on, 10 percent of our terminations which would be far more extensive and far more helpful.

Still we are reflecting what the planning administrators have told us in our discussions. Therefore, you can't be sure that these are the reasons for which plans are being terminated.

Senator NUNN. Is table C * the main part of that result?

Mr. SCHANES. Yes; it is, sir.

Senator NUNN. Why don't you go down table C for us and explain it?

Mr. SCHANES. That is based upon a 20-percent sample of both enactment terminations. By that we mean these are terminations occurring after September 1, 1974.

The law permitted terminations to be covered by the law for a 2-month period retroactive to that date. There were some 200-odd terminations filed with us in that period. For those occurring after that date, on this 20-percent sample, 37 percent stated the reason for termination as adverse business conditions, 16-percent adoption of another plan, 13-percent change of ownership by sale, transfer, merger; 12-percent liquidation, dissolution or bankruptcy; 6 percent, closing of plan, division of subsidiary; 6 percent, plan to expensive; 4 percent, lack of employee participation; and all others 10 percent.

Senator NUNN. What do you mean by adoption of another plan? Another approved plan or an individual plan?

Mr. SCHANES. It could be any type of a substitution of coverage for future service of employees which resulted in a pension of sorts at retirement.

Senator NUNN. Did you ask them to give you one reason for termination or check several reasons?

If there were more than one reason—if there were several reasons converging to cause them to terminate, did they have an opportunity to reflect this?

Mr. SCHANES. Not in this particular sample, sir. That's why I call your attention to the next study we are making. When it became of essence for all concerned to find out why the plans were terminated, we began to ask specific questions such as: Do you have more than one reason?

In our next study, we will be able to indicate one reason, two reasons, three reasons of what these combinations were.

In the study you have before you, largely these are one-reason answers and may not be reflective of the total situation.

Senator NUNN. To what extent do you believe the costs of reporting and paperwork are involved, based on what information you have right now?

Mr. SCHANES. To what extent are the actual terminations we have on hand reflective of administrative workloads?

I would say that perhaps in 20 percent of the terminations—and I am making a gross statement—that paperwork was part of the explanation of termination in combination with other reasons.

Being the sole reason is far more limited, perhaps, 5 percent.

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*See page 61.

Senator NUNN. None of these categories which you have in table C really fit into the paperwork unless its plan is too expensive?

Do you consider that category to encompass paperwork burdens?

Mr. SCHANES. Plans too expensive may have included paperwork. Again, this is a May study of terminations which occurred before that date and on which decisions may well have been made a long time prior to that date.

The impact of paperwork might not have been reflected in any of these.

Senator NUNN. Does your new survey have a category based on administrative paperwork burdens and so forth?

Mr. SCHANES. In our new sample survey we are classifying the stated reasons for termination in considerable detail, including reasons such as reporting or recordkeeping requirements of ERISA, administrative expenses related to ERISA, funding requirements of ERISA, and so forth.

Senator NUNN. Would a plan be within its rights to terminate because of doubled or tripled administrative costs?

Mr. SCHANES. There's freedom for termination for whatever reason, sir.

Senator NUNN. Any reason?

Mr. SCHANES. Yes, sir.

Senator NUNN. Out of the 5,000 plans that did terminate on this survey, how many of them would not have had enough assets to cover their liabilities?

Mr. SCHANES. That's a difficult question to answer. We have thus far processed some 1,390-odd in which we know the assets are clearly sufficient to take care of all liabilities.

I am guessing, but I would think that perhaps at least 75 percent, perhaps higher than that, would have assets sufficient to cover all the liabilities.

Senator NUNN. You say about 25 percent would not?

Mr. SCHANES. It might be smaller than that.

Senator NUNN. If there is a termination because of administrative costs, is this considered by IRS to be a "valid business reason" to prevent them from taking away past year deductions?

Mr. SCHANES. I do not know the answer to that. We are not able to respond to that.

Senator NUNN. We will try to get the answer to that question from someone else.

Thank you very much. We appreciate your testimony.

Mr. SCHANES. Thank you very much.

[The prepared statement of Mr. Schanes follows:]

STATEMENT OF STEVEN E. SCHANES, EXECUTIVE DIRECTOR PENSION BENEFIT GUARANTY CORPORATION

On behalf of the Pension Benefit Guaranty Corporation, I am pleased to cooperate with your Committees in seeking to minimize the burdens on smaller pension plans flowing from ERISA.

As you know, PBGC is responsible for the plan termination insurance program and I would like to share some pertinent data with you. Our program covers approximately 120,000 defined benefit pension plans, with about 33 million participants. In calendar year 1975, we received 5,035 notices of termination of defined benefit plans, with 1,148 of them filed in December.

In May, 1975 we conducted a 20% sample of termination notices, seeking the characteristics of the plans involved. The results, contained in our Annual Report to the President and Congress, are reproduced as an appendix to my statement. That survey revealed that 53% of the terminating plans had under 10 participants; 30% of them were under 5 years old and 78% were funded through insurance contracts. As to the reasons for termination, 37% of the terminating plans cited adverse business conditions, 18% showed termination of all or a portion of the employer's operations, and 13% listed change of ownership. Adoption of another plan was the reason in 16% of the cases. I want to point out that these are the reasons given by the plan administrators but, for the most part, are unverified by us, since our procedures ordinarily do not involve investigation of the grounds for termination.

This survey is now being updated to cover the entire calendar year 1975 and we expect to have the results shortly.

In administering Title IV of the Act we have made positive efforts to minimize the burden on employers and plan administrators. Our forms and procedures are few in number, particularly for ongoing plans. As you know, defined benefit plans, with a limited number of exceptions not covered by Title IV, are required to pay an annual premium of one dollar per participant for single employer plans and 50¢ per participant for multiemployer plans. The plan administrator has 30 days after the beginning of the plan year to estimate and pay the premium. Then he has a full year and 30 days after the end of the plan year to reconcile that estimate with the actual experience.

The only other regular reporting for ongoing plans, pursuant to statutory requirements, is a two-line annual report as to whether any reportable events or other events requiring notice to PBGC occurred within the preceding plan year.

All three of the above requirements, the premium estimate, the premium reconciliation and the PBGC Annual Report, may be met through the use of a two-page form called the PBGC–1.

These forms are to be completed by the plan administrator, with no requirement for any independent certification of any sort.

The details of reportable and related events, if they do occur, must be reported to us within 30 or 60 days, depending on the type of event.

Terminating plans, of course, are required to submit extensive data about plan assets and benefit liabilities.

Throughout our operations we have been mindful of one of the key purposes Congress included in Title IV: to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants. We respect the years of experience reflected in the private pension system and have made positive efforts to tap its expertise and invite input at all stages of our evolving program. We have attempted to keep our procedures simple and clear and to keep the pension community informed. One of our methods, for example, is to answer letters by telephone. We have had a gratifying response to this effective and economical technique.

In case processing, you may be aware of the fact that we have developed an interim and expedited procedure for those plans which have clearly sufficient assets to satisfy their benefit liabilities. In those instances, the plan administrator certifies that the assets are sufficient to satisfy all vested benefits and we then issue a notice of sufficiency, authorizing close-out of the plan and distribution of its assets. This has already occurred in 1,397 cases, as of January 28, 1976.

We have coordinated with the Department of Labor and the Internal Revenue Service on policy, regulations, procedures and forms, and have arranged for exchange of appropriate information.

At PBGC, our actions have been geared to minimizing any burden on ongoing plans stemming from Title IV. Through the actions I have described and others, we have attempted to fulfill our mission, without killing the goose that lays the golden eggs.

I shall be pleased to answer any questions you might have.

APPENDIX

Characteristics of Terminating Plans

Table A.—Size of terminating plans

(Based on 20 percent sample of post-enactment termination filings)[1]

Number of participants:	Percent distribution Plans	Percent distribution Participants
Under 10	53	7
10 to 25	29	14
26 to 50	7	8
51 or more	11	71
Total	100	100

[1] Excludes 6 plans in which participant data was not available.

Table B.—Age of terminating plans

(Based on 20 percent sample of post-enactment termination filings) [1]

	Percent distribution of plans
Under 3 years	14
3 and under 5 years	16
5 and under 10 years	39
10 years or more	31
Total	100

[1] Excludes 5 plans in which date of establishment of plan was not available.

Table C.—*Reason for plan termination*

(Based on 20 percent sample of post-enactment termination filings[1])

	Percent distribution of plans
Adverse business conditions	37
Adoption of another plan	16
Change of ownership by sale, transfer, or merger	13
Liquidation, dissolution, or bankruptcy of employer organization	12
Closing of plant, division, or subsidiary	6
Plan too expensive	6
Lack of employee participation	4
Other	7
Total	100

[1] Excludes 5 plans for which reason for termination was not reported.

Table D.—*Medium of funding of terminating plans*

(Based on 20 percent sample of post-enactment termination filings)

	Percent distribution of plans
Insured (total)	73
Group annuity type	15
Individual annuity type	53
Unknown type insured	5
Trusteed self-insured	23
Not determinable	4
Total	100

TABLE E.—*Industry of employer-sponsor of terminating plans*

(Based on post-enactment termination filings) [1]

	Percent distribution of plans
Agriculture and forestry	1
Mining	1
Construction	11
Manufacturing	34
Transportation	5
Wholesale trade	14
Retail trade	18
Finance, insurance, real estate	5
Services	11
Total	100

[1] Excludes 542 plans were industry was not available.

Senator NUNN. Our last witness this morning is Mr. Robert Conkel of the American Society of Pension Actuaries, accompanied by William Hand, a board member.

STATEMENT OF ROBERT D. CONKEL, ESQ., AMERICAN SOCIETY OF PENSION ACTUARIES; ACCOMPANIED BY WILLIAM W. HAND, BOARD MEMBER

Mr. CONKEL. Thank you, Mr. Chairman.

Senator NUNN. Proceed in whatever manner you would like.

Mr. CONKEL. I am legal counsel for the pension consulting firm of American Actuaries, Inc., headquartered in Grand Rapids, Mich.

Today, however, I am appearing before you on behalf of the American Society of Pension Actuaries.

Hereafter I would like to refer to it as ASPA.

In my capacity as a director and as chairman of the subcommittee on reporting forms.

On behalf of the 1,500 members of ASPA, which includes pension actuaries, administrators, consultants and attorneys, I thank you for this opportunity to present our thoughts concerning the administrative burdens placed upon the small business retirement plan by reason of the reporting forms issued by the Departments of Labor and Treasury.

It is estimated that ASPA members represent 25 percent of the qualified retirement plans in the country. In order to illustrate the number of plans and participants involved, the following figures are provided:

	Plans	Participants
Number of participants in plan:		
1 to 25	640,000	1,580,000
26 to 99	45,000	2,100,000
100 and more	25,000	30,000,000

Mr. CONKEL. This indicates that when the number of participants in a plan are from 1 to 25, of which there are 640,000 such plans, we are concerned with some 90 percent of all the plans in the country.

If we go to 100 participants per plan, we are concerned with 96 percent of all the plans in the country.

The reporting requirements require that plans shall report, regardless of the number of participants, the assets of the plan, or the size and worth of the employer.

It is virtually impossible to accurately determine the impact of the increased cost of administration upon any group of these small employers unless we take into account all of these factors.

In addition, we must take into account the willingness of employers to pay this increased cost and to bear the burdens of increased administration.

And the foremost reason for this uncertainty is that we still do not have regulations with the authorized exceptions and exemptions.

Notwithstanding the specific authority granted by Congress in the Employee Retirement Income Security Act of 1974, ERISA section 104 (a)(2)(A), to provide simplified and consolidated reporting for small plans, the regulatory agencies have not, until just in the past month, provided the small employer with any relief in this reporting area.

The regulating agencies had a monstrous job in developing regulations implementing the intentions of Congress.

We commend them for their efforts. However, we believe some basic mistakes were made and might still be made, as they find workable reporting requirements for smaller plans. If the following basic problems were resolved, the time and cost for reporting requirements might be acceptable to the small employer:

1. The three regulating agencies—Labor, Treasury, and PBGC—should coordinate their efforts in order to eliminate any duplication of reporting.

There are only three events that markedly alter the plan's provisions: (*a*) At inception; (*b*) Upon amendment; and (*c*) At termination.

We believe that one report to one agency for each of these events, with distribution by that agency to the other two would satisfy the reporting requirements of ERISA and eliminate much time and cost for the small employer.

All other annual and specific event reports required by ERISA could then be concentrated and restricted to the information and data pertinent thereto, without duplication of material provided upon the occurrence of those three events.

With repetitive filing of the same information year in and year out, an expensive annual audit is being performed. Audits should be performed only as a result of irregular data or participant complaints.

2. Why were the regulations for reporting so slow in coming? Why wasn't simplified reporting for small employers a part of the proposed regulations? Why are we now holding these hearings?

Perhaps, Labor and Treasury did not have a proper understanding of the practical problems of the small employer in connection with his compliance with ERISA's reporting requirements.

Our association, representing 25 percent of all qualified plans in this country, most of which are small plans and for whom our members provide the administrative functions, were not asked by any agency for assistance in the coordination and development of forms, guidelines or regulations.

We were not asked to serve on an advisory board nor to advise or consult on any procedure for the small employer.

I would like to take exception to the earlier testimony of Mr. Hutchinson, wherein he indicated that a small business representative was not named to the Labor Department's Advisory Council because of the limitations imposed by statute. The statute, ERISA section 512, simply provides that there shall be representations of employee organizations, employers, the general public, and from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting.

The statute says nothing about large versus small; yet, it was not until just a couple of months ago that an individual representing the general public category was appointed to the advisory board with the specific purpose to represent small employers.

But, out of all the other members, none represented small business.

Our membership is cognizant of the problems of the small employer and the administrative burdens ERISA placed upon him. We could have been of great help to these agencies and we still can be.

We believe it is imperative that the agencies seek this available assistance before they venture forth with their burdensome and costly requirements, reports and paperwork.

One of the best examples of this was in the development of Revenue Procedure 75-49 by the IRS, where no less than 95 percent of the employers in this country would be saddled with one liberal vesting schedule and that one was not one of the three Congress offered in ERISA.

Pensions & Investments magazine, in an editorial dated January 19, 1976, addressed itself to this revenue procedure and its eventual withdrawal as follows:

> The IRS should learn to seek comments from the industry before attempting to cast anything in concrete. In this case, it acted in a particularly high-handed manner. Rules that look perfectly reasonable to an IRS official can be shown to be perfectly impossible by people who have to live and work with them.

We are now advised that the Department of Labor will be developing the remainder of the reporting and disclosure regulations in the first quarter of 1976, and annual reporting regulations in the second quarter.

It is not certain whether these and other regulations will be presented in proposed or final form. As it appears, the regulations might be published almost simultaneously with the due dates for the annual reporting forms and the EBS-1.

Will the employers and their consultants have time to comment before the due dates of the reports? We believe that the short history in the development of regulations and preparation of forms under ERISA, by IRS, Labor and PBCG, strongly suggests that these agencies should listen to private industry before they finalize the forms and regulations.

The EBS-1, in its original form, was impossible with its lengthy essay-type questions.

It has been altered considerably. The combined annual report, was changed after it became apparent that the agencies did not need all of the information they originally thought as absolutely necessary.

It is this atmosphere of "hurry, hurry; wait, wait" that has caused the small employer the uncertainty of developing a new plan and the apprehension of continuing an existing one.

The confusion could have been eliminated and the purpose of ERISA, which is to protect the participants' rights, could have been met, if there had been a constructive and cooperative attitude and procedure between the regulatory agencies, as well as among the agencies and the private pension community.

It is not too late to develop a workable relationship which would permit each regulation and form to be reviewed in advance for its legality, effectiveness, costliness, practicality, and enforceability.

Our organization, ASPA, stands ready and available to assist, in a cooperative atmosphere, with the development of requirements that will be acceptable to the small employer and still meet the intent and purpose of the law.

It is encouraging to see the recent announcements of IRS and Labor that steps are being taken to reduce the paperwork for smaller plans.

Notwithstanding this move in the proper direction, much more remains to be revised if we are to have simplified and consolidated reporting.

All forms should be coordinated among the agencies as to format, content, due dates, et cetera. Review and redrafting is still required, input from small employer consultants is essential, and time becomes more and more crucial.

Inasmuch as we have not had an opportunity to review this revised, shorter version of the annual report, we are unable to address ourselves to the specific provisions thereof. Assuming that many of our suggestions were not adopted by the Tax Forms Coordinating Committee, we are attaching it to this statement, (exhibit A) [1] since it has specific reference to the time and expense of preparing one report, the proposed annual report, for a small plan.

When viewing the burdens of reporting for the small employer, we should not look solely at the regulatory agencies and their development of forms.

We must look at the entire reporting impact created by ERISA.

In exhibit B [2] we compare pre-ERISA reporting against post-ERISA reporting. The new post-ERISA requirements provide for the IRS to have seven new reports, Labor to have nine, and the Pension Benefit Guaranty Corporation to have six; new reports which the small employer must comply with.

To date, of all the old reports and new reports, only one form, 990–P, has been discontinued and this was one page in length. However, it is not our desire to be drawn into a counting of pages comparison of old requirements to new requirements.

The nature and complexity of the question, the availability of certain requested data, the detailed explanations for certain answers, and the various schedules required to complete the report; these are much more important than the number of pages in one Government form.

Although it is difficult to arrive at precise increased time and cost estimates, it is considerably clear by a quick review of exhibit B that

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[1] See page 81.
[2] See page 84.

both time to prepare and costs involved therein must increase by at least 50 percent of the pre-ERISA time and cost figures.

This estimate can be made without final resolution of the various report forms, since it is clear that additional reporting is mandatory.

Any estimate of time and cost increases will be affected by the persons or organizations preparing the report forms. Many employers, prior to ERISA, handled most of the reports internally or with minimum assistance from their retained accountant or attorney.

Noting the volume and complexity of the new reporting requirements in exhibit B, many employers are wisely seeking additional assistance, but possibly at a 100 percent or more cost increase.

Most consulting firms will have an idea of the figure they must charge to meet their expenses, as well as the figure they can charge their client without losing him.

This is a minimum charge. This is rockbottom costs. We have asked a number of consulting firms that administer smaller plans to provide us with their minimum figure for a 10-participant plan, assuming there are no additional surprises in the reporting requirements. When we say "no additional surprises," we mean truly simplified reporting. We simply anticipate that because we have been told there shall be simplified reporting.

Senator NUNN. Mr. Conkel, I have another committee that I was supposed to be in at 11:30. I have to leave in just a minute. I am running 20 minutes late.

Could you and Mr. Hand together try to divide up 10 more minutes? We will put all of your testimony in the record as if read, without objection.

Mr. CONKEL. Exhibit C[1] shows these minimum fees for a 10-participant plan increasing from 20 to 70 percent, and in some instances, where no fee was previously charged, a $350 to $400 annual charge will be made. This means a 350- to 400-percent increase in cost.

In addition, many insurance companies are going to start charging for their services.

Senator NUNN. Let me ask you one question briefly.

This additional administrative cost, is this a valid business reason by IRS?

Mr. CONKEL. I address myself to this as a related problem in my testimony.

When a plan terminates, the administration must obviously submit—I am talking of a defined benefit plan—to the Internal Revenue Service the notice to terminate and a request for a determination as to the acceptability of that termination.

We also have to advise the PBGC of a defined benefit termination. The PBGC, as Mr. Schanes indicated, really doesn't care whether or not there is a valid business reason, but IRS does care.

Under old IRS procedure, if a plan were in existence for less than 5 years, and an attempt to terminate were made, it was deemed not to be "permanent" in nature. Notwithstanding whether it is permanent in nature or not, you must have had a valid business reason to terminate.

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[1] See page 85.

We have found throughout the country that the expense of reporting and disclosure or the increased costs of ERISA is not a valid business reason for IRS purposes.

Senator NUNN. Then we wouldn't expect very many people to give that as a reason on any kind of survey, would we? Not if they have a lawyer.

Mr. CONKEL. That's exactly right.

Senator NUNN. The statistics so far would thus be virtually meaningless on this point?

Mr. CONKEL. That's correct. I don't believe you are seeing all the terminations. There are many people taking a "wait and see" approach. There are many people stymied because of this old IRS procedure.

As I mention in my statement it is a related problem. The minimum funding requirements imposes an excise tax if you start a plan and are unable to fund it.

This is what caused people to say they would rather get out of this than be burdened with the problem of an excise tax if they were unable to properly fund the plan.

So, they look for the alternative of terminating; and IRS says "no" they can't terminate unless they want to lose prior deductions. They say, "I don't have the money to put into my plan or keep it in effect."

So, he is going to get an excise tax if he keeps it in effect. He will not get a valid termination letter from the IRS, if he terminates the plan.

He is damned if he does and damned if he doesn't.

I will try and summarize this very quickly. We talked about the number of terminations. As I indicated, I don't believe we have a true and accurate indication of the number of plans that have terminated.

We have heard these figures today, but we have no idea how many plans have not proceeded through the PBGC and IRS machinery but have simply disbanded their plans or are waiting to terminate if no simplified reporting comes about.

The artuarial costs will increase. We anticipate that this could increase to be extent of 50 percent from pre-ERISA times with wide fluctuations from one actuarial firm to another.

These related problems that I mentioned, the small consulting firms are having difficulty, too; even the larger ones are having difficulty amending their present plans and administering the present plans.

The small consulting firms are floundering. They are adding to their staffs, merging operations or going out of business.

This, obviously, has caused the small employer to suffer additional costs, new outside administration and possibly violations of the law and eventual penalties.

I was asked to indicate what the future of the small employer plans might be and what indicators the Senate should be looking for to determine exactly what is happening to the small employer plan.

I have listed in my statement the guideposts that the Senate might be looking for: the number of small plans terminating, the number of small plans established, the number of plans converting from one form to another, the number of IRA's established and the number of nonqualified plans established.

There is no question but that there is going to be a slowdown in the establishment of plans as well as an increase in terminations.

The value of having a plan will be marginal for many employers after calculating their projected costs to establish and maintain their plans.

They will look for alternatives in order to cut their costs, reduce their reporting and improve this marginal value for establishing a plan at all.

Many will seek the less expensive, less cumbersome, and less than perfect defined contribution plan.

They may set up these IRA's for themselves and perhaps give the employees a bonus payment in lieu of a plan contribution. Most employees will not use the bonus to establish IRA's or if they do they probably won't continue them.

We believe that the employee-sponsored plan is the key to permanent retirement coverage for employees. We believe the employer should have the full range of plans available to him without the extreme concern of cost and reporting.

There must be an incentive found for the small employer to develop and maintain quality retirement plans which include his employees.

The small employer must be relieved of the extraordinary cost and time-consuming government reporting. The above indicators that I have listed will be most interesting several years from now.

What we do today will seriously affect these indicators as well as the very future of the small employer plan.

Thank you, Mr. Chairman.

Mr. HAND. Mr. Chairman, I am W. W. Hand, president of the firm of Hand and Associates. We are actuaries in Houston. I am here, of course, on behalf of the American Society of Pension Actuaries, ASPA.

In deference to your time schedule, I think that the 10 minutes you graciously allotted to us is up. My report covers three very important problems.

Senator NUNN. Why don't you summarize those for us, if you could.

Mr. HAND. First, the problem covered by my report is the cost that most employers in the country have already undergone in an effort to learn what ERISA is about and learn what the cost of their particular plan will be.

I have given a range of costs depending upon the size of the firm on page 6 of my report, and you will see that according to our cost figures in our firm that the average employer has already spent between $3,800 and $9,500 to determine the cost of increased eligibility requirements, the various aspects of their plans that will have to be amended, the drafting of the amendments of those plans, conference time, and these figures do not include the very valuable time of those clients and their staff people.

Senator NUNN. This is what they are paying for actuaries and in attorney fees?

Mr. HAND. Yes, sir. A large percentage of this money has already been spent by employers to determine how they must amend their plans to qualify under ERISA.

I think this is a one-time cost but it is a cost that has been largely overlooked. When people say the administrative costs of these employers are going up, yet we only have had to file two additional report forms, they overlook the necessity of these employers to try to understand what they are going to have to live with.

The second part of my report deals with revenue ruling 75–49. Again, I would like to call your attention to the fact that the great majority of the costs I mentioned in part one of my report had been incurred by these employers prior to the publication of 75–49 which came only some 14 months after the publication of ERISA.

In my opinion, it is the most absurd of all things that have happened since the date ERISA was put into the law. This revenue ruling stipulates three key tests, one of which must be a method to avoid vesting on a 440 schedule.

The first test applies to companies that have been in existence less than 7 years. The other two tests are turnover tests. The first is a prohibited group turnover as related to the so-called rank-and-file employee. Of course, there is great difficulty in even knowing who is in the prohibited group.

The second is the so-called 6-percent turnover test. Various actuarial firms have estimated that less than 5 percent of all the companies in existence for 7 years or more will be able to meet either one of those two turnover tests.

In my opinion, they are being very optimistic. Our firm administers over 1,000 retirement plans and we have not found a single firm, not one, that has been in existence 7 years or longer that can meet either one of the two turnover tests.

There may be some in existence.

This means that revenue ruling 75–49 was allowed to stand, that virtually all the costs that I have reported in part one of my statement would be thrown out the window and all the work that has been done by our firm and thousands of actuarial firms throughout the country today would be for naught.

It is a typical example of not giving the public an opportunity to participate in the revenue rulings that are being published.

I am well aware of the fact that revenue procedure 76–1 has temporarily put a halt to the compliance with revenue ruling 75–49. However, revenue ruling 76–1 simply allows you to file your plan with Internal Revenue Service and request a determination letter without consideration being given to the vesting.

Well, I submit, sir, that that is no termination letter at all. The vesting is one of the key factors upon which actuarial determinations or actuarial assumptions must be made.

If a client must later go back and amend his plan, that means an amendment of the actuarial assumptions. It means there is a change in the contribution requirements.

It means changing the communication material that was given to the employees, and this is an area that I think is grossly unfair to the American businessman that has endeavored earnestly to try to learn to live with ERISA.

I have several recommendations in my report that I think should be considered.

Senator NUNN. That will be very helpful. Mr. Alexander, who is going to be here tomorrow, I am sure will go into this.

Mr. HAND. The last section of my report deals with the accountants' opinion in the annual report requirements.

We are gratified this opinion will not be required for firms with less than 100 employees. I would call your attention to the fact that there are an awful lot of plans in this country with more than 100 employees.

The big problem seems to come with the fact that the accountants in signing their reports must certify that financial statements in relation to the plan are all maintained in accordance with sound accounting principles which comply with their standards.

There are an awful lot of plans in this country that are maintained by insurance companies. A large percentage of the plans are trusteed by banks and other sponsors that are very responsible financial institutions.

It is my understanding that unless some changes are made in the regulations that govern 5500, and this problem is not dealt with in those regulations, that the accountants will have to audit these banks, will have to audit these insurance companies and other plan sponsors.

In talking to our accountants who represent one of the largest national CPA firms, they think that literally banks will have to build additional offices to accommodate these accountants so that they can be audited year round, because every trust department that maintains any retirement plan business at all will have plan years ending each of the 12 months during the year.

This will mean virtually a continuous audit. In my opinion, this can be greatly simplified by simply stating in the regulations that the accountants shall be entitled to rely on financial statements published by banks, insurance companies, other responsible plan sponsors if their reliance is so stated in their report.

Thank you.

Senator NUNN. Thank you, Mr. Hand and Mr. Conkel.

We appreciate your testimony. I regret you had to be rushed. It will be given careful scrutiny as a part of the record.

Our other witness this morning, Mr. Thomas Kelly, of the American Institute of Certified Public Accountants, could not be here because of illness. The institute's testimony, as contained in his letter of January 29, will, without objection be made a part of the record.

We will adjourn the committee until tomorrow morning at 9:30 in this room.

[The prepared statements and corresponding documents of Messrs. Conkel and Hand and a letter from Mr. Kelly of the American Institute of Certified Public Accountants follow:]

STATEMENT BY ROBERT D. CONKEL

Mr. Chairman and distinguished committee members, my name is Robert Conkel. I am Legal Counsel for the pension consulting firm of American Actuaries, Inc. of Grand Rapids, Michigan. I am appearing before you on behalf of the American Society of Pension Actuaries (hereinafter referred to as ASPA) in my capacity as a Director and Chairman of the Sub-Committee on Reporting Forms.

On behalf of the 1500 members of ASPA, which includes pension actuaries, administrators, consultants and attorneys, I thank you for this opportunity to present our thoughts concerning the administrative burdens placed upon the small business retirement plan by reason of the reporting forms issued by the Departments of Labor and Treasury. It is estimated that ASPA members represent 25% of the qualified retirement plans in the country. In order to illustrate the number of plans and participants involved in these discussions, the following figures are provided:

	Plans	Participants
Number of participants in plan: [1]		
1 to 25	640,000	1,580,000
26 to 99	45,000	2,100,000
100 and more	25,000	30,000,000

[1] Bureau of National Affairs, Pension Reporter No. 65, page R-3, dated Dec. 15, 1975.

We are concerned, therefore, with approximately 90% of all the plans in this country if we consider under 26 participants per plan. If we consider under 100 participants per plan, we are concerned with over 96% of all the plans in the country. The reporting requirements provide that "plans" shall report, regardless of their patricipant size, the assets of the plan or the size or worth of the employer. It is virtually impossible to accurately determine the impact of the increased cost of administration upon any group of these small employers unless we take into account all of these factors. In addition, we must take into account the willingness of employers to pay this increased cost and to bear the burdens of increased administration. And the foremost reason for this uncertainty is that we still do not have regulations with the authorized exceptions and exemptions. Notwithstanding the specific authority granted by Congress in the Employee Retirement Income Security Act of 1974 (ERISA Section 104(a)(2)(A)) to provide simplified and consolidated reporting for small plans, the regulatory agencies have not, until just in the past month, provided the small employer with any relief in this reporting area.

The regulating agencies had a monstrous job in developing regulations implementing the intentions of Congress concerning ERISA's new and vast reporting requirements. We commend them for their efforts. However, we believe some basic mistakes were made, and might still be made, as they find workable reporting requirements for smaller plans. If the following basic problems were resolved, the time and cost for reporting requirements might be acceptable to the small employer:

1. The three regulating agencies (Labor, Treasury, and PBGC) should coordinate their efforts in order to eliminate any duplication of reporting. There are only three events that markedly alter the plain's provisions, i.e. (a) at inception (b) upon amendment and (c) at termination. We believe that one report to one agency for each of these events, with distribution by that agency to the other two, would satisfy the reporting requirements of ERISA and eliminate much time and cost for the small employer. All other annual and specific event reports required by ERISA could then be concentrated and restricted to the information and data pertinent thereto, without duplication of material provided upon the occurrence of those three events. With repetitive filing of the same information year in and year out, an expensive annual "audit" is being performed. Audits should be performed only as a result of irregular data or participant complaints.

2. Why were the regulations for reporting so slow in coming? Why wasn't simplified reporting for small employers a part of the proposed regulations? Why are we now holding these hearings? Perhaps, Labor and Treasury did not have a proper understanding of the practical problems of the small employer in connection with his compliance with ERISA's reporting requirements. Our association, representing 25% of all qualified plans in this country (most of which are small plans and for whom our members provide the administrative functions), was not asked by any agency for assistance in the coordination and development of forms.

We were not asked to serve on an Advisory Board nor to advise or consult on any procedure for the small employer. Our membership is cognizant of the problems of the small employer and the administrative burdens ERISA placed upon him. We could have been of great help to these agencies and we still can be. We believe it is imperative that the agencies seek this available assistance before they venture forth with their burdensome and costly requirements, reports and paperwork. One of the best examples of this was in the development by IRS of Revenue Procedure 75-49, where no less than 95% of the employers in this country would be saddled with one liberal vesting schedule and that one was not one of the three Congress offered in ERISA. "Pensions & Investments" magazine, in an editorial dated January 19, 1976, addressed itself to this Revenue Procedure and its eventual withdrawal, as follows: The IRS should learn to seek comments from the industry before attempting to cast anything in concrete. In this case, it acted in a particularly high-handed manner. Rules that look perfectly reasonable to an IRS official can be shown to be perfectly impossible by people who have to live and work with them.

We are now advised that the Department of Labor will be developing the remainder of the reporting and disclosure regulations in the first quarter of 1976, and annual reporting regulations in the second quarter. It is not certain whether these and other regulations will be presented in proposed or final form. As it appears, the regulations might be published almost simultaneously with the due dates for the annual reporting forms and the EBS-1.

Will the employers and their consultants have time to comment before the due dates of the reports? We believe the short history in the development of regulations and preparation of forms under ERISA—by both IRS and Labor—strongly suggests that these agencies should listen to private industry before they finalize the forms and regulations. The EBS-1, in its original form, was impossible with its lengthy essay-type questions. It has been altered considerably because of good practical input. The combined annual report, Form 5500, was changed after it became apparent that the agencies did not need all of the information they originally thought as absolutely necessary. It is this atmosphere of "hurry, hurry; wait, wait" that has caused the small employer the uncertainty of developing a new plan and the apprehension of continuing an existing plan. The confusion could have been eliminated and the purpose of ERISA (to protect the participants' rights) could have been met, if there had been a constructive and cooperative attitude and procedure between the regulatory agencies, as well as among the agencies and the private pension community (employers, unions and consultants). It is not too late to develop a workable relationship which would permit each regulation and form to be reviewed in advance for legality, effectiveness, costliness, practicality and enforceability.

Our organization, ASPA, stands ready and available to assist, in a cooperative atmosphere, with the development of requirements that will be acceptable to the small employer and still meet the intent and purpose of the law.

3. It was encouraging to see the recent announcements of IRS and Labor that steps are being taken to reduce the paperwork for smaller plans (fewer than 100 participants) by requiring shorter annual reports, waiving the requirement of an opinion by an independent accountant, extending the due date for filing the annual report from 4½ months to seven months after the plan year end, and not requiring the filing of insurance information previously required by Schedule A of the Annual Report. Notwithstanding this move in the proper direction, much more remains to be revised if we are to have simplified and consolidated reporting. All forms should be coordinated among the agencies. Review and redrafting is still required, input from small employer consultants is essential, and time becomes more and more crucial. Inasmuch as we have not had an opportunity to review the revised, shorter version of the annual report, we are unable to address ourselves to the specific provisions thereof. Assuming that many of our suggestions in a letter dated October 29, 1975 were not adopted by the Tax Forms Coordinating Committee, we are attaching it to this statement (Exhibit A) since it has specific reference to the time and expense of preparing one report (the proposed annual report) for a small plan. It is possible that each form of reporting requires this same type of extensive review, with a meaningful effort at coordination and cooperation.

INCREASED REPORTING

When viewing the burdens of reporting for the small employer, we should not look solely at the regulatory agencies and their development of forms. We must look at the entire reporting impact created by ERISA. In Exhibit B we compare pre-ERISA reporting against post-ERISA reporting. Numerous new reporting requirements were developed, as well as a new governmental agency (PBGC) requiring additional reports. To date, only one form (990-P) has been discontinued and this was one page in length. However, it is not our desire to be drawn into a counting of pages comparison of old requirements to new requirements. The nature and complexity of the question, the availability of certain requested data, the detailed explanations for certain answers, and the various schedules required to complete the report; these are much more important than the number of pages in one government form.

Although it is difficult to arrive at precise increased time and cost estimates, it is considerably clear by a quick review of Exhibit B that both (1) time to prepare and (2) costs involved therein must increase by at least 50% of the pre-ERISA time and cost figures. This estimate can be made without final resolution of the various report forms, since it is clear that additional reporting is mandatory. Any estimate of time and cost increases will be affected by the persons or organizations preparing the report forms. Many employers, prior to ERISA, handled most of the reports internally or with minimum assistance from their retained accountant or attorney. Noting the volume and complexity of the new reporting requirements in Exhibit B, many employers are wisely seeking additional assistance—but possibly at a 100% or more cost increase.

Most consulting firms will have an idea of the figure they must charge to meet their expenses, as well as the figure they can charge their client without losing him. This is a "minimum charge." We have asked a number of consulting firms that administer smaller plans to provide us with their minimum figure for a ten-participant plan, assuming there are no additional "surprises" in the reporting requirements. Exhibit C shows these minimum fees increasing from 20% to 70%, and in some instances where no fee was previously charged, a $350 to $400 annual charge will be made. Most insurance companies did not charge a service fee for administrative functions prior to ERISA. Now, many insurance companies have announced, or are planning to announce, separate service charges for these functions at a cost ranging from $200 to $700 per year. The reason for this charge was not only the cost of administering the program, but the precise legal requirements for reporting and disclosure imposed on the carrier and the "multiple services" problem facing most insurance companies.

The smaller employer often cannot absorb that cost and must consider termination as a viable alternative. This increased cost and/or time required to comply has caused many employers to re-evaluate the advantages to them in having a plan at all. The PBGC has advised us that 5,035 plans terminated in 1975, according to their records. These are only the defined benefit plans that went through the PBGC procedures. We have been advised by IRS that some 2,448 profit-sharing plans were terminated in the first nine months of 1975. Again, these are the ones that went through the IRS termination procedures. The pension plan terminations in the first nine months of 1975 (3,261) were up 47.2% over the 1974 nine-month period. However, we have no idea how many plans have not proceeded through the PBGC or IRS machinery, but have been disbanded with the assets paid to the participants. We also know that many defined benefit plans have initiated termination procedures, but found that alternative blocked by IRS when threatened with loss of prior years' deductions (discussed in item 4 under "Related Problems").

The actuarial requirements also will result in increased costs for defined benefit plans due to increased reporting. Not having seen the government agencies involved to any great degree with respect to actuarial reporting, a projection of cost increase is difficult to ascertain. We recognize that ERISA, at a minimum, will require:

1. An actuarial report every third year.
2. An actuarial report upon merger or acquisition.
3. An actuarial report upon termination.
4. Individual calculations of a participant's nonforfeitable benefit each year.
5. Amortization schedules for the funding standard account.
6. Notification and justification of changes in the actuarial assumptions.
7. Completion of an annual report concerning the actuarial material.

If the government agencies do not require extensive reports to justify changing of assumptions, do not question negligible differences, and are reasonable in the review of submitted data, the costs could be kept at livable levels. Although the actuarial statements and valuations could be only one to three pages in length, the supplemental calculations might be as much as 50 or more pages, listing items such as employee data, benefits, increases in benefits, exclusions, vested benefits, unfunded liabilities, death benefit reserve liabilities, assets, etc. Due to the uncertainty of the government requirements, more precise data will be maintained.

Therefore, the cost of meeting the actuarial requirements will be increased because of:

1. The increased reports shown above,
2. The necessity to maintain precise records, and
3. The increased compensation paid to actuaries for signing actuarial statements and reports as an "enrolled actuary."

The increase in cost may be estimated at approximately 50%, with wide fluctuations from one actuarial firm to another. Obviously, this cost increase could be much more, if the government agencies do not administer the requirements on a reasonable and understandable basis.

RELATED PROBLEMS

The uncertainty of cost and of the final regulations have caused many problems which should not be overlooked:

1. Most small employer plans were developed and administered by insurance companies, banks, mutual funds, as well as by insurance agents, attorneys, accountants and consultants. The close scrutiny of events affecting their plan, the vast preparation of forms, and the time and attention required in order to comply will create innumerable problems; not only for the employer, but for the organization or person that developed and administered the plan heretofore. The larger consulting firms are having difficulty amending and administering their present plans. The smaller consulting firms, organizations and advisors are floundering. They are adding to their staffs, merging operations or going out of business. This causes the small employer to suffer additional costs, new outside administration, or possibly violations of the law and eventual penalties. The small employer, as well as his advisors and consultants, are in a dilemma with no easy solution.

2. Another costly item that each small employer must bear is the amendment of this plan. This might have been one of the easier requirements to which the employer had to comply. However, we were faced with late regulations and guidelines for amending, uncertainty of the due dates for amendment and little help from the regulatory agencies. The Internal Revenue Service provided information that the plan could be amended anytime during the first Plan Year for which it must comply with ERISA. However, the Labor provisions of ERISA had to be completed and in the plan at the beginning of the first Plan Year. Therefore, we can all assume that those who followed IRS advice might now be in technical violation of the Labor provisions. The Labor Department has been silent on this matter, leaving total confusion for the practitioners. Many plans were amended to only include the fiduciary provisions (i.e. remove exculpatory clauses, name fiducaries, establish investment policies, permit allocation of duties, add a claims procedure, set forth a funding method, etc.) Therefore, these plans will require another amendment later in the year in order to meet the other changes in the law. Other practitioners amended the entire plan, with full knowledge that additional amendments would be required for the uncertain areas. Some other practioners haven't amended their plans at all, assuming that procedures are so "botched up" that Labor and IRS cannot hold them accountable. Obviously, penalties for failure to comply could abound. Once again, the small employer will be the one affected as he ultimately must foot the bill.

3. The due date for the summary plan description to be distributed to participants is still scheduled for May, 1976. Apparently the description is due whether the plan has been amended to comply with ERISA or not. Thus, many employers may be required to bear the cost of one description under the old plan and another description of his amended plan. This required duplication of effort and cost should be corrected. A possible solution would require the filing of a booklet in May, 1976 for the old plan which does not necessarily comply with ERISA; or alternatively allow the EBS-1 form to satisfy the summary plan description requirement for this first year. Within one year the new plan will be prepared and specific compliance with the summary plan description requirements can be met.

4. Another problem of increasing frequency involves the employer that established a defined benefit plan within the past five years. With the new funding requirements the employer is faced with an excise tax if he has a funding deficiency in any years hereafter. The employer considers termination of his plan, but is promptly advised of old IRS procedure that provides for loss of deductions in prior years. It is presumed by IRS that the plan is not "permanent" in nature unless it has been in existence five years. If termination takes place in those early years, all previous deductions taken for contributions to the plan are lost. The employer may overcome this presumption if they can show a "valid business reason." However, IRS has concluded that termination caused by the increased costs of ERISA compliance is not a valid business reason.

Therefore, the employer will lose his prior deductions if he terminates or will pay an excise tax if he continues the plan and has a funding deficiency. He is "damned if he does and damned if he doesn't." About the only advice left is to continue the plan and seek a waiver of contribution from IRS or an extension of years to amortize his past service liability. Inasmuch as there are no guidelines as to the availability of these alternatives, the employer and his advisors are, once again, left without answers. With continuing delay, his ultimate costs will surely escalate.

THE FUTURE OF SMALL EMPLOYER PLANS

Is there an accurate indication of what is happening to small business plans as a result of the reporting reaquirements, or as a result of ERISA, in general? What are the relevant factors to watch in the future? We are beginning to see certain trends taking place, such as the increase in terminations of plans; but this presently can be attributed to fear, uncertainty and confusion. Once we have a year under ERISA behind us, we should carefully examine and analyze the following:

1. The number of small plans terminating—defined contribution plans compared to defined benefit plans.
2. The number of small plans established—defined contribution plans compared to defined benefit plans.
3. The number of small plans converting from a defined benefit plan to a defined contribution plan, and vice versa.
4. The number of IRA's established. (If the base for IRA's should be increased from $1500 per year, we can foresee a serious drop in the number of small corporate and HR-10 plans.)
5. The number of non-qualified plans established for key employees.

It is anticipated that there will be a slowdown in the establishment of qualified plans as compared to previous years, as well as an increase in terminations as compared to previous years. The value of having a plan will be marginal for many employers after calculating their projected costs to establish and to maintain their plans. These employers will look for alternatives in order to cut their costs, reduce the reporting, and improve the marginal value for establishing a plan at all. Many may seek the less expensive, less cumbersome and less than perfect defined contribution plan. They may set up IRA's for themselves and perhaps give the employees a bonus payment in lieu of a plan contribution. Most employees will not use the bonus to establish IRA's, or if they do, they probably won't continue them.

We, at ASPA, believe the employer-sponsored plan is the key to permanent retirement plan coverage for employees. We believe the employer should have the full range of plans available to him without the extreme concern of costs and reporting requirements. There must be an incentive found for the small employer to develop and retain quality retirement plans, which include his employees. The small employer must be relieved of the extraordinary cost and time-consuming government reporting. The above indicators will be most interesting several years from now. What we do today will seriously affect these indicators, as well as the very future of the small employer plans.

Thank you, Mr. Chairman and Committee members for this opportunity to express our opinions on these problems. We believe that a cooperative and consolidated effort between the regulatory agencies and the representatives of small employers can effectuate resolutions to these issues. ASPA stands ready to serve in whatever capacity we are called upon.

Statement by William Hand, FSPA

Mr. Chairman and distinguished committee members, my name is William W. Hand. I am President of Hand and Associates, Pension Consultants and Actuaries of Houston, Texas, and I am appearing before you today on behalf of the American Society of Pension Actuaries (ASPA.)

My colleague, Mr. Robert Conkel, has given you most of the essential background information concerning ASPA so I will not waste your time by being repetitious in this respect.

However, as most of the members of these joint committees know, and as previous testimony given to various committees in both branches of Congress will bear out, I would like to emphasize that ASPA has, over the years, strongly supported constructive pension reform legislation and endorsed most of the major provisions of ERISA before it became law. We were, in fact, one of the first, if not the first, national organization to endorse Plan Termination Insurance. We also endorsed reasonable eligibility requirements, minimum funding standards, accelerated vesting standards and strict fiduciary standards which are the cornerstones of this far-reaching legislation. However, in supporting these concepts we repeatedly sounded a loud note of caution—a desperate, pleading note of warning—that administrative burdens of employers must be kept to a minimum if ERISA was to be productive and not counterproductive to the objective of strengthening the private pension system.

This note of warning was sounded particularly in respect to the small and medium size employer. Apparently, our pleas and those of hundreds of others who shared our concern were heard by many of your Committee members and others, because ERISA contains many provisions which indicate that it is the intent of Congress that the law be administered with a minimum of red tape, especially in respect to small employers. In addition, many members of your two Committees, as well as other members of Congress, have made a conscientious effort to follow up with the various regulatory agencies to keep administrative requirements to a minimum. In this regard, we would particularly like to commend the Chairman of your two Committees as well as Senator Russell Long for the outstanding letter dated November 18, 1975 which they jointly wrote to Labor Secretary John Dunlop and IRS Commissioner Donald Alexander. Since that date, there have been announcements indicating significant strides in reducing administrative expenses under ERISA for small employers. Many of these encouraging developments we attribute directly to that fine letter of November 18th and we are all grateful to you for it.

However, in spite of conscientious efforts by many people to reduce administrative expenses of small and medium size employers, we still have very serious problems which must be solved.

First, ERISA is an extremely complex and complicated piece of legislation which is intended to govern activities of an even more complex and more complicated business community. Second, I think we would all admit that ERISA falls somewhat short of being a perfect piece of legislation. Third, whether we like it or not, I think we must admit that red tape is a natural by-product of our bureaucratic system of governmental administration. When these facts are added together and collectively added to the fact that there seems to be a widespread lack of understanding of the objectives and problems of small and medium size employers, you arrive at an equation which any knowledgeable Pension Actuary can tell you indicates a very short life expectancy for the private pension system among this important group unless immediate action is taken.

Many of the factors which make up this deadly equation have already been discussed with you here today and more important factors undoubtedly will be presented before these hearings are concluded. I would, therefore, like to spend my time with you today discussing only three items which will ultimately be large factors in this complicated actuarial calculation to determine life expectancy of the Private Pension System in America.

First, I would like to review with you the rather elaborate and costly process which most employers have already gone through or which they are currently going through in an attempt to understand the impact ERISA will have on their plans. My comments in this respect are based on Defined Benefit Plans since it is this type of Plan upon which ERISA has the most direct cost affect.

During the past 17 month post-ERISA period, the chief roll of our firm (and I am sure other practitioners) has been to educate our clients on the positive aspects of ERISA and, where possible, to supply solid facts upon which reasonable decisions could be made. To accomplish this we have prepared, or we are in the process of preparing, special actuarial studies for every client maintaining a Defined Benefit Pension Plan. These actuarial studies are designed to show the cost effects of:

1. Increased coverage due to revised eligibility requirements.
2. Stricter vesting requirements. In this respect, we have prepared studies showing the actual cost which would have been applicable during the past three years under each of the three alternative vesting schedules enumerated in ERISA.
3. Recommended changes in actuarial assumptions.
4. Minimum funding standards.

In addition, these reports cover the current financial condition of the Plan; i.e., ratio of total accrued liabilities to current assets and ratio of vested accrued liabilities to current assets. The preparation of these reports has been time consuming and expensive. However, the initial cost of preparing these actuarial studies is only the beginning. Lengthy conferences are required to review these studies and to answer questions about ERISA.

Additional studies are often required to illustrate the cost affect of alternatives the client wishes to consider. This, of course, requires additional conferences. After a client is satisfied that he can live with ERISA from a cost standpoint, it is then necessary to get into steps required to amend his Plan. This means lengthy conferences with his attorney which are usually also attended by the actuary. The attorney then has to draft the required amendments which usually means completely rewriting the entire Plan and Trust Agreement. This is followed by more conferences. Final revisions are usually required to the Plan instruments before they are filed for approval which requires completion of the new 5300 Form.

According to our records, the cost figures for this entire process breaks down as follows:

	Minimum	[1] Maximum
Actuarial studies	$1,200	$2,500
Conference time by actuary to review studies	350	700
Conference time by actuary for preliminary meeting with client's attorney	250	600
Attorney's time for preliminary conference	250	600
Attorney's fee for drafting legal instruments	1,200	3,500
Post-drafting conference-actuary	200	500
Post-drafting conference-attorney	200	500
Filing for approval—conferences with IRS representatives, if required	150	600
Total	3,800	9,500

[1] Companies with no more than 500 employees and assuming no special problems.

The above cost figures represent averages which can and do vary considerably from client to client. For example, the above cost figures are somewhat on the high side for most companies whose Plans are adminnistered under prototype or master plans which will be amended by the sponsoring company. On the other hand, costs can run considerably higher than indicated above where the client has more than one Plan and wants to consider the feasibility of combining Plans or terminating one Plan and keeping the other. It should also be remembered that the above cost figures do not include the client's time which is usually very valuable. All things considered, I would say that most businessmen have taken this initial transition period as well as could be expected and we are probably fortunate that there hasn't been even more Plan terminations than there has been. But again, I caution—there is a limit.

The second problem I would like to discuss with you deals with Revenue Procedure 75-49. Of all the things that have happened in connection with ERISA, the unfortunate and untimely publication of this Rev. Proc. has, in my opinion, been the most absurd. This Rev. Proc. was issued by IRS as part of TIR1411 on November 3, 1975—fourteen months after ERISA became law. As I have already indicated, most employers had, by November 3, 1975, spent several thousands of dollars and countless man-hours on actuarial studies prepared to illustrate the cost impact of ERISA. Vesting is, of course, one of the main factors upon which the choice of actuarial assumptions is based. Therefore, if this Rev. Proc. is allowed to stand, most, if not all, of the work done by hundreds of actuarial firms such as ours will be for naught. The most devastating thing about Rev. Proc. 75-49 is that it was published so late and was totally unexpected. The fact that it was so totally unexpected is at least one indication that it goes far beyond what any reasaonable person would interpret as the intent of Congress when reading ERISA and the committee reports which accompany ERISA.

Let's look at some of the background and history behind this Rev. Proc. Prior to the enactment of ERISA, plans were not generally required to provide pre-retirement vesting. However, Section 401(a)(4) of the Code, both before and after the enactment of ERISA, prohibited discrimination in favor of officers, shareholders and highly compensated employees in the provision of contributions and benefits. For several years prior to the enactment of ERISA, local offices of IRS had relied on this anti-discrimination provision of the Code to require some minimum vesting in defined contribution plans. Except for plans covering only a small number of employees, the vesting requirements imposed by IRS were generally no more stringent than the use of alternative vesting schedules stipulated in ERISA. However, if the plan covered only a small number of employees (less than 25) the vesting requirements were usually stricter unless it could be proven to the satisfaction of IRS that there was little or no likelihood of the existence of development of the prohibited discrimination. The important thing to recognize is the fact that prior to ERISA, IRS seemed to believe that the prohibited discrimination would not normally exist:

1. In any defined benefit plan covering 25 or more employees.
2. In any defined contribution plan with 25 or more employees, if such plan provided for full vesting after some reasonable period of credited service (usually ranging from 10 to 14 years depending upon size and past turnover experience.)

Stricter standards were applied only in respect to defined contribution plans covering less than 25 employees. The standards adopted by the various local offices of IRS were not uniform. However, generally speaking, the fewer number of employees, the stricter the vesting requirements. For example, if a plan was established for a professional corporation covering three doctors whose average compensation was $75,000 per year and the only other participants were two nurses and a secretary whose average compensation was only $10,000 per year, it is easy to see how the prohibited discrimination could develop, if the plan did not provide for rather rapid vesting. However, the potential for discrimination decreases rapidly as the number of employees increases and the ratio of compensation of the prohibited group to compensation of all covered employees decreases.

The application of these pre-ERISA vesting standards resulted in a large number of plans having little or no vesting prior to age 65. It was, therefore, the decision of Congress to make minimum vesting standards one of the major parts of pension reform legislation. Decisions regarding vesting were not made lightly, however. Vesting was one of the most widely debated aspects of ERISA and Congress wisely dealt with this area of pension reform with a great deal of caution. A clear indication of this caution is contained in House Report No. 93-807, 93d Cong, 2d Sess., pp 53-54 which states in part as follows: "Clearly, however, it would be counterproductive to increase employer cost by more rapid vesting to such an extent as to significantly curtail the creation of new retirement plans (or to significantly curtail the increase in benefits in existing plans.)"

Congress dealt with vesting under ERISA very specifically by creating three alternative minimum vesting standards which were obviously intended to apply in all but the most exceptional cases. The intent of Congress in this respect is clearly shown by the following language contained in the joint committee report.

Discrimination.—Under the conference substitute the rules of the House bill are adopted with respect to the relationship of the minimum vesting standards of the bill to the antidiscrimination rules of present law (Sec. 401(4) of the IRS Code.) In general, *a plan which meets the vesting requirements provided in this substitute is not to be considered as discriminatory, insofar as its vesting provisions are concerned unless there is a pattern of abuse under the plan* (such as the firing of employees before their accrued benefits vest) or there has been (or there is reason to believe there will be) an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders or who are highly compensated. (emphasis added)

In the past, however, the law in this area has been administered on a case by case basis, without uniform results in fact situations of a similar nature. As a result, except in cases where actual misuse of the plan occurs in operation, the IRS is directed not to require a vesting schedule more stringent than 40% vesting after four years of employment with 5% additional vesting for each of the next two years, and 10% additional vesting for each of the following five years.

If Congress had wanted to make the 4–40 vesting rule the standard, it could have clearly done so and then stipulated certain exceptions under which the other three standards would apply. They clearly did not intend to do this.

However, Rev. Proc. 75–49, as published by IRS on November 8, 1975, would have accomplished precisely this result; i.e., the rule of 4–40 vesting would become the standard and the three alternative vesting schedules stipulated as the standards under ERISA could be used only under exceptional circumstances.

Rev. Proc. 75–49 prescribes three tests, one of which must be met in order to avoid the 4–40 vesting standard.

1. *Key Employee Test.*—This test is applied only to an employer who has been in existence less than seven years. In the case of corporations, this test will generally be satisfied if the total number of the shareholder-employees and the five highest paid officers is less than 30% of the total number of employees in the prohibited group (officers, shareholders and highly compensated employees.)

2. *Two To One.*—This test is satisfied if the rank-and-file turnover rate for the sixty month period preceding the application for determination letter is no more than twice as great as the prohibited group turnover rate.

3. *The Six Percent Test.*—This test is satisfied if the rank-and-file turnover rate for the preceding sixty month period does not exceed 6%.

Published estimates by other consultants and actuaries indicate that less than 5% of the corporations in America can meet either one of these turnover tests. Our own studies indicate that even 5% may be a high figure. We administer approximately 1,000 corporate plans and we haven't found a single one of our clients who have been in existence seven years or longer who could meet either of these turnover rates. By conservative estimates, therefore, the 4–40 vesting standard would be imposed on 95% or more of the corporate plans if Rev. Proc. 75–49 becomes effective.

This seems to be a clear question of whether the intent of Congress or the arbitrary judgment of the IRS is to prevail.

On December 9, 1975, IRS issued Technical Information Release 1424 which counters. Rev. Proc. 76–1. Rev. Proc. 76–1 states that IRS has agreed to reconsider the requirements of Rev. Proc. 75–49. It further provides that during this interim period, an applicant may request, in writing, that its application for an advance determination letter be prepared without regard to the requirements set forth in Rev. Proc. 75–49. However, such a determination letter will contain a caveat to the effect that such letter is not a determination as to whether the vesting provisions of the plan satisfy the nondiscriminatory requirement of Section 401(a)(4) of the Code.

While we were all happy to get some relief from Rev. Proc. 75–49, this is hardly a suitable answer. A determination letter is meaningless unless it covers the vesting provisions of the plan. Any subsequent change would mean not only amending the plan again to change the vesting schedule, it would mean changing the actuarial assumptions and, therefore, the contribution requirements. In addition, communication material to the employees would have to be reprinted and redistributed and all previously filed governmental reports would have to be amended and refiled. All of these add layers of cost upon layers of cost and could easily be the straw that breaks the back of the private pension system. According to our preliminary studies, the 4–40 vesting standard would increase the cost of vesting for the average employer by approximately 35% compared to the cost applicable under one of the three alternative vesting schedules of ERISA.

RECOMMENDATIONS

1. Rev. Proc. 75–49 should be rescinded immediately.

2. According to the joint committee reports, the conferees have directed the joint pension task force study group to examine problems of the inner relationship of the vesting and the anti-discrimination rules carefully. Until these reports

can be written, reviewed by responsible congressional committees and amendments written to ERISA, IRS should be instructed to accept one of the three alternative vesting schedules in ERISA as satisfying the nondiscriminatory requirements, except under the following circumstances:

(*a*) Where actual abuse has existed in the past.

(*b*) Where the compensation of shareholder-employees plus the compensation of any of the five highest paid officers who are not shareholders is 50% or greater but less than 75% of the compensation of all covered employees, the rule of 4–40 should be applied.

(*c*) Where the compensation of shareholder-employees plus the compensation of any of the five highest paid officers who are not shareholders is greater than 75% of the compensation of all covered employees, vesting should be 10% a year beginning with the first year.

It will be immediately apparent that the above recommendations do not include any tests for turnover. It may be that the joint pension task force study group can develop some meaningful studies which would indicate that final rules regarding vesting should incorporate some element of turnover. However, in the short period of time our firm has been working on this problem, we have been unable to develop any turnover test which we felt would be meaningful. One of the major problems is that any comparison of turnover among the prohibited group and rank-and-file employees is virtually meaningless by itself and the guides outlined above should prevent most discrimination for the following reasons:

1. The prohibited group is usually the older employees who have the longest period of service with the company. Turnover materially decreases with both age and length of service so this group could be expected to always have much lower turnover than rank-and-file employees. In addition, it is important to recognize that people in the prohibitive group often have very limited job mobility since their compensation is usually based on their value to the particular company for which they have worked for a long period of time.

2. Many of the prohibited group may have started out as rank-and-file employees. This is particularly true in larger companies. This would tend to indicate that discrimination does not exist whereas a comparison of turnover at a given time would indicate the opposite.

3. It is our belief and experience that discrimination very seldom exists when reasonable vesting standards are incorporated in a plan except where the compensation of the shareholders and the other highest paid executives is a high percentage of the total compensation paid to all plan participants. We submit, therefore, that the above guidelines will prevent most discrimination and should be adequate until more precise studies can be made.

4. No one set of guidelines for vesting can prevent all discrimination without imposing unrealistic and costly vesting standards on plans which would cause a large percentage to terminate. The small amount of discrimination which is not prevented by reasonable guidelines such as those stipulated above will, by necessity, have to be caught and stopped only upon audit.

The third problem area which I would like to briefly discuss with you today deals with the annual reporting requirements. First of all, I would like to say that we have been pleased to learn that a simplified version of report form 5500 will be available for use by employers whose plans cover less than 100 employees and that such plans will not be required to file the accountant's report. These are certainly steps in the right direction, but unfortunately fall short of solving some of the very major problems in this area. With the new reduced eligibility requirements imposed by ERISA, a much larger number of plans will cover over 100 employees.

The proposed regulation prescribes a two-tiered opinion by the accountant to be included in the annual report which is filed with the Secretary of Labor. In the case of the financial statements and schedules required to be included in the annual report in accordance with Section 103(b), the accountant must render an opinion as to whether the statements of plan assets and liabilities and income and expenditures, and the related separate schedules, are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. The second tier of the opinion included in the annual report provides that, in the case of the separate statements and schedules required under Section 103(b) (3) of Part 1 of Title I the accountant must render an opinion as to whether the individuals statements and schedules each presents fairly and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole.

It must be remembered that a large percentage of all pension plans use banks or other responsible corporate trustees or they are administered by an insurance company or other responsible plan sponsor. The proposed regulations require such banks, insurance carriers or plan sponsors to certify the accuracy of information required to be transmitted to the plan administrator. Unfortunately, we understand from our friends in the accounting profession that such certification will not be sufficient for them to express the opinions required by the proposed regulation. Unfortunately, the proposed regulations do not address this specific problem. If accountants are required to audit the books and records of banks. insurance companies and other responsible plan sponsors, an enormous amount of useless expense will be incurred.

We envision that if such a requirement is imposed that most banks and similar institutions will actually have to build additional offices to accommodate accountants who will constantly be auditing their books and records. Various estimates of the cost involved in each plan have ranged from $400 to approximately $8,000 and our own accountants who represent one of the largest national firms of CPAs have estimated that such cost would be no less than $2500 for companies with approximately 100 employees and could range as high as $6,000 to $8,000 for companies with as many as 500 employees. In our opinion, such additional and seemingly unnecessary cost will cause many companies to terminate their plans. Act Sec. 103(a)(3)(B) very clearly states that in offering his opinion the accountant may rely on correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance. While the subject of accountants' opinion is somewhat out of my particular area of expertise, we are deeply concerned about the cost impact on our clients, and it would seem that the problems could be largely eliminated by the regulations affirmatively stating that the accountant may in rendering his opinion rely on the correctness of any financial information, the accuracy of which has been certified by:

1. An insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account,
2. A bank or similar institution which holds some or all of the assets of the plan in a common or collective trust or a separate trust or custodial account, or
3. A plan sponsor as defined in section 3(16)(b). As I am sure all of you recognize the above language is copied directly from Act Sec. 103(a)(2)(A), (B) and (C). Failure to take some positive action in respect to this problem could result in a disastrous situation in respect to the private pension system.

Thank you.

[Exhibit A]

AMERICAN SOCIETY OF PENSION ACTUARIES,
Washington, D.C., October 29, 1975.

CHAIRMAN,
Tax Forms Coordinating Committee, Internal Revenue Building, Washington, D.C.

Dear Sir: Pursuant to the release concerning the proposed annual report forms for pension and welfare plans published in the Federal Register on September 30, 1975, the American Society of Pension Actuaries submits the following comments and recommendations.

GENERAL OBSERVATIONS

1. *Comment.*—The deadline for comments is unreasonably short, and we hereby request the period for comment be extended.

Rationale.—As a result of this unexpected inclusion of substantial reporting requirements for the vast number of smaller plans (fewer than 100 participants) in this country, the dissemination of this fact alone could take several weeks. The larger companies are organized with complete employee benefit staffs watching the promulgation of regulations and directives, whereas the smaller companies must wait for their various consultants and advisors to inform them of new requirements. Proper time must be afforded the smaller companies, their representatives and advisors, so that they will have an opportunity to make informed comment and recommendations.

2. *Comment.*—The due date for the forms should be extended for all reporting plans, with possible use of present reporting forms for all plans with plan years beginning before January 1, 1976.

Rationale.—Whether or not we take into account Comment #1 above, these smaller plans will have considerable difficulty in complying with the due dates proposed for the first plan year. The report form, plus the schedules and attachments, are voluminous, to say the least. Some plans will have been amended, but most will not have been by the time of the due date. Therefore, those that alter their plans during the next year will not have the advantage of following the format for completion of the annual report in the subsequent year. The data to be gathered by the employer will come from his attorney, accountant, consultant, banker, insurance agent, mutual fund salesman, etc. Will they be prepared to furnish the required data? Will the employer know what all the data flowing to him means? Will the employer be able to assimilate the instructions and coordinate them with the data coming to him? The data, unfortunately, will come in for each and every pension and welfare plan he has established. Simply keeping track of the material will be an accomplishment.

The easy answer to the above problem for the employer is to hire a consultant or have someone else handle the reporting requirements. Can they handle it in the time permitted by the first due date? If those reports are required as proposed, the consultant (or other form preparers) will certainly require additions to staff—staff which will be unskilled and in dire need of training.

Either way (i.e., the employer or his advisors preparing the forms), the cost under this proposed method might very well cause terminations. If the first year reporting due date were extended, we might be able to forestall unnecessary and emotional decisions to terminate.

3. *Comment.*—The decision not to have a separate simplified form for non-Keogh pension plans and welfare plans with fewer than 100 participants should be reconsidered.

Rationale.—ERISA section 104 (a) (2) (A) provides the Secretary of Labor with direct statutory authority to prescribe simplified annual reports for any pension plan which covers less than 100 participants. Although the IRS reporting forms 4848 and 4849 were not the easiest forms to complete, experience has been gained over the years so that complying with their completion was not impossible. The new form 5500, however, is cumbersome, complex, and lengthy. Data must be gathered from the attorney (including interpretations of the cited Act provisions throughout the form), the accountant, the trustee, the funding vehicle, the insurance company, actuary, etc. The completion of this form, together with the new EBS-1 and PBGC forms, will result in expensive, and to some extent overlapping reporting for small employers. We sincerely believe a much simpler version of Form 5500 could be developed for small plans with less than 100 participants. Taking into account the fact that the annual report form must be filed every year, it becomes essential that a much simpler form be developed for small plans. The form for small plans should recognize that where the information is contained in EBS-1 and PBGC forms, answers should only be required if that information is no longer timely.

The cost to the small employer of this duplicate reporting to several agencies, this burdensome gathering of data, this additional administrative function, this compliance with completion of "searching" questions, and the repetitive answering of questions every year will certainly result in a discouragement of voluntary establishing of private employee benefit plans—the opposite intention of Congress.

Specific Form Observations

All of the following remarks have reference to the Form 5500 although several are also apropos as to Form 5500-K and should be considered as such.

1. *Comment.*—Discontinued defined benefit plans (sometimes referred to as "frozen" plans or "wasting trusts") should not be required to file annual reports.

Rationale.—Termination reporting requirements by the IRS, Labor Department and the PBCG for defined benefit plans are adequate without additional annual reporting for terminated plans. The effect of such a burdensome requirement would be to practically require distribution of assets upon termination of plans.

2. *Comment.*—The filing of the (1) Form 5500 or (2) the previous forms 4848, 4848A, 4849 and Schedule A (Form 4848) with IRS will depend upon the employers' plan year and taxable year, whereas filing of the Form 5500 with the DOL will obsolete the Form D-2 for plan years beginning on or after January 1, 1975. Surely, the filing of *one* form for both agencies can be achieved this first year. In addition, the due date for filing with the DOL and the IRS should be coordinated so that both agencies will have the same due date.

Rationale.—The purpose of this combined annual report is to eliminate duplication and relieve the employer or plan administrator from complicated reporting requirements. Having old forms and new forms required for the same periods is duplication in its worst form. In addition, having different due dates for the two agencies causes confusion and is in direct conflict with the express purpose of simplification and consolidation of reporting requirements.

3. *Comment.*—The first filing of the Schedule B will be for the year in which the plan was subject to the minimum funding standards, whereas the filing of the Form 5500 has earlier required filing dates. Coordination of the due dates is required. Alternatively, the filing of Schedule B could be eliminated until the year in which the plan is subject to the minimum funding standards. A better solution would require the use of the old Forms 4848, 4849, etc., until such year as the plan becomes subject to the minimum funding standards.

Rationale.—The same rationale as that shown in Comment #2 above is appropriate for this Comment #3. The final solution to these diverse due dates should make every effort to eliminate confusion, duplication, complexity and cost.

4. *Comment.*—Forms 5501 and 5504 were not illustrated. Review of their structure is also required in order to adequately comment on the forms illustrated.

Rationale.—Not knowing the extent of the Forms 5501 and 5504 leaves us in a state of flux as to their content, duplication, and their precise necessity. The review of these forms is essential to the review of the Form 5500, 5500-K, and Schedules A and B.

5. *Comment.*—Item 17(a) calls for a listing of each asset, with explicit description. Is this essential, whereas both agencies are only seeking party-in-interest transactions? Requiring only a listing of those transactions would be more appropriate.

Rationale.—Some plans will have extensive lists of assets—most of which will not be party-in-interest transactions and of a non-prohibited transaction nature. Requiring all assets to be listed is cumbersome, especially since a complete statement of assets and liabilities is required in item 15.

RECOMMENDATIONS FOR CLARIFICATION OF FORM 5500

1. Item 17(e) provides for a listing of each reportable transaction, yet the word "reportable" is not defined. It should be defined in the instructions.

2. The term "multiple-employer plan" in item 4 is not defined in the instructions or in its references to the Code and ERISA. It should be defined in the instructions.

3. Item 6(a)(1) should have instructional guidelines for the terms "fixed benefit" and "flat benefit" as there is confusion among authors and practitioners as to their meaning.

4. The instructions for item 7 should have the words, "who is or may become eligible to receive a benefit" underlined or emphasized—for clarification of the term, "participant".

5. Item 13 leaves space for the explanation, whereas the instructions provide for a statement on a sheet of paper. Where should the "yes" answer be explained?

6. Item 13 instructions ask for the reasons for changes in appointments. Is this necessary reporting? It calls for a unilateral statement of a reason by an employer/sponsor without the benefit of a rebuttal of that reason by the removed appointee. How will this information be used by the DOL or the IRS? The reason for the change should not be required.

7. Item 14 should have the words, "from the plan" underlined or emphasized for clarification purposes.

8. Item 19(a)(ii) should have the parenthetical phrase "(as defined in Code section 410(b)(1)(A))" following the words, "Statutory exclusions", for clarification of that term.

9. In the instructions, at item 2(b) the words, "for obtaining one." should be added following the words "see 1(b) above", for clarification reasons.

10. In the instructions, third paragraph, item 14, the word, "or" should be added before the words, "(2) persons whose . . .".

11. Item 15(e) should have a parenthetical phrase added, stating "(used in the operation of the plan)", thus eliminating the need for the instruction for item 15(e).

12. In the specific instructions to Schedule A, the first paragraph should be identified "2(a)".

13. Item 15 requires a statement of assets and liabilities at current market values. The general instructions require an accountant's opinion as to whether

that information has been presented in accordance with generally accepted accounting principles. Since there are no generally accepted accounting principles that recognize the use of current-value balance sheets, the instructions should be rewritten to make it clear that generally accepted principles are to be overridden by the specific current-value requirement of the form.

14. The instructions indicate that the opinion of an independent qualified public accountant as to financial information will not be required for plans with less than 100 participants. No similar waiver is provided with respect to the actuarial statement under ERISA § 103(a)(4) and § 103(d). The Act contemplates, however, that the actuary may rely on the financial information certified by the independent public accountant. ERISA § 103(a)(4)(D). In the absence of an accountant's statement, the Instructions and the appropriate regulations should provide that the actuary may rely on financial data provided by the employer and certified by him to be correct.

15. ERISA § 301 and Internal Revenue Code § 412 require the maintenance of a funding standard account for money purchase plans as well as defined benefit plans. Schedule B of Form 5500 is not geared to providing information for a money purchase pension plan to demonstrate compliance with the funding requirements. A statement by an enrolled actuary is not really necessary for a money purchase pension plan. The Instructions to Form 5500 and the regulations should provide that information to show compliance with the above-referenced funding requirements will be supplied by the plan administrator for money purchase pension plans and an alternative Schedule B should be provided for such purpose. Even if an enrolled actuary is to provide such information for a money purchase pension plan, an alternative form of Schedule B must be developed.

16. Under the definition of "party in interest" at the end of the Instructions, the second-to-last paragraph, respecting the Secretary's power to issue regulations, should be deleted. It is misleading as it stands, and it is wholly unnecessary. If the Secretary issues such regulations, then he can also change the pertinent provisions of the itemization (A) through (I).

The above statements reflect our official position based on a review by a committee selected to prepare same in the short period of time afforded us. We would like to reserve the right to comment more extensively, for the reasons cited in our first comment under "General Observations", after the closing date for comments (October 30, 1975).

Respectfully submitted.

American Society for Pension Actuaries.

EXHIBIT B

IRS AND LABOR DEPARTMENT REPORTING FORMS—INTERNAL REVENUE SERVICE

Description	Pre-ERISA	Post-ERISA
Annual return of fiduciary (1 form required for all trusts or custodial accounts having the same accounting period).	990-P	Discontinued.
Identification list of funds	Schedule A to 990-P	Do.
Exempt organization business income tax return (unrelated business income).	990-T	Do.
Statement for recipients of annuities, pensions or retired pay	W-2P	Do.
Statement for recipients of lump sum distributions from profit-sharing and retirement plans.	1099R	Do.
Annual report by certain payers of annuities and lump-sum distributions	W-3P	Do.
Transmittal of income and tax statements	W-3	Do.
Application for determination. Investment of trust funds in stocks or securities of employer.	4575	Do.
Application for employer identification	SS-4	Do.
Application for determination individually designed plan	4573	5300 series.
Application for determination individually designed plan covering self-employed individuals.	4574	Do.
Application for determination termination or curtailment of plan	4576	Do.
Power of attorney	2848	Do.
Termination of an employee's pension or profit-sharing plan	966-R	Do.
Annual employer's return for employees' pension or profit-sharing plan	4848	5500.
Annual status report of an employees' pension or profit-sharing plan	Schedule A to 4848	5500 (schedule B) actuarial information.
Annual status report of Keogh Plan. (HR-10)	Schedule K to 4848	5500K.
Financial state of employees' pension or profit-sharing fund or fiduciary account.	4849	5500.
Plan description reporting form	D-1 and D-1S	EBS-1.
Plan description amendment form	D-1A	EBS-1.
Annual report	D-2	5500.

New Post-ERISA Requirements

Internal Revenue Service

1. Notice to interested parties upon application for approval.
2. Notification to IRS that above notice was provided.
3. Annual report of terminated participants with deferred vested benefit.
4. Terminated participant to receive notice of deferred vested benefit.
5. Notice of change in status—Change in name or address, or report of termination, merger, consolidation or division.
6. Actuarial statement—30 days before a merger, consolidation or asset transfer.
7. Report of Actuary at least every 3rd year.

Labor Department

1. Summary Plan Description to participants and Labor—if amended, due every 5 years; otherwise, every 10 years.
2. Modification or changes—Notify Labor 60 days after change.
3. Modification or changes—Notify participants 210 days after plan year end.
4. Summary of Annual Report to participants 210 days after plan year end.
5. Termination Report to Labor.
6. Opportunity for each participant to elect Joint and Survivor Annuity Option at early retirement—explanation in writing required.
7. Denial of claim in writing to participant, with right of review.
8. Report of Accrued Benefits and Nonforfeitable Benefits upon written request of participants but not more often than once per year.
9. Make available to participants—Copies of Plan Description, latest Annual Reports, Trust Agreement, Bargaining Agreement or other document under which Plan was established or is operated.

Pension Benefit Guaranty Corporation

1. Premium payment at inception of plan and annually.
2. Termination Report to PBGC—10 days before proposed termination date.
3. Notice to PBGC of "reportable event".
4. Notification to employer each year if it is "substantial employer".
5. Notify PBGC if "substantial employer" withdraws.
6. Annual Report to PBGC—may include items 3, 4, and 5 above.

Recordkeeping Requirements

Employers required to keep records "sufficient to determine the benefits due or which may become due to . . . employees." This requires permanent records of all employees, past and present, including those who have been separated from service and could potentially be rehired.

Labor requires records kept to permit verification or clarification of the reports for at least six years.

EXHIBIT C

CONSULTING FIRMS: MINIMUM ANNUAL FEE INCREASE DUE TO ERISA FOR 10 PARTICIPANT PLAN

Firm	Pre-ERISA	Post-ERISA	Percent increase
A	$250	$400	60
B	300	400	33⅓
C	300	425	40
D	350	500	40
E	500	650	30
F	700	1,000	40
G	325	550	70
H	[1] 250	[2] 350	40(50)
I	250-300	300-500	20-66⅔
J	[2] 300	[3] 350	20(33⅓)
K	[4]	400	400
L	[4]	[5] 350	350

[1] Plus $5 per participant.
[2] Plus $7.50 per participant.
[3] Plus $10 per participant.
[4] Only insurance commission.
[5] Plus $35 an hour after 10 hours.

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS,
New York, N.Y., January 29, 1976.

Hon. GAYLORD NELSON,
Chairman, U.S. Senate Select Committee on Small Business, Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Joint Hearing of the Senate Select Committee on Small Business, and the Financial Markets Subcommittee and the Private Pension Plans Subcommittee of the Senate Finance Committee.

The staff of the U.S. Senate Select Committee on Small Business has previously been advised that the American Institute of Certified Public Accountants would welcome the opportunity to appear before the Committee in connection with the above-referenced hearing. The AICPA representative was to have been George R. Vogt, CPA, Chairman of the Accounting Standards Task Force on Pension Funds.

I regret to advise you that Mr. Vogt has been hospitalized within the last few days and will be unable to appear before the Committee. I also regret that, because of the short time period between Mr. Vogt's untimely illness and the date of the hearing, I have been unable to secure another individual from the task force to take Mr. Vogt's place.

Although the AICPA will not be represented at the hearing, I am taking the liberty of including in this letter certain observations and comments which may be useful to the Committee and Subcommittees as additional background information. It should be noted that, in accordance with established procedures of the AICPA's accounting standards division, these comments are restricted to those included in previous formal communications made by AICPA task forces dealing with pension plans.

The AICPA task forces have communicated with representatives of the Department of Labor and Treasury on a number of occasions, both orally and in writing, on matters related to the Employee Retirement Income Security Act of 1974 (the "Act").

Most of the recommendations made by AICPA task forces have dealt with technical matters of accounting and auditing; however, in some cases those technical matters have a direct impact on the cost and reporting effort associated with complying with the Act. Major recommendations that, in my view, may have such a direct impact are briefly summarized in the remainder of this letter.

In a letter of comment dated November 3, 1975, to the Chairman, Tax Forms Coordinating Committee, on the release on Pension and Welfare Plans—Annual Information Returns/Reports (Federal Register, September 30, 1975), the AICPA Accounting Standards Task Force on Pension Funds suggested that the requirements for an accountant's report on plan financial statements should be deferred at least until such time as the Financial Accounting Standards Board (FASB) issues a Statement establishing codified generally accepted accounting principles for employee benefit plans. (This is presently under active study by the FASB). The letter notes that it is possible that the FASB might require changes in current generally accepted accounting principles and that "This, or other decisions by FASB, might create auditing and reporting problems which would have to be solved by the profession. The time constraints imposed by the Form (proposed Form 5500) in tandem with the uncertainties related to FASB action are severe." The letter does not specifically state that these requirements may create cost and reporting burdens for plans, but, in my opinion, that can reasonably be inferred from the comments.

That letter did, however, describe the severe time pressures which face independent accountants during the first few months of the calendar year and continued: "In the midst of all this activity, the General Instructions require independent accountants to accept engagements, plan the initial examinations (which require more work than recurring audits), carry out the work, resolve the accounting and auditing problems that will arise, and submit reports by May 15. Even if this were physically possible, it will impose a heavy burden on independent accountants which will be reflected in unnecessarily high audit fees. It will also burden plan administrators, who will be faced with preparing a revised Form EBS-1 and plan summaries during the same time period."

Accordingly, the letter concluded in this respect that "The General Instructions should provide for the filing of the Forms within 210 days of the end of the plan's year, and *make provisions for an additional extension of time in first year filings.*" (Emphasis supplied.)

In a letter of comment dated December 18, 1975, to the Office of Employee Benefits Security of the U.S. Department of Labor, on the release on Employee Benefit Plans—Proposed Annual Reporting Requirements (Federal Register, November 19, 1975), the AICPA Auditing Standards Task Force on Pension Funds reaffirmed the recommendations summarized above and stated its understanding that the Department of Labor intends to waive the requirement for an audit of any employee benefit plan that has less than one hundred participants. However, the letter also made the following observation, among others: "Although we are not advocating a specific size criterion for employee benefit plans subject to the Department's filing requirements, we question the use of the number of participants in a plan as the sole criterion for an audit requirement. We believe consideration should be given to the use of other possible criteria, such as the aggregate value of the plan's assets as of the beginning of the plan's reporting period."

* * * * * * *

I would be pleased to furnish the Committee with copies of the letters referred to above if the Committee so desires. I would also be pleased to bring any questions the Committee might have on these matters to the attention of the appropriate AICPA task force.

Respectfully submitted.

THOMAS P. KELLEY,
Director, Accounting Standards.

[Whereupon, at 12:06 p.m., the committee was recessed to reconvene at 9:30 a.m., Tuesday, February 3, 1976.]

PAPERWORK REQUIREMENTS OF THE PENSION REFORM ACT OF 1974

TUESDAY, FEBRUARY 3, 1976

U.S. SENATE, SUBCOMMITTEE ON PRIVATE PENSION PLANS AND SUBCOMMITTEE ON FINANCIAL MARKETS OF THE COMMITTEE ON FINANCE, AND THE SELECT COMMITTEE ON SMALL BUSINESS

Washington, D.C.

The subcommittees and the select committee met at 9:38 a.m., pursuant to recess, in room 2221, Dirksen Senate Office Building, Senator Gaylord Nelson (chairman of the Select Committee on Small Business) presiding.

Present: Senators Nelson, Byrd, Jr., of Virginia, and Javits.

OPENING STATEMENT BY SENATOR NELSON

Senator NELSON. This is the second morning of hearings on the paperwork and reporting burdens of smaller pension plans and the Employee Retirement Income Security Act of 1974.

Yesterday, we heard some excellent testimony about the costs of reporting to the approximately 685,000 smaller pension plans with under 100 participants (that might reach double or triple the pre-ERISA costs).

We also were informed that more than 5,000 defined benefit plans terminated in 1975, out of a total of about 100,000 of these types of plans, and there were and additional 2,500 terminations of profit-sharing plans during the first 9 months of last year.

Our first witness this morning is a member of the House of Representatives who has had an active interest in this area, Mr. Erlenborn of Illinois.

We have about 14 Senators from Small Business and Finance who have indicated that they intended to be at the hearing this morning. That is why we have delayed a few minutes in beginning.

Congressman Erlenborn, do you have any commitment that you need to make? I am perfectly willing to let you start right now.

Mr. ERLENBORN. I have no commitment until about 10:30 in one of my committee meetings.

Senator NELSON. I don't know how firm these commitments are and I don't want to delay any of the witnesses unnecessarily. If you would like to start your testimony so you can get back to the House, fine.

Mr. ERLENBORN. Fine.

Senator NELSON. Congressman Erlenborn, do you have a prepared statement?

STATEMENT OF HON. JOHN N. ERLENBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. ERLENBORN. I do, Senator.

Senator NELSON. That will be printed in the record and you may proceed as you desire.

Mr. ERLENBORN. Mr. Chairman, I am grateful for the opportunity to appear before this joint hearing to discuss the impact of pension legislation on small businesses.

I have compared the redtape surrounding the Employee Retirement Income Security Act, known as ERISA, to barnacles on a ship. Unless regularly removed from a ship's hull, barnacles can retard a ship's progress through water and hasten its deterioration. Likewise, if Congress allows the executive branch to slap layer upon layer of redtape on ERISA, a good law will become an intolerable burden, forcing many employers to abandon private employee pension programs.

I am a coauthor of ERISA, the House version, which is also called the Pension Reform Act, though some in the pension business took exception to the fact that we claimed there needed to be reform.

As most of the members of the Senate committees know full well, our intention in writing the law was to protect the interest of employees who are promised benefits from pension and welfare plans.

The law was uniquely a congressional project, not an administration concept. In fact, the Departments of Labor and Treasury did not become really active until the bill was in the conference committee.

Although it is unusual for Congressmen to spend much time with legislation after it is signed by the President, my colleague, John Dent, and I have made ERISA an exception. Congressman Dent, chairman of the House Labor Standards Subcommittee, and I, the ranking minority member, began holding oversight hearings early in 1975. In addition, we assigned two professional staff members full time to monitor the implementation process.

Many of you are familiar with the provision in the pension law that required administrators to file descriptions of their plans with the Labor Department by January 1, 1975, unless the deadline was delayed.

The deadline was moved to August 31. However, there was no joy in the pension world. The Labor Department had created a 20-page monster, officially called the EBS-1 form, which pension plan administrators would have been required to fill out in order to satisfy this reporting provision. The form was not computer compatible and called for essay-type responses, which would require the Department to perform the impossible task of not only reading each form, but also interpreting each one.

In addition, the Department was preparing to demand that a second set of EBS-1 forms be submitted just 4 months after the first submission. Spokesmen for small pension plans said the cost of filling out this form would be substantial—in some cases too costly to continue their plans. The EBS-1 form would cost at least $700 to fill out, and that would be only one of at least a dozen forms required by ERISA.

Our purpose had been to protect pension plans, not regulate them out of existence. Yet I think the original EBS-1 form would have done just that, regulate them out of existence. And for what reason? The Labor Department would never read 2 million, 20-page forms.

Fortunately our complaints were heard in the Labor Department. First, it decided that administrators could simply ignore pages 3 through 20 on the initial submission as long as the full 20 pages were completed the second time around. However, the Department subsequently scrapped the monster and came up with a substitute—a six-page, computer-compatible form said to be fairly easy to understand and fill out.

The remaining problem is that the Department still holds to the May 30 deadline this year for submission of the second set of EBS-1 forms. I might say that many plan administrators have suggested that, rather than having one filing date for all plans since the plans are being amended to conform with the law and usually this is done to conform with the plan-year than an arbitrary reporting date, it might make more sense to require these forms to be filed at the time the amendments have been completed and the plan-year begins.

Senator NELSON. In your oversight hearings on the other side, did you raise that specific question?

Mr. ERLENBORN. That question was raised and it was suggested by a number of plan administrators, and I have done a good deal of speaking to people interested in the pension law around the country and often this is suggested.

Senator NELSON. What kind of response did you get from the Labor Department?

Mr. ERLENBORN. So far the Labor Department does not respond very favorably.

Senator NELSON. Did they give any reasons for their objection to it?

Mr. ERLENBORN. Well, I think there is a problem of a difference between the fiscal year as far as tax matters are concerned and the plan-year. Possibly Commissioner Alexander later, when he testifies, may be able to address himself to this point, but I think that this was one of the points raised, that plan-years and the tax-years may not coincide. There may be some problem.

But it seems to me that if we are looking for a plan description, it would be best to get the plan description after it has been amended to conform with the law.

In November the law ran into more problems—the proposed 5500 annual reporting from and two Internal Revenue Service procedures. Included in the Labor Department's 5500 form is a requirement for an accountant's opinion. It is estimated that the requirement would have cost even the smallest of plans at least $1,000.

This accountant's opinion provision also would have led to the termination of many small plans. You can imagine a few plans with only a few participants and, who are only contributing a few thousand dollars every year. If they would have to spend $1,000 annually for an accountant's opinion, it would not justify continuation of the plans obviously.

Senator NELSON. When you say "accountant" are you using that term as a word of art? Are you talking about a particular——

Mr. ERLENBORN. It would probably have to be a CPA opinion, and the opinion, I understand, would also, as I am led to understand, be different than the normal accountant's opinion, would have to include—and this was the original requirement, it is not now—but would have to include the accountant's opinion that the plan has conformed to the requirements of ERISA.

I would also point out this was a requirement of the Labor Department, not of the Treasury Department. Mr. Alexander in our oversight hearings did make that clear to our committee.

Again I must point out that the Labor Department would never be able to read 2 million accountants' opinions every year.

Two House subcommittees held oversight hearings late last year at which this proposed form was discussed. John Dent and I spent several hours with former Secretary of Labor John Dunlop lobbying for a change in the regulation. At the same time two Senators on the committee here, Chairman Nelson and Senator Long, and also Senator Bentsen, wrote to the then-Secretary, urging him to spare small pension plans from this crushing paperwork burden, which is 80 to 95 percent of the total number of plans.

In December Mr. Dunlop told us that the Department was not likely to require accountant's opinions from plans with fewer than 100 participants. Furthermore, he stated that the Department was developing 5500–C, a simplified two-page annual report for plans with fewer than 100 participants. This form, the 5500 form, and the EBS–1 form are to be mailed to pension administrators in March.

With Labor Department troubles subsiding, we sailed ERISA into Treasury Department waters. IRS Revenue Procedure 75–49 was made immediately effective, as IRS procedures are, without any opportunity for prior public comment. I believe that 75–49 clearly is an attempt to override the intent of Congress. I know of no one on our House committee who does not share this opinion.

In ERISA we set out a choice of three vesting schedules. Also, we wanted to be certain that plans not qualifying for tax purposes prior to ERISA because they discriminated against lower echelon employees could not qualify under the new law.

To prevent such discrimination, we stated that those plans would be required to follow the older Internal Revenue Code nondiscrimination provision, and in the report we added "in no event greater than a 4–40 schedule," that is, 40 percent after 4 years.

However, the IRS has devised tests to determine discrimination, the effect of which is to apply the 4–40 vesting schedule to virtually all plans, regardless of whether they qualified prior to ERISA. In addition, the IRS failed to define certain key terms in the test, such as "highly compensated employees".

We have received hundreds of letters concerning this ruling and I am certain the Senators have as well. A Dallas, Tex., man was more than curt with his criticism. He wrote, "If the 4–40 vesting plan is adopted regarding pension funds, it will not apply to us as we will drop our pension."

In December the IRS responded to these complaints, and I would like to compliment both the Treasury and Labor Departments for their cooperation and willingness to respond to criticism. However, I believe that the IRS' action concerning 75–49 still is not in line with congressional intent though Commissioner Alexander told me this morning before the hearing that I should look at the action they took yesterday, and I am looking forward to seeing what that action was.

Another IRS procedure, 75–480, which deals with social security offset plans, seems to miss the mark as badly as 75–49. The agency has been unable to identify the lawful basis for issuing this procedure.

My point is that ERISA has many leaks, some which Congress created and can repair, and I might say much of the reporting requirements are spelled out in the law and we ought to look carefully at this. We ought also to see if in passing the law we required too much paperwork. However, we gave a good deal of authority to give exceptions for smaller plans, realizing the burden would be the greatest on them. However, with the Labor Department drilling additional holes, many employers are going to abandon ship before long.

I believe the IRS' confusing indecisiveness with 75–49, for example, is causing significant damage to the pension system. The Pension Benefit Guaranty Corporation, which administers the pension plan termination insurance program, has received 5,035 termination notices during 1975, mostly from small plans. This termination rate is more than four times—almost five times—greater than the corporation had predicted.

I must agree with Lawrence Smedley, AFL–CIO Associate Social Security Director, who stated that a contributing factor to these terminations—besides adverse business conditions, business failures—was the anticipation of higher employer costs under ERISA.

In June 1975 Chairman Dent and I introduced H.R. 7597, which attempts in the following manner to rescue small businesses from this tidal wave of ERISA redtape:

It mandates—rather than offering the option of reporting—simplified reports for benefit plans with fewer than 100 participants.

It gives Congress the right to reject proposed ERISA regulations prior to their going into effect, if it believes the regulations do not follow the intent of Congress.

I believe, Senator, we have precedent for this in the Higher Education Act. You may recall not too long ago, last year, we reviewed title I–X regulations having to do with sex discriminations and we have the right in whole or in part to reject those. And we have done this in other acts to give Congress the power to review and reject regulations before they become effective.

Senator NELSON. Does your legislation vest that responsibility in the vote in each body or is it within the committee itself?

Mr. ERLENBORN. No, it is a vote within each body.

Senator NELSON. Within a certain period?

Mr. ERLENBORN. As I recall, I believe we had a 60–day period.

Senator NELSON. May I ask, what is the status of that bill?

Mr. ERLENBORN. That bill has passed the subcommittee unanimously, the full committee unanimously, and is awaiting action in the Rules Committee. I might add that it has been lobbied against and opposed by both the Treasury and Labor Departments. We are hoping that maybe this year we will have an opportunity to convince them that there are good provisions in H.R. 7597 and before we get to the floor get some agreement with those Departments and support from the administration.

But so far, officially on the record, both Departments have advised the chairman of the full committee, Mr. Perkins, that they are opposed

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to sweeping and substantive amendments to ERISA. That was 6 months ago. They may be changing their mind, I hope.

Of course, we would welcome your consideration of this legislation once it passes the House, but regardless of whether it is done legislatively, I believe the Labor and Treasury Departments should reform their ERISA implementation process in three ways. I might add that these cost-saving reforms could be undertaken by all Federal agencies. I think they are rather universal in their applications.

First, agencies should cease accumulating "might-need" information. As in the case of income forms, agencies could require businesses and individuals to maintain certain records in case there is a need for additional information.

Limiting the Federal packrats would definitely cut down on government waste. Let me relate one example. Under the law that preceded ERISA, the Welfare and Pension Plan Disclosure Act, more than 1 million employee benefit forms were submitted to the Labor Department. The forms were not read—were not even filed. They were shoved into dozens of boxes, sometimes in the original envelopes they came in, and stored inside a government building in Silver Spring, Md.

Pension plan money, which should have put food in a retired employee's table, was used instead to fill boxes with useless redtape. We had a GAO accountant back in the mid-1960's who said the Labor Department was more than 3 years behind in filing. They had 3-years' accumulation of forms in boxes that had never been filed.

Next, prior to drafting proposed forms agencies should seek the advice of legislators and of people who must eventually fill out these forms. Perhaps the roles of agency advisory committees—which almost every law, including ERISA, provides—could be expanded in this area. Agencies should take advantage of the knowledge and experience that these people possess.

It is not constructive to have a well-intentioned bureaucrat, who is isolated from the outside world, dream up a 20-page monster form, and then give the public 30 days to recover from the shock.

Last week Congressman Dent, Congressman Charles Vanik and I appeared before the Commission on Federal Paperwork. It was a unique experience because one of the members of that Commission is Commissioner Alexander and it placed him in the position of being at the dias and I was at the witness table, and he was very kind to me, I must say, because possibly the roles will be reversed.

Senator NELSON. That is why you are being kind this morning, is that right? [Laughter.]

Mr. ERLENBORN. That's right.

I heartily support a suggestion of my colleague, Charles Vanik, who told the Commission that agencies should request information only after it is determined that it can be obtained through other than costly methods.

Finally, I wish to commend the joint committees for overseeing the pension. I firmly believe that together the two Houses of Congress and the Labor and Treasury Departments can scrape the redtape from ERISA, so that it is a law that encourages rather than constricts and discourages pension plan benefits.

Senator NELSON. Thank you very much, Congressman Erlenborn, for your very thoughtful and valuable contribution to this discussion about the problem of paperwork in general, and particularly the problem of paperwork stemming from the new pension law.

As one who is interested in ERISA I appreciate how far along you have gone in trying to tackle this question. I am head of the subcommittee on the Senate side on that and we had thought we could get hearings going last year; but didn't get around to it until now. But I think your testimony is very useful to us and we will want the comments of the agencies on the suggestions that you have made in your testimony, as well as their comments on the legislation that you have proposed over on your side.

So thank you very much for taking your time to come over.

Mr. ERLENBORN. Thank you very much, Senator Nelson.

[The prepared statement of Congressman Erlenborn follows:]

STATEMENT BY JOHN N. ERLENBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I am grateful for the opportunity to appear before this joint hearing to discuss the impact of pension legislation on small businesses.

I have compared the red tape surrounding the Employee Retirement Income Security Act, ERISA, to barnacles on a ship. Unless regularly removed from a ship's hull, barnacles can retard a ship's progress through water and hasten its deterioration.

Likewise, if Congress allows the Executive Branch to slap layer upon layer of red tape on ERISA, a good law will become an intolerable burden, forcing many employers to abandon private employee pension programs.

I am a co-author of ERISA, also called the Pension Reform Act. As most of the members of this Senate body know full well, our intention in writing the law was to protect the interest of employees who are promised benefits from pension and welfare plans.

The act covers about 2 million employee benefit plans, including at least 500,000 pension plans. Approximately 90 to 95 per cent of these plans have fewer than 100 participants.

The law was uniquely a Congressional project, not an administration concept. In fact, the Department of Labor and Treasury did not become active until the bill was in the conference committee.

More intense administration involvement began on Labor Day, 1974, when ERISA sailed out of the White House.

Although it is unusual for Congressmen to spend much time with legislation after it is signed by the President, my colleague, John Dent, and I made ERISA an exception. Congressman Dent, Chairman of the House Labor Standards Subcommittee, and I, the ranking minority member, began holding oversight hearings early in 1975. In addition, we assigned two professional staff members to monitor the implementation process.

As you will see, this aggressive oversight has proven to be valuable, but not a panacea.

The implementation problems surfaced initially in the Labor Department.

Many of you are familiar with the provision in the pension law that required administrators to file descriptions of their plans with the Labor Department by January 1, 1975, unless the Department chose to delay that deadline.

The deadline was moved to August 31. However, there was no joy in the pension world. The Labor Department had created a 20-page monster, officially called the EBS-1 form, which pension plan administrators would have been required to fill out in order to satisfy this reporting provision. The form was not computer compatible and called for essay-type responses, which would require the Department to perform the impossible task of not only reading each form, but also interpreting each one.

In addition, the Department was preparing to demand that a second set of EBS-1 forms be submitted just four months after the first submission.

Spokesmen for small pension plans said the cost of filling out this form would be substantial—in some cases, too costly to continue their plans. The EBS-1 form would cost at least $700 to fill out, and that would be only one of at least a dozen forms required by ERISA.

Our purpose had been to protect pension plans, not regulate them out of existence. Yet this is what the original EBS-1 form would have done. And for what reason? The Labor Department would never read 2 million, 20-page, forms.

Fortunately, our complaints were heard in the Labor Department. First it decided that administrators could simply ignore pages three through 20 on the initial submission, as long as the full 20 pages were completed the second time around.

However, the Department subsequently scrapped the monster and came up with a substitute—a six-page, computer compatible form, said to be fairly easy to understand and fill out.

The remaining problem is that the Department still holds to the May 30 deadline this year for submission of the second set of EBS-1 forms. The Department remains inflexible despite the fact that many administrators will be filling out the form again within a few months of that date because they will be changing their plans to conform with ERISA.

In November, the law ran into more problems—the proposed 5500 Annual Reporting form and two Internal Revenue Service procedures.

Included in the Labor Department's 5500 form is a requirement for an accountant's opinion. It is estimated that the requirement would have cost even the smallest of plans at least $1,000.

This accountant's opinion provision also would have led to the termination of many small plans, a result directly contrary to the law's intent. Again I must point out, the Labor Department would never read 2 million accountant's opinions every year.

Two House subcommittees held oversight hearings late last year at which this proposed form was discussed. John Dent and I spent several hours with former Secretary of Labor John Dunlop, lobbying for a change in the regulation.

At the same time, two Senators here today, Chairman Nelson and Senator Bentsen, along with Senator Long, wrote to the then Secretary, urging him to spare small pension plans from this crushing paperwork burden.

In December, Mr. Dunlop told us that the Department was not likely to require accountant's opinions from plans with fewer than 100 perticipants. Furthermore, he stated that the Department was developing 5500-C, a simplified two-page annual report for plans with fewer than 100 participants. This form, the 5500 form, and the EBS-1 form are to be mailed to pension administrators in March.

With Labor Department troubles subsiding, we sailed ERISA into Treasury Department waters.

IRS Revenue Procedure 75-49 was made immediately effective, without an opportunity for prior public comment. I believe that 75-49 clearly is an attempt to override the intent of Congress. I know of no one on my committee who does not share this opinion.

In ERISA we set out a choice of three vesting schedules. Also, we wanted to be certain that plans not qualifying for tax purposes prior to ERISA because they discriminated against lower echelon employees could not qualify under the new law.

To prevent such discrimination, we stated that those plans would be required to follow the older Internal Revenue Code non-discrimination provision but in no event greater than a 4-40 schedule.

However, the IRS has devised tests to determine discrimination, the effect of which is to apply the 4-40 vesting schedule to virtually all plans, regardless of whether they qualified prior to ERISA. To make matters worse, there appears to be no rational basis for the test standards. So far, the IRS has been unable to furnish us with criteria for these standards.

In addition, the IRS failed to define certain key terms in the test, such as "highly compensated employees."

We have received hundreds of letters concerning this ruling. A lawyer from Lansing, Michigan, who establishes and maintains retirement funds for small businesses, wrote "the Internal Revenue Service should withdraw altogether its unreasonable position taken by 75-49. The position of the Service, even if it did not flagrantly disregard the specific statutory provisions, would create an unnecessarily burdensome, expensive and time-consuming process . . ."

A Dallas, Texas man was more curt with his criticism. He wrote, "If the 4-40 Vesting Plan is adopted regarding pension funds, it will not apply to us as we will drop our pension plan."

In December, the IRS responded to these complaints. And I would like to compliment both the Treasury and Labor Departments for their cooperation and willingness to respond to criticism. However, I believe that the IRS's action concerning 75-49 still is not in line with congressional intent.

First, the agency announced that it was suspending 75-49. During the suspension period, the agency told pension administrators, 75-49 may be reinstated, but for the moment, they could follow 75-49 or an alternative.

Then last month, we had word that the suspension will be amended and pension administrators will have their choice of these four alternatives: follow 75-49; follow 75-49 with the recognition that the regulation may be changed; follow the facts and circumstances as had been the case with the IRS in the past; and or follow their last letter of determination.

However, 75-49 is still being considered as a possible replacement for all the alternatives.

Another IRS procedure, 75-480, which deals with Social Security offset plans, seems to miss the mark as badly as 75-49. The agency has been unable to identify the lawful basis for issuing this procedure.

My point is that ERISA has many leaks, some which Congress created and can repair. However, with the Labor and Treasury Departments drilling additional holes, many employers are going to abandon ship before long.

I believe the IRS's confusing indecisiveness with 75-49, for example, is causing significant damage to the pension system. The Pension Benefit Guaranty Corporation, which administers the pension plan termination insurance program, received 5,035 termination notices during 1975, mostly from small plans. This termination rate is more than four times greater than the corporation had predicted.

I must agree with Lawrence Smedley, AFL-CIO Associate Social Security Director, who stated that a contributing factor to these terminations—besides business failures—was the anticipation of higher employer costs under ERISA.

In June of 1975, Chairman Dent and I introduced H.R. 7597, which attempts in the following manner to rescue small businesses from this tidal wave of ERISA red tape: it mandates simplified reports for benefit plans with less than 100 participants; it gives Congress the right to reject proposed ERISA regulations prior to their going into effect, if it believes the regulations do not follow the intent of Congress.

In addition, H.R. 7597 deals with other problems in ERISA, which affect businesses of all sizes. The bill amends sections dealing with prohibited transactions, employer liability, and termination insurance.

H.R. 7597 has been unanimously reported out of subcommittee and the full Education and Labor Committee. In spite of Labor and Treasury Department opposition, the bill is expected to reach the House floor early this year.

Of course, we would welcome your consideration of this legislation. But regardless of whether it is done legislatively, I believe the Labor and Treasury Departments should reform their ERISA implementation process in three ways. I might add that these cost-saving reforms could be undertaken by all Federal agencies.

First, agencies should cease accumulating "might-need" information. As in the case of income forms, agencies could require business and individuals to maintain certain records in case there is a need for additional information.

Limiting the Federal packrats would definitely cut down on government waste. Let me relate one example. Under the law that preceded ERISA, the Welfare and Pension Plan Disclosure Act, more than one million employee benefit forms were submitted to the Labor Department. The forms were not read . . . not even filed. They were shoved into dozens of boxes and stored inside a government building in Silver Spring, Maryland. Pension plan money, which should have put food on a retired employee's table, was used instead to fill boxes with useless red tape.

Next, prior to drafting proposed forms, agencies should seek the advice of legislators and of people who must eventually fill out these forms. Perhaps the roles of agency advisory committees—which almost every law, including ERISA, provides—could be expanded in this area. Agencies should take advantage of the knowledge and experience that these people possess.

It is not constructive to have a well-intentioned bureaucrat, who is isolated from the outside world, dream up a 20-page monster form, and then give the public 30 days to recover from the shock.

Last week, Congressman Dent, Congressman Charles Vanik and I appeared before the Commission on Federal Paperwork. I heartily support a suggestion of my colleague, Charles Vanik, who told the Commission that agencies should request information only after it is determined that it can be obtained through other than costly methods.

Finally, I wish to commend this group for overseeing the pension law. I firmly believe that together the two houses of Congress and the Labor and Treasury Departments can scrape the red tape from ERISA, so that it is a law that encourages rather than constricts and discourages pension plan benefits.

Senator NELSON. Our next witness will be the Honorable Donald C. Alexander, Commissioner of Internal Revenue Service, accompanied by Alvin D. Lurie, Assistant Commissioner of Employee Plans and Exempt Organizations.

STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER, INTERNAL REVENUE SERVICE; ACCOMPANIED BY ALVIN D. LURIE, ASSISTANT COMMISSIONER, EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS; AND CHARLES L. SAUNDERS, JR., DEPUTY CHIEF COUNSEL

Commissioner ALEXANDER. I am also accompanied, Mr. Chairman, by Mr. Charles L. Saunders, Jr., on my left, the Deputy Chief Counsel.

Senator NELSON. The committees appreciate your coming in this morning to discuss this important problem. I am well aware that you as Commissioner have been conscious in particular of the problem of small businesses in many, many ways, so we are happy to have you here this morning.

As a preliminary, at some stage I would like to have you comment on a letter from the Interstate Drop Forge Co., of Milwaukee, Wis. They have 350 employees.

Here is what the company said. I will just read part of the letter, which is two pages long, and have it inserted in the record:

Late in the summer of 1974, the President signed the "Employee Retirement Income Security Act of 1974" into law. I don't think that at the time any of us had any idea of what a costly piece of legislation this would become.

By the end of February 1975, our Company had completely amended our two non-contributory-pension plans to comply with the law at a cost of $10,260 in actuarial and legal fees.

By the end of December 1975, we had almost completed the required employee handbooks at a cost of $18,300 in fees to a communications consultant who at our request only provided us with a rough draft of the handbook. We did the rest of the work. Although we haven't gone to press yet, we estimate that it will cost about $2,000 to have the books printed.

The law also requires that every welfare plan—no matter how many participants; no matter whether it is contributory or non-contributory—have a plan document available for the employee's inspection. Our legal fees to comply with this part of the law were $3,500.

In addition, we needed an administrative manual for each pension plan so that our employees could understand how to administer the plans. The legal fees were $4,200.

The total of the costs listed above is $38,260. This does not include the cost of our own people's time in attending various seminars, meetings with our communications consultant, and meetings with attorneys. Since our current employment is slightly over 350 people, we have already spent about $100 per employee to comply with ERISA.

[The letter referred to by Senator Nelson follows:]

INTERSTATE DROP FORGE CO.,
Milwaukee, Wis., January 14, 1976.

HON. GAYLORD NELSON,
Senate Office Building, Washington, D.C.

DEAR SENATOR NELSON: Late in the summer of 1974, the President signed the "Employee Retirement Income Security Act of 1974", into law. I don't think that at the time any of us had any idea of what a costly piece of legislation this would become.

By the end of February 1975, our Company had completely amended our two non-contributory pension plans to comply with the law at a cost of $10,260 in actuarial and legal fees.

By the end of December 1975, we had almost completed the required employee handbooks at a cost of $18,300 in fees to a communications consultant who at our request only provided us with a rough draft of the handbook. We did the rest of the work. Although we haven't gone to press yet, we estimate that it will cost about $2000 to have the books printed.

The law also requires that every welfare plan—no matter how many participants; no matter whether it is contributory or non-contributory—have a plan document available for the employee's inspection. Our legal fees to comply with this part of the law were $3500.

In addition, we needed an administrative manual for each pension plan so that our employees could understand how to administer the plans. The legal fees were $4200.

The total of the costs listed above is $38,260. This does not include the cost of our own people's time in attending various seminars, meetings with actuaries, meetings with our communications consultant, and meetings with attorneys. Since our current employment is slightly over 350 people, we have already spent about $100 per employee to comply with ERISA.

So much for history. We must now turn to you for help in the following pending matters:

1. Revenue Procedure 75-49, Guidelines for Advance Determinations on Vesting Schedules, was issued in November 1975. It requires that each employers seeking an advance determination letter on its pension plan either prove that the turnover rate of rank-and-file employees is not greater than 2 times that of its officers and/or 5% shareholder-employees or comply with the "four-forty" vesting schedule prescribed in the Revenue Procedure. Not only would Revenue Procedure 75-49 create a substantial burden for plan administrators but it would not accomplish its intended purpose of preventing discrimination against rank-and-file employees.

Technical Information Release 1424 issued December 9, 1975 permits processing of advance determination letters. Any advance determination letter issued to the applicant will then contain a caveat to the effect that the letter is not a determination as to whether the plan satisfies the requirements of Rev. Proc. 75-49.

I urge that you exercise your influence to see to it that Revenue Procedure 75-49 is repealed.

2. The IRS also issued Revenue Ruling 75-480, a modification to Revenue Ruling 71-446, in November 1975. Under this ruling, offset plans may no longer calculate the social security offset for early retirement by the pro-rata method which assumes constant future earnings. The "zero future earnings" assumption for determining the social security offset must be used. This change will cause the unnecessary expenditure of time and money to conform many existing plans which do not presently violate ERISA.

3. Regulations issued by the IRS in September 1973 change the initial content of ERISA as to joint and survivor annuities so that both of our plans which have already been rewritten to comply with the law will have to be amended to comply with the temporary and proposed regulations.

I hope I have made it obvious that I am irritated by not only the costs but the administrative burden of this wave of legislation by regulation. It is apparent that the plan administrators in other companies are even more irritated than I am since there have been over 5000 pension plan terminations since the passage of ERISA. Instead of complying with the rules in the new law these companies have decided to not have pension plans at all.

I am posting a copy of this letter on our employees' bulletin board and will do the same with a copy of your reply.

Yours truly,

JOHN R. PHILLIPS,
Treasurer.

Senator NELSON. I have no reason to doubt this the expenditures the company says it made. If this is an accurate computation of the costs—not including the overhead costs of their own employees—it is a real shocker to me. As one who conducted the hearings and was an advocate of the pension reform legislation, I think if I had known all this trouble was going to come from it, I would have voted against it on the ground that the cure is worse than the disease.

Now, could you comment on that?

Commissioner ALEXANDER. Well, Mr. Chairman, I would hesitate to comment upon the size of the fees charged by the entities described in that letter, whether the fees are reasonable or whether under some circumstances they might be a little high.

ERISA has been called the "full employment act for actuaries. accountants and lawyers" not without some reason. I am sure that Congress was aware that additional costs would be imposed upon employers by reason of the fact that additional requirements would be placed upon employers to secure certain promises implicit in retirement plans, which are the joint responsibility of the Department of Labor and the Internal Revenue Service, and welfare plans, which were described a moment ago, and which are the responsibility of the Department of Labor.

The costs that you described, Mr. Chairman, are disturbing. The administrative offices in the Department of Labor and in the Internal Revenue Service having responsibility for implementation of ERISA have a responsibility to see to it that that implementation is not so oppressive, is not so burdensome, is not so expensive as to call for termination of retirement plans.

I think, Mr. Chairman, that in the statement which I would like to file with your committee, but not read to you, we do bring into perspective this particular problem as to whether plans are terminating, as to whether the small plan is indeed disappearing from our scene by reason of the paperwork burdens imposed by ERISA. There is little that we can do, actually there is nothing that we can do, to change the legal requirements set forth by Congress with respect to the funding, among other things, of retirement plans.

But we can do our best to meet objectives which we share with Congressman Erlenborn, and which he described a few minutes ago, that we "well-intentioned bureaucrats," isolated perhaps from the real world, do not impose such burdens on that real world by inadvertence or otherwise as to preside over the demise of retirement plans as we have known them; and retirement plans as we have known them have not reached the zero population growth by any means.

The figures that Congressman Erlenborn described must be placed in context, as we would propose to place them in a short time; and I think you will see that plans have continued to grow at a pace far exceeding their demise, though plans indeed are shifting in design perhaps because of additional burdens placed by ERISA to secure the rights described in the typical pension plan. Perhaps people are shifting to defined contribution plans and changing present plans, defined benefit plans, into profit-sharing plans in which the promise of the pension is based upon what is in the plan rather than the other way around, where what is in the plan must be sufficient to meet the promise of the pension.

Senator NELSON. Well, Congressman Erlenborn recited the history that you heard in his testimony. He referred to EBS-1, the 20-page form he called a "monster" and the fact that the Labor Department sent out notice that you can ignore everything on pages 3 to 20, and you can fill this out the next time around and so on.

Then the information requested in the forms have been cut down again after the September-October publication of the revised forms. So what shocks me is why is it necessary to go through all that stuff in the first place?

Commissioner ALEXANDER. One of the reasons why it is necessary, Mr. Chairman, is shown by a review of ERISA itself, the bill is some 200 pages long, including the table of contents. Section 103 describing what is to be contained in the annual report begins on page 13 near the middle, small print, single space, and continues through the top third of page 19 of the bill.

Now, I wouldn't intrude upon this committee by suggesting that I should read this into the record, but I would certainly appreciate, Mr. Chairman, your making this a part of the record to show where the problem originated. This ship started with barnacles on it, the barnacles that Congressman Erlenborn described.

Senator NELSON. That section that you refer to, what is the citation so the reporter can include the material?

Commissioner ALEXANDER. This is section 103 of the Employee Retirement Income Security Act dealing with the annual report required of employee benefit plans to be filed with the Department of Labor.

I am touching now on the first part of the problems as outlined by Congressman Erlenborn.

Senator NELSON. And it runs from where to where?

Commissioner ALEXANDER. Page 13 to page 19, the top third of page 19, small print, single space. I think it would take me 15 minutes to read it. I am a slow reader.

Senator NELSON. We will spare us that, but it will be printed in the record at the appropriate place, which may very well be right here.

[Section 103 of the Employee Retirement Income Security Act follows:]

PUBLIC LAW 93-406—PLAN DESCRIPTION AND SUMMARY PLAN DESCRIPTION

SEC. 102. (a)(1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 104(b). The summary plan description shall include the information described in subsection (b), shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 104(b)(1).

(2) A plan description (containing the information required by subsection (b)) of any employee benefit plan shall be prepared on forms prescribed by the Secretary, and shall be filed with the Secretary as required by section 104(a)(1). Any material modification in the terms of the plan and any change in the information described in subsection (b) shall be filed in accordance with section 104(a)(1)(D).

(b) The plan description and summary plan description shall contain the following information: The name and type of administration of the plan; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator), a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 503 of this Act).

ANNUAL REPORTS

SEC. 103. (a) (1) (A) An annual report shall be published with respect to every employee benefit plan to which this part applies. Such report shall be filed with the Secretary in accordance with section 104(a), and shall be made available and furnished to participants in accordance with section 104(b).

(B) The annual report shall include the information described in subsections (b) and (c) and where applicable subsections (d) and (e) and shall also include—

(i) a financial statement and opinion, as required by paragraph (3) of this subsection, and

(ii) an actuarial statement and opinion, as required by paragraph (4) of this subsection.

(2) If some or all of the information necessary to enable the administrator to comply with the requirements of this title is maintained by—

(A) an insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account,

(B) a bank or similar institution which holds some or all of the assets of the plan in a common or collective trust or a separate trust, or custodial account, or

(C) a plan sponsor as defined in section 3(16) (B),

such carrier, organization, bank, institution, or plan sponsor shall transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year (or such other date as may be prescribed under regulations of the Secretary).

(3) (A) Except is provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b) (3) of this section and the summary material required under section 104(b) (3) present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report. In a case where a plan is not required to file an annual report, the requirements of this paragraph shall not apply. In a case where by reason of section 104(a) (2) a plan is required only to file a simplified annual report, the Secretary may waive the requirements of this paragraph.

(B) In offering his opinion under this section the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b) (3) (G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(D) For purposes of this title, the term "qualified public accountant" means—

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

(4) (A) The administrator of an employee pension benefit plan subject to the reporting requirement of subsection (d) of this section shall engage, on behalf of all plan participants, an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section. In a case where a plan is not required to file an annual report, the requirement of this paragraph shall not apply, and, in a case where by reason of section 104(a) (2), a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section—

(i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

(ii) represent his best estimate of anticipated experience under the plan.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of this title, the term "enrolled actuary" means an actuary enrolled under subtitle C of title III of this Act.

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under section 103(b) as to which any qualified public accountant has expressed an opinion, if he so states his reliance.

(b) An annual report under this section shall include a financial statement containing the following information:

(1) With respect to an employee welfare benefit plan: a statement of assets and liabilities; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of any significant changes in plan benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling of determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of such pension plan.

(3) With respect to all employee benefit plans, the statement required under paragraph (1) or (2) shall have attached the following information in separate schedules:

(A) a statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the plan, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this subsection; and

(H) a schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction. For purposes of the preceding sentence, the term "reportable transaction" means a transaction to which the plan is a party if such transaction is—

(i) a transaction involving an amount in excess of 3 percent of the current value of the assets of the plan;

(ii) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a plan year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the plan;

(iii) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the plan year exceeds 3 percent of the current value of the assets of the plan; or

(iv) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the plan year respecting a security is required to be reported by reason of clause (i).

(4) The Secretary may, by regulation, relieve any plan from filing a copy of a statement of assets and liabilities (or other information) described in paragraph (3)(G) if such statement and other information is filed with the Secretary by the bank or insurance carrier which maintains the common or collective trust or separate account.

(c) The administrator shall furnish as a part of a report under this section the following information:

(1) The number of employees covered by the plan.

(2) The name and address of each fiduciary.

(3) Except in the case of a person whose compensation is minimal (determined under regulations of the Secretary) and who performs solely ministerial duties (determined under such regulations), the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian.

(5) Such financial and actuarial information including but not limited to the material described in subsections (b) and (d) of this section as the Secretary may find necessary or appropriate.

(d) With respect to an employee pension benefit plan (other than (A) a profit sharing, savings, or other plan, which is an individual account plan, (B) a plan described in section 301(b), or (C) a plan described both in section 4021(b) and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section (301a)) an annual report under this section for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) The date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed.

(2) The date and amount of the contribution (or contributions) received by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) The following information applicable to the plan year for which the report is filed: the normal costs, the accrued liabilities, an identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to determine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 302.

(4) The number of participants and beneficiaries, both retired and nonretired, covered by the plan.

(5) The current value of the assets accumulated in the plan, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 302 and a statement explaining the basis of such valuation of present value of assets.

(6) The present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories as set forth in section 4044 of this Act, and the actuarial assumptions used in these computations. The Secretary shall establish regulations defining (for purposes of this section) "termination priority categories" and acceptable methods, including approximate methods, for allocating the plan's liabilities to such termination priority categories.

(7) A certification of the contribution necessary to reduce the accumulated funding deficiency to zero.

(8) A statement by the enrolled actuary—

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the requirements of section 302(c)(3) (relating to reasonable actuarial assumptions and methods) have been complied with.

(9) A copy of the opinion required by subsection (a)(4).

(10) Such other information regarding the plan as the Secretary may by regulation require.

(11) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under section (a)(4) of this section.

(e) If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the plan year and enumerating—

(1) the premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service, or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

Senator NELSON. Without being able to recall all the provisions of the section you refer to, that does not explain to me the original Labor Department form of 20 pages that Mr. Erlenborn was referring to as a "monster". If they could cut the forms down, they must have been still in compliance with the statutory requirements.

Commissioner ALEXANDER. Well, this really goes to the 5500 form to which Mr. Erlenborn referred.

Senator NELSON. As Mr. Erlenborn stated in his testimony, that Congress was not guiltless itself in terms of the specific requirements it made, which may very well require excessive paperwork. I wonder, would it be possible, and would you be willing to present to the committee your suggestions on specific statutory requirements which you think are unnecessary in order to have a practical administration of pension plans?

Commissioner ALEXANDER. We will be glad to work in coordination with the Department of Labor to this effect, Mr. Chairman. This is a joint undertaking.

Senator NELSON. I understand that. I will put the same question to the Department of Labor, because if there are basic changes in the law which should be made to make the administration easier and the paperwork less, I don't think there would be any problem in getting Congress to pass them. However, what all of us so frequently see—and it runs through any governmental agency no matter what they are doing, building a building or what-have-you—everybody sets up standards in such great detail in order to cover every possible contingency in order to protect everybody from any possible criticism. So that in order to get at one-half of 1 percent of what the problem might be, you monstrously burden the remaining 99.5 percent of the people involved.

That is very frustrating to see happen. I am not addressing myself to any specific part of this law now, but there are many, as you know as well as I. There are lots of ways to enforce a law. If somebody is guilty of some criminal violation, they can be prosecuted. It would be a whole lot better that the rare instance that occurs be prosecuted, rather than try to draft a form which would supposedly make it impossible for any crook ever to get by for one minute with cheating.

I would rather see some cheaters prosecuted subsequently than to burden the whole system so badly that the cost-benefit ratio of catching that small percentage is so high it isn't worthwhile.

Commissioner ALEXANDER. Mr. Chairman, that is the way that the Internal Revenue Service attempts to approach this problem of requiring the submission of information from the public, and that is the way that the Paperwork Commission, to which Congressman Erlenborn referred and of which I am a member—proposes to review the various agencies to make certain they are living up to their obligation to demand from the public only that which is mandated by statute directly or in fulfillment of a particular mission, and only that which, when there is discretion as to whether to require it, is clearly justified in terms of the benefit to the public exceeding both the direct and indirect costs to the public of securing, assembling, assimilation, and doing something with the information.

Senator NELSON. Go ahead, sir.

Commissioner ALEXANDER. Mr. Chairman, I have a long prepared statement. With your permission I do not intend to read it but I would like to have it submitted.

Senator NELSON. It will be printed in full in the record and you may summarize the main points however you desire. If you wish to comment on any of the testimony that was taken yesterday or any of Mr. Erlenborn's this morning, we would be glad to have your comments on it. I think the committee probably would like when the hearings are over, after looking at the record, to submit some specific questions on issues that have been raised and are not resolved by the testimony.

We would like to submit questions for your comments, perhaps even after the record is closed.

Senator BYRD. Can I ask a question at this point, Mr. Chairman?

Senator NELSON. Yes.

Senator BYRD. Do you feel that small business can fill out the form that is required by your organization and the one by the Department of Labor without professional help?

Commissioner ALEXANDER. Some of it cannot be filled out without professional help because certain specific things specifically require outside professionals. The accountants' report to which Congressman Erlenborn referred and which I am sure will be discussed by the NSPA witnesses, and the actuarial report, too, are two examples. Now, much of the form, we hope, can be filled out without the necessity of high-priced outside help of the kind to which the chairman referred in the letter which he read a few minutes ago.

We are deeply concerned about the problem of imposing such heavy costs upon employers that they will not have the money that they need to contribute to these retirement plans.

Senator BYRD. Not only that, the Government is paying half that cost.

Commissioner ALEXANDER. Yes, it is, because the costs are tax deductible, the Government is paying the top part of that cost, whatever it may be.

Senator BYRD. Well, are you simplifying the form that will come out as compared to the form you have sent out before?

Commissioner ALEXANDER. We certainly are, Senator Byrd. We had two long meetings back on November 24 and 25 in my conference room where we examined each item on our two major forms, form 5500 that has been previously referred to, our annual return form which we share with the Department of Labor; and form 5329, the return for an individual retirement savings arrangement. If any form should be simple, that form should be.

We examined each item on these forms to see why it was required, whether the statute mandated us to obtain it, or whether we had discretion to obtain it. If we had any discretion, then why was this item necessary in fulfillment of our particular responsibility? And the burden of carrying the proof was on the proponent of the question.

We also examined these questions to see whether they were written in the English language, not in some bureaucratic version of the language but in the English language that can be understood, we hope, by most people. I cannot say that everyone understands the English language. I am deeply concerned about the report of the Office of Education that says that about 24 percent of the people are functionally illiterate. There is nothing we can do there as an agency except to work with them and help them.

Senator BYRD. If you get it written in the English language you have made a great accomplishment.

Commissioner ALEXANDER. I am sorry to say we have not completely accomplished writing form 5329 in the English language, because one thing Mr. Lurie and I picked up too late. It refers to "any individual" and then refers to that individual as "their," rather than "his or hers." But I hope this type of mistake will be forgiven.

Senator BYRD. I am more concerned about understanding the damn thing. I am not so concerned about the grammar.

Commissioner ALEXANDER. We hope it is as understandable as a government form may be, and we will do our best to assist people to understand it if it mystifies them at first glance. This form is a bare-bones form. Most of it need not be filled out by people unless their circumstances are quite exceptional, the first page contains more white space than questions, and we like that.

Senator BYRD. Thank you.

Thank you, Mr. Chairman.

Senator NELSON. OK, Commissioner Alexander, you may go ahead.

Commissioner ALEXANDER. Mr. Chairman, much has been stated, I am sure, at the hearing yesterday, and also in the letters that you have received from constituents and in letters we have received, about our famous Revenue Procedure 75-49. This is discussed in my written statement. We had a problem here.

This procedure was an effort on the part of IRS to carry out what we perceived as the statutory mandate to implement a nondiscrimination requirement that has been basic in the retirement tax law since it began and is now contained in sections 411(d)(1)(B) and 401(a)(4) of the Code, and was set forth with reasonable specificity on pages 276 and 277 of the conference report.

We published this revenue procedure and we found on the basis of numerous comments from the public that we went too far.

Yesterday, we issued Technical Information Release 1441 in a further effort to provide a temporary and workable and useful alternative to a previous Revenue Procedure 76-1 that we had issued to encourage the unimpeded processing of advance determination letter applications for approvals of plans which would have been covered by our 75-49 Revenue Procedure. T.I.R. 1441 was an effort to supply objective guidelines for determining whether the type of vesting detailed in the conference report would be required by the Internal Revenue Service.

Congressman Erlenborn's statement described the conditions set forth in our Technical Information Release 1441. We think it practical and sensible. We hope the public finds it to be so.

We would like to submit for the record a copy of the Revenue Procedure.

Senator NELSON. This is a substitute?

[The material referred to above follows:]

INTERNAL REVENUE SERVICE TECHNICAL INFORMATION RELEASE 1441

The Internal Revenue Service today announced that, in view of extensive comments received from the public, it is giving further consideration to Rev. Proc. 75-49, 1975-48 I.R.B. 34, and, pending completion of such reconsideration, is today issuing new revenue procedure which modifies the manner in which Rev. Proc. 75-49 will be applied by the Service, by making satisfaction of its tests optional only. Rev. Proc. 75-49 provides tests for determining when the "4-40 vesting" rate set forth therein is required by the Service to satisfy the nondiscrimination requirement of section 401(a)(4) of the Internal Revenue Code of 1954 for purposes of an advance determination letter.

The Revenue Procedure which follows preserves the tests of Rev. Proc. 75-49 only as one of three alternative ways that an employer can demonstrate that the vesting provisions of an employee plan are nondiscriminatory for purposes of an advance determination letter. The Revenue Procedure also provides employers with two additional alternatives to Rev. Proc. 75-49 for the same purpose, and is designed to permit employers adopting new plans or amending existing plans to obtain advance determination letters without delay, pending the reconsideration of Rev. Proc. 75-49.

Until final guidelines are published as a result of the reconsideration of Rev. Proc. 75-49, an applicant for an advance determination letter can generally demonstrate that the vesting schedule of a plan satisfies the nondiscrimination requirement of section 401(a)(4) of the Code on the basis of any one of the following: (a) compliance with the tests in Rev. Proc. 75-49 (the "75-49 test"), (b) a prior favorable determination letter (the "prior letter test"), or (c) the facts and circumstances surrounding the application for an advance determination letter (the "facts and circumstances test"),

Provided the plan's vesting schedule satisfies one of the three statutory minimum vesting standards under section 411(a)(2) of the Code (if applicable).

As a further alternatives, an applicant may request (in a manner similar to that provided in T.I.R. 1424 issued December 9, 1975) that an advance determination letter be issued with a caveat to the effect that such letter is not a determination that the vesting schedule of the plan satisfies the nondiscrimination requirement. Since the procedure contained in TIR 1424 is restated in the Revenue Procedure below, TIR 1424 is superseded.

The Service noted that generally the adoption of one of the three statutory minimum vesting schedules of section 411(a)(2) is sufficient to satisfy the nondiscrimination requirement, but a more rapid vesting schedule may be required in cases where discrimination is likely to occur. The foregoing tests, i.e., the 75–49 test, the prior letter test, and the facts and circumstances test, will be employed by the Service, pending completion of the reconsideration of Rev. Proc. 75–49, in deciding whether any such more rapid vesting schedule will be required. Except where there has been a pattern of abuse or actual misuse of the plan in operation, a vesting schedule more rapid than 4–40 vesting will not be required in any case.

In appying the 75–49 test, the Service will determine that the vesting schedule of a plan is nondiscriminatory if the plan satisfies the tests contained in Rev. Proc. 75–49 either by (i) adoption of 4–40 vesting, or (ii) satisfaction of the "key employee test" or the "turnover test" (whichever test or tests are applicable).

For plans that have been the subject of a favorable determination letter which has not been revoked, the prior letter test may be available. The existence of such a letter will generally be accepted by the Service as demonstrating that the vesting schedule of the plan is not likely to be discriminatory in favor of employees who are members of the prohibited group. The rationale for this approach is that in issuing the prior determination letter, the Service had already determined that discrimination was not likely to occur as a result of the plan's vesting schedule. However, the percentage of vesting of each participant under the plan, as amended, must be no less (at every point) than provided under the vesting schedule upon which the most recent prior determination letter was based. Moreover, in rare and unusual cases (including but not limited to cases where there has been a pattern of abuse or actual misuse in operation of the plan), the Service may conclude that a prior determination letter will not be treated as demonstrating nondiscrimintaion. Any comments received from interested parties will be considered by the Service in this connection.

For all plans, as a further alternative, the facts and circumstances approach heretofore used by the Service may be applied to determine whether the prohibited discrimination is likely to occur.

The Service emphasized that the tests described above are applicable only if a plan satisfies one of the three statutory minimum vesting standards, and, further, that each of the above tests is an independent alternative. Thus, for example, the failure to comply with the requirements of Rev. Proc. 75–49 shall not be taken into account in determining whether a prior determination letter, or the facts and circumstances, are sufficient to demonstrate nondiscrimination.

The new Revenue Procedure issued today, which includes the modification of Rev. Proc. 75–49 making it applicable only as one of several atlernatives, is intended to be interim only, i.e., pending completion of the reconsideration of Rev. Proc. 75–49, and may be used in conjunction with the Special Reliance Procedure announced by T.I.R. No. 1416 (Nov. 5, 1975). Guidelines published as a result of reconsideration of Rev. Proc. 75–49 will be applied to any plan submitted for an advance determination letter more than 30 days after final publication of such guidelines.

Such guidelines published following reconsideration of Rev. Proc. 75–49 will not be applied retroactively. Thus, any plan which, under this interim procedure, has been the subject of a favorable advance determination letter on the basis of one of the alternatives described above (other than the alternative of a letter with a caveat) will not be required, for determination letter purposes, to provide, on a retroactive basis, vesting faster than that approved under a determination letter issued on the basis of any such alternative. Moreover, any such plan for which such a determination letter has been issued will not be required to comply with guidelines resulting from the reconsideration of Rev. Proc. 75–49 prior to the later of (a) the first day of the first plan year commencing more than 30 days after publication of such guidelines, or (b) the end of any Reliance Period determined in accordance with T.I.R. 1416 if the Special Reliance Procedure is followed.

The Service also announced that any general guidelines resulting from a reconsideration of Rev. Proc. 75–49 will be published first in proposed form with full opportunity for public comment.

The Revenue Procedure which follows is effective immediately and will be published in Internal Revenue Bulletin No. 1976- 9, dated March 1, 1976.

PART III—ADMINISTRATIVE, PROCEDURAL AND MISCELLANEOUS MATTERS

26 CFR 601.201: Rulings and determination letters. (Also Part I. Sections 401, 411.)

Rev. Proc. 76–11 Section 1.—Purpose—

This Revenue Procedure provides guidelines which will be followed by the Internal Revenue Service for the purposes of an advance determination letter under section 601.201(o) of the regulations (Statement of Procedural Rules), with respect to whether the vesting schedule of an employee plan is likely to result in discrimination in favor of employees who are officers, sharholders, or highly compensated (the "prohibited group"). These guidelines are concerned only with whether a faster vesting rate than would otherwise be required is appropriate for advance determination purposes due to actual or potential discrimination in favor of the prohibited group. This Revenue Procedure modifies Rev. Proc. 75–49, 1975–48 I.R.B. 84, and is designated part of the ERISA Guidelines previously listed in TIR–1415.

Sec. 2.—Background

.01 In general, a plan which contains a vesting schedule which satisfies the requirements of section 411(a)(2) of the Internal Revenue Code of 1954 shall be treated as satisfying the requirements of section 401(a)(4) of the Code (the general nondiscrimination requirement). Section 411(d)(1)(B) of the Code, however, provides, that additional vesting may be required if "there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders or highly compensated." Rev. Proc. 75–49 was issued by the Service to implement sections 401(a)(4) and 411(d)(1)(B) of the Code on the basis of the guidelines set forth in the Conference Committee report accompanying the Employee Retirement Income Security Act of 1974.

.02 Comments received by the Service suggested that a large number of employers may not be able to show compliance with Rev. Proc. 75–49 without the "4-40 vesting" rate set forth therein. That Revenue Procedure is now being reconsidered by the Service.

.03 Pending completion of reconsideration of Rev. Proc. 75–49, the Service, for purposes of an advance determination letter with respect to the qualified status of an employee plan or trust under section 401(a), 403(a), or 405(a) of the Code (whether or not such plan or trust is subject to section 411(a)(2) of the Code), will determine whether the vesting schedule of a plan is sufficiently rapid to prevent actual or potential discrimination in favor of the prohibited group (i.e., whether there has been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of such employees) on the basis of any one of the three tests in Section 3 below.

Sec. 3.—Tests for advance determination letters

.01 Pending completion of reconsideration of Rev. Proc. 75–49, the Service shall treat the vesting schedule of a plan as satisfying the requirements of section 401(a)(4) of the Code for purposes of issuing a favorable advance determination letter if (a) the plan satisfies the minimum vesting requirements of section 411(a)(2) of the Code (if applicable), and, in addition, (b) any one of the following conditions is satisfied:

(1) the plan complies with the tests contained in Rev. Proc. 75–49, either by (i) adoption of 4-40 vesting, or (ii) satisfaction of the "key employee test" or the "turnover test" (whichever test or tests may be applicable); or

(2) in the case of any plan which had previously been the subject of a favorable advance determination letter which has not been revoked, the percentage of vesting of each participant provided under the plan, as amended, is not less (at every point) than that provided under the vesting schedule of the plan upon which such most recent prior determination letter was based; or

(3) there is a demonstration, to the satisfaction of the Service, on the basis of all the facts and circumstances that there has not been, and that

there is no reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of the prohibited group.

.02 In rare and unusual cases (including but not limited to cases where the Service finds that there has been a pattern of abuse under the plan, such as a dismissal of employees before their accrude benefits become nonforfeitable, or actual misuse in operation of the plan), the Service may, in its discretion, not treat a prior outstanding determination letter as providing a basis for satisfying the test set forth in paragraph (2) of subsection 3.01. Any comments received from interested parties will be considered by the Service in this connection.

.03 Paragraphs (1), (2), and (3) of subsection 3.01 are independent alternative tests. Thus, the fact that a plan fails to satisfy one of the tests shall not be taken into account in determining whether a plan satisfies any of the other tests.

.04 In the case of any plan which otherwise fails to satisfy any of the tests set forth in this Section 3 (and for which the alternative described in Section 4 below has not been requested), such plan shall not be required by the Service to provide a vesting schedule more rapid than 4–40 vesting as a condition to the issuance of a favorable advance determination letter, except, however, that the Service may require vesting more rapid than 4–40 vesting if there has been a pattern of abuse under the plan or actual misuse of the plan in operation which affects the qualified status of the plan or trust.

Sec. 4.—Determinations without regard to discrimination in vesting

.01 In addition to the alternatives available to any plan to obtain a favorable advance determination letter on the basis of Section 3 above, pending completion of the reconsideration of Rev. Proc. 75–49 an applicant may request in writing that its application be processed without regard to whether the vesting provisions of the plan satisfy the nondiscrimination requirement of section 401(a)(4) of the Code. However, an advance determination letter issued to such an applicant will contain a caveat to the effect that such letter is not a determination as to whether the vesting provisions of the plan satisfy the nondiscrimination requirements of section 401(a)(4) of the Code.

.02 During the interim period pending the reconsideration of Rev. Proc. 75–49, an applicant which does not request in writing that its application be processed under Section 4.01 above will have its application processed according to the procedures set forth in Section 3 above. At any time prior to the issuance of an advance determination letter, however, the applicant may make or withdraw such request.

.03 Upon publication of final guidelines resulting from the reconsideration of Rev. Proc. 75–49, an applicant to which had been issued an advance determination letter containing the caveat described in this section may request, upon satisfying such guidelines, to have the caveat in its advance determination letter deleted. Such request shall be considered a continuation of the previous request for an advance determination letter, and will, therefore, not require either the filing of a new Application for Determination form or additional notification of interested parties.

Sec. 5.—Relationship of this Revenue Procedure to ERISA guidelines and special reliance procedure

.01 This Revenue Procedure incorporating the foregoing rules is part of the ERISA Guidelines initially announced by the Service in Technical Information Release No. 1415 (November 5, 1975), and, therefore, may be applied in conjunction with the Special Reliance Procedure announced in Technical Information Release No. 1416 (November 5, 1975).

.02 In this context, the following rules shall be applicable with respect to any application for an advance determination letter (other than an application for an advance determination letter on the basis of Section 4 above):

(1) As is generally the case with respect to rules incorporated within the ERISA Guidelines, the application of this procedure in determining whether the vesting provisions of a plan satisfy the nondiscrimination requirement of section 401(a)(4) of the Code shall remain in effect pending the publication of final regulations or other rules which amend or supplement the ERISA Guidelines (in this case, the publication of final guidelines resulting from the reconsideration of Rev. Proc. 75–49).

(2) With respect to any plan which shall have been submitted to the Service for an advance determination letter prior to the 31st day following the date

of publication of the final guidelines resulting from the reconsideration of Rev. Proc. 75-49, the determination as to whether the vesting provisions of such plan satisfy the nondiscrimination requirement of section 401(a)(4) of the Code shall be made on the basis of the rules described in Section 3 above.

(3) If a favorable advance determination letter has been issued with respect to any plan upon satisfaction of the rules of Section 3 above, an amendment of the provisions of such plan, to the extent necessary to conform to the requirements of final guidelines resulting from the reconsideration of Rev. Proc. 75-49, shall in no event be required to be effective prior to the first day of the first plan year commencing after the 30th day following the date of publication of such guidelines, or, in the case of a plan which satisfies all the requirements of the Special Reliance Procedure, the first day of the first plan year commencing after December 31, 1976, if later.

.03 With respect to any plan which is submitted to the Service for an advance determination letter under Section 4 above, a plan will not be considered to fail to satisfy the ERISA Guidelines merely because it follows such procedure. However, as part of its reconsideration of Rev. Proc. 75-49, the Service will consider whether final guidelines published as a result of such reconsideration will require, in the case of any plan which has been issued a determination letter with the caveat described in Section 4 above, retroactive amendments to conform to such guidelines.

Sec. 6.—Scope of revenue procedure

This Revenue Procedure applies solely for purposes of advance determination letters, and therefore does not apply in the case of a determination with respect to the qualified status of a plan or trust upon an audit of its operations under section 401(a), 403(a), or 405(a) of the Code. This Revenue Procedure also does not apply in determining whether re htsaeh fi
cedure also does not apply in determining whether there has been a pattern of abuse under the plan (such as the dismissal of employees before their accrued benefits become nonforfeitable) or actual misuse in the operation of the plan which affects the qualified status of the plan or trust.

Sec. 7.—Effect on other documents

Rev. Proc. 75-47, 1975-48 I.R.B. 32, is hereby amplified. Rev. Proc. 75-49, 1975-48 I.R.B. 34, is hereby modified, so as to make it operative optionally, in the manner hereinabove indicated.

Sec. 8.—Effective date

This Revenue Procedure applies to determination letters issued after February 2, 1976.

Commissioner ALEXANDER. This is not a substitute for 75-49. This is an interim procedure permitting people to go forward with amending their retirement plans for our reliance period, specified in the special reliance procedure which we issued last fall, pending the completion of the reconsideration that we are now giving to 75-49. We are trying to strike this difficult balance between implementing the nondiscrimination requirements of the statute and being practical about it.

Senator NELSON. One of the statistics furnished by the staff in reference to revenue procedure 75-49, states that the testimony of yesterday indicated that about 95 percent of existing plans would be required to comply with the "4-40" vesting requirement in this revenue procedure.

Do you agree with that statistic?

Commissioner ALEXANDER. It seems a little high to me because the plans included in the 4-40 rule are only a segment of the plan universe, because 75-49 does not affect to about half the plans. So we first should eliminate that half, of course, or more than half. Then we can talk about 75-49.

The half of the plans I am talking about are the small profit-sharing plans, small employers. Having spent about 20 years in this field, I believe small profit-sharing plans are not hurt by 4–40. How about you Mr. Lurie?

Mr. LURIE. That is true. I have heard the comment made just within the last several days that for them, 4–40, and I am speaking of the very small plans, was a boon because they previously could not get a plan qualified with a vesting rate as slow as 4–40; so you will find an awful lot of people that will find the 4–40 rate in 75–49 a very acceptable rate. Now, it is true that that group will have to observe 4–40, but under prior rules they might have had to observe 2–20 or 2–40; so the effect of 75–49 on them has to be understood in context.

Commissioner ALEXANDER. They normally have immediate vesting, or 5-year vesting, 20 percent a year or 10 percent a year. So we have a different universe. Now the universe covered by 75–49 finds it very very disturbing and this universe is important to us because we are certain that a great number of workers are covered by it.

Senator NELSON. Well, the statutory requirement which I recall did not include the "4–40," of course, the three I remember are 5–15 or zero–10 or the rule of 45.

Commissioner ALEXANDER. Those are the vesting schedules set forth in the statute, but also in the statute are the two sections that I referred to, section 401(a)(4) and 411(d)(1)(B) which implement the antidiscrimination rule in the statute basically contained in 401(a)(4).

Now these sections do not specify particular vesting schedules. But the provision of the conference report to which I referred does set forth a clear schedule no greater than 4–40 in the implementation of the antidiscrimination rules.

You see, "Cliff" vesting, 10 years with no vesting for the first 9 and full vesting in the 10th year, may lead to violation of the antidiscrimination rule if, for example, the owner and the most highly compensated employee of the corporation decides to fire all his workers other than himself at the end of the 9th year. Now, clearly, the benefits granted in the Internal Revenue Code, the unprecedented benefits granted for contributions to and distributions from retirement plans, are not designed to be given to a person engaging in such a practice, and the Internal Revenue Service has an obligation to implement the statutory prohibition against discrimination.

Senator NELSON. There is another section in the statute on prohibiting firing for that purpose; is there not?

Commissioner ALEXANDER. Yes, that is 411(d)(1)(A), where there is a pattern of abuse tending to discriminate. But 411(d)(1)(B) states that "a plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of 401(a)(4)," the antidiscrimination rule, unless there has been, or reasonably will be, "an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders, or highly compensated.

So if there is, or if we have reason to believe that there will be if we can reasonably think that there will be an accrual of benefits or forfeitures tending to favor this priority class, then a plan which satisfies the requirements of the section containing the requirements you mentioned may still not satisfy the vesting requirements when the antidiscrimination rule is applied.

So this is what we are trying to implement, Mr. Chairman. The question is whether we overshot the mark. We are reconsidering 75–49 and have issued, as of yesterday, a practical way for the many plans that have prior favorable determination letters to proceed without waiting upon our final determination that will result from our reconsideration of 75–49.

We want people to move, we want to help them move. At the same time, we have this obligation mandated by statute to implement the antidiscrimination rule.

Mr. LURIE. I think it is important to understand, Senator, that there is now no requirement under our new rule that a plan must observe 75–49. 75–49 continues to exist as an alternative, purely an optional alternative, it is there when it will serve the purposes of the plan. As we pointed out, many plans can happily use the 4–40 rate, or can readily satisfy the tests of 75–49, and for them they will be able to demonstrate that and use 75–49 to their benefit. However, obviously, as the Commissioner indicated, there are others for whom 75–49 was not really intended, who may find it difficult to use it; and for them, in the announcement of yesterday, we have provided two very specific alternatives, making it unnecessary for them to pay 1 minute of attention to 75–49. Those alternatives, as the Commissioner indicated in his statement would be for those that have had a favorable letter in the past, to use that letter as a passport that will take them through the qualification process on this interim basis. For those who have not gotten a favorable letter, or want to change in some way their earlier vesting rate, they also can come to us and say, "We do not want to rely on our letter, we do not want to use 75–49, we want to be able to present ourselves on the basis of our facts and circumstances and prove that we are entitled to the vesting rate that we have now provided in this plan, which is not 4–40 because our vesting rate does not tend to discriminate in favor of the prohibited group." All of these alternatives are now fully available and will permit plans that have been holding back from this special reliance procedure, that the Commissioner alluded to, to now fully use that procedure, come through the process, and for all practical purposes treat 75–49 as if it never existed unless it will serve their purposes. In those cases, they will be able to use it.

Senator NELSON. Thank you

Go ahead.

Commissioner ALEXANDER. Mr. Chairman, in my written statement I discuss the problems of reporting requirements and what we have done in an effort to simplify these requirements, and compare reporting requirements before the enactment of ERISA and the number of pages which people were required to file, with reporting requirements after enactment of ERISA.

I would like to touch briefly on the reporting requirements of the major segments of this universe.

In my statement I point out that IRS and the Department of Labor developed a 4½-page Form 5500, the annual return, the annual report, to which I previously adverted.

Also, there are some building block schedules to meet statutory requirements for actuarial information and other information. IRS does not require the filing of an accountant's statement. That is made clear in the revisions we currently are making to Form 5500. The total is 10½ pages maximum for large plans, plus the Department of Labor's accounting statement and a listing of all assets. This is to be compared with 27 pages which were required to be filed by such plans prior to enactment of ERISA; so if anything, ERISA has decreased the paperwork burden for these particular plans (although it has surely modified the burden, and surely the accountant's statement causes problems which have been referred to before in this hearing and will be discussed later).

Now, we are talking about the reporting requirements for the about 25,000 large corporate plans covering 30 million employees out of the total universe which we estimated at 35 million employees covered by ERISA.

We also reviewed our requirements relating to small corporate plans. And we reviewed our requirements relating to the time at which this form had to be filed. The Department of Labor is required to obtain reports under the statute for a plan year. The IRS, on the other hand, must use the employer's tax year. We attempted to find common dates in our original approach to this subject. After review and reconsideration we decided that we should extend the time for filing to 7 months rather than 4½ months, but the effort to obtain a common date created more problems than it solved.

But we did do our best, both of us, to try to devise simple and short plans for small employers. So we developed for small corporate plans, those with fewer than 100 participants——

Senator NELSON. Is that fewer than 100 or is that 100 and fewer?

Commissioner ALEXANDER. No, I may have said 100 and fewer before an appropriations committee, but I should have said fewer than 100. In this area about 475,000 out of the 500,000 plans are included. These are the plans that can't afford the heavy expenditures that you have described, although the case you describe would be covered by 5500 because that employer had more than 300 employees.

But for these employers of less than 100, this vast majority of the ERISA population, we are developing a two-page Form 5500–C to be filed with both IRS and the Department of Labor, actually only one page with IRS, plus a 1½-page Form 5504 to be filed with IRS to support income tax deductions.

Now, if the plan is a typical pension plan, a defined benefit plan, schedule B actuarial information with an attachment which we don't believe will normally exceed one page, is required by both IRS and DOL. If the plan is funded by insurance contracts, a 1½ page schedule A insurance information, is required by the Labor Department but not by IRS.

The Labor Department also must have a listing of assets of a plan not wholly insured.

Senator NELSON. What basic problem do you get around, are you trying to resolve or meet when it involved 150 employees instead of 99?

Commissioner ALEXANDER. We had to draw line somewhere, Mr. Chairman. I believe that 100 and over represents historical, legal precedent in the Department of Labor, and "less than 100" is specifically set forth in the statute in a matter to which Congressman Erlenborn previously referred, in section 104 of ERISA, permitting the Secretary, by regulation, to prescribe simplified annual reports for these plans. So, the line was drawn by Congress.

Senator NELSON. That wasn't my question, my question was what is the nature of the problem that requires a much more detailed report in your judgment, if it is 150 or 300 employees, than if it is 99? What information are you getting from them that you obviously don't need from some plan of 99 employees?

Commissioner ALEXANDER. I'll have to discuss this specifically from the standpoint of the Department of Labor.

The accountant's report is required of large plans. The Secretary has the discretion to exempt small plans less than 100, and he chose to exercise that discretion. Certain of these requirements that were thought necessary were also perceived to be burdensome. The benefit of securing the information and making the information available to employees, for example, was thought to be exceeded by the cost of requiring the small employer to assemble, produce, and pay for this particular information, this particular service.

So, in equating the benefit and the cost in the example I gave, I am saying Congress permitted the Department of Labor to exercise its discretion and exempt small plans from the complex reporting requirements imposed upon the large.

Now, whether that line should have been drawn, and whether it should have been drawn at that particular number, is of course, a matter which Congress could reconsider.

Mr. Saunders. Do you have further comment on that?

Mr. SAUNDERS. Again, I am going to have to say that what you have been hearing a good deal about, for example, the accountant's statement and many of these other things, go to requirements that are imposed on the Department of Labor by section 103. And I think the Labor Department in many cases has felt, I suppose because these items are mandated here in these six pages of section 103, that they cannot or would have a difficult time simply ignoring what the law says except where the plan is less than 100, because there they were given specific authority. That is the only place they were given authority by the law to prescribe a simplified annual report form, as the statute states.

Senator NELSON. Is there any reason in your judgment, let's assume that your interpretation is correct, that Congress mandated a simplified form and let's assume that given that mandate your division point of 100 was perfectly a rational one, somebody might say it ought to be 150 or 200, but let's assume 100.

If you didn't have that requirement, could you just as well have a simplified form for all plans?

Mr. SAUNDERS. Senator, I am not an administrator, nor am I close to Labor's particular administrative problems, so I am unable to answer that particular question for them.

Commissioner ALEXANDER. I think Mr. Lurie, who does have this particular direct responsibility, can best answer that question.

Mr. LURIE. I would add one thing if I might before answering the question. There is a premise in your question that is not necessarily founded in fact. The Form 5500 that we have produced is a 4½-page form. Now, there are attachments, there is a schedule to it that flushes out some of the information that the form calls for; but the Form 5500 itself is a 4½-page form, not an extremely burdensome report, in fact, shorter than the previous reporting under 4848, 4849 and the 990(p) that obtained before enactment of ERISA.

Now, 5500 as we originally put it out in proposed form, was designed for plans large and small. We had gone to such effort to reduce the reporting burden on all plans, not merely the fewer than a 100 plans, but we had gone to an effort to reduce the reporting burden for plans small and large, so much so that we felt that it might have been even deceitful to put out a short form for the under 100 and a long form for the over 100. So, we proposed a single form 4½ pages long.

Now, when the comments came into us, we perceived that that was tactically an unsound approach, that Congress had indeed wanted to see further reduction in the burdens on small plans. So we boiled that form down as far as we could possibly boil it down to require basically, for this current year, as far as IRS is concerned, essentially only registration information: the name of the plan, the type of plan, the funding vehicle, very minimal data.

Now, that minimal data is not indeed sufficient for a full and complete administration down the line. We do need to know details with respect to the number of participants and the kinds of coverage, things that the form is designed to capture for us on our master files so we can conduct effective audit review down the line.

So, what we have done basically this year is to produce a bare bones minimal form for the under 100 on the theory that for this initial year their burdens are difficult enough in having to learn the new rules.

The larger plans, being able to utilize professional assistance where necessary, can, without any difficulty, I assure you, fill out the form 5500 in-house basically. It is not a difficult form. All one has to do is look at it, read the items and see that we have not imposed in 5500, even on the over 100's, a burden they cannot readily handle. I don't think there has been any disagreement on that. I don't think there has been any major complaint. The concern was for the little company that has no help available to it, there is a limit to what you can throw at it at one time. We have recognized that and produced a very skeletal form for it to comply with.

Senator NELSON. What is your response then to—and I don't know what all the details of the requirements are—but what is your response to the letter from the Milwaukee company that they spent $38,500 thus far on lawyers and accountants' fees and not counting any time of their own personnel?

Mr. LURIE. Well, the Commissioner has responded to that question. I don't know that I could improve upon his answer. It is very difficult to take a letter like that out of context. Frankly, the Commissioner and I were both in private practice, professionals in this area. I think the fees cited in that letter sound extremely high. It is difficult for me to understand how that plan could have incurred a $10,000 or $11,000 bill for fees for attorneys and actuaries for a plan for 350 employees. The numbers sound out of line. I don't want to cast aspersions without having examined it. That is why it is difficult to respond to the letter.

My visceral reaction is that the letter seems to overstate what normally is necessary for a plan to comply with this statute. I don't see anything like that in the picture. I think the Commissioner is going to get into the means that we have utilized to make the preparation of qualification documents simple. We have produced procedures which he will get into, that should make the process of conforming plans relatively simple, and we will be coming out with more of the same, so the professional fees, from that standpoint, will be reduced even further.

Senator NELSON. Well, I don't think any business, at least small business, goes ahead and spends a lot of money unless they at least thought it was necessary.

On the question of professional fees, I don't know who did it, but I have not seen cheap professional fees in recent years, whether it is medicine, law, CPA's, or what have you. It is a very expensive business as you know.

Mr. LURIE. Yes; it is.

Commissioner ALEXANDER. Yes; it is expensive and we are trying to cope with our obligation not to make this act a law primarily for the benefit of the professionals. We think this act is for the benefit of the employees.

We are trying to do our best to make it that way.

I would like to call your attention, Mr. Chairman, to our written statement that a small business with a single defined contribution plan that is not funded by insurance contracts—a typical profit-sharing plan of a small business, and many of them have them—will be required to file only a $5\frac{1}{2}$-page report with both IRS and Labor, plus this listing of assets, as compared with 11 pages for IRS alone before the enactment of ERISA.

This form 5500-C that we have discussed, our simplified reporting form for plans covering less than 100 participants, will be filed by about 475,000 small corporate employers out of this universe of about 500,000, covering approximately 5.7 million employees.

I would like to turn then, Mr. Chairman, to the point that Mr. Lurie made a moment ago. What we are doing to try to help people cope with the mysteries of ERISA—and they are mysteries.

We are doing a lot. In fact, we are doing some things that some of the professions are not particularly happy about.

They question whether the Internal Revenue Service should be in the business of practicing law.

We propose to develop model plans, just as we developed model forms for private foundations, as trusts are, as corporations, to assist people in another areas for which Mr. Lurie has responsibility, where the benefits should go to the public rather than to the professions.

We propose to develop standard paragraphs to cope with particular parts of ERISA. We propose, also, to permit law firms to establish pattern plans, to submit a prototype not using that word in its technical sense containing paragraphs and clauses designed to meet the various requirements of ERISA. We would rule on that; they could then use that approved plan as a pattern for approval as to form, and they could have these plans adopted by their clients, reducing the kinds of costs that are disturbing to you and are disturbing to us, and that were described in the letter you read into the record. And this will permit people not only to save money, but also to move more rapidly. Practitioners wouldn't have to reinvent the wheel every time they made a submission to us. We need to have plans submitted to us. We need to be in a position to exercise our responsibilities. To review and to approve or reject plans amended to meet requirements of ERISA; and we propose to do our best through these basic methods that I have described, and others, such as the continuation of our program of issuing questions and answers, such as continuation and finalization of our program of issuing regulations on all aspects of ERISA to give practitioners and the public what they need in order to comply with their responsibilities.

Now, finally, Mr. Chairman, I would like to touch on this numbers game.

The numbers game is the prediction of doom, to which I have referred earlier this morning, that ERISA and the burdens imposed by unreasonable paperwork requirements are resulting somehow in the demise of the retirement plan, particularly the small plan, as we have known it.

We don't think so.

Terminations in point of numbers as reported to Pension Benefit Guaranty Corporation are up as compared to numbers reported in 1972 to the Internal Revenue Service.

In 1972, there was no mandate for reporting as there is today. In 1972, there was a smaller universe than there is today.

And we have had some tough economic times, and no one, I am sure, is more familiar with that than you gentlemen at the dais.

These bad economic times mean that the value of the assets in a trusteed pension plan, for example, decreases. But bad economic times coupled with inflationary times mean that the demands on those assets, with retirement pay being a function of current pay, goes up. So, if you have increased costs and lowered values to meet those costs in your plan, then you necessarily have further increased costs, current costs of meeting these current demands.

Certainly, the absolute number of terminations has increased; and certainly this increase is a cause of concern; but, certainly, as set forth in the discussion in my statement, this problem has been overstated and the issue has turned into a straw man. The issue has turned into a straw man by equating the aboslute number of terminations out of a larger universe, in these economic times, into a conclusion based up the absolute number out of context, which is not a sound conclusion, and based upon, Mr. Chairman, a contention that the increase in this number is due to the paperwork burden.

1975, a year of extreme uncertainty at best on the part of employers and pensions advisers, saw adoption of more than 32,000 new corporate pension and profit-sharing plans, and during that same year we issued only 8,108 determinations on terminations of corporate plans of all types.

Senator JAVITS. Mr. Chairman, could I ask a question of fact at this point.

Senator NELSON. Sure.

Senator JAVITS. I think it would be very useful to us to consider the number of employees and amounts involved in the terminations, and new applications, to analyze the immediate effect of ERISA on pension plan terminations and applications.

May I say, while I have the floor momentarily, to express to both chairmen, Chairman Nelson and Chairman Bentsen, my appreciation for the clarity with which these hearings were announced. Mr. Chairman. There was no shaking of the tree, as it were, on vesting, funding, fiduciary standards, or reporting and disclosure, but rather a concern about the efficient administration and enforcement of these provisions by the Labor Department and IRS.

The committee expressed its interest in whether or not it was the administrative burden which was causing more terminations than perhaps we ought to have. I am glad to see that, the Commissioner similarly is directing his attention in a very specialized way to that particular point.

I don't think that the millions of American workers who consider this one of the greatest achievements of law since social security, should feel that we are putting in jeopardy the statutory scheme contained in ERISA.

Commissioner ALEXANDER. Do you have figures now to respond to Senator Javits' question?

Mr. LURIE. We do have some figures, Senator. The fact is that some statistics have been gathered .They are obviously very preliminary on what are the reasons. We ask that when we have an application for termination, when they seek a determination from us we ask for the reason for terminating and we find only about 5 percent at the most, could be related to administrative burden. Their principal concerns have been the economic situation. Plans have gone from pension plans to profit sharing plans. But from all statistics we have now seen, the actual plans that referred to the administrative burden as such, as the reason for termination, are minuscule.

One thing more about the numbers that the Commissioner didn't bring out, of the 5,000 some plans that PBGC reports as having filed a notice of intent to terminate—which are not necessarily terminations because PBGC does arm twisting and tries to prevent a plan that has gone through a termination notice from actually carrying it out——

But, even assuming these 5,000 are not discouraged, maybe 75 or 80 percent of those 5,000 are small plans representing less than 50 participants. So that the big part of the 5,000, maybe 4,000 of that, represents a very small employee community. The very large number of participants relatively are encompassed in a very small number of terminations. So, again, the numbers are too raw to be taken seriously.

Our own predictions are much closer than what has been characterized as the PBGC prediction. We are predicting perhaps 10,000 plan terminations, which represents 1 percent of the community of pension plans. Not a very large number. In any year it would have to be taken into account as a likely eventuality. In the year 1975, most likely, plans would have looked at this morass, been frightened by it, and if they were going to jump out, they would have jumped out in

1975, before they got into the clutches of the system, if you will. So I don't think we are seeing here numbers that we should overreact to. We must take them seriously, obviously. We are looking at these numbers. We are watching the trends. But there has been a vast distortion and a vast expression of concern about something that we think is not yet in any way demonstrated to be a great exodus from the pension community. We don't see it happening from anything like the paperwork burdens.

Senator JAVITS. Will you in due course be able to give the comparison figures between the plan terminations, and applications in light of the absolute number of plan terminations and applications, the size of the plans involved in terms of participants and retirees and the monetary size of the funds effected.

Mr. LURIE. Yes, sir, we certainly can.

[The information referred to follows:]

BENEFIT PLAN DETERMINATION LETTERS, JANUARY-DECEMBER 1975

CORPORATE EMPLOYEE BENEFIT PLANS

	Profitsharing and stock bonus plans	Pension or annuity plans
Determination letters issued with respect to:		
1. Initial qualification of plans:		
(a) Plans approved	14,720	15,319
Participating employees [1]	161,872	626,575
(b) Plans disapproved	111	156
2. Termination of plans	3,558	4,550
Cases closed without issuance of determination letters	1,474	1,993

[1] Total employment under all approved plans was 2,584,497.

BENEFIT PLANS FOR SELF-EMPLOYED PERSONS

	Profitsharing plans	Pension plans	Bond purchase plans
Determinations issued with respect to:			
1. Initial qualification of plans:			
(a) Plans approved	301	230	2,017
Participating employees	1,982	804	2,394
(b) Plans disapproved	4	5	44
2. Termination of plans	29	38	8
Cases closed without issuance of determinations	65	61	163

Senator JAVITS. The last thing I would like to say, Mr. Chairman, is naturally, as one of the authors of the act, my colleagues and I were heartened that you were able to cut down paperwork by new regulations. I think that I would express the feeling for a number of us in urging you to continue that process and not rest. It will be extremely helpful to us in continuing the most efficient and effective reform of pension fund abuses if needless bureaucratic excesses are eliminated.

The thing that concerns me is that just as people drop away from the plans, perhaps prematurely and factors of that sort and so many are coming into it for I really am every reluctant to see amendments to the ERISA prematurely which may materially detract from its benefits to the working people. They are all our basic concern. Therefore, you will help us with that great national objective which is based upon worker fidelity to the system, if you will continue to strive further for more efficient reporting and disclosure requirements and not rest on the current reductions in the size of the reporting forms. I would hope that you and your associates will proceed along that line.

Mr. ALEXANDER. We certainly will. We have no intention of deciding that we have reached final design or, indeed, that the problem has been solved.

Furthermore, as a member of the Commission on Federal Paperwork, I would have no intention of permitting this agency to reach that conclusion even if it were—which it is not—otherwise inclined.

Now, this completes our statement, Mr. Chairman. We will be glad to answer further questions.

Senator JAVITS. Thank you very much. I appreciate your statement.

Senator NELSON. Let me ask you a question. I have no way to independently judge this, but Mr. Bruce G. Fielding and Company submitted a cost breakdown on 10 plans which you probably have looked at; they involve one person up to 30. Mr. Fielding, as you also know, is a member of the Paperwork Commission. You have testified that you have substantially cut the paperwork required from pre-ERISA periods to post-ERISA. Yet, he in submitting samples of 10 plans, he submits one of 30 employees which annual costs before ERISA was $1,912.80 per participant; then he says under the same plan with 30 employees after ERISA, the cost went from $1,912 to $4,302, and from $64 per participant to $143 per individual.

Now, what would be the explanation of that?

Mr. ALEXANDER. Two things: First, I think very highly of Mr. Fielding. We serve together on the Commission of Federal Paperwork and he is a member of my small business advisory committee and a very valuable member.

Second, I am not sure whether Mr. Fielding built in an inflationary element into his cost comparisons.

Third, I believe that Mr. Fielding's figures were developed on the basis of earlier preliminary forms that were much more detailed, forms that we have now curtailed greatly.

Senator NELSON. This is from last fall, I am told.

This thing was last September.

Mr. ALEXANDER. Much has happened since last September, and I believe Mr. Fielding's figures would be materially changed by what we have done.

Senator NELSON. I see.

It would be interesting to see a sample breakdown since you have amended the forms and shortened them as to what that actual cost is.

Mr. ALEXANDER. Mr. Fielding did make a statement at the Paperwork Commission hearing on this particular problem, and he complimented the IRS in making a vast reduction in the costs of compliance with ERISA. We will be glad to supply that for the record because I am now uncertain as to what dollar figure he used.

Senator NELSON. It was September, so obviously he was not using your new forms.

Mr. ALEXANDER. This statement was made last week.

Senator NELSON. We would like to have it.

Mr. ALEXANDER. I think your staff was represented and I think perhaps they have the figure.

Senator NELSON. We will receive it for the record.

Any other questions?

Senator JAVITS. No, thank you.

Senator NELSON. Thank you very much, gentlemen. We appreciate your taking time to come over this morning.

[The colloquy between Messrs. Fielding and Lurie, referred to above, and the prepared statement of Mr. Alexander follow. Oral testimony continues on p. 140.]

Commissioner FIELDING. I have two things I would like to mention. One is that I think we ought to understand the impact of what IRS has done in simplifying forms. We feel that it will affect 580,000 some employers, and we feel that it will reduce the accounting—by approximately one-half billion dollars. That is what they have done, and I think they deserve tremendous credit, even though I am an accountant, and it is cutting down my income, I am all for it. I would like to ask you, Mr. Lurie, do you feel that ERISA would be less of a burden to employers if there wasn't dual administration problems?

Mr. LURIE. You ask a question. I would say that I would think yes, that the necessity of satisfying two agencies, try as they might, and successful as they have been, to coordinate their efforts and their rules, is complicated by the dual agency control, for employers.*

STATEMENT BY DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE

I welcome this opportunity to be with you today to discuss the progress which the internal revenue service and the Treasury Department have made, thus far, in the implementation of the employee retirement income security act of 1974. I particularly want to review with you those actions which have been designed to reduce the burden on small business.

As you know, the enactment of ERISA brought with it the promise of meaningful reform in various problem areas relating to employee retirement benefits, such as participation, vesting, funding and disclosure of information regarding the plan's administration. This reform, however, created an enormously difficult administrative task—to establish, within 90 days, a separate office within the IRS of employee plans and exempt organizations under the supervision and direction of an assistant commissioner (with its attendant organizational and staffing problems); and to develop regulations and guidelines to enable hundreds of thousands of employers to adopt new plans, or amend existing plans, to conform to the new requirements. For most employers, the day of reckoning was little more than 1-year away, although for some employers, ERISA was to be effective immediately.

Since the creation of the office of the assistant commissioner just over one year ago, we have worked continuously to implement the various and complex provisions of the new law. It is a monumental endeavor which is further complicated by the fact that we share some of our administrative responsibilities under ERISA with the Department of Labor and the Pension Benefit Guaranty Corporation. In this regard, we have worked closely with these agencies, particularly in coordinating our efforts in minimizing the duplication of reports that are required to be filed under ERISA.

I fully appreciate that many small employers are concerned that ERISA might result in increased costs and administrative burdens. In the discussion to follow. I will outline some of the actions we have taken, and some of the directions we plan to take, which I believe will alleviate much of the difficulty and costs employers have feared. In addition, I have included, as Appendix I, a listing of all of the announcements and releases that we have issued under ERISA.

In recognition of the need to provide an immediate and complete set of interim guidelines to facilitate the adoption of new plans or the amendment of existing plans in conformance with ERISA requirements, the service, on November 5, 1975, published two technical information releases, Tri-1415 and 1416, which announced, respectively, a compendium of authoritative rules, known as the ERISA guidelines, and the creation of special reliance procedure.

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*Transcript of hearings of Commission on Federal Paperwork, Jan. 29, 1976, pages 100–101.

The ERISA guidelines constitute a set of interim rules which an employer will need to satisfy the ERISA requirements, and consist of all the qualification requirements published prior to November 5, 1975 by the service and the DOL as temporary or proposed regulations, revenue rulings, revenue procedures, questions and answers, technical information releases and other issuances. The ERISA guidelines, independent of the special reliance procedure, may be relied upon until amended or supplemented by the issuance of final regulations or other rules.

Under the special reliance procedure, the service and the DOL offer employers who are establishing a new plan, or amending an existing plan which must comply with ERISA, a stabilization of rules for a period, known as the reliance period. Under the interim guidelines and the special reliance procedure, such plans will be deemed to have satisfied the requirements of ERISA for at least one plan year. The special reliance procedure, in effect, "freezes" the qualification requirements of ERISA, for those who comply with the ERISA guidelines, for their entire plan years commencing on or before December 31, 1976. In other words, except in rare and unusual circumstances, regardless of the issuance of final regulations which may amend or supplement the rules which comprise the ERISA guidelines, an employer will not be required to amend its plan to comply with such new regulations or guidelines for the duration of the reliance period.

Employers may presently take advantage of the special reliance procedure by adopting their plans or plan amendments on or before May, 1976. Furthermore, although it is not required by the special reliance procedure, employers who wish total assurance of their satisfactory compliance may obtain advance determination letters with regard to their adoptions by filing their plans or amendments prior to September 2, 1976.

The ERISA guidelines and the special reliance procedure are by no means a "cure-all" for the problems of employers who must deal with the additional burdens of the new law. Their availability, however, should significantly ease the transition for employers who seek to bring their plans into compliance.

Furthermore, our efforts have not ceased with the publication of these two TIR's. Many of the proposed and temporary rules which comprise the ERISA guidelines are the subject of regulations projects. I am confident that the experience we have gained over the last fifteen months, together with the numerous comments and suggestions from employers and practitioners with regard to the existing interim guidelines, will lead to final rules and regulations that are reasonable and equitable, and effectively fulfill our responsiblities under the law.

A major problem which has been encountered in our attempt to clarify the requirements of ERISA is Revenue Procedure 75-49, which was issued in TIR-1411, dated November 3, 1975. Rev. Proc. 75-49, implementing the nondiscrimination requirement in sections 411(d)(1)(B) and 401(a)(4) of the code on the basis of guidelines set forth in the ERISA conference report (at page 276), attempted to provide objective guidelines for determining whether the "4-40 vesting" rate set forth therein will be required by the service for purposes of an advance determination letter.

Comments received by the service, however, have suggested that a large number of employers may not be able to show compliance with the Rev. Proc. without 4-40 vesting. Therefore, in order to provide time for a thorough evaluation of these numerous comments, and to reconsider the Rev. Proc. without impeding the processing of advance determination letter applications, the service provided a temporary alternative, in TIR-1424, dated December 9, 1975, which announced Rev. Proc. 76-1, which provided that during this interim period, an applicant may request in writing that its application be processed without regard to the requirements of Rev. Proc. 75-49. However, a determination letter so issued would contain a caveat to the effect that such letter is not a determination as to whether the vesting provisions of the plan satisfy the nondiscrimination requirement of the code.

Further comments indicate, however, that the temporary alternative provided by Rev. Proc. 76-1 may not be sufficient to encourage the unimpeded processing of advance determination letter applications. Therefore, further guidelines, designed to permit employers to adopt new plans, or to amend existing plans without delay, pending the final reconsideration of Rev. Proc. 75-49, have now been developed by the service. These new definitive guidelines set forth the "prior letter test" and the "facts and circumstances test" to be used as additional alternatives to the application of Rev. Proc. 75-49. Also, they continue to permit applicants to request, in a manner similar to that provided in Rev. Proc. 76-1, that a caveated letter be issued without determining whether the vesting provisions satisfy the nondiscrimination requirement.

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These guidelines emphasize the existence of prior favorable determination letters for existing plans, and the surrounding facts and circumstances for new as well as existing plans, in determining whether the vesting provisions satisfy the nondiscrimination requirement of the code. This new procedure is intended to be interim only, pending final reconsideration of Rev. Proc. 75–49, and may be uesd in conjunction with the special reliance procedure. Those final guidelines resulting from completion of our reconsideration of Rev. Proc. 75–49 will be published first in proposed form with full opportunity for public comment, and will not be applied retroactively.

As I mentioned, the changes brought by ERISA are sweeping and comprehensive. The sheer volume of interpretative materials to implement ERISA presents a tremendous administrative challenge There is a danger that the interpretative guidelines under statutory provisions will themselves be too formidable for all but the most highly-trained individuals. We have, therefore, made a concerned effort to issue guidelines which may be easily followed by the public. For this reason, we have published significant interpretative materials in the form of questions and answers which cover issues relating to the qualification of defined contribution plans (TIR–1334), and defined benefit plans (TIR–1403), plan mergers and consolidations (TIR–1412), and the establishment of employee stock ownership plans (TIR–1413). We have also issued a plain language document relating to individual retirement programs (Pamphlet 590), and we are presently revising other such documents regarding employee plan matters to take into account the impact of ERISA.

In recognition of the burden placed upon employers, plan administrators, and practitioners in complying with ERISA, the service developed and conducted 136 ERISA seminars on a nationwide scale, with the prime objective of providing pension plan practitioners instructions on the preparation of IRS forms as well as clarification on technical matters. Through these seminars, approximately 24,309 participants were provided guidance and instruction in the conformance and application processes in order that all plan submissions could be handled as expeditiously as possible.

Furthermore, we have devoted a very large segment of our field personnel to the operation of a day-to-day taxpayer assistance program relating to ERISA. The service will continue to provide such assistance to the fullest extent that our budget constraints will permit.

In the press release of January 23, 1976, you expressed concern over the administrative and financial impact of ERISA on small businesses. I would like to take this opportunity to relate the actions we have taken to simplify the reporting requirements for such employers. And let me preface my remarks in this regard by noting that our actions in reducing the reporting burden have been accomplished despite the considerable growth in the complexity of the law.

Prior to ERISA, both large and small corporate employers were required to file Form 4848, schedule A to Form 4848, and Form 4849. Also Form 990–P, was required to be filed by each fiduciary. Form 990–P and its schedule A have now been eliminated. The above forms totaled 11 pages of filing requirements. In addition, DOL required a 16 page Form D–2 for plans with 100 or more participants but did not require reporting by small plans (fewer than 100 participants).

For self-employed individuals or partnerships with Keogh (HR–10) plans, IRS required Form 4848A, and Form 990–P plus schedule A to 990–P, for a total of 4 pages for each plan. There was no DOL reporting requirement for Keogh plans prior to ERISA except for those plans with 100 or more participants.

With the passage of ERISA, we (IRS and DOL) were charged with developing reporting forms for administering the provisions of the act which significantly expanded both the scope and content of reporting requirements of pension benefit plans.

A 4½ page Form 5500 was developed for reporting by large plans to both IRS and DOL, plus a 1½ page Form 5504 to be filed with IRS to support the income tax deduction. If the plan is a defined benefit plan, a 1½ page schedule B (with actuarial information) with an attachment which will not generally exceed 1 page is required for both IRS and DOL and, if the plan is funded in whole or in part by insurance contracts, a 1½ page schedule A (insurance information) is required by DOL. A listing of all assets is required for both IRS and DOL for all large plans not wholly insured. If an employer has more than one plan, IRS requires a ½ page transmittal Form 5501. IRS does not require the filing of an accountant's statement for each plan. This amounts to a total of

10½ pages maximum for large plans plus the accountant's statement (which is for DOL), and a listing of all assets, as compared to 27 pages prior to ERISA. Form 5500 will be filed by some 25,000 large corporate plans covering about 30 million employees.

In response to considerable public concern on this question, we have developed for small corporate plans (those with fewer than 100 participants) a 2 page Form 5500-C to be filed with both IRS and DOL (only page 1 filed with IRS) plus a 1½ page Form 5504 to be filed with IRS to support the income tax deduction. If the plan is a defined benefit plan, a 1½ page schedule B (actuarial information) with an attachment which will not generally exceed 1 page is required for both IRS and DOL; and if the plan is funded in whole or in part by insurance contracts a 1½ page schedule A (insurance information) is required by DOL. For any plan that is not wholly insured, a listing of all assets is required for DOL. If an employer has more than one plan, IRS requires a ½ page transmittal Form 5501. This results in a maximum total of 8 pages, plus the listing of all assets for small corporate plans, to satisfy both IRS and DOL as compared to 11 pages for IRS alone prior to the expanded reporting requirements of ERISA. However, it should be pointed out that a small business person with a single defined contribution plan that is not funded by insurance contracts will be required to file only 3½ pages with both IRS and DOL (plus the listing of all assets with DOL), as compared to 11 pages for IRS alone prior to ERISA. Form 5500-C will be filed by about 475,000 small corporate employers covering approximately 5.7 million employees.

For self-employed business persons with Keogh (HR-10) plans, a 2-page Form 5500-K was developed. If the self-employed individual has no common-law employees (about 300,000 plans fall into this category), he/she is required to file only page 1 of Form 5500-K with IRS plus a ½ page Form 5505 to support the income tax deduction. This is a total of 1½ pages as compared to 4 pages prior to ERISA. DOL does not require Form 5500-K if there are no common-law employees.

For self-employed business persons who have common-law employees, the 2-page Form 5500-K is required by both DOL and IRS only (page 1 for IRS). In addition IRS requires the ½ page Form 5505 to support the self-employed individual's income tax deduction and a 1½ page Form 5504 to support the deduction for the common-law employees. If the plan is a defined benefit plan a 1½ page schedule B (with actuarial information) is required by both IRS and DOL and, if the plan is funded by insurance contracts, schedule A (1½ pages) is required by DOL. This results in a maximum of 7 pages as compared to 4 pages prior to ERISA. However, if the plan is a defined contribution plan (and most Keogh plans are), and not funded by insurance contracts, only 4 pages are required to be filed which is the same as the number of pages prior to ERISA. Approximately 100,000-150,000 Keogh Plans have common-law employees.

Thus, we believe we have kept reporting requirements to a minimum by developing 3 different building block forms with separate deduction forms and schedules, rather than having an employer try to determine which portion of an all inclusive form applies to him/her. Also, we have extended the due date of the return from 4½ months to 7 months after the end of the employer's tax year. Under these new rules the earliest date upon which the new returns will have to be filed will be July 31, 1976. The forms are scheduled to go to print in early February, and should be available by late February or early March.

I might add that for individual retirement accounts (IRAs), we have developed a 2-page Form 5329 that is to be filed with an individual's Form 1040. Actually, page 1 contains only 2 questions plus name and address, while page 2 will require the completion of only 6 line items if an individual makes no excess contributions or has no premature distributions, prohibited transactions or rollovers. The financial information required on Form 5329 will be supplied on Form 5498 by the bank, insurance company, etc., with which the individual established the IRA. We have estimated earlier that from 1½ to 2 million IRAs would be established in 1975; however, recent newspaper accounts which reflect the response to our IRA program, indicate that our estimate may be low.

I have briefly outlined some of the measures we have already taken to deal with the problems of administering ERISA. Further, I would like to mention some of the new directions which we are considering to facilitate employers' efforts to comply with the act's requirements.

Presently, we are focusing attention on the development of procedures and methods to streamline and simplify the preparation of initial plans and amendments, and the processing of applications for determinations. These procedures go beyond the traditional type of service guidelines, and include the publication of standard paragraphs that can be incorporated into practitioners' own plans.

Furthermore, the service is developing a model profit-sharing plan, money purchase plan, and defined benefit pension plan, which could be adopted by an employer. Some procedural questions must be resolved before a model plan can be issued. For example, no final decision has been made as to whether the employer's adoption of a model would warrant automatic qualification of the plan under section 401(a) of the code, or whether some initial brief review of the case by the district office would be required prior to the issuance of a favorable determination letter. In either event, however, I am certain that the adoption of a model plan, or the use of standard paragraphs, would substantially reduce the time, cost and difficulty involved in drafting an acceptable plan and in obtaining an advance determination letter.

Another innovation which the service is about to announce is a procedure that will permit law firms to establish money purchase pension and profit-sharing plans, and, in time, defined benefit plans, as patterns which may be submitted to local district offices for approval as to form, similar to a prototype plan.

These plans, to be known as District Approved Pattern Plans, once approved by the service, may be adopted by a number of clients, which, we hope, will help to reduce plan drafting costs. Subsequent employer submissions of the District Approved Pattern Plan may be made to any district office, and should be processed and accepted in a reasonably short period of time since a copy of the letter informing the law firm of the acceptability of the plan will accompany subsequent submissions. These plans will be available to other practitioners for their use in creating their own pattern plans.

It is also anticipated that the service will permit law firms to amend their District Approved Pattern Plans when the need arises. A letter will be sent to the law firm stating that the amended plan is acceptable for future submissions pursuant to the pattern plan program.

I would now like to address the subject of plan terminations, a problem which is of particular concern to all of us. There are frequent and often alarming discussions of the extent to which ERISA has been responsible for an increasing number of plan terminations. I would like to cite a case that received nationwide television publicity as an illustration of the many ways in which ERISA impacts on a pension plan. During a news interview an employer stated that his plan was being terminated by reason of additional reporting and administrative costs and that, as a result, employees were being deprived of future benefits. Our review of the case suggested that, as we commonly discover, several factors played a part in the decision to terminate the plan, including business hardship and funding cost increases.

To illustrate, the vesting provisions of the plan in question, prior to termination, required 39 years of employed coverage before 100 percent vesting would be attained. Presumably, only a few long-term employees would receive fully vested benefits under such a provision. As you are well aware, the minimum vesting requiremtnts of ERISA call for a much faster rate of vesting to insure that employees with significant periods of service receive benefits under a plan. Thus, ERISA will, in fact, place additional burdens on such employers, since more rapid vesting results in the additional costs associated with providing greater benefits.

As illustrated by the above case, one of the sources of the additional cost to the employer of maintaining a plan is a direct result of the legislation's objective, that is, providing a mechanism whereby an employee's benefits are protected and assured. Thus, many employers will face increased plan costs solely attributable to the amendment of the participation, vesting and funding provisions of the plan, since delivering more benefits to more employees inevitably costs more money.

Compounding the problem of identifying the real effect of ERISA on plan terminations, is the economic climate of the last three years. According to an SEC report on the asset holdings of private noninsured pension plans, the book value of these holdings increased from $117.5 billion at December 31, 1972 to $133.7 billion at December 31, 1974. At the beginning of this two-year period the market value of these holdings has 131 percent of the book value, but two years later the market value had dropped by $42.6 billion, and then represented only 84 percent of the book value. This substantial decrease in market value has required increased contributions to the plans during this period.

At the same time, inflation reached record levels. With benefits geared to rising compensation levels, plan liabilities were increasing substantially. The SEC report stated that the employers contributing to the funds being studied, contributed on the average, 18 percent more in 1974 than in 1973. Furthermore, these increased costs have come at a time when many businesses were facing decreased profits, or losses. It is not surprising, therefore, that, in light of such economic conditions, the additional costs and contributions are cited as the reason for termination of many plans.

The varied and numerous influences on plan costs mentioned above make it difficult to assess precisely the effect that ERISA has had on plan terminations. This assessment becomes even more speculative, however, when one begins to compare the number of terminations reported before and after the enactment of the law. (This data is summarized in tables 1 and 2 of Appendix II.) Prehaps the most important fact to keep in mind when making these comparisons is that reporting of the intent to terminate a plan first became manadatory under ERISA.

For purposes of illustration, the "Study of Pension Plan Terminations, 1972" was published by the Department of Treasury and the Department of Labor. The study was based on 1227 applications for determination letters in connection with plan terminations of defined benefits plans, during the 12 month period ending August, 1972.

PBGC recently reported that they had received 5035 notices of intent to terminate defined benefit pension plans during calendar 1975, and commented that this number represented four times the number anticipated when ERISA was adopted in 1974. These figures caused quite a bit of concern. However, the 1972 figures represent those terminations which were reported to the IRS. Since reporting was not mandatory then, as it is now, we have no statistics on how many plans were terminated and did not notify the IRS during the 1972 period. It is reasonable to assume that if mandatory reporting requirements had been in effect in 1972 that the figure for that period would have been higher.

A further factor that should be considered in comparing the number of terminations, before and after ERISA, is the number of plans in existence during the respective periods. In 1972, there were approximately 328,000 plans of all types in effect at the beginning of the period studies. At the beginning of 1975, this figure rose to 485,000 plans. Therefore, one would expect a corresponding increase in the number of terminations even if the rate remained constant.

Finally, any look at the effects of ERISA on plan terminations should be measured against plan starts in the same period. We know that the first full year after enactment was a year of great uncertainty for employers and pension advisors. Nevertheless, 1975 saw the adoption of 32,062 new corporate pension and profit-sharing plans. During the same year we issued 8,108 determinations on terminations of corporate plans of all types.

In summary, the effects of ERISA on plan terminations, and the significance of terminations data, are not easily discernable at this time. We have included as tables 3, 4, and 5 of appendix II results of studies conducted by IRS, Labor and the PBGC, which report the reasons given by employers for plan terminations. Unfortunately, these studies are not complete since the pre-ERISA studies reflect only those terminations reported to IRS, and the post-ERISA study reflects only a sample of plans reported to PBGC. We expect that, by improving our method of collecting data on the reasons for plan terminations, we will have a more precise evaluation on the impact of ERISA on plans in the future.

Finally, while legislative recommendations are matters for the treasury, not for IRS, I think I can make several general observations. First, the call for tax simplification, which is echoed time and again is nowhere more in need of realization than in the pension area. This legislation, which bears on tens of millions of participants, over one million employers and countless fiduciaries and professionals serving the area, in achieving the ultimate in equity has also achieved the ultimate in complexity. The tension between writing a statute that overcomes all the evils that have been perceived and one that is readily comprehensible by the average reader has, in the case of ERISA, been resolved, some will say, too much in favor of the former. Difficult as it is to achieve a perfect balance in matters such as this, some greater attempt to accomplish it would doubtless be useful.

Next, in the case of lengthy and highly technical legislation such as the 1974 pension legislation, I would suggest that the congress consider allowing more "lead time" between enactment and the effective date of the major provisions. In the case of this act, most of the qualification provisions became effective—in the case of plans not in existence in January 1, 1974—for plan years beginning after September 2, 1974. In the case of other plans, most provisions became effective for plan years beginning after December 31, 1975. I respectfully submit, that we and the public, could have used more time.

A final, and related, point is that, in such a long and complex piece of legislation, the Congress may wish to consider staggering the effective dates of major provisions. A large number of our rules were published during the fall of 1975, and we have received comments to the effect that it is simply more material than a practitioner can assimilate in the time available, even though longer than normal comment periods were provided in most cases.

APPENDIX I

Regulations

Sept. 23, 1974 (T.D. 7325)	Disclosure of plan information to PBGC.
Dec. 10, 1974	Procedural rules re public inspection of rulings and determination letters.
Dec. 1974 (T.D. 7335)	Election re valuing bonds, etc., constituting assets of retirement plans.
Dec. 2, 1974 (T.D. 7338)	Election re retroactive plan amendments.
Jan. 6, 1975 (T.D. 7339)	Election of lump-sum distribtuion treatment under IRC Secs. 402 and 403.
Jan. 13, 1975	Hearings on proposed exemptions from prohibitions on transactions between benefit plans and broker-dealers (IRC 4975).
Feb. 4, 1975	Intrim exemption under ERISA Sec. 406 and IRC Sec. 4975.
Feb. 6, 1975, Notice of proposed rulemaking.	Exception for certain insurance contract plans from minimum funding standards.
*Feb. 21, 1975, Notice of proposed rulemaking.	Individual retirement accounts.
(Mar. 5, 1975) Feb. 24, 1975	Corrections—Proposed procedural rules with respect to public inspection of certain ruling and determination letters.
Mar. 6, 1975, Notice of proposed rulemaking.	Foreign subsidiaries or domestic subsidiaries engaged in business outside the United States.
Mar. 17, 1975 (T.D. 7347)	Election to come under new provisions of ERISA relating to participation, vesting finding, and form of benefit.
Apr. 21, 1975 (T.D. 7354)	Election with respect to changes in vesting schedule under IRC 411(a)(10)(B).
Apr. 21, 1975 (Notice of proposed rulemaking).	Proposed regulations under IRC 46, 50A, 72(m), 401(c), 401(d), 401(e), 404(e), 901, and 1379 (H.R. 10 Regs.).
Apr. 28, 1975 (Labor Department exemption procedure 408(a) of ERISA).	Department of Labor exemption procedure for handling special exemptions from the restrictions of sections 406 and 407 (a) of ERISA. Contains cross reference to TIR-1367 issued Apr. 25, 1975 for IRS procedures for handling special exemptions under IRC 4975(c)(2).
Apr. 30, 1975 (Notice of proposed rulemaking).	Regulations under IRC 62, 72, 101, 122, 402, 403, 405, 652, and 1304. (Lump sum distributions.)

*Modification of proposed TIR Regs. dated July 3, 1975.

June 4, 1975 (T.D. 7358)	Notification of interested parties regarding qualifications of certain retirement plans.
June 4, 1975 (Notice of proposed rulemaking).	Notification of interested parties regarding qualification of certain retirement plans.
June 9, 1975 (Correction notice to T.D. 7358).	A sentence was added to the end of paragraph (b)(1) of 11.7476-1 in T.D. 7358 published on June 4, 1975.
June 9, 1975, Correction notice to notice of proposed rulemaking.	Several wording changes were made to the proposed regulations published on June 4, 1975 relating to notification of interested parties.
June 9, 1975, Notice of extension of exemption under section 4975.	Prohibitions on securities transactions with certain broker dealers, reporting-dealers, and banks.
June 17, 1975 (Correction notice to T.D. 7353).	Accrued vacation pay.
June 27, 1975 (T.D. 7363)	Election by a church to have participation, vesting, funding, etc.
June 27, 1975 (Notice of proposed rulemaking).	Requirements for depositing certain employment taxes.
June 30, 1975 (Proposed rulemaking).	Domestic international sales corporation requirements.
July 3, 1975 (*modification of proposed TIR Regs. of Feb. 21, 1975).	Individual retirement accounts.
July 14, 1975 (T.D. 7367)	Determination relating to qualification of certain retirement plans.
July 14, 1975 (Notice of proposed rulemaking).	Determination relating to qualification of certain retirement plans.
July 24, 1975 (T.D. 7371)	Temp. Regs. relating to disclosure to the DOL and the PBGC of information relating to certain determination letters.
Aug. 1, 1975 (No T.D. number for statement of procedural rules).	Determination letters of employees' plans and trusts.
Aug. 8, 1975 (Notice of proposed rulemaking (Jointly with DOL)).	Definition of fiduciary.
Aug. 8, 1975 (Proposed exemption hearing on exemption and rulemaking proceedings).	Proposed exemptions under sec. 4975 re certain classes of transactions involving employee benefit plans and certain broker-dealers, reporting dealers and banks.
Aug. 14, 1975 (Correction notice to "definition of fiduciary").	Changes made in sec. 54.4975-9 in para. (c)(1) and sec. 54.4975-9 on page 38561 first column, para. (D) of FR Doc. 75-20865 dated Aug. 8, 1975.
Aug. 25, 1975 (Pension Benefit Guaranty Corporation—notice of proposed rulemaking).	Disclosure and amendment of records under the Privacy Act.
Sept. 8, 1975 (Labor Department minimum standards).	Rules and regulations for minimum standards for employee pension benefit plans.
Sept. 18, 1975 (Notice of proposed rulemaking).	Definitions of multiemployer plan and plan administrator.
Sept. 22, 1975 (Pension Benefit Guaranty Corporation (Not IRS Regs.)).	Guaranteed benefits.
Sept. 23, 1975 (Correction notice to notice of proposed rulemaking).	A reference change was made to the proposed Regs. published Sept. 18, 1975 relating to definition of multiemployer plan and plan administrator.

REGULATIONS—Continued

Sept. 23, 1976 (Notice of proposed rulemaking (cross reference)).	Extension of interim exemption from prohibitions on securities transactions with certain broker-dealers, reporting dealers and banks.
Sept. 23, 1975 (Labor Department employee benefit plan).	Extension of interim exemptions on securities transactions with certain broker-dealers, reporting dealers and banks.
Sept. 29, 1975 (T.D. 7377)	Certain retroactive amendments of employee plans. (IRC 401(b)).
Sept. 30, 1975 (Notice of pension and welfare plans, forms developed by IRS and DOL (Forms 5500 thru form 5500—Schedule B are listed in your issuance book)).	Annual information returns/report.
Sept. 30, 1975 (Labor Department pension and welfare plans—annual information returns/report).	Cross reference to annual information on returns-reports.
Oct. 19, 1975 (Pension Benefit Guaranty Corporation).	Disclosure and amendment of records under the Privacy Act.
Oct. 3, 1975 (notice of proposed rulemaking).	Qualified joint and survivor annuities.
Oct. 3, 1975 (T.D. 7379)	Temporary regulations relating to qualified joint and survivor annuities.
Oct 3, 1975, (notice of proposed rulemaking).	Regulations related to minimum participation standards.
Oct. 3, 1975 (T.D. 7380)	Minimum participation standards.
Oct. 7, 1975 (notice of proposed rules).	Certain retroactive amendment of employee plans.
Oct. 8, 1975 (notice of proposed rules).	Commencement of benefits under qualified trusts.
Oct. 8, 1975 (T.D. 7381)	Temporary regulations relating to commencements of benefits under qualified trust.
Oct. 9, 1975 (Labor Department fidiciary responsibility).	Interpretive bulletins relating to fidiciary responsibility.
Oct. 10, 1975 (Labor Department guaranteed benefits correction).	Correction notice in the Federal Register Sept. 22, 1975 under guaranteed benefits.
Oct. 10, 1975 (Labor Department proposed form EBS-1. This form is listed is your issuance book).	Form EBS-1.
Oct. 15, 1975 (notice of proposed rule).	Requirement that benefits under a qualified plan are not decreased on account of certain social security increases.
Oct. 15, 1975 (T.D. 7382)	Temporary regulations relating to requirement that benefits under a qualified plan are not decreased on account of certain social security increases.
Oct. 16, 1975 (notice of proposed rulemaking).	Nonbank trustees of pension and profit-sharing trusts benefiting owner-employees.
Oct. 16, 1975 (T.D. 7383)	Nonbank trustees of pension and profit-sharing trusts benefiting owner-employees.
Oct. 16, 1975 (notice of proposed rulemaking).	Use of custodial accounts and annuity contracts under qualified pension, profit-sharing, and stock bonus plans.
Oct. 17, 1975 (correction to T.D. 7381 dated Oct. 8, 1975).	Temporary regulations to commencement of benefits under qualified trust.
Oct. 17, 1975 (correction to notice of proposed rulemaking dated Oct. 8, 1975).	Commencement of benefits under qualified trusts.

REGULATIONS—Continued

Aug. 27, 1975 (proposed regulations for enrollment of actuaries).	Joint board for the enrollment of actuaries.
Oct. 22, 1975 (correction to notice of proposed rulemaking dated Oct. 3, 1975).	Qualified joint and survivor annuities.
Oct. 22, 1975 (correction to T.D. 7379 dated Oct. 3, 1975).	Temporary regulations relating to qualified joint and survivor annuities.
Oct. 31, 1975 (T.D. 7386)	Definition of Fiduciary.
Oct. 31, 1975 (DOL—Definition of the term "fiduciary").	Definition of terms used in subchapters C, D, E, F, and G.
Oct. 31, 1975 (IRS/DOL employee benefit plans).	Extension from prohibitions respecting certain classes of transactions involving employee benefit plans and certain broker-dealers, reporting dealers and banks.
Nov. 4, 1975 (Notice of annual return/report forms).	Announcing extension of comment period for annual return/report forms in the FR Sept. 30, 1975.
Nov. 4, 1975 (Pension Benefit Guaranty Corporation).	Allocation of assets—proposed determination of payable benefits.
Nov. 4, 1975 (Notice of proposed rule—PBGC).	Guaranteed benefits—proposed limitations.
Nov. 5, 1975 (T.D. 7387)	Minimum vesting standards.
Nov. 5, 1975 (Notice of proposed rulemaking).	Regs. relating to minimum vesting standards.
Nov. 5, 1975 (T.D. 7388)	Employees of organizations under common control.
Nov. 5, 1975 (Notice of proposed rulemaking).	Employees of organizations under common control.
Nov. 6, 1975 (T.D. 7389)	Temporary regulations relating to disclosure statement regarding individual retirement accounts, individual retirement annuities, and endowment contracts.
Nov. 11, 1975 (DOL—Guidance to determine coverage).	Definition of terms used in subchapters C, D, E, F, and G of this chapter.
Nov. 10, 1975 (Retroactive amendments of employee plans).	Announcing extension of time for comments relating to certain retroactive amendment of employee plans, appeared in F.R. Oct. 7, 1975.
Nov. 10, 1975 (Minimum participation standards).	Notice of extension of time for comments relating to the minimum participation standard, appeared in the F.R. Oct. 3, 1975.
Nov. 12, 1975 (Department of Labor minimum standards).	Announces extension of time for filing comments on minimum standards, appeared in F.R. Sept. 8, 1975.
Nov. 19, 1975 (Notice of proposed rulemaking).	Certain trustees of individual retirement accounts.
Nov. 19, 1975 (T.D. 7390)	Certain trustees of individual retirement accounts.
Nov. 19, 1975 (Department of Labor employee benefit plans).	Proposed annual reporting requirements.
Nov. 20, 1975 (Department of Labor employees benefit plans).	Interpretive bulletins relating to reporting and disclosure—independence of accountant retained by employee benefit plan.
Dec. 12, 1975 (Pension Benefit Guaranty Corporation).	Valuation of plan assets.
Dec. 17, 1975 (Proposed rules)	Minimum vesting standards; extension of time for comments.
Dec. 19, 1975 (Department of Labor Management Services Administration).	Proposed class exemptions from respecting certain transactions in which multiemployer plans are involved.

Technical Information Releases

Sept. 10, 1974 (TIR-1308)	Interim determination letter procedures (Rev. Proc. 74-38).
Sept. 11, 1974 (TIR-1309)	Interim opinion letter procedures (Rev. Proc. 74-39).
Sept. 12, 1974 (TIR-1310)	Rulings procedures.
Sept. 13, 1974 (TIR-1311)	Public inspection—Applications.
Nov. 12, 1974 (TIR-1315)	Instructions for preparing 1974 form 1099R.
Dec. 31, 1974 (TIR-1329)	Prohibited transactions transitional rules.
Dec. 31, 1974 (TIR-1330)	Prohibited transactions—Excise tax.
Dec. 31, 1974 (TIR-1331)	Prohibited transactions—Excise tax.
Jan. 7, 1975 (TIR-1333)	Exemption of certain transactions from excise tax.
Jan. 8, 1975 (TIR-1334)	Questions and answers—ERISA.
Jan. 10, 1975 (TIR-1335)	IRA procedures (Rev. Proc. 75-6).
Jan. 13, 1975 (TIR-1336)	Determination letters on certain defined contribution plans subject to ERISA (Rev. Proc. 75-5).
Jan. 10, 1975 (TIR-1337)	Proposed exemption from prohibition on transactions. Notice of hearings on proposed exemption in prohibited transactions cases involving certain broker-dealers.
Feb. 3, 1975 (TIR-1344)	Prohibited transactions—Interim exemptions for certain broker-dealers, reporting dealers, and banks.
Feb. 6, 1975 (TIR-1346)	Investments in underlying assets.
Mar. 12, 1975 (TIR-1351)	Prohibited Transactions—Interpretation of last sentence of IRC 4975(e) relating to investment in shares of employer regulated investment company.
Apr. 11, 1975 (TIR-1363)	Questions and answers to provide guidelines for applying the amended sick pay regulations.
Apr. 22, 1975 (TIR-1366)	Extension of interim exemption from prohibited transaction restrictions of IRC 4975 as it relates to certain broker-dealers, reporting dealers, and banks.
Apr. 25, 1976 (TIR-1367, Rev. Proc. 75-26).	Procedures of IRS and Department of Labor for processing application for special exemption from prohibited transactions under IRC (4975(c)(2) and section 408(a) of ERISA.
June 3, 1975 (TIR-1381)	Proposed class exemption from prohibitions respecting certain transactions in which multiemployer plans are involved.
June 6, 1975 (TIR-1382)	Extension of interim exemption from prohibitions on securities transaction with certain broker-dealers, reporting dealers, and banks.
June 11, 1975 (TIR-1385, Rev. Proc. 75-31).	Notifying interested parties of requests for determination letters relating to the qualification of individually designed pension, annuity, profit-sharing, bond purchase, and stock bonus plans.
July 3, 1975 (TIR-1391)	Individual retirement accounts.
July 24, 1975 (TIR-1396)	Guidelines for when an advance for expenses to a disqualified pension will not be a prohibited transaction.

Technical Information Releases—Continued

Aug. 8, 1975 (TIR-1397)	1. Proposed permanent exemptions under sec. 4975 re certain classes of transactions involving employee benefit plans and certain broker-dealers, reporting dealers and banks. 2. Proposed regulation re applicability of definition of fiduciary. 3. Hearings on exemption and regulations proposals (jointly with DOL).
Aug. 13, 1975 (TIR-1398, Rev. Proc. 75-37).	Modification of Rev. Proc. 75-31 (TIR-1385), granting additional time to employers or employee benefit plan administrators who file form 5301.
Aug. 13, 1975 (TIR-1399)	Supplements TIR-1329 which outlined and clarified sec. 2003(c)(2)(D) of ERISA on prohibited transaction exemptions for certain services before June 30, 1977.
Sept. 5, 1975 (TIR-1401, Rev. Proc. 75-38).	Guidelines to permit the issuance of opinion letters on the acceptability as to form of certain defined contribution master and prototype plans (H.R. 10).
Sept. 17, 1975 (TIR-1403)	Questions and answers on defined benefit plans.
Sept. 19, 1975 (TIR-1404, Rev. Proc. 75-42).	Guidelines to permit the issuance of opinion letters on the acceptability as to form of certain defined contribution plans that do not include self-employed individuals. (Corporate type.)
Sept. 22, 1975 (TIR-1405)	Extension of interim exemption from provisions on securities transactions with certain broker-dealers, reporting dealers and banks.
Oct. 30, 1975 (TIR-1408)	Questions and answers relating to mergers and consolidations.
Nov. 3, 1975 (TIR-1410, Rev. Proc. 75-47).	Determination letters on ESOP's.
Nov. 3, 1975 (TIR-1411)	Determination letters relating to whether vesting schedule of plan satisfies the nondiscrimination requirements of section 401(a)(4) of the code.
Nov. 4, 1975 (TIR-1412)	Issuance of determination on the qualification of individually designed plans.
Nov. 4, 1975 (TIR-1413)	Questions and answers relating to employee stock ownership plans (ESOP).
Nov. 4, 1975 (TIR-1414)	Extension to Nov. 19, 1975, of the period of time for submitting comments concerning the proposed annual return/report forms to be filed by plan administrators as required under 104 of ERISA and 6058(a) of the code.
Nov. 5, 1975 (TIR-1415)	Announce the compendium of guidelines to permit employers to adopt new plans or amend existing plans to conform to the requirements of ERISA.
Nov. 5, 1975 (TIR-1416)	Announce the special reliance procedure so that new plans or amendments to existing plan conforming to existing guidelines may rely on those guidelines during the special reliance period.
Nov. 6, 1975 (TIR-1418)	Modification of Rev. Rul. 56-267 to permit IRA's to invest trust funds in pooled trusts for qualified 401(a) trusts.

Technical Information Releases—Continued

Nov. 10, 1975 (TIR-1419)	Announce procedures relating to the issuance of opinion letters for master and prototype plans. (Rev. Proc. 75-51 and 75-52.)
Dec. 3, 1975 (TIR-1422)	Announce that qualified pension, profit-sharing, or stock bonus plans may not permit the assignment or pledging of plan benefits as security for loans.
Dec. 9, 1975 (TIR-1424)	Announcement that Rev. Proc. 75-49 is being reconsidered and that applicants for advance determination letters may request consideration without regard to Rev. Proc. 75-49.
Dec. 15, 1975 (TIR-1425)	Announce that final regulations relating to IRA's will provide for filing an annual report form 5498) and that form 1099 is not to be filed. In addition, the tax consequences of revoking an IRA were discussed.
Dec. 15, 1975 (TIR-1426)	Announce that final regulations relating to lump sum distributions will differ from the proposed regulations and will allow distribution to more than one recipient.
Jan. 2, 1976 (TIR-1430)	Announce certain conditions under which renewal or extension of a pre-January 1, 1976, loan made to a qualified employees plan participant and secured by a pre-1976 assignment of the participant's benefit will not affect the plan's qualification.
Jan. 5, 1976 (TIR-1431)	Announce rules regarding the time that a contribution to a qualified retirement plan is deemed to be made. (Rev. Rul. 76-28.)

Announcements

Jan. 6, 1975 (A-75-1 I.R.B. 1975-1)	Form 5330, return of initial excise tax on prohibited transactions, is available.
Jan. 20, 1975 (A-75-3 I.R.B. 1975-3)	Form 4972. special 10-year averaging method, for determining capital gain and ordinary income portions of lump-sum distributions.
June 30, 1975 (A. 75-59 I.R.B. 1975-26).	IRS and DOL have jointly proposed class exemptions form prohibited transactions in multiemployer plans.
July 14, 1975 (A-75-69 I.R.B. 1975-28).	Publication 590, tax informations on individual retirement savings programs, is available.
July 21, 1975 (A-75-72 I.R.B. 1975-29).	Public hearing on proposed regulations under TRC 62, 72, 101, 122, 402, 403, 405, 652, and 1304 relating to lump-sum distributions held on Aug. 12, 1975.
Aug. 18, 1975 (A-75-91 I.R.B. 1975-29).	Comments or suggestions may be submitted by Sept. 2, 1975, on procedural rules concerning determinations on the qualification of plans.
Aug. 25, 1975 (A-75-87 I.R.B. 1975-34).	Correction of Rev. Proc. 75-5.
Oct. 20, 1975 (A-75-106)	New forms 5498—Statement of account for participants in an IRA and 5499—annual summary and transmittal of IRA statements—are available.

Announcements—Continued

Oct. 28, 1975 (A-75-110)	Questions and answers on defined benefit Plans.
Oct. 15, 1974 (A-74-87 I.R.B. 1974-41).	Issuance of rulings under ERISA.
Oct. 15, 1974 (A-74-89 I.R.B. 1974-41).	Inspection of applications and determination letters under ERIS.
Oct. 29, 1974 (A-74-94 I.R.B. 1974-43).	Publication of ERISA.
Dec. 9, 1974 (A-74-107)	Preparation of Form 1099 R, Statement for recipients of lump-sum distributions from profit-sharing and retirement plans, for 1974.
Dec. 23, 1974 (A-74-112 I.R.B. 1974-51).	Change in annual information return for Keogh plans.
Nov. 10, 1975 (A-75-123, I.R.B. 1975-45).	Extension of time for comments on the proposed pension and welfare plans annual information returns.
Nov. 24, 1975 (A-75-120, I.R.B. 1975-[illegible]).	Publication 876, Privacy Act notification is available.
Dec. 1, 1975 (A-75-125, I.R.B. 1975-48).	Questions and answers relating to mergers and consolidations of employee plans.
Dec. 15, 1975 (A-75-130, I.R.B. 1975-50.	Questions and answers; employee stock ownership plans.
Dec. 15, 1975 (A-75-134, I.R.B. 1975-50.	Available employee plans' forms.
Dec. 22, 1975 (A-75-136, I.R.B. 1975-51).	Form 990-P is no longer required to be filed by employees' trust exempt from taxation under section 501(a).
Dec. 29, 1975 (A-75-138, I.R.B. 1975-52).	Schedule A (Form 5301) is no longer required.
Dec. 29, 1975 (A-75-140, I.R.B. 1975-53).	Individuals who have established IRA's are required to file Form 5329.

Revenue Rulings

Nov. 3, 1975 (Rev. Rul. 75-480, I.R.B. 1975-44).	Modification of Rev. Rul. 71-446.
Nov. 3, 1975 (Rev. Rul. 75-481, I.R.B. 1975-44).	Limitations on contributions or benefits.
Dec. 8, 1975 (Rev. Rul. 75-530, I.R.B. 1975-49).	Pooling assets of individual retirement accounts with assets of group trust. Modification of Rev. Rul. 56-267.

Revenue Procedures

Oct. 15, 1974 (Rev. Proc. 74-38, I.R.B. 1974-41).	Interim determination letter procedure.
Oct. 15, 1974 (Rev. Proc. 74-39, I.R.B. 1974-41).	Opinion letters; master and prototype plans including self-employed individuals.
Oct. 15, 1974 (Rev. Proc. 74-40, I.R.B. 1974-41).	Opinion letters; master and prototype plans not including self-employed individuals.
Feb. 3, 1975 (Rev. Proc. 75-5, I.R.B. 1975-5).	Determination letters; individually designed employees' plans.
Feb. 3, 1975 (Rev. Proc. 75-6, I.R.B. 1975-5).	Individual retirement plans; rulings and determination letters.
May 19, 1975 (Rev. Proc. 75-26, I.R.B. 1975-20).	Prohibited transactions; exemption applications.
July 7, 1975 (Rev. Proc. 75-31, I.R.B. 1975-27).	Determination letters; interested party notification.
Sept. 2, 1975 (Rev. Proc. 75-37, I.R.B. 1975-35).	Determination letters; interested party notification.

Revenue Procedures—Continued

Sept. 29, 1975 (Rev. Proc. 75-38, I.R.B. 1975-39).	Opinion letters; master and prototype plans for self-employed individuals.
Oct. 14, 1975 (Rev. Proc. 75-42, I.R.B. 1975-41).	Opinion letters; master and prototype defined contribution plans.
Dec. 1, 1975 (Rev. Proc. 75-47, I.R.B. 1975-48).	Determination letters; individually designed plans.
Dec. 1, 1975 (Rev. Proc. 75-48, I.R.B. 1975-48).	Determination letters; employee stock ownership plans.
Dec. 1, 1975 (Rev. Proc. 75-49, I.R.B. 1975-48).	Guidelines; nondiscrimination in vesting schedules. Amplification of Rev. Proc. 75-47.
Dec. 8, 1975 (Rev. Proc. 75-51, I.R.B. 1975-49).	Opinion letters; master and prototype plans including self-employed individuals. Rev. Proc. 74-39 and 75-38 superceded.
Dec. 8, 1975 (Rev. Proc. 75-52, I.R.B. 1975-49).	Opinion letters; master and prototype plans not including self-employed individuals. Rev. Proc. 74-40 and 75-42 superceded.

Delegation orders

Jan. 7, 1975 (Delegation order No. 112 (Rev. 1) Del. order No. 112 (Rev. 2).)	Issuance of EP determination letters by key districts.
Jan. 21, 1975 (Delegation order No. 85 (Rev. 6).)	Agreements treated as determinations.
Jan. 21, 1975 (Delegation order No. 42 (Rev. 6).)	Consents fixing periods of limitation on assessment on collection.
Jan. 27, 1975 (Delegation order No. 96 (Rev. 2).)	Application of rulings without retroactive effect.
Jan. 27, 1975 (Delegation order No. 97 (Rev. 12).)	Closing agreements.
June 2, 1975 (Delegation order No. 77 (Rev. 8).)	Issuance of statutory notices of deficiency.
July 9, 1975 (Delegation order No. 112 (Rev. 2).)	Issuance of EP determination letter by key districts.
July 11, 1975 (Delegation order No. 151.	Delegation of authority to disclose certain information to Department of Labor.
Oct. 6, 1975 (Delegation order No. 88 (Rev. 4).)	Issuance of notice of revocation and reestablishment of exemption.
Dec. 18, 1975 (Delegation order No. 151 (Rev. 1).)	Delegation of authority to furnish the Department of Labor or the Pension Benefit Guaranty Corporation a written request for redelegation.
Dec. 30, 1975 (Delegation order No. 112 (Rev. 3).)	Delegation of authority to district directors to issue determination letters. Delegation order No. 112 (Rev. 2) superseded.

News releases

Sept. 5, 1975 (IR 1414)	Notice of establishment of EP/EO organization. Also includes answers to frequently asked questions about ERISA.
Sept. 13, 1974 (IR 1419)	IRA's—General information.
Sept. 30, 1974 (IR 1422)	Basic organization of office of EP/EO.
Dec. 6, 1974 (IR 1436)	Public inspection of private tax rulings.
Mar. 21, 1975 (IR 1469)	A nationwide field structure to implement the tax aspects of ERISA.
Dec. 24, 1975 (IR 1544)	IRA's—General information.
Dec. 29, 1975 (IR 1546)	Announcement that testimony regulations will be published shortly dealing with the election provided by the Tax Reduction Act of 1975 for "Keogh" plan contributions.

Prohibited transaction exemptions

Dec. 29, 1975 (75-1 I.R.B. 75-52)-- 52). Exemptions from prohibitions respecting certain transactions involving employee benefit plans and certain broker-dealers, reporting dealers and banks.

APPENDIX II

TABLE 1.—NUMBERS OF CORPORATE PLAN TERMINATIONS FOR THE YEARS 1972-75[1]

Calendar year	Plans in effect at beginning of year	Number of corporate plan termination: Profit-sharing and stock bonus plans	Pension or annuity plan	Total	Percent of total plan terminated
1972	328,376	1,775	1,745	3,520	1.1
1973	374,191	1,908	2,222	4,130	1.1
1974	429,666	2,027	2,577	4,604	1.1
1975	484,981	3,584	4,592	8,176	1.7

[1] Based on quarterly breakdowns of determination letters for qualified corporate plans issued by the Internal Revenue Service.

The figures tell us that determination letters on terminations were issued in the calendar years 1972, 1973, and 1974 for 1.1 percent of the plans in effect at the beginning of each year.

In 1975, however, it rose to 1.7 percent. While in 1972, plan terminations were split evenly between pension or annuity plans and profit-sharing or stock bonus plans, in 1975 we see that pension or annuity plans account for over 56 percent of all terminating plans. Pension and annuity plans were the most affected by the downturn of the economy, particularly the trusteed plans for which the decline in market value of the assets resulted in a deterioration of their funding position. Considered in those depressed circumstances, the funding requirements and the provision in act section 4062(b) for employer liability under defined benefit plans in the event of plan termination with insufficient assets, might very well explain the replacement of defined benefit plans by defined contribution plans. These replacements account for 16 percent of the cases handled by PBGC as plan terminations.

TABLE 2.—COMPARISON OF PLAN TERMINATIONS REPORTED BY IRS AND PBGC[1]

	Number of pension plan terminations: IRS	PBGC
October to December 1974	654	467
January to March 1975	904	744
April to June 1975	1,367	1,082
July to September 1975	990	
October to December 1975	1,331	[2] 3,209

[1] IRS figures based on determination letters issued for pension or annuity plans, including money purchase plans; PBGC figures based on case openings covering defined benefit pension plans only.
[2] Deduced from the total number of plan terminations reported for 1975 by PBGC (5035).

TABLE 3.—DISTRIBUTION OF PENSION PLANS AND CLAIMANTS BY REASON FOR TERMINATION, 1972

Reason for termination	Number of plans	Number of claimants
Total	1,227	42,019
1. Change of company ownership by sale or transfer	206	4,054
2. Change of company ownership by merger	45	1,430
3. Adoption of new superseding plan	105	4,127
4. Lack of employee participation	59	491
5. Adverse business earnings	322	4,968
6. Liquidation or dissolution of employer organization	258	7,888
7. Change of ownership by sale or transfer and either adverse earnings or liquidation of employer organization	44	1,412
8. Change of ownership by merger and either adverse earnings or liquidation of employer organization	1	6
9. Combination of reasons, including both adverse earnings and liquidation of employer organization	21	2,688
10. Other or unknown	95	5,085
11. Closure of plant, division or subsidiary, but not entire firm	71	9,870

Source: Study of pension and plan terminations, 1972 prepared by the Departments of the Treasury and Labor. Based on determination letters for defined benefit plans during the year ending August 1972.

TABLE 4.—DISTRIBUTION OF CLAIMANTS BY REASON OF TERMINATION, 1974

Reason for termination	Number	Claimants Number	Claimants Percent in group
Total	1,314	40,532	100.0
1. Change of company ownership by sale or transfer	260	5,441	13.4
2. Change of company ownership by merger	61	2,229	5.5
3. Adoption of new superseding plan	147	5,814	14.3
4. Lack of employee participation	67	1,407	3.5
5. Adverse business earnings	281	3,397	8.4
6. Liquidation or dissolution of employer firm	270	6,904	17.0
7. Sale, transfer and liquidation or adverse earnings 8. Merger and liquidation or adverse earnings	52	2,193	5.4
9. Liquidation, adverse earnings and other reasons	24	995	2.5
10. Other or unknown	74	1,647	4.1
11. Closure of plant, division or subsidiary	78	10,505	25.9

Source: Study of pension and plan terminations, 1974 prepared by the Departments of the Treasury and Labor. Based on determination letters for defined benefit pension plans during the year ending August 1974.

TABLE 5.—*Distribution of pension plans by reason for termination*

	Percent distribution of plans
Adverse business conditions	37
Adoption of another plan	16
Change of ownership by sale, transfer, or merger	13
Liquidation, dissolution, or bankruptcy employer organization	12
Closing of plant, division, or subsidiary	6
Plan too expensive	6
Lack of employer participation	4
Other	7
Total	100

Source: PBGC study. Based on 20 percent sample of post enactment termination filing Sept. 2, 1974–May 1, 1975.

Senator NELSON. Our next witness will be Mr. Rudolph Passero, chairman, national affairs committee, National Society of Public Accountants.

STATEMENT OF RUDOLPH J. PASSERO, CHAIRMAN, NATIONAL AFFAIRS COMMITTEE, NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS

Senator JAVITS. Mr. Chairman, this particular witness happens to be from New York. I would like to welcome him to the committee and explain that I cannot stay throughout his testimony.

I hope you bear in mind that I have exactly five committee hearings and markups this morning. It is a common occupational disease. But I will stay as long as I can.

Mr. PASSERO. I understand your situation, sir.

Mr. Chairman, as has been indicated, I am from the State of New York, Rochester, more specifically, and I am a licensed public accountant under the laws of that State. As previously indicated, I am presently serving as chairman of the national affairs committee of the National Society of Public Accountants.

The NSPA is an individual membership organization of some 16,000 independent accountants throughout the country. Our members are professionals who provide a variety of accounting, auditing, management advisory and tax services. Our members are serving principally the small business community.

Because licensure of accountants is governed under separate and distinct State laws, our members include certified public accountants, licensed or registered public accountants, accounting practitioners, public accountants, accountants and practitioners utilizing various other titles which are permitted under provisions of State law.

Our members, of course, are bound to a stringent code of professional ethics and have chosen voluntarily to refrain from all advertising or solicitation. We have also promulgated specific codes of conduct applicable to engagements involving tax matters.

NSPA has been vitally interested in the development of the Employee Retirement Income Security Act of 1974 for two important reasons: No. 1. Our members are themselves independent entrepreneurs and employees with responsibilities to their staff members; and No. 2. Our members' clients are the typical small business entity that was to be provided the incentive to establish pension plans for the first time.

NSPA compliments the joint efforts of the Department of the Treasury's Internal Revenue Service and the Department of Labor for the high degree of coordination which they have managed to achieve to date. Without this cooperation, the program could not have come this far.

The initial attitudes by these two departments toward the treatment of small plans did not provide assurance to those persons involved with smaller plans that the final regulations would provide for more reasonable requirements for such plans. A considerable period of uncertainty existed during which pension advisers and financial counselors were necessarily cautious and reserved in their recommendations. A number of plans ceased to exist, or refrained from starting, because of the fear of unjustifiably high administrative costs. The adverse effect this has had on the creation of employment income security cannot really be assessed.

Senator NELSON. You are not making a judgment as to whether it has been substantial or insubstantial, is that what you are saying?

Mr. PASSERO. The difficulty is in assessing significance of these costs, on preparation and implementation of approved plans.

Now, in part due to the expressed intent and interest of the Congress, the special circumstances of small business seem to be receiving the attention and treatment merited.

The National Society of Public Accountants endorses the legislative approach taken in S. 2344 by Senators Nelson and Bentsen to specifically require the Secretary of Labor to issue simplified reporting and disclosure requirements for small pension plans with fewer than 100 participants.

Another matter of considerable significance is the continued absence of any definition of standards by the Secretary of Labor for independent qualified public "accountants" for jurisdictions where no current licensing of public accountants, other than CPA's, exists.

This was an important provision in the legislation as originally enacted in the Congress. The floor statement in connection with this action is attached as appendix A to the comments filed with the Department of Labor dated December 19, 1975. These appear at the conclusion of this statement. It clearly calls for recognition of such accountants with standards to be set by the Secretary.

Even though small plans are now being exempted from the annual audit report by IRS and the Department of Labor administrative action, the early issuance of equivalency standards implementing this statutory provision is needed to fulfill the legislative intent of ERISA as it applies to midsized plans. Many small businesses will have more than 100 participants in plans and these firms should have the requirement for "qualified public accountants" specified as soon as possible.

The Department of Labor's news release misstates the requirement in this regard where it refers to the revisions made including:

"Waiving the requirement for an opinion by an independent certified public accountant * * *."

The changes which are being made for the benefit of small business should be more accurately described if the small business community is to be fully informed of the actions taken in its behalf.

The National Society of Public Accountants will continue to monitor the regulations and forms proposed in the pension area and supply comment to the Departments. Attached are copies of two filings already made. A third was also filed on November 19, 1975, with the Internal Revenue Service's Tax Forms Coordinating Committee. The content of that document is substantially covered by the December 19, 1975, filing with the Department of Labor.

We appreciate this opportunity to participate in these important hearings and pledge our cooperation with the committees involved to do all that we can to bring about fair and meaningful implementation of the Employee Retirement Income Security Act of 1974.

I was much impressed with the testimony given by Commissioner of Internal Revenue Alexander and his aides. I would like to at this time introduce to the Senator, the members present, Mr. Jon Bednerik of the National Society of Public Accountants. Jon is director of government affairs, for our society and is vitally interested and active in following the course of promulgation of these regulations that are now the law under ERISA.

The commentary made by the Commissioner and some of the testimony given yesterday which was made available, contains many possible misleading statistics. I believe the Commissioner referred to them as the "numbers game."

Certainly it is unintentional but I would point out that while the committee, your committee has garnered information indicating that there are some 600,000 plans in existence at the moment, one of the other witnesses yesterday, I believe, testified it is 710,000. That is a change of some 18 percent which allows for an awful lot of people.

I did a very brief survey that has to do with amounts contributed to these pension and profit-sharing plans by small businesses that comprise part of our practice back home.

When we relate the numbers of plans, it does not give us dollar contributions made by these plans in relation to the number of participants.

For whatever it may be worth, the following is a summary of some six plans that are in effect with several of our clients.

We have one plan in which there are 29 participants. Last year's contribution was $1,000 for 19 participants.

We drop now to 23 participants, in which the annual contribution last year was $20,000.

We have several one-man corporations, one employee, one stockholder, for contributions in each of the several occasions averaging out to something like $500.

I have another plan in which there are two participants in which the contribution for last year was just short of $7,500.

The last one, consisting of five participants, contributed $1,360 last year.

I have not seen any dollar contribution figures on a specific plan basis in any of the testimony that has been given here, or anywhere else. I thought these few figures might be of assistance to the committee in your deliberations.

That pretty largely, Senator, represents the prepared testimony that we have.

If there is anything else that you wish us to add to, or if you have questions we would be delighted to answer them.

Senator NELSON. You heard the testimony of Mr. Alexander in which he stated as a general proposition that the reporting requirements and forms under their latest actions to date are less than three. What is your judgment on that?

Mr. PASSERO. Yes, in terms of numbers of pages, but the complexity of some of those pages I am not so sure have been reduced.

We find again in the small business community, the businessman regrettably too often sometimes looks to his advisers, his attorney or accountant, to assist him in many matters which we consider to be more or less menial; oftentimes this is necessary simply because these small business people have no staffs of their own, no bookkeeping, no comptroller, no accountant. And in some instances, not even a secretary.

The preparation of the original version of the ESB-1 caused a great deal of consternation among our office clients and they just automatically were forwarded to our office, to our accounting firm office.

It appears to be a natural instinctive act on the part of a small businessman to foist or pass on to his accountant, the governmental reporting forms and they take for granted that it is our bailiwick and our responsibility. Of course, we are delighted to assist them, not for what some might understand that we can extend our billable time for, but in a sincere effort to get them to comply with requirements of agencies and departments.

Senator NELSON. Well, thank you very much for your taking your time to come and testify this morning. Your statement and the appended documents will be printed in full at the appropriate place in the record.

Thank you very much.

[The attachments to Mr. Passero's statement follow:]

COMMENTS FILED BEFORE THE DEPARTMENT OF LABOR, OFFICE OF EMPLOYEE BENEFITS SECURITY BY THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS

I. THE INDEPENDENT QUALIFIED PUBLIC ACCOUNTANT

Proposed Department of Labor, Office of Employee Benefits Security Regulations contain the following language set forth at section 2520.103-6: section 2520.103-6 Opinion of an independent qualified public accountant included in the annual report.

(a) General and application. In accordance with section 103(a)(3)(A) of the Act, the administrator of a plan required to file an annual report under section 104(a)(1)(A) of the Act shall engage an independent qualified public accountant on behalf of all plan participants to examine the financial statements, books, and records of the plan and prepare an opinion containing the information described in paragraph (c) of this section. The plan administrator shall include the opinion of the accountant described in paragraph (c) of this section as a part of the annual report. The opinion described in paragraph (e) of this section shall be included in the summary annual report, but is not required to be included in the annual report.

Such accountants' opinion, the proposed regulations state, are required for the majority of plans without exemption for small plans. The Internal Revenue Service, in smiliar rules and regulations, has proposed an acrosst-he-board exemption from annual opinion statements for those plans with "100 or fewer participants".

NSPA recognizes that striking a fair and equitable balance between employer benefit plan security additional cost and paperwork burden is a fragile process. NSPA does believe, however, the additional cost to very small plans caused by annual accountants' opinions is unwarranted and would add to the already burgeoning number of smaller plans which are folding because of increased administrative costs.

In a recent National Society of Public Accountants' survey, most respondents agreed with the Internal Revenue Service's position that a "100 or fewer participant" cutoff would be appropriate for identifying these smaller plans which should be exempt from the anual opinion requirement. Members from various parts of the country indicated an additional yearly increment cost of $800–$1,000 to even small plans with as few as 15 participants if the annual opinion were mandated for such plans. Obviously, the costs of performing the necessary work for an annual audit of larger plans would be proportionately greater. NSPA concludes that the additional plan security brought about by yearly financial reviews is far outweighed by the financial burden caused by annual opinion statements.

The National Society of Public Accountants believes the Department of Labor should endorse the exemption previously proposed by the Internal Revenue Service.

If it is determined that setting the exemption from the annual audit report at 100 or fewer participants is not the proper level, then the cutoff could be placed at some lower figure such as 50 or fewer. Clearly at some point it becomes self-defeating to impose administrative cost burdens on plans so small that they will not survive that impact.

An alternative which some National Society of Public Accountants' members suggest is the expansion of the period between audit reports to two or even three years for plans below some established size. Typically, the funds involved in such plans will not be great and the dangers inherent in the longer gap between reviews should not prove harmful.

II. ABSENT FURTHER DEFINITION OF INDEPENDENT QUALIFIED PUBLIC ACCOUNTANT CONTAINED IN ERISA SECTION 103(a)(3)(D), THE PROPOSED REGULATIONS DO NOT ADEQUATELY APPRISE PLAN ADMINISTRATORS OF THE POTENTIAL POOL OF COMPETENT PRACTITIONERS FROM WHICH TO SELECT

As presently proposed, section 2520.103-6 relating to accountants' statements may well be confusing and misleading to plan administrators. The term "independent qualified public accountant" apparently is unique to ERISA and, therefore, not a term customarily utilized in the trade or financial lexicon, state laws or in technical journals.

For ERISA purposes, an "independent qualified public accountant" is defined in section 103(a)(3)(D) as:

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

Plan administrators not versed in the complexities and subleties of state accountancy licensure may be led to believe the term is synonymous with certified public accountants. In fact, quite the obverse holds true in this instance. The term "qualified independent public accountant" is a shorthand term for a rather substantial pool of public accountants who are fully capable and professional and yet are uncertified. To ensure the availability of this collective auditing intellect, the legislative drafters thought it necessary to define precisely the term "qualified independent public accountant". This was accomplished in section 103(a)(3)(D), as indicated above.

NSPA recommends incorporating into regulations the definition designed by Congress. Absent such inclusion, the legislative intent to provide the largest source of capable practitioners would be frustrated. It is certainly axiomatic that an expanded number of capable accountants would go far in reducing the additional administrative costs being absorbed by pension plans.

Proposed section 2520.103-6 can be simply expanded by including section 103(a)(3)(D) language directly. The Regulations would then read as follows:

For purposes of this section, an independent qualified public accountant means:

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary of Labor as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification and licensing procedure for accountants. (Note: Subsection iii is only necessary with this language if the Secretary of Labor has not timely promulgated certification requirements for unlicensed practitioners. See Section III, infra.)

III. THE SECRETARY OF LABOR SHOULD PROMULGATE CERTIFICATION STANDARDS FOR UNLICENSED PRACTITIONERS FOR INCLUSION IN FINALIZED ANNUAL REPORT REQUIREMENTS

ERISA section 103(a)(3)(D)(iii) directs the Secretary of Labor to establish by regulation equivalency requirements for those practitioners practicing in jurisdictions where there is "no certification or licensing procedure for accountants". Such regulations have not yet been forthcoming.

Unofficially, the Department of Labor has expressed the possibility that the Secretary does not have to promulgate equivalency (certification) requirements because the phrase quoted above, if read literally, only applies to states which have neither certification procedures not licensing procedures for public accountants. Since all jurisdictions do, in fact, have some procedure (by examination or otherwise) to certify public accountants as CPAs, the Secretary may be relieved of his obligation mandated in ERISA section 103(a)(3)(D)(iii) under this interpretation.

This conclusion is patently absurd. If we read the pertinent language as Department of Labor would suggest, then Congress has, in effect, drafted a nugatory and inoperative subsection. If we follow the Department of Labor's theory, why wouldn't 103(a)(3)(D)(i), (ii) standing alone have been sufficient?

The answer is apparent: Congress wanted to go further. If we parse the legislative intent, Section 103(a)(3)(D)(iii), albeit adopted with the disjunctive "or", is meant to read with the conjunctive "and". Essentially, Congress requires the Secretary of Labor to promulgate equivalency (certification) provisions for accountants in public practice for jurisdictions which only certify accountants as CPAs and which do not currently license a second category. Hence, jurisdictions fitting this description are those which have no certification and current licensing procedure for accountants. These are as follows: Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

The legislative history is short, succinct and bears out this point completely. Creation of three qualified accountant categories appears quite early in the genesis of current Section 103(a)(3)(D)(iii). An amalgam of what was then H.R. 2, H.R. 12906 and S. 4200 provides the statutory language. A review of the coalescence of these bills clarifies the meaning of the existing language.

H.R. 2 contained the following language defining "qualified public accountant":

> (i) a person who is a certified public accountant certified by a regulatory authority of a State;
>
> (ii) a person who is a licensed public accountant, licensed on or before December 31, 1973, by a regulatory authority of a State; or
>
> (iii) with respect to audits performed before January 1, 1976, any other person who meets, in the opinion of the Secretary, standards of education and experience which are representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations: except that if the Secretary deems it necessary in the public interest, he may prescribe by regulation higher standards than those required for the practice of public accountancy by the regulatory authorities of the States, and a person shall be considered a qualified public accountant for purposes of subparagraph (A) only if meets such standards.

Clearly, the H.R. 2 language envisoned the creation of three accountant categories. H.R. 2 went to the floor with this language intact.

As part of the floor debate, H.R. 12906 was considered in the nature of a substitute for H.R. 2. The text of H.R. 12906 was being considered as a substitute for title I of H.R. 2 (H. Res. 869, 120 Cong. Rec. 1126 *et seq.* (daily eds. February 26–28, 1974)).

H.R. 12906 (at p. 26) defined "qualified public accountant" in identical language to H.R. 2, *supra*.

Representative Ashbrook offered a floor amendment to H.R. 12906. The language of the amendment simply struck the arbitrary cut-off dates. Mr. Ashbrook, in his floor statement, explained the nature of state accountancy licensure, and documented that the absence of cut-off dates would, indeed, perpetuate the three categories of accountants eligible for ERISA auditing. The House accepted the three-tiered approach; and no evidence indicates a different reception in the Conference Committee. A copy of Representative Ashbrook's floor amendment appears as Appendix A.

Admittedly, the language alteration to subsection (iii) cannot be pinpointed as to time of change or author. No guidance exists in the Conference Report. Change in language, in this instance, does not signal a shift of intent or meaning.

S. 4200 would have defined "qualified public accountant" as a certified or licensed public accountant—a two-tiered scheme. The Conferees rejected this concept unequivocally and attempted to retain the House endorsed version encompassing a three-tiered system with an equivalency provision. Such intent has not been emasculated by the somewhat haphazard rewording of subsection (iii), though it has been muddled. The legislative intent is given meaning only if subsection (iii) is read in the conjunctive ("and") instead of the disjunctive ("or").

NSPA believes the Secretary of Labor has a clear congressional directive which cannot be ignored. Section 103(a)(3)(D)(iii) equivalency regulations should be promulgated and included in the finalized Annual Reporting Requirements.

Establishing equivalency standards is admittedly an extremely difficult task involving such variables as education, expertise, background, etc. With this in mind, NSPA suggests to the Department of Labor that consideration be given to preparing a fair and comprehensive examination which would cover the single topic of pension plan auditing. Passage of such an examination would assure plan administrators and the Department of Labor of the accountants' proven capability in this highly specialized area. Qualifications to be met to sit for the examination, if any, could be worked out between the Department of Labor and IRS. Precedent for this approach is contained in the present IRS Enrollment Program set forth in Treasury Circular 230, 31 CFR 10.1 *et. seq.*

Provisions of the present law establish qualifications for actuaries with the cooperation of various private associations in that field.

The National Society of Public Accountants is available to work with the Department of Labor and the Internal Revenue Service on this important matter.

Another resource for the examination that might be employed is the Accreditation Council for Accountancy, Inc. which has a Board of Trustees including governmental and academic representatives. This organization has developed an independently prepared written examination in accounting and another specialized examination in the field of taxation. Since NSPA understands that plans of ACA, Inc. include formulation of an examination in auditing, it could probably serve as a body to provide input in the pension auditing area.

Of course, experience and educational standards might be set in lieu of a more formal examination procedure.

The Secretary of Labor should be urged to promulgate regulations at the earliest possible moment for inclusion in the Annual Reporting Requirements and the Code of Federal Regulations (CFR). Once accomplished, section 2520.103-6 could read as follows:

For purposes of this section, an independent qualified public accountant means:

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State; or

(iii) a person who practices in States where there is no certification and licensing requirements for unlicensed practitioners and who meets the requirements set forth hereafter: . . .

IV. CONCLUSION

The National Society of Public Accountants, through its Washington staff, National Affairs Committee and Federal Taxation Committee, is available at any time to assist the Department of Labor in their efforts to make ERISA function equitable and smoothly. Our suggested amendments to the proposed Annual Reporting Requirements are a substantial portion of that effort.

APPENDIX A

[From the Congressional Record, Feb. 28, 1974]

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment.

The Clerk read as follows: Amendment offered by Mr. Ashbrook: On page 26, line 9, strike the following "on or before December 31, 1978,".

On page 26, lines 11 and 12, strike the following: "with respect to audits performed before January 1, 1976."

(Mr. Ashbrook asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Chairman, I am offering an amendment to H.R. 2 which will eliminate an arbitrary limitation on the eligibility of auditors of private pension plans. The inclusion of this arbitrary limitation in the bill was, I believe accidental.

The two changes are necessary because the provisions in Section 104(a)(3)(C)(ii) and (iii) do not adequately and fairly take cognizance of the licensing procedures of public accountants in some 26 States including Ohio.

In 16 States, at the present time, the State legislatures have provided the measures of competency including education, experience and examination, to license independent accountants for public practice in addition to CPA's. I understand that some 400 persons a year are now being licensed in Ohio as licensed public accountants. The States in this category are as follows: Alabama, Alaska, Arizona, Georgia, Indiana, Maine, Montana, New Hampshire, New Mexico, Ohio, Oklahoma, Oregon, South Carolina South Dakota, Tennessee, and Vermont.

Of significance, too, are the 10 States which presently provide no regulation of the profession of public accounting except to restrict the title of the certified public accountant. In such jurisdictions, until comprehensive regulatory licensing standards are enacted by the respective State legislatures, there will be no means for otherwise qualified independent public accountants to perform audits for private pension plans under the current language of H.R. 2. The States in this group are as follows: Arkansas, Delaware, Idaho, Kansas, Minnesota, New Jersey, North Dakota, Pennsylvania, Wyoming, and the District of Columbia.

The need for flexibility in permitting qualified personnel in these States is recognized in H.R. 2, but it is needlessly limited. If it is truly appropriate to grant the Secretary of Labor the authority to promulgate standards of competence until 1976; it should be appropriate without a cutoff date.

In making these changes to H.R. 2, I am not unmindful that the standards to be employed in providing eligibility for independent auditors must not be diminished or impaired. An important element in this bill must be the protection of the public and the establishment of competency standards.

Public interest requires that persons engaged to perform audits of these programs be independent and possess sufficient technical knowledge to carry out the engagements in a satisfactory manner.

Since reliance has been placed in the standards set by States and in the equivalency standards set by the Secretary, no artificial and unnecessary restriction on dates ought to be placed on this generally meritorious legislation.

It ought to be noted that the Securities and Exchange Commission utilizes terminology calling for "independent public accountants" and no set dates for licensure are established by that exacting regulatory authority which oversees the public interest in the investment field.

A recent example of a major Federal program setting standards for independent auditors is the revenue sharing program. Regulation promulgated by this important office of the Department of the Treasury define qualified accountants as those licensed by the State, regardless of the date of licensure.

Professional accountants, whenever licensed, should have the opportunity to participate in this important program.

This legislation has made many strides in the private pension reform area and I do not want to see it weakened by a technical oversight which does not recognize the realities of the accounting profession in America today.

Mr. DENT. Mr. Chairman, as far as this side is concerned, I agree to the amendment offered by the gentleman from Ohio (Mr. Ashbrook).

The amendment was agreed to.

The CHAIRMAN. Are there any further amendments to part I? If not, the Clerk will read.

NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS,
Washington, D.C., October 29, 1975.

Mr. ERWIN C. SCHULER,
Chairman, Tax Forms Coordinating Committee, Internal Revenue Service, Washington, D.C.

DEAR MR. SCHULER: The following comments pertain to the proposed annual information returns/reports to be filed with the Internal Revenue Service and the Department of Labor by an employer or plan administrator of a pension or welfare benefit plan.

In the instructions it would be a good idea to perhaps include the definition of (a) defined benefit plan and (b) defined contribution plan, since other definitions are already contained in the instructions.

Under "other services" in the Codes for Principal Business section, there should be a classification for accountants as well as one for enrolled agents.

The phrase "independent public accountant" contained in the general instructions should be clarified.

The box marked "new" beside the business code number in Item 1(e) on Forms 5500 & 500-K is a mystery. There is no reference to its use in the instructions.

In Item 15 of Form 5500, change the term "current value" to "current market value" which is more easily understood.

The instructions for Items 7(a), (b)(, and (e) of Form 5500 should clarify that former participants or retired participants whose benefits have been paid out from a trust or for whom a current or deferred annuity exists not under control of the plan, should *not* be included.

Item 15(1) on Form 5500 should be deleted as IRS and DOL are only interested in current market value, not the cost basis of the assets.

An official form or schedule should be provided for use in connection with Item 17(a) of Form 5500 and Item 8(a) of Form 5500-K.

Schedule A and/or the instructions should clearly indicate who is responsible for filling out this schedule, i.e., the insurance company. Also, a signature line for the insurance company should be provided on Schedule A.

Item 1(f) on Schedule B should be deleted since it is repetitive of Item 3(b).

Items 1(i)(1) and (ii) should be deleted since the information is the same as Items 1(f) and 1(g).

We appreciate this opportunity to submit these views and suggestions to the Service. If we can be of further assistance, please do not hesitate to let us know.

Sincerely,

MINOR S. SHIRK,
Chairman,
Federal Taxation Committee.

Senator NELSON. Our final witness will be Mr. Richard Fay, attorney at law, Pittsburgh, Pa., member of the Employee Benefits Division, Section on Taxation, American Bar Association.

STATEMENT OF RICHARD H. FAY, ATTORNEY AT LAW, PITTSBURGH, PA., MEMBER, EMPLOYEE BENEFITS DIVISION, SECTION ON TAXATION, AMERICAN BAR ASSOCIATION

Mr. FAY. Thank you.

Senator NELSON. Your statement will be printed in full in the record. You may present it however you desire. If you can do some summarizing it would be appreciated.

Mr. FAY. I promise to summarize.

Before I summarize my statement, however, I would like to respond to the questions that Senator Javits asked Mr. Lurie. You remember that Senator Javits asked, based on IRS experience, what were the reasons for termination of plans.

Mr. Lurie said that of the terminations, a very small number of terminations were because of administrative problems.

Under the tax code, for deductions to a qualified plan to be allowable, the plan must be permanent. In other words, you must be establishing the plan with the intention that it will be a permanent plan.

Now, it is understood, of course, that you can terminate the plan if you have valid business reasons. That being so, I would never have one of my clients submit a notice of termination saying the only reason he is terminating is because he can't comply with the administration of it.

Such a statement could jeopardize his deductions since the plan's inception. So I am amazed that even 5 percent said that they were terminating their plans because of difficulties of complying with the new law.

The second part of Mr. Lurie's answer was that he noted that the number of participants in the terminated plans was not significant. Well, it seems to me that this is not a very good answer to this committee which is addressing itself to the impact of ERISA on small business, because what he is saying is that as far as small businesses are concerned, they will not be continuing or establishing defined benefit plans.

Generally, a defined benefit plan, from the viewpoint of security, is the most advantageous for the worker.

I will now summarize my statement. Let me apologize for my voice. Apparently, I decided to grace my appearance with a tremendous cold.

It is, of course, a pleasure to have this opportunity to testify at the first senatorial hearings on the impact of ERISA. As Senator Nelson says, one of the objectives of these hearings is to determine whether "serious compliance problems continue to exist for smaller retirement plans under ERISA and whether, as a result, terminations are, in fact, taking place in significant numbers."

On the next page I have figures on the increased costs. Let me get back to your letter from a company in Milwaukee, Senator, if I may. I think the figures are high but they are not unbelievable. It sounds to me like this very energetic businessman went to his lawyer, saying that on September 2, 1974, the law was passed, and I want my plan amended. And the lawyer probably said don't do it now, but the businessman maybe is one of these energetic people who wants to do things immediately. He said, "I want to amend my plan to comply with the law." So the lawyer sat down and in the absence of regulations, started drafting, and as the regulations started coming out, he continued redrafting and that is about what would happen if a businessman insisted that his plans be amended to comply with the law as of last year.

Last year, to the extent possible, I advised my clients not to try to bring their plans into compliance with ERISA because not enough was known. And for those clients, that for a variety of reasons can't wait, for example, they made an agreement to establish a plan under a collective bargaining agreement; then we go ahead and we draft, knowing that almost everything we do will have to eventually be changed. And that's very expensive.

I think what is disturbing about the termination figures is that there was such acceleration in the last month of last year as people became more aware of ERISA and they are taking action and terminating their plans.

So it seems to me we should ask if there is a way that the legislation could be changed to reduce some of the costs while not reducing protection to the employees.

It seems to me the area of reporting and disclosure is where the most substantial savings can be made with no dilution in the worker's rights or protections under ERISA.

Let me say that in the reporting requirements there is an element of unreality about them. As Mr. Erlenborn said, the previous reports to the Labor Department were in crates and, in many instances, never filed. It has been estimated that if you consider all the plans that have to be resubmitted to comply with ERISA, the IRS will have about 10 minutes to approve each plant if it wants to get it done in 1 year.

We are going to have a tremendous amount of paper going into agencies who will have very little time to look at them and they will get very little information they can use and a great deal which they cannot understand. For example, ERISA requires that every plan have an administrator. In the absence of identifying someone as administrator the employer becomes the administrator, and this is fairly important because a lot of the reporting and disclosure requirements fall upon the administrator of the plan.

Therefore, I always established someone other than the employer to be the administrator. Now, under the determination form for a defined contribution plan, there is a statement that says if the employer is not the administrator, put down the administrator's employer number. If he is not the employer, he doesn't have an employer number. Since you learn quickly with the bureaucrats that you never leave a blank unanswered in a form because they will just send it back, I sent away asking the IRS to assign the administrator an employer number and I never got one back because they don't know what I am talking about.

I keep getting calls from the IRS in Philadelphia asking way can't I make the employer an administrator; and I say I don't want to, and I say, this is a labor provision. Well, they say, they have heard of them and that they have had trouble with the Labor Department before.

So they have not worked out quite what they will do in the simple area of the administrator.

It is almost impossible to adequately summarize the reporting requirements but there are about six major reporting requirements. Let me say none of these forms can be done by even a very knowledgeable, competent, intelligent, small businessman. They are just too technical. I don't think that means they are necessarily wrong, but it would be necessary for the small businessman to go out and get somebody to help him. Maybe it will be just a couple questions but he is going to have costs associated with filling out these forms.

The first reporting requirements are that as part of seeking tax qualification the employer has to fill out Form 5301 or Form 5302, which are very detailed, and the lawyer drafting the plan usually does this.

Basically it sets out everything that you ever wanted to know about the plan.

The next requiement is the notice to interested parties. The next is the joint IRS Department of Labor Annual Report. Fourth, is the plan description to the Department of Labor which has to be resubmitted every time there is a material modification.

And fifth, a summary plan description, and. of course, if the employer has defined benefit plan, he falls under the requirements of reporting to the Pension Benefit Guaranty Corporation.

Basically, I have no complaints with the forms that the employer submits when he seeks a letter of determination. They are complex but they are probably necessary.

Also, I think the annual report that we have been talking about this morning is a highly technical but also probably necessary report to give the agencies involved some idea of what is happening in those plans.

After that, though, I have great problems. I would recommend that the EBS-1 form be eliminated entirely. I think one of the most rewarding or revealing things that the staff of these committees could do is to go to the Labor Department and ask how much time they will have to look at the form, who they will have to do it, and if those people will understand the form because it is highly complex.

If, however, it is decided that the Labor Department will not forego the pleasure of this form, I suggest that the law be changed so that if no plan is a tax qualified plan, and the employer has sought a letter of determination, and has filled out the forms seeking determination, that should be considered adequate compliance with the requirement of the plan description.

In the reporting area, we come across one of the most unnecessary burdens to employers because of the dual jurisdictional approach of ERISA.

The information that Labor wants on the EBS-1 form is duplicated somewhere else in the Government's hands and it is just not asking too much for the Government to find it.

Another area I think we can eliminate because it does absolutely no good is the notice to interested parties.

Senator NELSON. What is that now? Notice, what?

Mr. FAY. One of the new requirements imposed on plans if employers are going to establish plans is that they send a notice to interested parties.

Essentially, that means all employees, although it can be larger depending on what kind of plan or amendment to the plan is involved.

This is another forum that has to be done by the employer. He has to go to a professional to do it. There are some very detailed rules about timing, who gets it, and how they get it, and I am not at all convinced any purpose is being served.

ERISA established a framework of protection for the employee. If the employer establishes a plan that meets those requirements, what is being served by asking the employee to comment?

Senator NELSON. Is this for employee comment?

Mr. FAY. Excuse me?

Senator NELSON. For the employee to comment?

Mr. FAY. That is right. For example—say I have set up a salary-only plan that meets all the requirements of ERISA and I sent a notice to you and you are an hourly worker who is not included in the plan, do you have any comments.

I suggest that you are just asking for trouble. It serves no purpose whatsoever. I think that employers will be reluctant to establish plans under such circumstances. It will be one more reason why employers will not want to establish plans because you are waving a red flag in the worker's face.

You send another example notice to interested parties and you say we do not make employees participants of the plan until age 25, which is allowed under ERISA, and when the worker gets his notice, he is 19 or 20, and maybe he thinks this is age discrimination.

What right does he have to enforce? What purpose is being served? I think very little.

Senator NELSON. Well, did the statute require that notice?

Mr. FAY. Yes, sir. I must say that I agree with comments by Commissioner Alexander that most of the burdens of reporting flow from the statute.

The annual report, the plan description and so forth—they are all in the act in great, great detail and I think that wise legislative pruning might be in order.

Senator NELSON. Well, have you outlined in your statement, or if not, would you be prepared to suggest what specific modifications of the statute on reporting on the effects of paperwork could be eliminated and should be eliminated?

Mr. FAY. Well, just to repeat myself, I would think that——

Senator NELSON. Is it in your current statement?

Mr. FAY. Yes, it is, but just to go over it, I think that the law on plan description to Labor could be changed so that the filing of the forms to the IRS would be considered adequate.

You would have to change the law to achieve that.

Senator NELSON. Wait, what was that again? That reporting requirements——

Mr. FAY. This EBS-1 which started off as the 16-page monster and now is down to a 6-page absurdity.

Senator NELSON. So you would eliminate that form and rely upon what, simply the report to IRS?

Mr. FAY. I would rely on the forms that the taxpayer submits for seeking a letter of determination and I would rely on the annual report.

It seems to me that is more than enough reports. The EBS-1 form is a highly technical form and has questions like what are your rules for breaks in service and hours of service and then in the instructions to clarify what Labor means by these terms. They refer to the regulations which are about 40 pages long.

That is the only guidance the taxpayer has. The regulations are a subject of controversy, and highly competent practitioners have trouble with them.

I would predict that to fill out that form fairly accurately would take somebody qualified in the area for a plan he has not seen before about half a day.

Senator NELSON. You are referring to which form now?

Mr. FAY. The plan's description form, the EBS-1 form. I think that is just too much time.

There is no way the employer can fill that form out.

Another form that we are facing is the form that you have to submit to the Pension Benefit Guaranty Corporation. I have done quite a few of those recently because the annual premium is due for calendar year plans.

I think that on the whole you see an attempt by the Pension Benefit Guaranty Corporation to simplify the forms, but that form is a classic example of a rather poor sense of cost to the employer weighed against benefit to the Government.

Not one of my small employers were able to understand that form. It took me about 4 hours of very intense reading to understand it.

Once you do understand it, it is fairly simple. The reason it is difficult is the need for premium reconciliation.

This is felt necessary because the Government asks the employer to pay a premium based on his anticipated employment for the upcoming year.

So, next year if he had not paid enough, or overpaid, you ask him to reconcile.

As the instructions make clear for most small employers the estimate and actual employment are going to be the same.

But you have to go through this very detailed form to come out with what might be a difference of a dollar or two, and that just doesn't seem worth it.

I would like to turn to some other areas for small businessmen created by ERISA. First, welfare programs. I don't believe the legislation clearly distinguishes or appreciates the differences between employee pension benefit plans and employee welfare benefit plans.

Most of the requirements for welfare plans just add additional cost with very little benefit to employees. This is particularly true for small employers.

Almost all their welfare plans are insurance contracts. In other words, the terms of the welfare plan are provided in an insurance contract.

But under ERISA certain procedures must be set forth, and a named fiduciary must be named and so forth. It has forced us—at least the firm I am in—to come up with a form for this that just refers to the insurance contract by number and one of my clients wrote back stating that the importance of this document makes him want to cry but he is too old for that.

Another area in which I don't think ERISA made adequate distinction is the difference between defined benefit plans and defined contribution plans.

Certainly, this is true for the requirement for a joint and survivor annuity. Most of the smaller employers' plans are defined contribution plans, usually profit-sharing plans.

For profit-sharing plans the joint and survivor requirement is unnecessary and if imposed, will result in a loss of flexibility of benefits to employees.

The purpose of the joint and survivor provisions of ERISA was to create a remainder interest where one would not otherwise exist.

For defined contribution plans, the total account benefit is normally paid to a participant's beneficiary, so the application of the joint and survivor rule is unnecessary.

In other words, the normal profit-sharing plan provides survivors with the protection that the joint and survivor provisions were designed to achieve. The application of the joint and survivor annuity to a profit-sharing plan will mean, and this is true in my firm, that profit-sharing plans will be drafted to eliminate any form of annuity payment—certainly just the reverse of the result that Congress had intended.

I think the regulations could be easily changed so that defined contribution plans could meet this requirement in a logical way.

Second, there is a provision in the regulations on hours of service that I think is disturbing for many employers. Generally, under the regulations an employee is credited for every hour he was compensated or eligible to be compensated for work.

The question arises: What happens if the employer pays one employee on some basis other than an hourly basis.

Essentially the regulations say if you don't keep hourly records of payment, those employees who are participants in the plan for which hourly records are not kept will be given a full year of service for their participation in any one day in the plan.

So, in the example I give, if a small employer does not keep hourly records of pay, their employees would be credited with 1,000 hours per year of employment even if they worked only 1 day.

Moving on to what drew a lot of comment, that is the Rev. Proc. 75-49. I think some legislative history would be helpful. You remember, Senator, that at the last day of the conference, there was a tremendous controversy about the fact that Congress was, for the first time, enacting vesting and participation requirements.

Should this eliminate any concern about discrimination of the plan in operation? Some felt, and the Treasury did, although that was not shared by IRS, that the fact that Congress established standards for vesting, et cetera, should mean that this would be conclusive proof that the plan was not going to be operated in a discriminatory fashion.

Well, there was objection to that, but, on the other hand, it came out that there was great variety investing requirements in different IRS districts; in other words, say, two doctors and one nurse in one district would be required to vest at a schedule much faster than a similar operation in another district.

So, there was a need to create a uniformity and not have it so arbitrary. So, the committee report said the fact that we have minimum vesting standards doesn't mean that if in operation the plan is discriminatory, theirs can not require faster vesting but in no case—this was done in an attempt to create some uniformity—can it be greater than 4-40; in other words, after 4 years, 40-percent vesting.

From that the IRS came through with its regulation which would disqualify about, I think the figure of 95 percent is pretty good, of existing big plans.

Now, I don't know what rule they came up with yesterday but I don't know why they keep fooling with it. We have massive problems of compliance under ERISA.

We are asking for final regulations on ERISA, but most of them are temporary, most have great problems and it doesn't seem to me that IRS showed great sense of priorities when they got into this battle.

It was not an ERISA matter; it was not mandated by Congress. This is one they should have postponed.

I guess my final point is this: As you well know, the IRS has issued a minibible and both the Labor Department and IRS have stated that if you comply with the regulations that are in existence, no matter how unpolished or unfinished they may be, by May 30 of this year, your plan will be in compliance for the rest of that year even if we change our mind, which undoubtedly we will.

This may make sense from an administrative viewpoint because they are now trying to schedule when regulations will be issued.

But, if you think about cost to the small employer, it is just not possible. A lawyer can not go to the small employer and say, "I am drafting this plan but I will have to go through the same exercise 1 year from now," but that is essentially what the IRS is requiring.

We have a piecemeal approach until Labor and the IRS finally make up their minds.

That is the reason why the costs in that Milwaukee case were so high. The IRS and labor are attempting to get enough regulations out so that they can maintain that the plans can be brought into compliance, but that is not true. Many questions remain unanswered.

This piecemeal approach is just causing a lot of problems. I think what we should do is admit that the IRS is not in a position now, nor the Labor Department, to give final guidance to plans.

Let's postpone all deadlines, get IRS and Labor to concentrate on essential regulations, and then have the plans come into compliance.

This piecemeal approach is an extremely expensive approach.

Thank you very much, Senator.

Senator NELSON. Thank you very much, Mr. Fay, for your very valuable testimony.

We intend to take a number of the issues raised by you and others and we will request the agencies to specifically reply so that we will have their viewpoint on the feasibility of making some of these changes that you and others have recommended today and yesterday.

Thank you very much for taking your time to come here.

Mr. FAY. Thank you.

Senator NELSON. We are adjourned.

[The prepared statement of Mr. Fay follows:]

STATEMENT BY RICHARD H. FAY, REED, SMITH, SHAW & MCCLAY

It is a pleasure to have this opportunity to testify at the first Senatorial hearings on the impact and consequences of the Employee Retirement Income Security Act of 1974 ("ERISA"). One of the objectives of these hearings, as stated by Chairman Nelson, is to determine whether "serious compliance problems continue to exist for smaller retirement plans under ERISA and whether, as a result, terminations are, in fact, taking place in significant numbers."

It is always dangerous to extrapolate from one's own experience, but based on my present employment with a law firm representing a number of smaller businessmen who maintain approximately 250 employee benefit plans, I would say that small businessmen's compliance problems with ERISA, particularly the reporting and disclosure requirements, are not only continuing but increasing and that unnecessary and undesirable terminations of plans by smaller employers are, in fact, taking place. I have been a witness to smaller employers terminating good retirement plans because they felt that they cannot understand or keep up with the compliance requirements of ERISA.

As to the increased cost, the Pittsburgh office of one of the national major accounting firms has calculated that their cost for preparing an employee benefit plan has increased from about $700 to $3,000. Other estimates of the increased cost for drafting a plan, shepherding it through the IRS, and meeting the other requirements of ERISA are much higher.

National figures would suggest that my experience is not unique. The impact of ERISA is apparent in the requests for determination letters. For corporate plans, as the following figures indicate, there was a significant drop in requests for determination letters for the first nine months of 1975 over the same period in 1974.

Corporate plans	1974	1975
Profit-sharing and stock bonus plans approved	21,370	12,933
Number of employees covered	340,477	143,783
Pension plans approved	25,807	13,678
Number of employees covered	770,557	550,714
Total plans disapproved	254	226

Also, figures recently issued by the Pension Benefit Guaranty Corporation show that the number of 1975 requests to terminate plans was four times greater than what was anticipated and that the rate of termination is accelerating as ERISA compliance deadlines approach. In 1975 the Pension Benefit Guaranty Corporation received a total of 5,085 notices of intent to terminate pension plans, and 1,148 of these notices were filed in December. These figures amply demonstrate the need for Congressional hearings such as this one to determine if there are ways to reduce the cost of meeting the requirements of ERISA for small businessmen without in any way reducing the protection and benefits offered to employees by ERISA. It seems to me that, particularly in the area of reporting and disclosure, substantial reduction in employers' costs can be achieved without diminishing the protection provided employees.

There are so many reporting requirements that any summary will be inaccurate, but, in general, the major reporting requirements are (a) those that are made as part of the employer seeking a letter of determination from the IRS that his plan is a tax-qualified plan, (b) notice to interested parties which must be provided by employers to all his employees if he wishes a letter of determination, (c) a joint IRS/Department of Labor annual report which must be filed for most plans, (d) a plan description to be filed with the Secretary of Labor which must be resubmitted within 60 days if the plan is materially modified, and (e) a summary plan description to be provided to the participant. If the employer maintains a defined benefit plan, he would, of course, also have to meet the reporting requirements of the Pension Benefit Guaranty Corporation.

I have no major criticisms with either the filing requirements of seeking a letter of determination or the summary plan description. The summary plan description was a much needed reform which should allow participants to obtain a clear explanation of the major provisions of their plan. There is the danger, however, that the regulations will require that the summary plan description be so detailed and complex as to defeat its original purpose. The regulations for the summary plan description should not require such detail as to create the false impression that all provisions and effects of the plan can be determined from its summary.

Furthermore, the annual report seems also to be a basically sound approach replacing as it does a series of previous filing requirements of the Department of Labor and the Internal Revenue Service. The recent announcements that a simplified two-page annual report form for non-Keogh pension plans and welfare plans with under 100 participants will be forthcoming and the elimination of the requirement for the opinion of an independent certified accountant for plans with fewer than 100 participants are welcome news for smaller plans. A concern at this moment, however, is the announcement of the Secretary of Labor in the last week of December that the filing requirements for the annual report have been moved from 4½ months after the end of the plan year to 7 months after the end of the plan year. It is curious that this announcement was not issued jointly by the Department of Labor *and* the IRS, and the IRS position on this extension should be clarified.

I have serious questions about the need, justification, and format of the plan description to be filed with the Department of Labor and the notice to interested parties. In discussing forms we should keep certain goals and objectives in mind. First, what is the information being obtained and how can it be used? Second, if the information is similar or identical to information already in the possession of the government, what additional benefit to the government or additional protection to the employee is achieved to justify the additional cost to the employer? Third, how much time does it take for someone to understand and to complete the form? And finally, can the form be completed by an intelligent person who is not an expert in the employee benefit area? I would suggest that the annual report and the notice to interested parties cannot meet any of these tests. It, of course, can be observed that the form of the annual report is not so different from what the Department of Labor has requested for some years. But it seems appropriate in light of the many new reporting requirements of ERISA to determine how much of the information previously requested is still needed.

For tax-qualified plans most of the requested information has already been provided on the forms for seeking a letter of determination, and I, therefore, recommend that serious consideration be given to allowing tax-qualified plans to meet the annual report requirements by compiling the forms they submit to the IRS. If one is convinced that a separate annual report is still necessary, I still strongly question the desirability of the format of the annual report. It represents an attempt to reduce a highly technical area to a yes or a no questionnaire which results in misleading information to all concerned. For example, there are questions about the rules of the plan for years of service and breaks in service, and the only guidance is to refer to the highly complex and technical regulations which have been issued on these areas. There is no way that the employer or even the average practitioner can adequately and sufficiently answer these questions. Other questions request information whose practical value to the Department of Labor is hard to imagine.

The notice to interested parties is a classic example of one good idea too many. This notice results in additional cost to employers with very questionable additional protection to employees. Congress, in enacting ERISA, established for the first time detailed requirements for employee benefit plans. It is these requirements that provide the employee his basic protection. If an employer establishes a plan complying with ERISA, it is highly questionable what additional protection to employees is provided by requiring that a notice to interested parties be given. Furthermore, it is a highly dangerous requirement in that it suggests that participants have rights in addition to those required by ERISA. It will be a source of contention and litigation and, I think, will result not only in unnecessary cost to employers but will act as a deterrent to establishing plans.

Finally, while on the whole I believe that the form for payment of premiums to the Pension Benefit Guaranty Corporation reflects a genuine desire to have as simple a form as possible, it demonstrates a good example of increased cost to employer with the little benefit to be gained by the Pension Benefit Guaranty Corporation or employees. Most of my small employers were unable to understand this form. They came to me for assistance and it took me about three hours of very careful reading to understand how it works. Once you understand it, it is really quite simple, but the reason for its complexity is primarily the requirement for a premium reconciliation. This is felt necessary because the employer is asked to estimate the number of covered participants at the beginning of the year which, of course, could change over that year. Therefore, in the next year he is asked to reconcile his estimate with actual participation. The smaller employer, therefore, is asked to spend a great deal of time and money to estimate what may be a very small difference, if any. As the instructions on the form indicated, for many plans there will be no change, but to adequately fill out this form, the employer will have to spend an hour or two of his time or pay an expensive outside expert to determine if a dollar or two more should be sent to the Pension Benefit Guaranty Corporation. In other words, what cost are we imposing on small businessmen for absolute precision in form submitted to the government? Does this requirement far exceed the benefit to the government? I suggest that when an employer has to spend an hour or two hours of time so that the government might be able to receive two or three more dollars in premiums, we are wasting time and money.

WELFARE PLANS

There are other areas of ERISA which particularly affect small businessmen that Congress might want to consider.

On the whole I do not believe ERISA adequately recognizes or distinguishes between welfare plans and pension plans. For example, the overwhelming number of welfare plans maintained by smaller employers are fully insured plans.

In other words, they are welfare plans whose benefits are provided under the terms of some insurance contract. The requirement that these plans be reduced to writing and that certain fiduciary responsibility provisions be incorporated into that writing is merely redundant or results in unresolved conflict between the client and the insurance company. My firm is taking the approach of drafting a welfare plan which incorporates by reference the terms of the insurance contract. For fully insured welfare plans, this exercise, which is costly to the client, seems of questionable value to the employees and to the government. As one client wrote to a member of my firm when we sent him one of these welfare plans, "The importance of this document makes me want to cry, but I'm too old for that."

JOINT AND SURVIVOR ANNUITY

Most of the smaller employers' plans are defined contribution plans, usually profit-sharing plans. For profit-sharing plans the joint and survivor requirement is unnecessary and if imposed, will result in a loss of flexibility of benefit to employees. The purpose of the joint and survivlor provisions of ERISA was to create a remainder interest where one would not otherwise exist. For defined contribution plans, the total account benefit is normally paid to a participant's beneficiary, so the application of the joint and survivor rule is unnecessary. In other words, the normal profit-sharing plan provides survivors with the protection that the joint and survivor provisions were designed to achieve. The application of the joint and survivor annuity to a profit-sharing plan will mean, and this is true in my firm, that profit-sharing plans will be drafted to eliminate any form of annuity payment—certainly just the reverse of the result that Congress intended. I would, therefore, suggest that the regulations dealing with joint and survivor annuity be amended to provide that a plan will not be disqualified if it provides that upon the death of the employee, "the entire balance of his account under the defined contribution plan would be paid to his surviving spouse unless the participant has elected another form of benefit payment."

HOURS OF SERVICE

The proposed regulations dealing with participation, vesting, and accrual of benefits have a provision that will be particularly disturbing to smaller employers who do not keep hourly records of employment. The general rule is that for purposes of determining an employee's creditable service, hours of service shall be ascertained from the records of hours worked or hours for which payment is made or owing. If, however, such records are not kept or if the employer compensates his employees on a salaried basis, an alternate method of determining hours of service for non-hourly employees is provided which permits an employer to apply an equivalent formula for translating weeks or days of service into hours. The regulation states that the formula must yield an equivalent of at least 1,000 hours of service per computation period. In other words, for smaller employers that do not keep hourly records of pay, their employees would be credited with 1,000 hours per year of employment even if they worked only one day.

NONDISCRIMINATORY VESTING SCHEDULES—REV. PROC. 75-49

As you have undoubtedly heard, the IRS has issued Revenue Procedure which would prescribe a so-called "4-40" graded vesting in cases where the Service believed that a qualified plan's vesting schedule is likely to produce discrimination. Under that Revenue Procedure, plans of employers with businesses more than five years old, which provide for vesting slower than using the 4-40 vesting schedule and which cover employees in whose favor discrimination is prohibited, must meet one of the two turnover tests:

1. The rate of turnover for rank and file employees must be less than 6% (the 6% test), or
2. The rate of turnover for rank and file employees must be not more than 200% of the rate of turnover for employees in the prohibited group (the 200% test).

If neither one of these tests could be met by a plan, the Revenue Procedure required the use of a vesting schedule at least as favorable as the so-called 4-40 vesting.

The Service responded to the barrage of criticism directed at this Revenue Procedure by issuing another Revenue Procedure under which the Service has taken the position that in a request for a determination letter an employer may ask that the original Revenue Procedure not be applied. If the determination letter request states that the plan submitted is to be considered without regard to the original Revenue Procedure, the Service will proceed to examine the plan on that basis.

If it approves the plan as being qualified under ERISA, it will issue a letter of determination on all aspects of the plan except the plan's vesting schedule. With regard to the vesting schedule, the letter will contain a caveat stating that no determination was made whether the vesting provision of the plan satisfies the nondiscrimination requirements of the Code. This is obviously a temporary and highly unsatisfactory solution to the problem. While I do not believe that compliance with one of the statutory vesting requirements of ERISA should be conclusive evidence that the plan is operated in a nondiscriminatory fashion, it seems to me, nevertheless, that the original Revenue Procedure far exceeds Congressional intent and is unnecessarily costly for employers. Use of the 4-40 vesting instead of one of the vesting schedules of ERISA will substantially increase vesting costs for most employers. Whatever one may think of the merits of this Procedure, I think the increased cost could result in massive curtailment of employee benefit plans. One study estimates that the 4-40 vesting will increase the cost of vesting by 25% over a ten-year period. Furthermore, the original Revenue Procedure establishes a highly arbitrary and mechanical test rather than a case-by-case determination of whether a plan is operated in a discriminatory fashion. The revenue ruling will result in plans being disqualified when, in fact, they are being operated in a fair and equitable manner.

PIECEMEAL APPROACH

Both the Department of Labor and the Internal Revenue Service have announced that if a plan complies by May 30 with the requirements of ERISA as they are presently embodied in regulations, the plan will be held in compliance with the requirements of ERISA until the end of this year. For purposes of an orderly addressing of the complex problems that have to be faced, this step-by-step procedure makes sense from an administrative viewpoint. This piecemeal approach, however, drastically increases the cost of drafting the plans. It is obvious that it is small businessmen who can least afford this approach.

The administrative agency's delay in getting final regulations out is due somewhat to the complexity of the area and the lack of knowledgeable people. Without trying to assign blame to anyone, it is time we recognized that all deadlines will probably have to be extended. You cannot expect small businessmen to incur substantial charges to bring their plans into compliance with the requirements of ERISA only to be faced in a short time with additional costs of re-amending their plans. I, therefore, would strongly recommend that Congress look into a procedure whereby the appropriate agencies would have the time to develop final regulations which then can be used for drafting of plans.

[By direction of the chairman the following communication was made a part of the printed record:]

JARABIN, GAGGS & HUNT,
CERTIFIED PUBLIC ACCOUNTANTS,
Santa Barbara, Calif., February 25, 1976.

Re Pension Plan Reporting Requirements.

SENATE SMALL BUSINESS COMMITTEE,
Financial Markets and Private Pensions, Subcommittee of the Senate Finance Committee, Dirksen Senate Office Building, Washington, D.C.

GENTLEMEN: I understand that hearings are being held on the burdens imposed on small businesses in reporting under the Pension Reform Act of 1974. The problems created by the Act are serious, but I would not expect that meaningful information would be available in terms of actual plan terminations, cost, time and reporting burdens because no significant reports have yet been required to be filed under the Act.

The initial filing requirement, Form EBS-1, was originally proposed to be due on March 31, 1975, was later postponed until May 31, 1975, subsequently postponed until August 31, 1975 and (within two weeks of the mailing of the forms) changed from a multipage form to a two page registration form. The hasty change, only two weeks after the mailing of all the multipage forms to all known employers, was poorly communicated to employers in the form of a cryptic notice that hearings were to be held on a proposed change in reporting requirements of the Department of Labor. The results of the hearings concerning the proposed postponement and lessening of the requirements on the initial Form EBS-1 was not communicated to employers. Form EBS-1 has subsequently been substantially revised and is now due on May 30, 1976, fourteen months after the original proposed deadline. The form is not finalized, and it is therefore not known whether the requirements imposed by it will be manageable or whether it will be distributed in time to be completed and filed timely. Thus, although the Department of Labor has managed to cause considerable inconvenience to accountants, plan administrators, and others, the amount of time and financial burdens imposed by the Act upon employers rising from the initial description of the plan to the Department of Labor is not yet known.

A similar situation is occurring on the proposed annual filings required under the Act. Internal Revenue Service/Department of Labor Form 5500 has not yet been finalized. The original proposed forms resulted in a substantial amount of adverse comment, but the final form of this reporting requirement is not yet known. Therefore, any information which you obtain at your hearings concerning the annual reporting burden resulting from the Department of Labor/Internal Revenue Service interpretation of the Act is entirely speculative.

Another example of a burden which has not yet been imposed anyone, but which could be substantial, is the proposed requirement that small retirement plans have an annual audit by a certified public accountant. The original proposed Form 5500 stated on its instructions that no such audit was required for plans with under 100 participants, within a few weeks the Department of Labor advised interested parties that it really meant to require such an audit even though the instructions themselves stated that it was not required. The most recent information which I have is that the Department of Labor has again changed its mind and is now considering not requiring such an audit. Although the financial burden of such a requirement is considerable, the actual imposition of this requirement has not yet occurred, and is the subject of additional speculation both as to whether the requirement will finally be imposed, and as to the cost of such an annual requirement.

In summary, the financial burden created by the Pension Reform Act of 1974 could be considerable if the Department of Labor and Internal Revenue Service do not take advantage of the provisions of the Act which permit them to lessen its impact on plans with under 100 participants. To date, however, the financial burdens imposed have not been significant because almost no reporting requirements have gone into effect. Please do what you can to see that reasonable reporting requirements are imposed on smaller employers, and that the requirements are communicated to these employers in a timely fashion in a manner which can be understood by them.

Thank you in advance for your assistance.

Yours very truly,

RICHARD HUNT.

[Whereupon, at 11:48 a.m., the committee was adjourned.]

APPENDIX

Pension Benefit Guaranty Corporation

Analysis of Single Employer Defined Benefit Plan Terminations, 1975

March 19, 1976

HIGHLIGHTS

The number of terminations of pension and annuity plans since the enactment of the Employee Retirement Income Security Act of 1974 (ERISA) has received widespread attention in recent months. In particular, concern has been expressed as to the impact of ERISA on plan terminations. This report examines single employer defined benefit plan termination notices received by the Pension Benefit Guaranty Corporation (PBGC) during calendar year 1975. The major findings are:

The number of defined benefit plan terminations reported to PBGC in 1975 was approximately 4,300, with about 3,950 of these covered under the PBGC termination insurance program. Using earlier BLS and Labor Department studies and historical trends, PBGC budgeted for from 3,700 to 4,100 defined benefit terminations in 1975. Using those same studies, approximately 3,200 terminations could reasonably have been expected in the absence of ERISA.

In 35 percent of the plan terminations involving an ongoing employer, an intent to provide pension coverage to plan participants through another plan was cited.

Seventy-seven percent of the plan terminations covered by the insurance program did not indicate that ERISA was the reason for termination. Adverse economic conditions, change in ownership or liquidation of the employer's business were typical of the cited reasons for plan termination.

Twelve percent of the plan terminations covered by the insurance program indicated that ERISA was the reason for termination. Eleven percent cited other reasons in addition to ERISA, such as adverse economic conditions.

In all terminated defined benefit plans covered by the Act, whether or not a successor plan is instituted, the participants are guaranteed vested basic pension benefits, within statutory limitations, paid from assets of the plans or by the Pension Benefit Guaranty Corporation.

ANALYSIS OF SINGLE EMPLOYER DEFINED BENEFIT PLAN TERMINATIONS, 1975

Introduction

In recent months, considerable attention has been paid to the apparent increase in the number of private pension and annuity plans terminating since the enactment of the Employee Retirement Income Security Act of 1974 (ERISA). In particular, concern has been expressed as to the extent to which ERISA may have contributed to this increase.

This report seeks to assess the impact of ERISA on plan terminations by analyzing both the number of plan terminations and the stated reasons for termination provided PBGC by plans terminating during 1975.

The number of terminations takes on meaning as a measure of the impact of ERISA when compared with the number of plan terminations which might reasonably be expected in the absence of ERISA. For this purpose, the report draws upon the results of a PBGC projection developed in early 1975 of the number of defined benefit plan terminations expected during 1975. The report also draws upon a study initiated by PBGC in early 1976 of those plans filing a Notice of Intent to Terminate with PBGC during 1975. This study included an analysis of the stated reasons for termination provided PBGC by the plans.

Volume of PBGC plan terminations, 1975

During calendar year 1975, the first full year after the enactment of ERISA, 5,035 notices of intent to terminate, including duplicate notices, were filed with the Pension Benefit Guaranty Corporation (PBGC). However, as shown in Table 1, an estimated 735 cases were closed administratively because (a) the termination related to an individual account plan, such as profit sharing, (b) the event reported was not a termination, (c) the termination had occurred prior to enactment of ERISA, or (d) the other reasons shown in Table 1. During 1975, PBGC received notices of intent to terminate 4,300 defined benefit plans, of which about 3,950 were actually covered by the PBGC termination insurance program.

Anticipated volume of plan terminations, 1975

The PBGC estimate of plan terminations for calendar year 1975 was made solely for budgeting purposes and was undertaken in two steps. First, historical data on IRS pension plan terminations were analyzed, and adjustments were made to estimate actual defined benefit plan terminations experienced during the 1967–1974 period. Second, projections were made for 1975 based on past experience. In addition, an estimate was made of the effect of adverse economic conditions and ERISA in projecting a work load figure for 1975. The results of these steps are summarized in the following sections:

Analysis of Historical Data.—The number of applications for determination letters acted upon by IRS for terminated pension and annuity plans for the 8 years prior to 1975 provided the historical basis for projecting the level of defined benefit plan terminations for 1975. Data for the years 1967 through 1974 shown in Table 2, col. 1, indicate that the number of IRS determinations for terminated pension and annuity plans grew steadily during this period from an annual rate of 602 in 1967 to 2,577 in 1974, with an average annual growth rate of close to 25 percent.

Adjustments.—The historical data on pension and annuity plan terminations had to be adjusted so projections could be made for the post-ERISA defined benefit plan termination case load. A study by the Bureau of Labor Statistics, Report on Characteristics of Terminated Retirement Plans 1955–1965, indicated that, on average, the number of actual terminations exceeded the number of applications acted upon by the Service during any period by 20 percent. In a period of increasing plan terminations, this 20 percent factor reflects the lag between the actual termination and the subsequent actions by the Service, by means of a determination letter or some other means. Applying this 20 percent factor to the figures on IRS determination actions results in an estimate of actual plan terminations per year (Table 2, col. 2). With this adjustment, for example, it is estimated that in 1974, 3,092 pension and annuity plans actually terminated compared to a determination rate by IRS of 2,577 plans.

Not all pension and annuity plans are defined benefit plans. It is estimated that defined benefit plans account for 70 percent of the pension and annuity plan terminations reported to IRS in the past (Table 2, col. 3). As a result of this adjustment, it is estimated that the level of defined benefit plan terminations grew from 506 in 1967 to 2,165 in 1974.

1975 Projections.—In early 1975, a projection of the number of defined benefit plans that could reasonably be expected to terminate in 1975 was developed by PBGC by first extrapolating the historical termination trends and then adjusting the results to reflect anticipated effects of the recession and ERISA. The key assumption in these projections related to the expected growth above the 1974 level of defined benefit plan terminations. Projection I, assuming a 25 percent increase, was based on the historical average growth rate in plan terminations, while Projecton II used the highest observed increase in the historical series, 40 percent, to reflect both trends and unfavorable business conditions.

The number of plan terminations in Table 3, line 2, are the result of a straightforward projection of the 1974 experience (line 1) under the assumed growth rates, mentioned above. Estimated plan terminations in the post-ERISA period were further adjusted upward to reflect an assumed 5 percent underreporting of plan terminations prior to ERISA, since prior to enactment the submission to IRS of an application for determination with respect to a plan termination was not mandatory. This adjustment resulted in the projected plan termination rates shown in line 3. All these figures, ranging from 2,706 to 3,182 terminating defined benefit plans, could be considered reasonable based on past experience.

However, 1975 was not expected to be a normal year. Therefore, PBGC made further adjustments presented at budget hearings on May 6, 1975, referenced in Table 3, line 4, which produced an anticipated termination case load ranging from 3,782 to 4,107 defined benefit plan terminations. These higher rates reflected the anticipated effect of ERISA.

In summary, the level of 4,300 defined benefit plan terminations (with 3,950 covered by the termination insurance program), corresponds closely with prior PBGC budget projections.

Survey of plan terminations, 1975

In early 1976, PBGC undertook an analysis of data obtained from plans filing notices of intent to terminate with PBGC between January 1, 1975, and December 31, 1975. A systematic 10 percent sample of filings was drawn; however, the analysis was limited to those filings that had not been administratively closed by December 31, 1975.

Since the estimates for plans in the report were based on a sample, they may differ from the figures that would be obtained from a complete enumeration of terminating plans. Particular care should be taken in interpreting small differences among percentages. The first results of this survey are summarized in the following sections:

Reasons for Termination, 1975.—Table 4 summarizes the results of the survey of stated reasons for plans terminating in 1975. In 77 percent of the covered terminated plans, no mention of ERISA appeared in the notice submitted to PBGC. Of the remaining plans, 12 percent cited ERISA as the sole reason for termination; 11 percent cited ERISA combined with other reasons.

The reasons for plan termination stated by plan administrators are in close agreement with the assumptions underlying the PBGC budget projections of defined benefit plan terminations for 1975. Therefore, when reasons for termination are related to PBGC projections for the 1975 termination case load, a close correlation is found between actual and expected experience. The expected termination level based on the assumption of unfavorable economic conditions (with no ERISA impact) shown in Table 3, line 2, is in line with the number of terminations (77 percent of 4,300) for which ERISA was not stated as a factor in termination.

Continuing Pension Coverage for Participants.—The effect of the terminations of defined benefit plans may be completely or partly mitigated by coverage under a successor profit-sharing or money purchase plan.

Some 35 percent of all terminating defined benefit plans involving an ongoing concern included a statement that a successor plan or shift to some other existing plan was being planned for participants. More importantly, these estimated 1,000 terminating plans included about a third (or an estimated 30,000 participants) of all the participants in terminations involving ongoing companies.

TABLE 1.—*PBGC plan termination experience, 1975*

Notices received	5,035
Less: Administrative closings [1]	735
Individual account plans	221
Non-terminations	154
Other [2]	360
Equals: Defined benefit plan terminations	4,300
Covered	3,950
Non-covered	350

[1] Based on projections of experience to date.
[2] Includes plans terminated prior to enactment and duplicate filings by plan administrator.

TABLE 2.—HISTORICAL ANALYSIS OF PENSION AND ANNUITY PLAN TERMINATIONS, 1967-74

Year	Applications for IRS determination [1] (1)	Estimated plan terminations (1.20×col. (1)) [2] (2)	Estimated defined benefit plan terminations (0.70 of col. (2)) [3] (3)	Annual percent change (4)
1967	602	722	506	
1968	672	806	564	11.5
1969	868	1,042	729	29.3
1970	1,142	1,370	959	31.6
1971	1,605	1,926	1,348	40.6
1972	1,745	2,094	1,466	8.8
1973	2,222	2,666	1,866	27.3
1974	2,577	3,092	2,165	16.0

[1] Internal Revenue Service.
[2] BLS "Report on Characteristics of Terminated Retirement Plans 1955-65" indicated actual terminations filed with IRS during period exceeded determination letters by 20 percent (lag effect).
[3] Treasury/Labor "Study of Pension Plan Terminations 1972" indicated that defined benefit plans accounted for 70 percent of all determination letters issued in 1972.

TABLE 3.—PROJECTED DEFINED BENEFIT PLAN TERMINATIONS FOR 1975 UNDER VARIOUS ASSUMPTIONS

	Projection I (25 percent growth rate)	Projection II (40 percent growth rate)
1. 1974 estimate from table 2, col. 3	2,165	2,165
2. 1975 estimates: No pre-ERISA under reporting	2,706	3,031
3. 1975 estimates: 5 percent-ERISA under reporting [1]	2,842	3,182
4. PBGC 1975 budget estimates [2]	3,732	4,107

[1] Estimate based on unpublished PBGC and IRS data.
[2] Published in "Departments of Labor and Health, Education, and Welfare Appropriation for 1976," Hearings (May 6, 1975) before Subcommittee of the Committee on Appropriations, House of Representatives, Subcommittee on Departments of Labor and Health, Education and Welfare, 94th Cong., 1st sess., pt. 5, Department of Labor Related Agencies, p. 450.

TABLE 4.—*Percent distribution of stated reason for termination of defined Benefit Plans, 1975* [1]

	Percent
ERISA not mentioned:	
Adverse business	33
Plan too costly	11
Change in ownership	11
Liquidation dissolution/closing	10
Other	12
Subtotal	77
ERISA mentioned:	
Impact of ERISA	12
ERISA combined with other reasons	11
Subtotal	23
Total	100

[1] Based on a systematic 10 percent sample of plans filing valid notices of intent to terminate with PBGC during 1975.

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