PENSION PLAN SIMPLIFICATION

HEARING

BEFORE THE

SUBCOMMITTEE ON PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 3140

A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1954 TO PROVIDE FOR THE TREATMENT OF DEFINED CONTRIBUTION RETIREMENT PLANS FUNDED EXCLUSIVELY BY EMPLOYER IRA CONTRIBUTIONS

S. 3193

A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1954 AND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 TO SIMPLIFY PAPERWORK REQUIREMENTS AND STREAMLINE ENFORCEMENT

JUNE 27, 1978

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PENSION PLAN SIMPLIFICATION

TUESDAY, JUNE 27, 1978

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON PRIVATE PENSION PLANS AND
EMPLOYEE FRINGE BENEFITS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 2221, Dirksen Senate Office Building, Hon. Lloyd T. Bentsen (chairman of the subcommittee) presiding.

Present: Senators Bentsen, Matsunaga, and Packwood.

[The committee press release announcing this hearing and the bills, S. 3140 and S. 3193 follow:]

COMMITTEE ON FINANCE, U.S. SENATE, SUBCOMMITTEE ON PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS

SENATOR BENTSEN ANNOUNCES HEARINGS ON PENSION SIMPLIFICATION

Senator Lloyd Bentsen (D.-Tex.), Chairman of the Finance Subcommittee on Private Pension Plans, announced Thursday that hearings have been set for Tuesday, June 27, 1978, in two bills he has introduced to simplify the regulation of pension plans.

The hearings will be held in Room 2221, Dirksen Senate Office Building, and will begin at 10:00 a.m.

"Excessive government regulation of private pension plans under the pension reform law of 1974 has led to an intolerable burden of paperwork and red tape that is bad for employers and workers alike," Bentsen said.

"The demands of government threaten the existence of many pension plans, especially smaller plans, and I am working to lessen those demands."

One of the Bentsen bills, cosponsored by Senator Richard G. Lugar (R.-Ind.), (S. 3193) would eliminate the complicated annual report that pension plan managers now have to file with the government under the Employee Retirement Income Security Act (ERISA) and require only that the report be filed every five years. A simplified report would be filed the other years.

The second Bentsen bill (S. 3140) would allow employers to avoid virtually all of the myriad paperwork requirements and red tape of ERISA by contributing directly to retirement accounts maintained by individual workers.

"It is important that Congress act quickly to reduce the regulatory demands that pose a threat to pension plans. My legislation would help achieve that goal by substantially reducing the amount of form-filing involved," Senator Bentsen said.

Witnesses at the Tuesday hearing will include Senator Lugar, spokesmen for the Treasury and Labor Departments, representatives of Price Waterhouse & Co. and a spokesperson for the Pension Rights Center.

Legislative Reorganization Act.—Senator Bentsen stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committee of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify should comply with the following rules:

1. A copy of the statement must be filed by noon the day before the day the witness is scheduled to testify.

2. All witnesses must include with their written statement a summary of the principal points included in the statement.

3. The written statements must be typed on letter-size paper (not legal size) and at least 75 copies must be submitted by the close of business the day before the witness is scheduled to testify.

4. Witnesses are not to read their written statements to the Committee, but are to confine their fifteen minute oral presentations to a summary of the points included in the statement.

5. No more than 15 minutes will be allowed for oral presentations.

Written Testimony.—Senator Bentsen stated that the Subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five (5) copies by July 14, 1978, to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

95TH CONGRESS
2D SESSION

S. 3140

IN THE SENATE OF THE UNITED STATES

MAY 24 (legislative day, MAY 17), 1978

Mr. BENTSEN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1954 to provide for the treatment of defined contribution retirement plans funded exclusively by employer IRA contributions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**
4 This Act may be cited as the "Simplified Pension Plan
5 Act".
6 **SEC. 2. COMPLIANCE WITH MINIMUM FUNDING STANDARD.**
7 Section 412 of the Internal Revenue Code of 1954 (re-
8 lating to minimum funding standards) is amended—
9 (1) by striking out "or" at the end of paragraph
10 (5) of subsection (h),

1 (2) by striking out the period at the end of para-
2 graph (6) of such subsection and inserting in lieu
3 thereof a comma and "or",
4 (3) by inserting immediately after such paragraph
5 (6) the following new paragraph:
6 "(7) any simplified pension plan described in sub-
7 section (j).", and
8 (4) by adding at the end of such section the follow-
9 ing new subsection:
10 "(j) SIMPLIFIED PENSION PLAN.—A simplified pen-
11 sion plan is a defined contribution plan funded exclusively by
12 individual retirement accounts which meets the requirements
13 of section 408 (c).".
14 **SEC. 3. CONTRIBUTION LIMITS.**
15 (a) IN GENERAL.—Subsection (c) of section 408 of the
16 Internal Revenue Code of 1954 (relating to accounts estab-
17 lished by employers and certain associations of employees) is
18 amended by inserting after paragraph (2) the following new
19 paragraph:
20 "(3) In the case of a simplified pension plan—
21 "(A) the employer contribution with respect to
22 an employee for any taxable year of the employee
23 may not exceed an amount equal to 15 percent of
24 the compensation includible in the gross income of

1 the employee for the taxable year, or $7,500, which-
2 ever is less,
3 "(B) the plan meets the requirements of sec-
4 tion 401 (a), and
5 "(C) if the amount of the employer contribu-
6 tion to or for the account of an employee for any
7 taxable year is less than the amount described in
8 paragraph (1) of section 219 (b) with respect to
9 that employee, the plan will accept contributions
10 from that employee to his own account in an
11 amount equal to the excess of the amount described
12 in such paragraph over the amount of the employer
13 contribution to or for the account of the employee
14 for the taxable year.".
15 (b) CONFORMING AMENDMENT.—Paragraph (1) of
16 section 408 (a) of such Code is amended by inserting "an
17 employer contribution under subsection (c) (3) (A) of this
18 section, or" after "Except in the case of".
19 **SEC. 4. APPLICATION WITH RETIREMENT SAVINGS DE-**
20 **DUCTIONS.**
21 (a) AMENDMENT OF SECTION 219.—Subparagraph
22 (A) of section 219 (b) (2) of the Internal Revenue Code
23 of 1954 (relating to coverage by certain other plans) is
24 amended—

1 (1) by striking out "or" at the end of clause (iii),

2 (2) by redesignating clause (iv) as (v), and

3 (3) by inserting after clause (iii) the following

4 new clause:

5 "(iv) a simplified pension plan described

6 in section 412(j), or".

7 (b) AMENDMENT OF SECTION 220.—Subparagraph

8 (A) of section 220(b)(3) of such Code (relating to cov-

9 erage under certain other plans) is amended—

10 (1) by striking out "or" at the end of clause (iii),

11 (2) by redesignating clause (iv) as (v), and

12 (3) by inserting after clause (iii) the following

13 new clause:

14 "(iv) a simplified pension plan described

15 in section 412(j), or".

16 **SEC. 5. EFFECTIVE DATE.**

17 The amendments made by this Act shall apply with re-

18 spect to taxable years beginning after December 31, 1978.

95TH CONGRESS
2D SESSION

S. 3193

IN THE SENATE OF THE UNITED STATES

JUNE 12 (legislative day, MAY 17), 1978

Mr. BENTSEN introduced the following bill; which was read twice and referred to the Committees on Finance and Human Resources jointly by unanimous consent

A BILL

To amend the Internal Revenue Code of 1954 and the Employee Retirement Income Security Act of 1974 to simplify paperwork requirements and streamline enforcement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**
4 This Act may be cited as the "ERISA Paperwork
5 Reduction Act".
6 **SEC. 2. REQUIREMENT FOR A DETERMINATION LETTER.**
7 Section 6057 of the Internal Revenue Code of 1954
8 (relating to registration of and information concerning pen-
9 sion, etc. plans) is amended by redesignating subsection (g)
10 as (h) and adding the following new subsection (g):

1 "(g) DETERMINATION LETTER.—Pursuant to regula-
2 tions promulgated by the Secretary, in order for a plan to
3 qualify under section 401, the plan must obtain a determina-
4 tion letter from the Secretary granting qualification.".

5 **SEC. 3. CONSOLIDATED FORM FOR INITIAL QUALIFICA-**
6 **TION.**

7 Subtitle A of title III of the Employee Retirement In-
8 come Security Act of 1974 (relating to jurisdiction, admin-
9 istration, and enforcement) is amended by adding at the end
10 of section 3004 the following new subsection (c):
11 "(c) Within 60 days after the date of enactment of
12 the ERISA Paperwork Reduction Act, the Secretary of the
13 Treasury and the Secretary of Labor, acting jointly, shall
14 prescribe a single form for employee benefit plans (as de-
15 fined in paragraph (3) of section 3 of this Act) which will
16 satisfy the requirements of section 102(a)(2) of this Act
17 and of the initial qualification requirements of the internal
18 Revenue Code of 1954.".

19 **SEC. 4. CONSOLIDATED ANNUAL REPORTS.**

20 Section 103 of the Employee Retirement Income Secu-
21 rity Act of 1974 (relating to annual reports) is amended to
22 read as follows:

23 "ANNUAL REPORTS

24 "SEC. 103. (a) PERIODIC ANNUAL REPORTS.—Sub-
25 ject to the limitations in subsections (b) and (c), the Sec-

1 retary of the Treasury and the Secretary of Labor shall require
2 employee benefit plans to which this part applies to file
3 every 5 years a single annual report with the Secretary of
4 the Treasury to carry out the policy declared in section 2
5 of this Act and to satisfy the requirements of sections 6057
6 (a) and 6058 (a) of the Internal Revenue Code of 1954.
7 The Secretaries may require such plans to furnish or make
8 available to participants and beneficiaries for inspection
9 copies of summaries of reports and other information required
10 under this section.

11 "(b) SIMPLIFIED ANNUAL REPORT.—For years when
12 a full report under subsection (a) is not required, the Sec-
13 retary of the Treasury and the Secretary of Labor are
14 directed to prescribe a simplified annual report which could
15 be incorporated with the tax return of the sponsor of the
16 plan.

17 "(c) STAGGERED FILING.—The Secretary of the Treas-
18 ury and the Secretary of Labor are directed to stagger filing
19 of the annual reports required under subsection (a) so that
20 only 20 percent of existing plans would file such reports each
21 year.".

22 SEC. 5. TREASURY AND LABOR DEPARTMENT BOOKLET.

23 Subtitle A of title III of the Employee Retirement
24 Income Security Act of 1974 (relating to jurisdiction, admin-

1 istration, and enforcement) is amended by adding at the end
2 of section 3004 the following new subsection (d):
3 "(d) Within 60 days of enactment of the ERISA
4 Paperwork Reduction Act, the Secretary of the Treasury
5 and the Secretary of Labor shall publish a booklet to assist
6 plan sponsors (particularly smaller businessmen) in devel-
7 oping or revising recordkeeping systems in order to simplify
8 compliance with the provisions of this Act.".
9 SEC. 6. TECHNICAL AND CONFORMING CHANGES.
10 The Secretary of the Treasury and the Secretary of
11 Labor shall, as soon as practicable but in any event not later
12 than 60 days after the date of the enactment of this Act,
13 submit to the Congress a draft of any technical and conform-
14 ing changes in the Internal Revenue Code of 1954, and the
15 Employee Retirement Income Security Act of 1974, respec-
16 tively, which are necessary to reflect throughout such Code
17 and Act the changes in the substantive provisions of law
18 made by this Act.

Senator BENTSEN. The hearing will come to order.

I apologize to all in attendance for the delay in starting the hearings. We had a vote on the United Kingdom tax treaty on the Senate floor for the second time. I understand we will not have any more votes this morning.

This morning, the Pension Subcommittee of the Senate Finance Committee is holding hearings on pension simplification. Everybody recognizes that ERISA has created unnecessary governmental paperwork and redtape. Excessive costs for administering a pension plan simply mean that employers will have less funds available to provide benefits for plan participants. Duplicate paperwork, inconsistent regulations, and long regulatory delays in the implementation of ERISA are harmful to pension plan participants, to employers, and unions, as well as Government regulators. The failure of Congress to address this problem this year will be simply inexcusable.

I was one of the original authors of the ERISA bill. I used to put that in all of my campaign literature. I sure do not do it anymore.

The main reason is because of the amount of regulation and redtape that has overcome the people who are trying to participate. Worthy objectives, but bad implementation.

Last year, the Senate Finance Committee unanimously approved my pension simplification bill, which has two major objectives. First, it would help to eliminate overlapping jurisdiction in the implementation of ERISA. It is a waste of the taxpayers' money to have the Departments of the Treasury and Labor fulfilling identical functions.

My bill would carefully allocate jurisdiction between the two agencies. I was very pleased that the administration endorsed this concept in hearings before the committee last year.

Second, S. 2352 would implement several of the recommendations of the Paperwork Commission to reduce unnecessary ERISA reporting requirements. This year, I introduced two pension simplification proposals.

S. 3140 would give small businessmen the option to create a greatly simplified retirement plan with very little paperwork or redtape. My bill would enable employers to establish a pension plan which combines the best features of the so-called Keogh, or H.R. 10 plans, for the self-employed with the best features of IRA.

Under the proposal for a simplified pension plan, businessmen would make contributions up to the annual $7,500 Keogh limitations, but these contributions would be made directly into separate individual retirement accounts for each employee. The minimum Keogh standards would apply.

This combination Keogh-IRA plan would be advantageous to both employers and employees. The businessman would not have to establish a separate trust fund for the company pension plan since the annual contributions will go directly into individual retirement accounts for the employees. This would substantially reduce paperwork and redtape.

Employees would benefit from portability under this proposal, because the employee could take his individual retirement account with him upon a change of jobs.

Senator Lugar and I introduced S. 3193 which would help streamline ERISA. Under this bill, the annual report, form 5500, which must be

filed with the Federal Government every year under ERISA, would only have to be filed every 5 years.

In other years, plans would file a simplified annual report which would be incorporated with the plan sponsor's tax return.

Of course, the Departments of Treasury and Labor would continue to have complete access to any plan that might require a thorough annual audit.

The full annual reports would be filed on a staggered basis, only 20 percent of the plans filing in any 1 year. The purposes of the reporting requirements in ERISA are to enable the Treasury and Labor Departments to enforce the law and to protect the pension rights of senior citizens. A staggered filing system would expedite the audit process and strengthen ERISA enforcement.

At this point in the record I will insert statements I made on the Senate floor describing the bills, S. 3140 and S. 3193.

"SIMPLIFIED PENSION PLAN ACT," S. 3140

Mr. BENTSEN. Mr. President, I am today introducing the "Simplified Pension Plan Act" which would give smaller businessmen the option to create a greatly simplified retirement plan with very little paperwork or red tape. My bill would enable employers to establish a pension plan which combines the best features of the so-called Keogh or H.R. 10 plans for the self-employed with the best features of the Individual Retirement Account (IRA). Under the proposal for a "Simplified Pension Plan," businessmen would make contributions up to the annual $7,500 Keogh limitation but these contributions would be made directly into separate Individual Retirement Accounts for each employee. The minimum Keogh standards would apply.

This combination Keogh-IRA plan would be advantageous to both employers and employees. The businessman would not have to establish a separate trust fund for the company pension plan since the annual contributions will go directly into Individual Retirement Accounts for the employees. This would substantially reduce paperwork and redtape. Employees would benefit from "portability" under this proposal since the employee could take his Individual Retirement Account with him upon a change of jobs.

Mr. President, there has been a great deal of concern about the excessive paperwork and red tape that has resulted from the Employee Retirement Income Security Act (TRISA). As Chairman of the Private Pension Subcommittee, of the Senate Finance Committee, I have been particularly disturbed that many good, smaller pension plans have terminated because of unnecessarily complex reporting requirements, regulatory delays and overlapping jurisdiction in the implementation of ERISA. Last year the Senate Finance Committee unanimously approved my Pension Requirements Simplification Act, S. 2352, which would help eliminate overlapping jurisdiction in the administration of ERISA and would insure that pension plans generally only have to file one Federal form each year. The legislation I am introducing today would further simplify ERISA, particularly for smaller businesses.

Prompt enactment of both S. 2352 and the legislation I am introducing today would help relieve businessmen from the regulatory burdens of ERISA. At the same time these two bills would insure that pension plan participants and beneficiaries continue to receive full protection from the minimum standards of ERISA.

Mr. President, I would like to briefly describe how the optional "Simplified Pension Plan" would work.

Generally, the plan would operate in the same manner as a qualified defined contribution Keogh or H.R. 10 plan except that contributions would be made directly to the separate employee IRAs. The employer would have to provide coverage for all eligible employees. The maximum deductible contributions for the employer or employee would be the lesser of 15 percent of earned income or $7,500.

The existing standards for vesting, participation, non-discrimination and social security integration that apply to Keogh plans would also apply to "Simplified Pension Plans". For example, employees with three years of service must

be allowed to participate in the plan. Immediate vesting would be required. The plan could not discriminate in favor of officers or highly compensated employees.

In addition, under my proposal, if the employer's pension contribution for an employee does not exceed the $1,500 IRA limitation, the employee could make up the difference.

Under the proposal, an employer could adopt an IRS prepared model Simplified Pension Plan, copies of which would be filed with the IRS and distributed to the employees together with a copy of the IRA agreement. Individually designed plans could also obtain IRS approval. Existing reporting and disclosure standards would apply. However, the plan should be sufficiently simple that under existing regulations, a copy of the plan could be used as a summary plan description, bank statements (or similar documents furnished by an insurance company) should satisfy all applicable requirements regarding disclosure to participants of their interests in the plan. The employer would be required to file very simplified reports with IRS to support his deduction for plan contributions and the qualification of the simplified plan and no accounting for plan assets would be required.

Mr. President, the "Simplified Pension Plan" would give businessmen the option to estabish a pension plan with a minimum of paperwork and redtape. Prompt enactment of this legislation would be a constructive step toward reducing the regulatory burdens of ERISA.

ERISA Paperwork Reduction Act, S. 3193

FLOOR STATEMENT BY SENATOR LLOYD BENTSEN

Mr. Bentsen. Mr. President, I am today introducing a bill to help reduce pension paperwork requirements and to help streamline enforcement of the Employee Retirement Income Security Act (ERISA).

Mr. President, everybody recognizes that ERISA has created unnecessary governmental paperwork and redtape. Excessive costs for administering a pension plan simply mean that employers will have less funds available to provide benefits for the plan participants. Duplicate paperwork, inconsistent regulations and long regulatory delays in the implementation of ERISA are harmful to pension plan participants, employers and unions as well as government regulators. Failure of Congress to address this problem this year will be simply inexcusable.

Last year the Senate Finance Committee unanimously approved my Pension Simplification bill (S. 2352) which has two major objectives. First, it would help eliminate overlapping jurisdiction in the administration of ERISA. It is a waste of taxpayers' money to have the Department sof Treasury and Labor fulfilling identical functions. My bill would carefully allocate jurisdiction between the two agencies and I was very pleased that the Administration endorsed this concept in hearings before the Finance Committee last year. Second, S. 2352 would implement several of the recommendations of the Paperwork Commission to reduce unnecessary ERISA reporting requirements.

The legislation I am introducing today supplements S. 2352 and would help further streamline the 1974 Pension Reform Act.

Several accountants in the firm of Price Waterhouse & Co. recently conducted a comprehensive study of the paperwork and enforcement problems under ERISA, particularly for smaller plans. These accountants formulated several concrete proposals to remedy the problems they identified and the legislation I am introducing incorporates many of their recommendations.

These accounts believe this proposal can reduce the costs of administering a pension plan by reducing paperwork and by shifting some of the reporting requirements to the time of establishment of the pension plan. It is at this point in the process where there is greater competition between banks, insurance companies and other pension administrators in the sale of pension services. Greater competition in the sale of services can reduce the costs of administering the plan, particularly for small employers.

This proposal has several features.

First, tax-qualified pension plans would be required to obtain so-called determination letters from the Internal Repenue Service at the time a plan is created. Most plans already obtain this letter and all plans must file a form with the federal government when the plan is established anyway. Thus, this proposal would not result in any additional reporting. It is at the time a pension plan is formulated that the information is most readily available to smaller businessmen. Since Congress has mandated pension reporting for enforcement purposes, Con-

gress should structure the reporting requirements to impose the least burden on businessmen.

Second, Form EBS-1, which is submitted to the Labor Department, would be consolidated with the initial qualification forms that are submitted to IRS. This would reduce duplicate paperwork at the time a plan is established without denying the federal government information necesary to enforce ERISA.

Third, the annual report (Form 5500) which must be filed with the federal government every year under ERISA would only have to be filed every five years. In other years, plans would file a simplified annual report which could be incorporated with the plan sponsor's tax return. (Of course, the Departments of Treasury and Labor would continue to have complete access to information from any plan that might require thorough annual audits.)

Fourth, the full annual reports would be filed on a staggered basis with only 20 percent of the plans filing in any one year. There are presently about 685,000 private plans and it is difficult if not impossible for the federal government to audit each one of these every year. If only one fifth of these plans or about 135,000 file each year, it will be easier for the federal government to review the plans and identify violations of ERISA. The purposes of the reporting requirements in ERISA are to enable the Treasury and Labor Departments to enforce the law and protect the pension rights of senior citizens. A staggered filing system would expedite the audit process and strengthen ERISA enforcement.

Fifth, the Departments of Labor and Treasury would be directed to formulate a booklet or guide to assist small businessmen in complying with ERISA. Currently, IRS publishes many books and guides to help various groups of taxpayers and these have proved to be helpful.

Although the study by the accountants from Price Waterhouse & Co. recommended some changes in reporting requirements to plan participants, I have not included these proposals in the legislation pending further study.

Mr. President, the Senate Finance Committee's Pension Subcommittee, which I chair, will hold hearings on this proposal in the very near future so that we can get the views and suggested modifications of the Departments of Treasury and Labor.

Mr. President, at this point in the Record, I would like to insert a copy of the memorandum prepared by the accountants describing their proposal.

Recommendations of Accountants at Price Waterhouse & Co.—June 1978

Reporting and Disclosure Considerations for Small Retirement Plans

The following comments and ideas for small plan reporting were gathered, in part, from the recent study of plan administration costs that we conducted for the Department of Labor and from our own knowledge and thoughts on the subject.

We believe that the primary purpose of pension compliance reporting is basically to provide protection e.g. assurance or a means to determine that the interests of the government and participants are adequately safeguarded. Basically, we believe that there has to be a reporting arrangement that provides the government with useful and adequate information that must be fitted into a well coordinated policing function. However, in the same sense, we believe that the reporting structure must be designed in such a manner that does not set compliance costs at such a level that promotes plan termination or discourages plans from being established.

There has been a great deal of concern voiced that the small retirement plan sector (100 or fewer lives)[1] has been subjected to inadvertent and disproportionate plan administrative costs due to the reporting and disclosure requirements of ERISA. The findings of DOL study supports this claim. We believe that there are a number of reasons for such reporting cost increases as briefly discussed below.

Extension of Reporting Requirements—ERISA required that many plans (those with less than 25 participants) that were not subject to WPPDA reporting now report to the government and to participants. Therefore, the new requirements added an extra layer of plan administration costs.

[1] According to the DOL statistics the small retirement plan sector accounts for nearly 93 percent of the total private pension plan universe on a numerical basis—but only includes 11 percent of all participants.

Technical Nature of ERISA.—The expanded nature of ERISA reports caused many plan sponsors to seek or required professional services due to the increased technical requirements—and thus increased out-of-pocket costs.

Inconsistencies in the Regulatory Process and "Learning Curve".—Changes in the effective dates of many of ERISA's regulations which caused duplication, delay and increased involvement of the outside pension advisors and the "learning curve" effect added to plan administration costs.

We believe that it is not impossible to piece together a framework for small plan reporting that when properly evaluated may be very desirable to both plan sponsors and regulators. Our approach takes into account a number of characteristics that, in general, prevail in the retirement plan sector;

Degree of Pension Knowledge and Reliance on External Assistance.—Most plan sponsors are not capable to complete the mandatory reports and must rely on external resources since they do not have a support staff (accountant, personnel manager) that can perform the functions internally.

Lack of Detailed Record Keeping Systems.—The general lack of administrative techniques to gather and report plan information makes plan reporting even more pronounced for the small employer group.

Method by Which Plans are Sold.—Many comments were received that indicated that small plans are sold by the pension industry.[2]

With these three basic considerations in mind, we believe the bulk of regulation for the small plan sector should be at the front-end for a number of practical reasons.

First of all, if the plan qualification process were a mandatory requirement then the regulators could develop and collect relevant information regarding the plan's future operations and could initiate administrative techniques similiar to those used to review tax returns. Also, the EBS-1 requirement could be rolled-up in the initial qualification process and approval for the Summary Plan Description requirement could follow shortly thereafter.

This means that the plan sponsor or the pension advisor would be able to satisfy all initial plan reporting with one streamlined process. At present, many pension professionals undergo plan qualification as a conservative measure—thus we do not expect plan installation costs to increase to any great degree. Another factor, that enters into this equation is that here is *competition* in the plan installation area—since plans are sold. This is the only competitive aspect of plan administration since professional fees are on a time and materials basis thereby being insulated from competition to a large degree.

We believe that even with the increased front-end reporting, plan administration costs would not be significantly impacted since the pension industry would readily adopt pricing practices and "standardized installation arrangements" to attract pension business and at the same time to realize economies in administering their plans.

The advantage of such an approach is two-fold—one being that the annual administration costs and possible disatisfaction that impact plan sponsor termination would be greatly reduced and secondly, that the pension provider organizations themselves would be able to reduce their involvement necessary to administratively support a plan. In other words, the increased level of front-end regulation should permit a reduction in the annual reporting and produce across the board cost savings both to the benefit of the pension industry, plan sponsors, and participants.

With this reduction of annual requirements, we still believe that our reporting design will provide adequate information to police plan operations. We propose that a series of annual, periodic and intermittent reports be developed to buttress ERISA's other provisions. For instance, we would replace the existing 5500 (K and C) annual report with a fairly straightforward one page filing to be incorporated with the plan sponsors' tax returns. This schedule would primarily be geared to support the tax deduction, disclose basic plan information, and report on prohibited transactions and fiduciary matters.

We believe that a schedule of this type could be prepared by the plan sponsor or by his advisor with a minimal amount of effort and cost as part of the annual tax preparation. Also, we would suggest that the regulatory agencies develop plan administration guidelines in simple and clear language to help the un-

[2] The pension industry is a broad classification that includes those organizations that install and service small retirement plans such as, actuarial firms, banks, pension consulting, insurance companies, etc.

tutored plan sponsor with this filing. This plan booklet would be similiar to other basic tax publications issued presently and would describe what information had to be collected and reported. This type of document would give the small plan sponsor the ability to revise or develop his record keeping accordingly which should ease the preparation effort and cost.

From the government's standpoint, automated administrative techniques could be developed within established decision rules to "flag" those filings that may need special attention.

The emphasis on compliance reporting under our arrangement would be on the expanded periodic filings that would perhaps be comparable in detail to the present 5500 annual reports. This type of report would be filed every 3 or 5 years and allow the government to enhance its review procedures and undertake appropriate actions as the circumstances warrant. Also, the filing of these reports would be staggered for the small plan sector i.e. 20 percent file in year one, 20 percent in year two, and so forth. This would allow the government to level out the workload thus promoting efficient, orderly and economical processing and regulation through the audit process. Also, the staggered filing dates relieve the pressure on pension organizations that have to prepare and file numerous reports within specific time frames. We found that pension professionals did not have the staff nor time necessary to service all of their clients within the required deadlines.

If the periodic report was adopted, we could assume that costs and preparation effort would not exceed the present levels for preparing the 5500 annual report. In effect, this would allow plan costs to be reduced on average and spread over a period of years thus relieving the annual cost impact that presently exists.

Another area that would have to be integrated into the reporting scheme would be for reportable events. Exception reports would have to be filed promptly in some instances for certain reportable events while others could be included in the proposed one page annual filing at tax time. Plan sponsors could be given basic plan guides that define events that must be reported and outline the steps to do so.

One of the most important features of our reporting design would increase participant reporting—in part because the average participant is untutored with pension matters in general. This added reporting would require that the statement of accrued benefits [3] be provided each year and expanded to include necessary fiduciary information. Such annual statements in and of themselves would report on how the plan is being operated thus eliminating the need for the Summary Annual Report.

We found that during the DOL project that defined contribution plans prepare such benefit information as a part of routine plan administration. Also, defined benefit plans may be subject to increased statement costs—but with the other trade-offs their overall costs should be at much lower levels. The participant reporting is intended to make plan administration costs productive and meaningful.

With that in mind, I would ask the representatives of the executive branch, those from the U.S. Treasury Department, Mr. Halperin, Mr. S. A. Winborne, please come up to the witness stand. I would also like those from Labor, Francis Burkhardt, the Assistant Secretary; Mr. Lanoff, the Administrator of the Pension Welfare Program, to please come forward.

Mr. Halperin, would you like to lead off?

Mr. HALPERIN. Thank you, Senator.

STATEMENT OF DANIEL I. HALPERIN, TAX LEGISLATIVE COUNSEL, OFFICE OF THE ASSISTANT SECRETARY OF THE TREASURY FOR TAX POLICY

Mr. HALPERIN. Thank you, Senator. I am pleased to have this opportunity to discuss your bill, S. 3140. Mr. Winborne of the Internal Revenue Service will comment on S. 3193.

[3] In the case of defined benefit plans we believe that projected benefit information would be much more useful to assist a participant in post-employment income planning.

We believe that for employers who choose to adopt the type of plan created under this bill, it will achieve simplification without detriment to the tax policies underlying the favored tax treatment of qualified plans; and therefore, we are pleased to support the bill and to encourage its early enactment by the Congress.

We would like to discuss one possible modification regarding integration with the social security system. We would also like to point out one potential policy issue regarding the choice between defined benefit and defined contribution plans. In my written statement, we have outlined the provisions in the bill, but in view of the fact that they have just been outlined, I will just skip over to our comments on the matter.

The first thing is the issue of discrimination. The bill builds on the concept of employer-sponsored IRA's and a number of people have pointed out that employer-sponsored IRA's do not have antidiscrimination rules under the present law. It has been suggested that they be added.

We have felt, up to now, that it would be a fruitless exercise to do so since there is no incentive to establish an employer-sponsored IRA as imposed to individual employees establishing their own. If more stringent requirements were imposed on employer-sponsored plans, it would be easy to get around them by having employees establish their own IRA's.

On the other hand, under this bill, there is an advantage, of course, to the employer-sponsored program in that the deductible contributions are higher: $7,500 instead of $1,500—therefore, there is an incentive for employer-sponsored plans, and we would therefore agree that putting in antidiscrimination requirements would be both beneficial and would be effective, since there is something to be gained by establishing this kind of plan.

The second issue that comes up is employee contributions to plans which do not have an employer contribution of $1,500, which is the maximum allowed under IRA. Since the IRA's have come into the law in 1974, the problem has arisen in that some employees are unhappy when the employer establishes a plan. The existence of an employer plan in which they participate prevents them from participating in IRA's and they look at the employer plan and they say the contribution is much less than I could put in under an IRA; or, I am not vested and I do not expect to stay around here long enough to get a vested contribution.

So we have had a number of bills introduced which have attempted to allow employees where the contributions on their behalf to the employer-sponsored plan is less than $1,500, or not vested, to allow employees in these circumstances to establish IRA's.

Unfortunately, that is a very complicated business, and in order to accomplish it without giving additional advantage to high-income employees, who are most likely to want to double up on pension coverage, it becomes even more complicated than that, so that these bills have not moved.

However, we think this approach really is a much simpler way to do it, since you have an account established for an individual employee. The employer's contribution to that account is less than $1,500. That is an obvious fact, and it is a simple matter to allow the employee to make up the difference on a deductible basis.

By requiring that the benefits be vested, it solves the problems of employees who would rather have IRA's which are vested rather than participate in employers' plans. And by imposing the overall $1,500 limit, it is directed toward the low-income people who need the encouragement the most in order to build for their retirement.

And, as I noted earlier, there is a built-in overall $1,500 limit. I would point out however that one problem could occur if the employee is participating in the simplified plan under S. 3140 and in another plan as well. For example, an employer which now has a regular profit-sharing plan could also add a simplified plan and put in a small contribution, and that would allow any interested employee to contribute $1,500 on his own on a deductible basis. So in order to not unduly complicate this matter, we believe that the deductible employee contribution should be limited to those employees who do not participate in any qualified plan other than the new, simplified plan.

Unfortunately, as in many areas, the IRA area is one where the attempt to work out complete equity among people in different situations has led to an extremely complicated law, particularly complicated for one aimed at individual taxpayers. We would certainly urge that this bill, which I think has tremendous advantages in terms of simplifying the law, not also move in the other direction toward complexity.

On integration, the bill would allow a simplified plan, as we understand it, to integrate with social security by using the integration rules of the Keogh plan. Now, this means that the employer is allowed to take account of the social security contribution, 5.85 percent under current law; 6 percent, I guess, beginning next year, as if it were made to the qualified plan.

Now, that would mean that a simplified plan of this type could have a contribution level of 5.85 percent of salary over the social security wage base, which would be $17,700 this year and is scheduled to move up fairly rapidly over the next few years, reaching $29,700 by 1982.

We have been concerned about those kinds of plans. That kind of integrated plan benefits only highly compensated employees. We believe that that undercuts the rationale for tax benefits for qualified plans which, as we see it, is to encourage retirement benefits at all income levels. It is also our belief that social security by itself does not provide adequately for retirement for moderate-income people. It does not enable moderate-income persons to continue their standard of living after retirement, and therefore, there is an encouragement to a private retirement program through tax incentives.

However, integration—or at least the excess-only form of integration—allows retirement plans only for people making in excess of the social security wage base and we do not believe that that is consistent with the intent of the tax benefits.

Under the President's tax reform proposals, we propose a system by which a plan could not be integrated with social security unless it provides substantial benefits for all participating employees. We realize there is a necessity, or at least there are a lot of people who believe that there is a necessity, for integration, because otherwise, if a plan provided a level percentage of pay at all income levels in order to get an adequate retirement income for people at the higher levels, it would provide well over 100 percent of pay for people at the bot-

tom. We did not believe it was sensible to encourage retirement programs by which people had more income after they retired than they had while they were working.

So we see a need for integration. On the other hand, we think it is improper to use it to entirely exclude low-income employees. In the administration proposal, as I said, we permitted integration only if there was some benefit to all. We had been thinking along the lines of saying you could have a certain percentage of pay up to the wage base and you could have, say, twice as much as the contribution above the wage base. So if you wanted to have a contribution level of 10 percent on salary over $17,000 you would have to have a 5-percent contribution on salary below $17,000.

Now, we have had, of course, a large number of objections to that proposal. We believe a good many of them are not on the merits. They are rather on the idea that we have just gone through a need to change plans because of ERISA, and another proposal which would require a good many plans to be amended a second time would have a large administrative cost, which would be unacceptable. So we think that a good deal of the objection to the program involves the necessity for change rather than the ongoing cost of meeting the new rules.

Since we are now dealing with a totally new animal in S. 3140, we think it might be reasonable to require that form of integration which would require that benefits be provided at all income levels.

I did want to point out one other matter before concluding. As a practical matter, S. 3140 really lends itself only to defined contribution plans, plans by which the employer contributes a specified percentage of pay and then the level of retirement benefits is whatever can be paid out of the amount put in, plus the earnings thereon.

There is no specific benefit promised, as there would be under a defined benefit plan. It would seem that ERISA itself, because of its minimum funding requirements and the provisions for plan termination insurance and employer liability, has ecouraged a trend toward defined contribution plans and away from defined-benefit plans.

Some people think that is a positive change, but on balance, we believe that it is not. A defined benefit plan is much more meaningful to an employee. If an employee can look and be told that his pension will be 20, 30, or 50 percent of final pay, particularly when you have a defined benefit plan based upon final pay, that gives you some means of planning for retirement.

When you have a defined contribution plan and all you know is the employer is contributing a certain amount, it is very difficult to use that for retirement savings. I know I personally participated in a defined contribution plan before coming to the Government and I really have no idea as to what my pension would be as a percentage of salary at the time I retire, and I assume that is true of most people.

So we think that we ought to watch very carefully whether there is a significant shift away from defined benefit plans toward defined contribution plans, and what that means in terms of retirement security for employees as a group.

We do not suggest that this word of caution should deter prompt action on S. 3140, but we think that overall we should continue to keep a close eye on this problem.

That concludes my statement. Of course, I would be pleased to answer any questions anyone might have.

Senator BENTSEN. I think I will withhold questions until we have gone through all of the witnesses.

Mr. Winborne, if you would proceed with your testimony at this point?

Mr. WINBORNE. Thank you, Mr. Chairman.

At the outset, although not indicated on the statement that I gave you, I would like to introduce on my right, Mr. Fred Ochs who has, for several years, been our Director of our Employee Plans Division at the Internal Revenue Service.

Senator BENTSEN. We are pleased to have you, Mr. Ochs.

STATEMENT OF S. A. WINBORNE, ASSISTANT COMMISSIONER FOR EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS, INTERNAL REVENUE SERVICE, ACCOMPANIED BY FRED OCHS, DIRECTOR, EMPLOYEE PLANS DIVISION, INTERNAL REVENUE SERVICE

Mr. WINBORNE. Mr. Chairman and members of the committee, I, too, am pleased to be here with you today to discuss your bill, 3193, but I would first like to briefly describe to you some of the actions that the Service has taken, or proposes to take in the foreseeable future to reduce the paperwork, and then comment on the specific proposals of your bill, if I may, sir.

Under ERISA, employers and plan administrators, as many of us know, are required to file various forms and reports with the IRS, with the Department of Labor, and in some cases with the PBGC. The act requires separate filing of the same reports perhaps with IRS and the DOL.

I think everybody involved recognized soon after the passage of ERISA that compliance with these filing requirements placed an additional and very heavy administrative burden on employers, and especially on small businesses, of maintaining qualified plans.

As a result, the IRS and DOL have worked together for some time in what appears to be close cooperation to ease some of these burdens. For instance, as a result of these efforts, the annual returns which were originally required to be filed separately with the IRS and the DOL were consolidated into one form with one filing date.

In an effort to minimize even further the compliance burdens, particularly on the small businesses, the Service and the Department of Labor developed the form 5500(c), the annual information report for corporate plans having 100 participants or less. This report now, as far as the IRS needs are concerned, is only two pages long.

Forms 5501, 5504, and 5505, which were filed in support of deductions claimed for contributions to plans maintained by corporations and owners-employees, have been completely eliminated.

Senator BENTSEN. Those are very commendable steps.

Mr. WINBORNE Thank you, sir.

Senator BENTSEN. They have been a long time forthcoming, but I am glad to see it accomplished.

Mr. WINBORNE. At the present time, the Service is working with DOL to eliminate duplicate information requests made by DOL's

form EBS-1—the plan description—and our forms 5300 and 5301, which are used when a termination request is made to the Service.

The Service is also working with the Pension Benefit Guaranty Corporation to develop the so-called one-stop termination procedure so that employers or plan administrators need file such requests with only one agency. Under this procedure, we visualize that work would be coordinated between the agencies, but separate responses would be furnished the applicant by each agency and, of course, those responses would deal with the agents in statutory areas, for instance, in the case of IRS, the tax qualification of the terminating plan and, of course, for the PBGC, the sufficiency of the plan assets at termination.

The principal objective and effort of the IRS since the passage of ERISA has been to provide timely response to applications for plan requalification under the act. As a result, the Service's compliance efforts up to this time have been extremely limited.

Since both agencies will soon be moving into a more extensive compliance program, we have developed in coordination with the Department of Labor, formalized coordination, compliance and litigation procedure. This, we think, will assure the unrestricted flow of information between the agencies from the time a case is identified for examination through possible litigation. Also, the procedure should reduce duplication of effort and, again, the burden on the taxpayer.

The development of a single, annual information return, which includes a substantial portion of PBGC's data information needs has allowed the Service, DOL, and PBGC to create a single computer system, providing return and data necessary for all three agencies.

Extensive studies are now being undertaken by the IRS and DOL to determine the feasibility of using computer probability profiles, which you may also have heard of as discriminant function concepts, or DIF's in the identification of plans which may be in violation of fiduciary standards or deficient in form or operation otherwise.

At the present, we are studying the feasibility of developing a compliance-oriented annual return which would highlight significant qualification and operational deficiencies and, at the same time, facilitate an efficient, and hopefully cost-effective, compliance program which would provide the basis for the DIF computer compliance program.

As a part of this study, we are developing a proposed compliance program which contemplates cycle filing, one of the proposals of your S. 3193. In addition, we plan to institute a taxpayer compliance measurement program with an intensive audit of a large cross section of plans to determine both the actual level of compliance and the level of audit coverage actually needed to maintain an acceptable compliance level.

We note that your bill, S. 3193, proposes that section 6057 be changed to require that all tax-qualified pension plans file requests for determination letters with the Service at the times the plans are adopted. Also, the forms and information required by the Internal Revenue Service to be submitted on initial qualification of a pension plan are to be consolidated with the Department of Labor's plan description, the form EBS-1, so that requirements of both agencies can be satisfied by a single submission.

Your bill would require the Secretary of the Treasury and the Department of Labor to prescribe the consolidated form within 60 days after passage of the legislation.

The Service believes that the proposals of S. 3193 to merge the EBS-1 and the 5300 application series, and require the filing of requests for the determination letter as a condition of plan qualification for tax purposes would aid significantly in our compliance program and, in addition, it may and probably should reduce the cost to employers.

In any event, for the first time, there would be a legal requirement that a proposed plan be submitted to the IRS for a determination letter in order for it to be a qualified plan and thus obtain favored tax treatment. We think that is reasonably important.

However, since the requirement for filing a determination letter request is designed to be a prerequisite for tax qualification, we suggest that S. 3193 require that section 410(a) of the code be amended rather than section 6057.

Section 401(a), of course, is the basic income-tax section relating to the qualification of employee plans and it would seem more appropriate to place a qualification condition there rather than under a section relating to filing.

We also believe that if the plan description and determination letter request information are combined in one submission, a new submission should be required whenever, and every time, a material modification of the plan occurs. This would substantially reduce the present compliance problems, since major plan revisions affecting plan qualification would thereby be reviewed by the Service. However, in view of the coordination which would be required between the agencies and the lead time needed for printing and distribution, we wish to call to your attention that the 60-day deadline, as now provided in your bill, does not provide adequate time, in our opinion, for the agencies to revise and consolidate the forms involved there.

It is also proposed in your bill that the filing of the annual return, the form 5500, be made only once every 5 years. In the other years, a simplified annual return would be filed with the plan's sponsor's tax return. The full annual reports would be filed on a staggered basis, with only 20 percent of the plans filing in any one year.

Now, we believe that the staggered cycle filing system may be an appropriate area. We also believe that it needs further study since, if it is found to be workable, it would reduce reporting costs and we would, of course, be in favor of it. However, we first must insure that an adequate compliance monitoring system is available for the protection of participants and beneficiaries.

Accordingly, in our opinion, the involved agencies should be given a further opportunity to study the various potential compliance impacts which may result from the proposed legislation.

Also, we foresee an administrative problem should the simplified annual report to be required to be filed with employer's tax return, as S. 3193 now contemplates. That is for the reason that an employer and a trust forming part of an employee plan are really separate tax entities which often have separate annual accounting periods.

Further, where a plan is maintained by more than one employer, such as a union-negotiated multiemployer plan, there is really no correlation between the plan or the trust's accounting year on the one

hand, and that of any one of the contributing employers on the other hand.

For this reason, we recommend that S. 3193 not require that either the full annual report or the simplified annual reports be filed with employer's tax return.

I would also like to take this opportunity to impress the chairman and the members of the subcommittee with our concern over section 6 of the bill, which directs the responsible agencies to publish a booklet on recordkeeping. If this requirement in the bill is intended to cover all the provisions of ERISA, we in the Service have some question about its ultimate usefulness since, in our opinion, it would necessarily be so detailed and so voluminous that it might well be more confusing than enlightening.

But, on the other hand, if the provisions of section 6 are limited to the reporting and disclosure requirements of ERISA, we feel confident that the agencies could effectively implement such a congressional directive.

In either event, however, the 60-day period allowed in the bill for compliance seems very inadequate to us. At the outset, a full compliance-oriented return would have to be developed in order to determine the data elements which would be required in acceptable records keeping. Additionally, any rcordkeeping system prescribed would undoubtedly impact on other agencies, both Federal and perhaps even State, thereby requiring varying, but undoubtedly substantial, interagency coordination in the development process.

Clearly, meaningful implementation under those circumstances would be difficult, if not impossible to accomplish within those 60 days now specified in section 6. For that reason, we request the subcommittee to grant us a short period of time to complete our consideration of this matter, at which time we would then gladly convey to you our recommendation as to an appropriate implementation period.

As you can see, the Service's past and ongoing studies and S. 3193 reflect several of the same concepts. Except for the mandated filing to achieve tax qualification, it is probably that the principal goals of S. 3193 could be implemented administratively by the IRS.

However, we do not know whether the Department of Labor has authority to administratively merge the EBS-1 with our determination letter request, or to implement the cycle filing concept.

In summary, then, Mr. Chairman, let me emphasize that the Service is continuing to study ways to reduce the cost of ERISA compliance. We would, of course, welcome any legislative action that would enable us to maintain strong ERISA enforcement and, at the same time, permit plan administration costs to be reduced.

At this time, we would be happy to attempt to respond to any questions.

Senator BENTSEN. Mr. Winborne, that brings to mind a number of questions, but I will withhold mine and ask my colleagues to until we get through the rest of the witnesses here.

I would ask Assistant Secretary Burkhardt to speak.

Mr. BURKHARDT. Thank you very much, Mr. Chairman. I will introduce my statement for the record and just try to touch on four areas that we want to talk about today at your invitation.

STATEMENT OF FRANCIS X. BURKHARDT, ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

Mr. BURKHARDT. One is some of the departmental efforts that have been taken to lessen the paperwork burdens. The second thing I want to talk about is some of the results of studies which have tried to address the impact of ERISA's reporting disclosure requirements.

The third thing I would like to talk about is some of the future potential for certain paperwork reductions, and the last area is that your bill, S. 3193.

I think it is important that the Federal agencies and the participants have access to adequate information in order to determine whether their plan is being operated in a manner that provides them with the promised benefits. Private pension plans today make up some $250 billion in assets and represent one of the major sources of investment in this Nation's economy.

So the department is very much concerned about the costs that are associated with administering these plans.

Senator BENTSEN. Give me those numbers again, would you please.

Mr. BURKHARDT. Private pension plans make up $250 billion in assets and represent one of the major sources of investment. I think that has changed drastically over the last 20 years, from the source of capital investment that has been utilized in our economy.

So we are very concerned with the impact that the ERISA law has on the administration of these plans.

The subcommittee should be aware, Mr. Chairman, that, of the 11 recommendations relevant to the Department made by the Federal Paperwork Commission to reduce ERISA paperwork, 7 have already been adopted and implemented and some of the remaining recommendations are under active consideration.

We are also pleased to announce that we are very close to another signifiacnt action to reduce paperwork requirements, and this is a proposed revision in the regulations for the summary annual reports.

The Department had proposed regulations back in July of 1976 with regard to SAR's, but these were criticized as being burdensome to plans and uninformative to participants. The new regulation that we are working on is intended to make the SAR more useful and easier to prepare by including less, but more significant information, and by prescribing a predesignated format where the plan administrator simply fills in the information.

By requiring this less detailed and complicated information, the SAR hopefully will highlight those items which provide the participant with a snapshot picture of the plan's financial activities and a good initial appraisal of the plan's financial condition.

Recently, as was mentioned, the major paperwork reduction was provided by permitting plans to report the material modification by including a summary of the change with their annual report rather than reporting the amendment on the plan description form, which is the EBS-1 within 60 days. Now, this eliminated an entire form that plans had been required to fill out.

The new regulations also reduced the reporting requirements of plans with respect to short-term investment triggers by the so-called 3-percent transactions, and of assets acquired and disposed of within

the plan year. I think it is important to note that that single change in that 5500 reduced paperwork in some cases by hundreds and hundreds of pages, because, where plans were sending us stock transactions for normal securities that were traded, bought, and sold in a year, and sent us the computer printouts of these transactions, they were of absolutely no use to us in terms of looking at the financial condition of plans.

We have eliminated that triggering requirement, where they are publicly traded stocks and bonds.

Another major cause of dissatisfaction as has been mentioned by the Internal Revenue Service was the ERISA requirement that the annual report form be filed with both the Department of Labor and the IRS and we eliminated that particular requirement.

Now, a word about some of the studies that have been done with regard to the ERISA requirements. We were very much concerned about the reporting and disclosure requirements and in order to assist in identifying which administrators of small plans had suggested were unjustifiably expensive, the Department issued a study on administrative costs of small plans and, with your permission, Mr. Chairman, I would like at this time to introduce a copy of this study for inclusion in the hearing record.

Senator BENTSEN. Without objection, it will be so ordered.

[The material referred to follows:]

ESTIMATES OF ADMINISTRATIVE COSTS OF SMALL RETIREMENT PLANS, 1974-1976

U.S. Department of Labor
Labor-Management Services Administration
Pension and Welfare Benefit Programs
May 1, 1978

Abstract

This paper reports the major findings of two surveys conducted by Price Waterhouse & Company for the Department of Labor on administrative costs of small pension plans for the years 1974, 1975, and 1976. The primary survey was of a stratified random sample of sponsors of small private pension plans with 100 or fewer participants. The second survey was of selected firms providing administrative services to small plans.

Due to very poor response to the plan sponsor survey as well as other problems with the completion of the survey instrument by those who did respond, the results should not be generalized to the universe of small pension plans. The surveys do, however, provide insightful case studies of costs incurred by a group of small pension plans during a three-year period that included the first two years immediately following passage of the Employee Retirement Income Security Act of 1974 (ERISA).

The first survey showed that the 611 plans studied experienced median total administrative cost increases of 63% over this period. While some of the disaggregated data on individual costs is of questionable validity, it appears that over half of the costs that were listed by plan sponsors as "ERISA-related" were one-time expenditures incurred in bringing the plans into compliance with ERISA.

The survey of service providers showed a large degree of variation in the fees charged to small plans during 1976. The survey indicates that fees charged to small plans in 1976 had median values of $100 for completing a 5500-C Annual Report, $75 for an EBS-1 Plan Description (completed every 5 years), and $125 for Summary Plan Descriptions for use by plan participants (completed every 5 years if there have been any amendments; if not, every 10 years).

The median fees for the actuarial opinion, which ERISA requires to be performed every three years for defined benefit plans, was $180 in 1976 for the firms that participated in the survey.

Purpose of Surveys

Since the passage of ERISA in 1974, concern has been raised frequently about the rising administrative costs of small pension plans. Fear has been expressed that some of these plans might seek to terminate if they could not find solutions to their administrative cost problems.

Therefore, in 1976, the Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor, decided to undertake a study of administrative costs of small private pension plans.

In June of 1976 the Department awarded a contract to Price Waterhouse & Company to perform surveys of small plan sponsors and small plan service providers. The objective of these surveys was to:

(1) measure and compare total administrative costs of small pension plans during the period 1974-1976;

(2) attempt to evaluate the initial impact of ERISA on plan administrative costs in 1975 and 1976; and

(3) predict the impact of ERISA on plan administrative costs in subsequent years.

The Department believes that the surveys met the first two objectives of the project. The surveys provide insight into administrative cost problems experienced by the group of surveyed plans during 1974-1976.

However, to meet the third objective--to predict the ongoing impact of ERISA on plan administrative costs--required a survey response by a statistically valid sample of plans and a clear delineation of recurring and nonrecurring ERISA-related costs by those that responded. Neither of these requirements were met.

Price Waterhouse received completed surveys from only 9% of the plan sponsors surveyed. In addition, a review of the responses that were made indicates that the

people completing the survey had difficulty distinguishing between one-time, nonrecurring costs and recurring costs.

The overall low response to the survey of plan sponsors makes even the findings for objectives (1) and (2) valid only on a case-study basis. The results of the plan sponsor survey should be viewed as statistically valid only for the 611 plans included in the survey.

The survey of service providers was conducted to provide examples of the range of fees for the various ERISA-related requirements as well as benchmarks to aid the Department in evaluating the validity of costs claimed by the plan sponsors in the first survey. Those findings are incorporated in this report.

Methodology

The Department and Price Waterhouse determined that the objectives of the study could be met with a mailed survey to plan sponsors and a mailed survey to a group of service providers. Other methods such as pre- and post-ERISA plan audits were also considered by the Department. While it was felt that the plan audit approach would provide more reliable statistics on ERISA impact on administrative costs, the estimated expense of such an approach was considered prohibitive and well beyond the research budget of the Pension and Welfare Benefit Programs.

Out of the total of 7,000 plan sponsors that Price Waterhouse eventually sampled for the plan sponsor survey, only 611 chose to respond. This low response is unacceptable for a statistically valid study due to the potential for enormous nonresponse bias. Therefore, it is impossible to take summary statistics from the survey, such as mean and median costs, and generalize about what the entire universe of small pension plans experienced during this period.

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In addition, the methodology employed did not enable the Department to validate the accuracy of the plan sponsor responses. Since many of the plans appeared to have inadequate recordkeeping to answer many of the individual cost questions, these items should be considered "ballpark" estimates by plan sponsor staff.

The survey of service providers was based on selected firms specializing in providing administrative services to small plans. A response rate of 40% (99 of 250 firms) was received from this mail survey.

Survey Results

The surveys were conducted by and initially analyzed by Price Waterhouse. These data were then further analyzed by the Department of Labor to provide supplementary findings. The results presented below are based on the data analyses conducted by the Department of Labor.

Findings From Survey of Sponsors of Small Pension Plans

Total Plan Administrative Costs

There was a very large range in total costs reported by plan sponsors, from less than $500 to more than $15,000. Costs reported were heavily skewed toward the lower cost end of the distribution. Because of the large cost range and extreme values the use of median annual costs is the best measure for comparing average costs for the years 1974-1976.

--Median total administrative costs of small pension plans increased by 63 percent during the 1974-1976 period, from $848 in 1974 to $1,378 in 1976.

--Median administrative costs in 1976 were $1,498 for defined benefit plans and $1,343 for defined contribution plans. This compares with 1974 reported median costs of $800 for defined benefit plans and $850 for defined contribution plans.

--Defined benefit plan median costs increased by 87 percent from 1974 to 1976; defined contribution plan median costs by 58 percent.

--Median administrative costs generally but not consistently increased as the size of the sample plans increased. Defined contribution plan median costs in 1976 ranged from $1,052 for plans covering from

1 to 9 participants to $4,036 for plans covering from 51 to 100 participants. Defined benefit plan median costs increased from $1,170 for plans in the 1-9 participant size group to $5,519 for plans in the 31-50 size group but then decreased to $4,563 for the 51-100 size group.

Internal vs. External Plan Administrative Costs

The extent to which plan sponsors have the "inhouse" ability to perform plan administrative functions is an important determinant of overall administrative costs, since internal costs incurred in performing various plan functions are presumably lower than external costs paid to outside service providers to perform these functions. A comparison of the rate of increase from 1974 to 1976 between internal and external costs can provide a measure of the ability of plan sponsor personnel to perform initial ERISA-related requirements during 1975 and 1976 and the extent to which plan sponsors had to rely on outside specialists.

--Almost 90 percent of the plans surveyed reported internal costs incurred by plan sponsor personnel, and over 98 percent reported external costs paid to firms providing supporting administrative services to plans.

--Median external costs increased by 100 percent from 1974 ($400) to 1976 ($800), a rate twice that of the increase in median internal costs from 1974 ($300) to 1976 ($450).

--Defined benefit and defined contribution plans experienced somewhat similar rates of increase from 1974 to 1976 in both their external costs--111 percent for defined benefit plans, 100 percent for defined contribution plans--and their internal costs--54 percent for defined benefit plans, 46 percent for defined contribution plans.

Costs of ERISA-Related Requirements

Data provided by many plan sponsors on costs of meeting individual ERISA-related requirements were of a limited and somewhat questionable nature. For example, the maximum amount of administrative costs incurred by a plan in 1975 and 1976 which could reasonably be attributable to ERISA is equal to the total amount by which costs for each of the years 1975 and 1976 exceeded 1974 costs. Yet for over half of the plans, the costs of meeting individual ERISA requirements, when added together, were greater than the incremental amount by which 1975 and 1976 costs exceeded 1974 costs. This is a strong indication that the reporting of costs associated with ERISA compliance either reflect double counting of costs for related requirements or do not reflect the incremental costs attributable exclusively to ERISA. Costs of meeting certain requirements listed on the survey form as ERISA-related, for example, such as plan amendments, summary plan booklets and actuarial opinions, may have been incurred by some plans in the pre-ERISA period.

While the total ERISA-related costs reported by many plan sponsors responding to the survey apparently were overstated, other sponsors may have understated total costs. Sponsors were requested to identify both the internal and external components of costs. Some plans were able to provide a positive cost estimate for either the internal or external component of cost but entered a zero for the other type of cost or else left it blank. It could not be determined how many of these zero or blank responses were correct entries and how many reflected an inability of sponsors to estimate the actual costs incurred.

While the validity of this plan sponsor provided data is thus questionable, they are presented here because they, along with results from the service providers survey, represent the only aggregate data available on administrative costs directly associated with ERISA compliance.

--Based on the limited data received on ERISA-related costs, it appears that over half of such costs were one-time expenditures incurred in meeting nonrecurring ERISA requirements (plan amendments, original two-page EBS-1 plan description, changes in recordkeeping due to ERISA, and ERISA notice for participants and beneficiaries).

--The highest single ERISA-related cost experienced by plans was for plan amendments to comply with ERISA minimum standards in such areas as participation and vesting. Plan sponsors incurred a median cost of $700 in amending their plans.

--The highest single cost incurred in meeting a recurring ERISA-related requirement was for obtaining an actuarial opinion, which had a median value of $275 for defined benefit plans.

--Among individual recurring requirements which would normally be completed on an annual basis, median costs were $105 for a 5500-C, $100 for providing statements of accrued benefits, $78 for Summary Annual Reports and $40 for a PBGC Report by defined benefit plan.

--Of the remaining routine reporting and disclosure requirements, an EBS-1, which would normally be filed once every 5 years, had a median value of $100 and a Summary Plan Description, which is pro[illegible]ed once every 5 or 10 years was also $100.

Impact of Non-ERISA Factors on Administrative Costs

--In addition to ERISA, other factors such as inflation also had an impact on administrative costs of plans during the 1974-1976 period. For example, if it is assumed that internal hours spent by plan sponsor personnel on plan administration would have been the same in 1976 as in 1974 had ERISA not been enacted, internal plan costs would have increased by 15 percent as a result of increases in wage rates paid to sponsor personnel.

--Increases in plan costs may also have resulted from plan growth in terms of the assets held by the sample plans. The amount of plan assets increased by 46 percent from 1974 to 1976, a rate that was likely to have had some impact on costs during this period.

Findings From Survey of Selected Firms Providing Supporting Administrative Services to Small Pension Plans

--Much of the costs incurred by plans in complying with ERISA requirements result from a one-time expenditure for nonrecurring ERISA requirements. The pension practitioners contacted charged typical plans with fewer than 100 participants an average fee for all nonrecurring requirements of $868. The average cost charged per plan participant for meeting nonrecurring requirements ranged from $37 to $89, depending on the type of pension practitioner.

--Expenditures were also estimated for complying with ERISA reporting and disclosure requirements. The median fee charged to small plans by service providers was $100 for completing a 5500-C Annual Report, $75 for an EBS-1 Plan Description and $125 for a Summary Plan Description.

--Another ERISA-related requirement (for defined benefit plans) for which plans incur an expense is an actuarial opinion. The selected pension consultants and actuarial firms reported a median fee of $180 for providing an actuarial opinion.

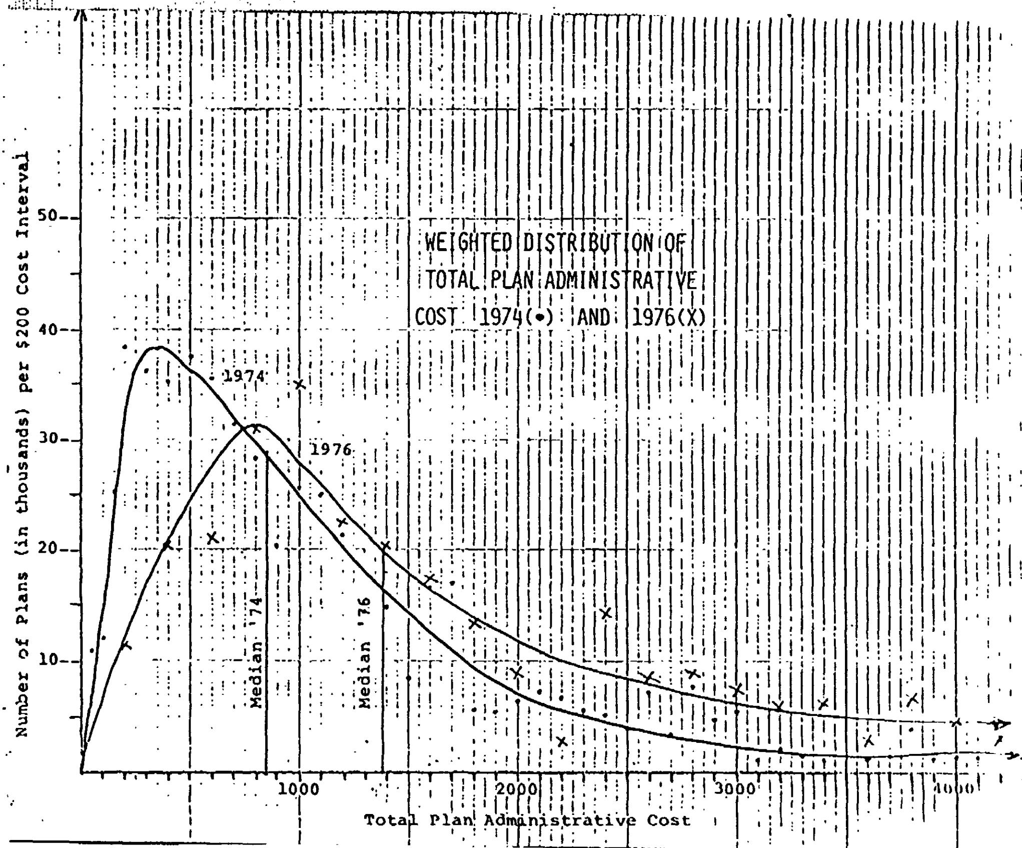
Summary and Conclusions

The material presented in this report should be viewed as a comparison of the administrative costs of a group of small pension plans between 1974 and 1976. While the survey data must be interpreted cautiously because of the low response rate and lack of detailed recordkeeping by plan sponsors, some conclusions can be drawn from the results. These results indicate a significant increase in administrative costs of these small pension plans from 1974 to 1976. By far the largest single cost item listed by plan sponsors as "ERISA-related" was for plan amendments to meet minimum standards. The establishment of minimum plan standards is one of the most significant aspects of ERISA since it increases the opportunities of employees in firms with pension plans to participate and receive benefits from their plans.

Due to inadequate recordkeeping for this purpose, many of the plans had difficulty distinguishing between recurring and nonrecurring costs and in attributing costs to a particular cost item. It was clear that the initial costs associated with recordkeeping, reporting, and disclosure were high during this period. Through a combination of improved plan recordkeeping, increased familiarity with reporting and disclosure requirements, and continuing efforts by Government agencies to reduce and simplify these requirements, substantial decreases in future costs are hopefully occurring.

Finally, the results indicate that lack of information and uncertainty about ERISA requirements, for whatever reason, appeared to lead to a high degree of variation from plan to plan in meeting the same requirements.

The results of the plan sponsor survey showed that external cost (purchased services) increased more rapidly than internal costs. Plan sponsors apparently purchased a large "market basket" of advice and assistance due to the uncertainty that surrounded the implementation of a new complex law. Much of this uncertainty has hopefully been removed since 1976.



WEIGHTED DISTRIBUTION OF
TOTAL PLAN ADMINISTRATIVE
COST 1974(•) AND 1976(X)
1974
1976
Median '74
Median '76
50
40
30
20
10
1000
2000
3000
4000
Number of Plans (in thousands) per $200 Cost Interval
Total Plan Administrative Cost

MEDIAN TOTAL PLAN ADMINISTRATIVE COSTS

DEFINED BENEFIT PLANS	1974	1976	INCREASE (1976 vs 1974)
1-9 Participants	$639	$1,170	83%
10-30 Participants	723	1,422	97%
31-50 Participants	2189	5,519	152%
51-100 Participants	1993	4,563	129%
1-100	800	1,498	87%
DEFINED CONTRIBUTION PLANS	1974	1976	INCREASE (1976 vs 1974)
1-9 Participants	$ 684	$1,052	54%
10-30 Participants	1063	2,058	94%
31-50 Participants	1262	3,139	149%
51-100 Participants	1385	4,036	191%
1-100	850	1,343	58%
Total, All Plans	848	1,378	63%

MEDIAN EXTERNAL PLAN ADMINISTRATIVE COSTS

DEFINED BENEFIT PLANS	1974	1976
1-9 Participants	$320	$650
10-30 Participants	550	878
31-50 Participants	745	2956
51-100 Participants	777	2815
1-100	433	912
DEFINED CONTRIBUTION PLANS	**1974**	**1976**
1-9 Participants	$305	$628
10-30 Participants	457	1210
31-50 Participants	1050	1871
51-100 Participants	1591	1989
1-100	400	800
Total, All Plans	400	800

Percent Increase - 1974-1976 : 100%

MEDIAN INTERNAL PLAN ADMINISTRATIVE COSTS

DEFINED BENEFIT PLANS	1974	1976
1-9 Participants	$ 225	$365
10-30 Participants	256	398
31-50 Participants	480	1521
51-100 Participants	600	1171
1-100	296	457
DEFINED CONTRIBUTION PLANS	**1974**	**1976**
1-9 Participants	$250	$311
10-30 Participants	350	555
31-50 Participants	372	718
51-100 Participants	606	1368
1-100	303	443
Total, All Plans	300	450

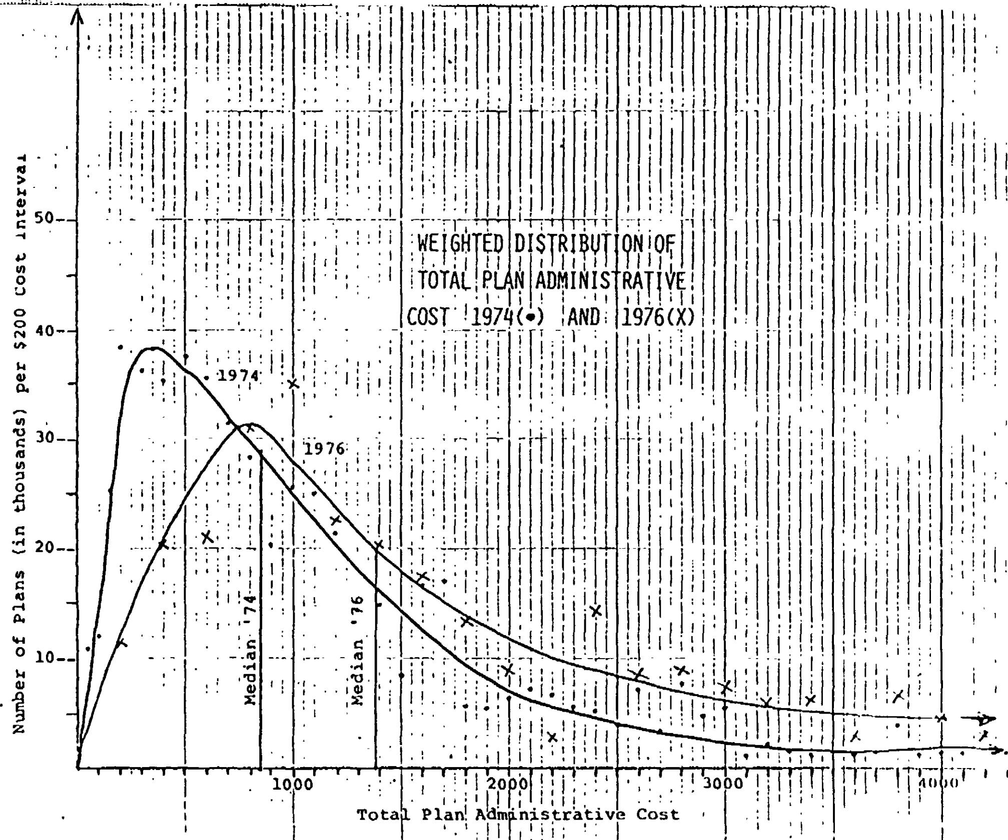
Percent Increase 1974-76 : 50%

MEDIAN ERISA RELATED FUNCTIONAL COSTS FROM EMPLOYER SURVEY

All Plans		
Nonrecurring Costs	Respondents	Median Cost
Plan Amendments	523	$ 700
Two Page EBS-1	481	90
Changes in Record-keeping	263	100
ERISA Notice	420	70
Recurring Costs		
5500C	439	105
Summary Annual Report	370	78
Statement of Accrued Benefits	339	100
Intermittent Costs		
EBS-1	444	100
Summary Plan Descrip.	349	100
Defined Benefit Plans Only		
Recurring Costs		
PBGC Premium & Annual Report (1976)	112	40
Intermittent Costs		
Actuarial Opinion	91	275

MEDIAN FEES CHARGED BY SERVICE PROVIDERS FOR ERISA RELATED REQUIREMENTS FOR A TYPICAL SMALL RETIREMENT PLAN, 1977

All Plans		
Nonrecurring Costs	Respondents	Median fee
Plan Amendments	59	$575
Two Page EBS-1	54	40
Changes in Record-keeping	26	100
ERISA Notice	35	32
Recurring Costs		
5500C	53	100
Summary Annual Report	40	50
Statement of Accrued Benefits	31	62
Intermittent Costs		
EBS-1	56	75
Summary Plan Descrip.	52	125
Defined Benefit Plans Only		
Recurring Costs		
PBGC Premium & Annual Report (1976)	43	25
Intermittent Costs		
Actuarial Opinion	37	180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TOTAL PLAN ADMINISTRATIVE
COST 1974(•) AND 1976(X)
1974
1976
Median '74
Median '76
Number of Plans (in thousands) per $200 Cost Interval
Total Plan Administrative Cost
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1000
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4000

Mr. BURKHARDT. It should be noted, though, with regard to this study that there was a very poor response to the plan sponsor survey. We hade some 611 returns out of some 7,000 in the particular study, and there were some problems with the completion of the survey.

So the results, while very important and very instructive, cannot really be generalized to the universe of small pension plans.

By far the largest single-cost item listed by the plan sponsors as ERISA-related was the plan amendments to meet minimum standards. The establishment of minimum plan standards was one of the most significant aspects of the ERISA since it increased the opportunities for employees in firms with pension plans to participate and receive benefits from the plans.

Some have contended that the enactment of ERISA has brought with it an increase in plan terminations. The General Accounting Office recently conducted a study on post-ERISA plan terminations which reviewed not only the incidence of terminations but also the reasons for individual terminations.

The study found that non-ERISA factors were more significant in causing terminations than the ERISA requirements. Where ERISA factors were found to play a significant role in plan termination, this was generally based on the plan's failure to meet minimum ERISA protections, such as eliminating lengthy service requirements, rather than paperwork or administrative burdens.

While the study found that disclosure burdens were the cause of some terminations, the GAO concluded that the administrating agencies have made significant progress in lessening paperwork and in issuing clarifying requirements.

I would like to touch on, at this time, some of our considerations for future paperwork reductions and some of the measures that will, hopefully, further reduce paperwork.

One of them has already been mentioned. We have worked with the IRS in combining their form 5300, required as part of the tax-qualifying status, with the Department's plan description form, the EBS-1. But it should be recognized that while only tax-qualified pension plans fill out the form 5300, there are an additional approximately 100,000 welfare plans and non-tax-qualified pension plans, that are required also to submit the EBS-1 at the present time.

Also, unlike the EBS-1, the 5300 represents a one-time filing.

Because of these differences, we are seeking other alternatives to the requirement that a form EBS-1 be filled out with the Department at the time a plan is established.

Another proposal we are considering involves developing a number of predesignated forms for the summary plan description. And, by the way, we are also looking at the possible combination of the EBS-1 and the summary plan description, and it is not too far to imagine that perhaps even the 5300 with these other two might be able to be merged together at some point in time. There are certain legal problems with that, certain administrative problems, but we are working on it.

The idea of using the predesignated form would be similar to the approach that I discussed earlier with regard to the summary annual report which hopefully when we have that regulation out shortly will have a predesignated form attached to it.

Senator BENTSEN. Predesigned?

Mr. BURKHARDT. Predesigned.

The last, and final area, that we would like to comment on today is the bill S. 3193 which, as I understand it, requires that all plans, including those not seeking tax-qualified status obtain determination letters at the time the plan is created. As I mentioned earlier, this proposal may not be necessary in light of our joint efforts with the IRS to combine the 5500 with the EBS-1.

In considering the cyclical annual report proposal which was contained in S. 3193, it is important to distinguish, I think, between the cost of filling out a form itself as opposed to the expense of compiling the information which is reported. If the data that is required by the form is already maintained by the plan for its regular operation, the cost of filling out the form may be minimal.

The Department has sought to request information in the manner that it is retained typically by the plans for their own purposes.

I think the more important consideration, however, is the impact that this proposal might have on the Government's compliance efforts. With regard to small plans, it must be recognized that they are as susceptible to financial abuses as larger plans.

For example, the Department's computerized audit program found that about 9,000 plans with 100 or fewer participants reported party-in-interest transactions compared to approximately 3,000 of the larger plans. So what we are talking about there are loans, real estate loans, lease-back arrangements, and the rest.

Also, regarding smaller plans, we have already devised a shorter, simplified 5500(c).

Mr. Chairman, with all of this said, I promise that the Department will continue to examine your proposal along with other measures of reducing the paperwork. We support the intent of the bill's proposal to formulate a booklet to assist small plans complying with ERISA. In fact, we have produced a 42-minute slide show that has been made available to plan administrators that shows him how to fill out this 5500 form.

We have had seminars, some 5,000 around the country, that hopefully achieve the same purpose as you are trying to achieve with your pamphlet publication.

In conclusion, Mr. Chairman, ERISA has opened the book on financial activities and has eliminated the mysteries of how individuals qualify for benefits. The Department has had considerable success in reducing reporting requirements and expects to continue to make process within the law's present mandate.

This concludes my prepared remarks. I might just add, as a footnote, that the hearing before this committee last year, as you mentioned in your opening statement, there has been movement on many of suggestions that this committee has made, both to the Department of Treasury and to the Department of Labor, and we are happy to work closely with you in these areas.

Senator BENTSEN. Thank you very much, Mr. Secretary.

Mr. Lanoff, would you proceed with your comments?

Mr. LANOFF. I do not have any comments.

Senator BENTSEN. You do not have any?

Let me go in inverse order, then.

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Secretary Burkhardt, I think substantial progress has been made and that your Department and Treasury have followed up on a number of the suggestions, and certainly have brought into being a number of your own. But much yet remains to be done.

I do agree with the GAO study—and I have seen it too, of course, showing that many other reasons in addition to paperwork cause plans to terminate and one of the major ones was the tougher funding that we require under ERISA. And some of these plans were really illusory so far as what beneficiaries thought they would some day get.

That their staying there that long and finally being funded, and did not meet reality. So I am in concurrence with that.

Let me make a couple of comments here to Mr. Winborne.

How do you determine what a material modification of a plan is when you have a new submission? I agree with you, but how do you measure the material modification?

How would that person out there decide this was a material modification?

Mr. WINBORNE. In order to know whether he must file a——

Senator BENTSEN. Yes.

Mr. WINBORNE. We would have to give that some thought, Mr. Chairman, and we would have to spell that out as best we could. At this point in time, to my knowledge at least, we have not reached that point, not come to a decision as to what would be a material change as opposed to a change for which a filing would not be required.

Senator BENTSEN. I am sure there are some guidelines, otherwise you could have a great variance in judgment that the individuals and the people who were auditing the changes and a fellow would not know when he was in trouble and when he was not, in so far as filing the plan.

Mr. WINBORNE. That is correct. We would have to make that known; we would have to publicize it.

Senator BENTSEN. The other one, Mr. Winborne, is on the 60-day deadline. I do not expect this legislation to pass for some time, you know, and we have a lot of time in between now and then.

And as you have spoken to some of these things having been done from the last time, there is nothing to keep you from working on these things between now and the final enactment of this piece of legislation?

Mr. WINBORNE. I agree 100 percent, Mr. Chairman. As a matter of fact, last night Mr. Lanoff and I on the telephone were discussing getting our organizations together and doing some work in the immediate future.

Senator BENTSEN. Well, if I can keep pushing you all and prodding you all, I will do it.

Mr. WINBORNE. I would much appreciate it, Mr. Chairman.

Senator BENTSEN. Every once in awhile.

How do your field offices work? What kind of coordination do you try to develop between Labor and the IRS and is this working with these specific plans?

Mr. WINBORNE. Mr. Chairman, if I may, let me have Mr. Ochs who has been directly involved in the field operation try to respond to that.

Senator BENTSEN. All right.

Mr. OCHS. Thank you, Mr. Winborne. I will ask Mr. Lanoff if he might add to what I have to say, but up to just recently there has not

been a need for extensive coordination, because the IRS was almost entirely committed to predetermination on qualification on ERISA and, as Mr. Winborne mentioned in his opening statement, both agencies are moving toward the coordinated compliance program which is about to be finalized and signed off on which there will be absolute coordination on all efforts from the day the plan is identified for examination to even potential litigation.

Senator BENTSEN. There is going to be a greater focus on plan audits, I would assume, in the future.

Mr. OCHS. Yes; there will, sir, and I think that Mr. Lanoff and I are satisfied that that agreement, which is very close to being signed, will insure absolute coordination between all efforts of the Department of Labor and the IRS in the field offices.

I might add that we had our regional managers back here to kick that off in January so that we could build a working relationship from the very beginning between the Department and IRS.

Senator BENTSEN. Would someone speak to the availability of prototype plans now and how much they are actually being used?

Mr. OCHS. There are several types, Mr. Chairman. We have what we call a master or prototype plan which are granted to banks and insurance companies as sponsors in the national office. We have issued, as I recall, about 3,500 corporate master and prototype plans, about 5,000—I am giving you rough figures—about 5,000 H.R. 10's, and about 6,000 IRA plans out of our national office, each one of which could actually represent 100 or 1,000 different plans sold to a doctor.

In our field offices, we have recently developed what we called a field prototype in which the practitioner in the field can apply for approval and a determination as to qualification of a basic plan and once that basic plan is approved, all future submissions are, in effect, very expeditiously processed at very little cost.

That program is just getting started.

Senator BENTSEN. I have a number of other questions I want to ask, but I would like to defer now to my colleague, Senator Matsunaga.

Senator MATSUNAGA. I wish to join the chairman in congratulating the Treasury and Labor represenatives for their assistance in this hearing—and for the progress their Departments have made since their last appearance here in cutting down the amount of paperwork required especially of small businessmen.

This has been one of the constant complaints which we of the Congress have been receiving from businessman; that so much of the government paperwork imposed on businesses are felt to be unnecessary. The best thing that has resulted from the introduction of the bill to reduce paperwork has been your administrative initiative in implementing the congressional objection.

Now, Mr. Burkhardt, you say that fiduciary conflicts often occur within small plans. In Hawaii, the great majority of pension plans are small plans for small employers employing less than 50 workers.

Of course, we should not discourage small employer plans by overregulating them. I am sure you will agree with that.

What kind of compromise would you suggest to reduce the regulatory burden on small employees and, at the same time, safeguard the workers who are employed in small firms?

Mr. BURKHARDT. Well, Senator Matsunaga, I think you are referring to page 11 of the testimony in which I mentioned that 46 percent of the plans—what we find typically, I think, since the passage of ERISA, there has been a sort of institutional response among small employers that this was their money that they set aside for their employees, and have typically looked at it as their money. So consequently, they have tended to invest the money back into the business.

ERISA, of course, passed certain standards and said that the pension benefits that workers earned should be guaranteed in some fashion that was not contingent upon the future success of the future company.

I think that is basically where some of the biggest problem areas are. In terms of compromise and what we can do to not appear as regulatory, I am not sure that we can compromise that particular minimum standard regulation. What I think we can do, hopefully, is standardize some of the reporting requirements that small employers have to fulfill. If we can, for example, as we are going to do for the SAR's get it down to a couple of pages that can just be checked off, maybe we can simplify the filling out of some of these forms. I think the thing we have done with the slide show, this 42-minute slide show, should educate enough small employers in what things they have to do themselves, so that they will not have to hire expensive legal services.

I think that the other area, perhaps, that we can look at is the amount of—and we have, in the 5500(c), we do not require, I believe, an actuarial opinion, but we do not require even an accountant's certification for that particular form. So we have made a number of compromises with regard to small employers that we have not made, for example, with regard to large employers.

Senator MATSUNAGA. How much effort is now being made to standardize forms?

Mr. BURKHARDT. We are looking at every form with that in mind. As I mentioned, the summary annual reports, we are looking at the EBS-1's and the summary plan descriptions with that very thought in mind, a predesigned form that will allow plan administrators to fill them out with very little backup.

Senator MATSUNAGA. I understand that IRA benefits are not extended to corporate, qualified pension plan participants. Mr. Halperin would you comment?

Mr. HALPERIN. There is a problem because present law does not permit people to participate in both qualified plans and in IRA's. IRA's are designed to fill a gap and to permit people who are not participating in employer-sponsored programs to have a chance at tax-savings for retirement on a tax-deductible basis.

There is clearly a problem with IRA's. Our studies show by and large that the high-income people who are eligible for participation in IRA's do so, but when you get down to people with $20,000 of income and less we find that there is less than 5-percent participation among the eligible group.

Since they involve individual choice and since the tax benefit for the lower income people is not great enough to overcome what might be resistance towards retirement savings, IRA's tend not to fulfill the purpose of the program. They do not provide retirement savings for

low-income people, at least at the same proportion they provide them at the high-income levels.

If IRA's were extended to allow people who also participate in qualified plans to participate in IRA's, I think that that proportion would get worse. You would find that people at higher income levels who happened to have $1,500 in a bank account, which I assume most of them do have, can just move it into an IRA and get a $750 tax savings if they are in the 50-percent bracket.

So there will be even greater benefits for the high-income people.

Senator BENTSEN. Mr. Halperin, you got into the question of social security integration. I heard several major criticisms of the administration's social security integration proposals. First, according to the American Society of Pension Actuaries, more than 16,000 plans might be forced to terminate if the proposal is enacted into law.

Second, and I am quoting:

> The present guidelines are not discriminatory. Social security always has been, is now, and according to present law, will in the future be highly discriminatory in favor of the lower-paid employees.

By that, what they are saying is that the amount of money that is collected from an employee and the ratio of benefits that are returned are proportionately much higher to the lower-paid employee than they are to the higher-paid employee. The present integration guidelines have been meticulously developed over a long period of years in an attempt to allow employers to establish qualified pension plans to partially make up for this discrimination in social security, to encourage employers to adopt private pension plans.

Third, many plans would have to be amended to comply with the new rules. This involves acturial, accounting, and legal fees. Would you care to comment?

Mr. HALPERIN. Yes, Mr. Chairman. I think the first and third points that you mentioned there—the fact that a number of plans would terminate and that a number of plans would have to be amended—those, of course, involve a transitional problem. The middle point really goes to the basic philosophy of whether the proposal——

Senator BENTSEN. That is the really significant point.

Mr. HALPERIN [continuing]. Is correct or not.

I think that the difference of opinion is this. Under present rules, what the integration rules are designed to accomplish—and I think they do a fairly good job of it—is to treat the social security program as part of the employer's plan and to look and see whether the total benefits provided from social security and the employer plan are a level proportion of pay.

Social security under the current integration rules is treated as providing a certain percent of pay up to the wage base, and nothing above. If an employer wanted to match that on pay up to $100,000 or $200,000 on which there is no social security coverage, they would leave out the employees at the bottom and they would just cover the wages not covered by social security.

Or, if they wanted to increase the benefit at the bottom a little bit, they would add that little bit to the part at the top.

So what the American Society of Pension Actuaries is saying is that, if you look at the two programs together, low-paid employees

if anything probably still come out ahead in total, compared to the high paid. If that is the purpose of the integration rules, then no change is needed.

We have really taken a different position as a matter of, I guess, philosophy and I think there is room for differences.

We have said that we believe that the purpose of the tax benefit for qualified plans is to encourage retirement benefits at all income levels. It starts out from the premise that social security is inadequate by itself to maintain a person's preretirement standard of living.

If you are allowed to say to people whose total wages are covered by social security, we will not cover you in the retirement plan, but what we will use the retirement plan for is to bring everybody else who has a higher wage up to the same coverage that social security provides for you, we think that the tax benefits are not being used properly. The goal should be to bring the low-income people up to an adequate preretirement income level.

Integration in that scheme has this purpose. If an employer says, I think that people ought to have postretirement income of 60 percent, say, of their preretirement pay, if they did that across-the-board and gave it to everybody, people who are getting social security for a substantial portion of their pay would end up with 90, 100, or 110 percent of their preretirement pay, and we think that is unwise.

It is presumably to come out of their current paycheck and there is no reason to deprive people of an adequate standard of living now in order to let them live better after retirement.

So we think integration ought to be aimed at that, ought to be aimed at allowing the plans to get up to adequate retirement levels at all income levels without giving too much at the bottom. We do not see as its purpose saying Congress has provided for the lower- and moderate-income wage earners through social security and is now intending to provide for the higher-income wage earners through tax benefits.

If that is what it is, the American Society's position is correct, but we do not believe that that is sound tax policy.

Senator BENTSEN. On page 8 of your statement, if I remember your testimony, you go from the 1.8 to 1 ratio, in effect, to 2 to 1.

How do you fine tune it that much to get equity?

Mr. HALPERIN. Well, I think the perfectly logical way to do it, as we stated in some detail in the detailed description of the administration's tax proposal, would be to adopt the minimum benefit approach and say, what is our goal?

Is our goal 50 percent of income postretirement, 60 percent of income postretirement, and to say to a plan, you have to meet that minimum benefit. Once you meet the minimum benefit, you can integrate without giving more at the bottom as you bring the higher paid up to that minimum benefit.

That wauld be the logical way to do it.

We did not proceed in that way, I think for two reasons. One, we thought it would add an additional layer of complexity and——

Senator BENTSEN. And a problem of cost, and would they go ahead and put such a plan in, I suppose.

Mr. HALPERIN. And second, for a plan that had a low level of benefits, that would be a much tougher rule than the one we proposed.

So that the 2 to 1 proposal, I think, moves in the direction of the minimum benefit. It requires you to give some at the bottom and more at the top and for each $1 you give at the bottom you can give $2 at the top, and it moves in the direction that we see as the logical one. It is not as complicated as the minimum benefit approach and it is not as harsh on plans with a low level of benefit.

I think it can be criticized on the fact that it does not have any logic in the sense that you can cannot defend 1.8 to 1 or 2 to 1 on any mathematical formula, but we think it does move in the right direction. There was a study by Professor McGill of the way to integrate State and local pension plans with the social security system and he comes out with a formula which is 2 to 1 on defined benefit plans and which has an offset formula which is almost the same as ours.

We do have that support in the fact that we came up with something that is reasonable in a lot of circumstances.

Senator BENTSEN. Senator Matsunaga, do you have any further questions?

Senator MATSUNAGA. I do not.

Senator BENTSEN. Gentleman, I am very pleased with your testimony and, as is Senator Matsunaga, I am pleased to see some progress and I think pretty major progress being made. And if you want to be the authors of that continuing progress, then please see that it is implemented, otherwise we will do it for you.

Thank you very much.

[The prepared statements of the preceding panel follow:]

STATEMENT OF DANIEL I. HALPERIN, TAX LEGISLATIVE COUNSEL, OFFICE OF THE ASSISTANT SECRETARY OF TREASURY FOR TAX POLICY

Mr Chairman and Members of the Subcommittee: I am pleased to have the opportunity to appear before you today to discuss the Chairman's bill, S. 3140. The bill would combine the administrative simplicity of separate retirement funds for each employee (as under Individual Retirement Accounts (IRAs)) with the higher contribution level permitted for the self-employed when they adopt plans for their employees (so-called Keogh or H.R. 10 plans). For employers who choose to adopt the type of plan created under the bill, it will achieve simplification without detriment to the tax policies underlying the favored tax treatment of employee retirement plans. Therefore, we are pleased to support the bill and encourage its early enactment by the Congress. At the same time, we would urge one modification regarding integration with the Social Security system. We would also wish to raise one significant issue of retirement policy for the Subcommittee's consideration, namely, the impact of the proposal on the choice between a defined benefit and a defined contribution plan. I will discuss these matters and several other features of the bill in the remainder of this testimony after outlining the bill's provisions.

BASIC OUTLINE OF THE BILL

The bill builds upon the framework of the IRA provisions added to the Internal Revenue Code by ERISA. Current law (section 408(c)) provides for the establishment of group individual retirement accounts by employers or associations of employees on behalf of employees. Deductible contributions to these IRAs, like contributions to all other IRAs, are made only by employees, and they are generally limited to the lesser of $1,500 or 15 percent of annual compensation. Deductible contributions cannot be made by an employee if he or she was an active participant in a qualified plan during any part of the taxable year.

The bill would expand upon the concept of employer-maintained IRAs, which have not been widely used up to now. It would authorize deductible employer contributions to such an IRA, with the employer contribution being limited to the lesser of 15 percent of gross income or $7,500. This conforms to the deductible

limitation for employer contributions on behalf of a self-employed individual under a Keogh plan.

In order to obtain this status, the simplified plan must be an employer-sponsored group IRA meeting a combination of requirements under the IRA provisions and the qualified plan provisions which insure maximum security once the funds have been contributed and, further, would insure against discrimination in favor of highly-paid employees. Thus, for example, participation would have to be on a nondiscriminatory basis, an employee could not be denied participation on the basis of service once he or she has completed three years of service. and employer contributions would be fully and immediately vested.

Another significant feature of the bill is that if an employer's contribution for an employee is less than the annual IRA limitation for that employee, the individual could make up the difference.

From the employer's point of view, the bill proposes simplified reporting and disclosure requirements and the further simplification of the plan itself. Simplified plan design could be achieved either through adoption of a model plan or through an individually designed plan which would be simpler than the typical employer plan under present law.

I would like to turn now to four specific considerations in connection with the bill.

DISCRIMINATION

The present Code provision for employer-sponsored IRAs does not contain any anti-discrimination rules. There have been suggestions that the provision be amended to add such rules. However, we have viewed such an amendment as a fruitless exercise within the framework of the current IRA provisions. Current law provides no incentive for an employer to establish a group IRA plan as opposed to individual plans. Therefore, anti-discrimination requirements for employer-sponsored plans could be circumvented by the simple technique of individual employees establishing IRAs, perhaps with the aid of the employer.

The bill, however, does provide an incentive for the employer to establish the simplified plan. It accomplishes this by allowing substantial deductions for employer contributions to such plans. The bill also precludes the establishment of employer-sponsored IRAs on a discriminatory basis. Therefore, we believe the bill represents a meaningful effort to eliminate discrimination in this area.

EMPLOYEE CONTRIBUTIONS

The bill will allow an employee to contribute and deduct the difference between the employer's contribution and the deductible limitation for IRAs applicable to the employee under current law. This will alleviate a problem which has existed since the IRA provisions were enacted as part of ERISA. An employee may not make a deductible contribution to an IRA if he or she is an active participant in a qualified plan for any part of the taxable year. This has caused certain employees to view participation in a qualified plan as detrimental because employer contributions to a qualified plan on their behalf are quite small or because the employee does not expect to vest in a retirement benefit under the employer-maintained plan.

Several proposals have been made in this Congress and the previous Congress to deal with this problem. In some cases, those proposals have contained defects either because they were extremely complicated or because they allowed extra IRA contributions on a discriminatory basis. In some cases, both defects were present.

S. 3140 is much more satisfactory from this standpoint. First, the bill resolves the problem of an employee who changes jobs frequently and might never vest under an ordinary retirement plan. Under the simplified plan, that employee's benefits are always fully vested and fully portable.

Secondly, it is designed to encourage retirement savings for low-income persons. As an illustration, assume the employer maintains a simplified plan for the benefit of two employees, one of whom earns $30,000 while the other earns $10,000. An employer contribution of 10 percent of compensation on behalf of each will result in contributions of $3,000 and $1,000 respectively. The higher-paid employee will not be able to make an extra IRA contribution, because the employer contribution already exceeds the employee's $1,500 deductible limitation. On the other hand, the $10,000 employee can make an extra IRA contribution up to $500.

Finally, and most importantly, it has a built-in overall $1,500 limit which would generally prevent execessive combining of IRA contributions with benefits under a

qualified plan. I must caution, however, that this privilege could be abused if an employer establishes more than one plan. For example, if the employer maintains a profit-sharing plan to which it makes substantial contributions, the employer should not be able to adopt a simplified plan described in the bill and make very small contributions, thereby allowing highly-paid individuals to make deductible excess IRA contributions to almost the full extent of the IRA deduction limitation. Thus, the ability to deduct employee contributions should be limited to those who do not participate in a qualified plan other than the new simplified plan. More complex solutions should be avoided. IRAs are intended to be simple arrangements understandable by unsophisticated individuals who do not have access to advice from attorneys, accountants, and other advisors. Unfortunately, the existing IRA provisions are already extremely complicated and contain many traps for taxpayers who do not precisely follow the rules. We urge that these problems not be magnified by the adoption of complex rules under the bill.

INTEGRATION

As we understand it, the bill would allow a simplified plan to be integrated with Social Security under the current integration rules for Keogh plans. Integration is accomplished in a Keogh plan by taking into account Social Security taxes paid on behalf of employees as plan contributions by the employer for the employees.

We have been concerned about the current integration rules. At their worst, they have resulted in qualified plans which benefits only highly-compensated employees. This undercuts the rationale reflected in the anti-discrimination rules for qualified plans—that is, tax benefits associated with qualified plans should serve as an incentive for an employer to provide retirement benefits for employees at all levels of income. These concerns led to the proposal for changes in the integration rules contained in the President's Tax Reform Program.

Under the tax reform proposal, a plan could still be integrated with Social Security, but only if it provides substantial benefits for all participating employees.[1] A number of persons who have objected to the integration proposal have not done so on the merits. Rather, they have been concerned that a shift in the integration rules will necessitate relatively widespread plan amendments following closely upon the amendments which have just been made to meet the standards enacted by ERISA. For those people, the primary objection has been the cost and administrative problems associated with amendments rather than the ongoing costs of meeting the proposed ratio. Since S. 3140 would result in entirely new plans, the amendment problem would not exist. Therefore, we suggest to the Subcommittee that it consider allowing integration only where a simplified plan satisfies the President's integration proposal.

DEFINED BENEFIT PLANS

As a practical matter, the approach taken by S. 3140 lends itself only to defined contribution plans. The employer contributes a specified percentage of pay which is deposited in each employee's account. The level of retirement benefits is not specified but will be the amount which can be derived from the sum contributed and the earnings thereon. In contrast a defined benefit plan provides for a specific benefit, for example, $10 per month per year of service, 1 percent of career average pay per year of service, 1 percent of average pay over the last five years of service per year of service. Since the employer's contribution to this type of plan is affected by the investment performance and the age of the participant and in some circumstances by changes in the compensation level, a defined benefit plan does not easily fit into the individual account pattern required for the simplified plan.

Because it established minimum funding requirements, premium payments for plan termination insurance and in some cases employer liability upon plan termination, ERISA may have made defined benefit plans less attractive compared to defined contribution plans than they were prior to the enactment of the legislation. From one point of view this is a beneficial effect of ERISA.

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[1] Specifically, the proposal for defined contribution plans is that the proportion of contributions allocable to compensation above the integration level may not be in a ratio greater than 1.8 times the proportion of contributions allocable to compensation below the integration level. As a result of testimony before various committees and discussion with interested persons, we are prepared to modify that proposal that the basic ratio may be 2 to 1 rather than 1.8 to 1.

Some conceive of the employer's contribution to a pension plan as a payment in lieu of an increase in current salary and, therefore, each employee should have a nonforfeitable right to his or her proportionate share of the contribution. Others argue that defined contribution plans are more meaningful to those who spend less than a full career with one employer. Contributions under such plans tend to be a level percentage of pay regardless of age. If it is assumed salary will increase and that an adequate retirement income must be measured against earnings at the time of retirement, the contribution level will be higher than it would be if earnings were expected to remain steady.[2] Thus, the vested benefit under a defined contribution plan could include some provision for anticipated increases in earnings. Under a defined benefit plan the value of a vested benefit is determined by reference to earnings at the time of separation from service. Therefore, the amount of a lifetime pension, even if full vesting is achieved, will be less if the employee changes jobs than if he or she stays with one employer. A defined contribution plan could produce the same benefit in both situations.

On the other hand, a defined benefit plan can more easily adjust for changes in salary and plan earnings. Particularly if it promises a specified percentage of pre-retirement pay, such a plan is much more meaningful to the employee in facilitating planning for retirement. Very few employees can estimate the adequacy of a benefit from a defined contribution plan.

Therefore, on balance we think a shift in plan design toward defined contribution plans would be unfortunate. We believe there needs to be a study as to whether such a shift has taken place and if so whether it furthers the interests of providing retirement security for employees as a group. We do not think, however, that this word of caution should deter prompt action on S. 3140.

Statement of Francis X. Burkhardt, Assistant Secretary of Labor for Labor-Management Relations

Mr. Chairman and Members of the Subcommittee: I am pleased to be here to testify regarding ERISA's paperwork requirements. The Department has placed considerable emphasis on implementing ERISA's reporting and disclosure provisions in a manner that furnishes necessary information to participants, beneficiaries and Government agencies without placing unreasonable requirements on employee benefit plans and those who sponsor them. In my remarks today I will discuss Departmental efforts to lessen paperwork burdens, the results of studies which address the impact of ERISA's reporting and disclosure requirements, future potential paperwork reductions, and S. 3193 (the ERISA Paperwork Reduction Act).

Departmental Actions to Reduce Paperwork Burdens

ERISA's reporting and disclosure provisions provide critical information regarding financial and other operating characteristics of pension and welfare plans, and the entitlements of participants and beneficiaries to benefits provided by such plans. This information is essential to workers who plan for their livelihood during retirement depending upon benefits from private pensions plans and who count on health and other important benefits from welfare plans.

It is important for participants and Federal agencies to have access to adequate information in order to determine whether plans are being operated in a manner that will enable them to provide promised benefits. Very substantial sums are involved as private pension plans have 250 billion dollars in assets and represent a major source of investment for the Nation's economy.

In administering the reporting and disclosure provisions, the Department has endeavored to require the most useful information while eliminating or revising requirements which are not essential and result in unnecessary costs to plans. This has been a continuing effort through which we have taken a number of initiatives to reduce paperwork burdens. This Subcommittee should be aware, Mr. Chairman, that of the 11 recommendations relevant to the Department made by the Federal Paperwork Commission to reduce ERISA paperwork, seven have already been adopted and implemented while some of these remaining recommendations continue under active consideration. This has resulted in a significant reduction in plan time and money.

[2] This works out correctly if the rate of salary growth is both uniform among employees and correctly anticipated. It also ignores the difficulty of providing for past service under a defined contribution plan started or improved when the employee is in mid-career.

Mr. Chairman, I am pleased to tell you that we are close to announcing another significant action to reduce paperwork requirements, a proposed revised regulation for the Summary Annual Report (SAR). ERISA requires that each year plan administrators must furnish the SAR, which contains a summary of the plan's Annual Report, to all participants and beneficiaries. The Department had proposed regulations for the SAR on July 29, 1976, but these were criticized as being burdensome to plans and uninformtaive to participants. The new regulation that we are developing is itnended to make the SAR more useful and easier to prepare by including less, but more significant, information, and by prescribing a pre-designed format where the plan administrator simply fills in the information.

Our aim is to propose that te information for the SAR can be extracted directly from the Annual Report, and as the SAR is scheduled for distribution after the Annual Report is submitted, no new information will need to be compiled. By requiring less detailed and complicated information, the SAR will highlight those items which provide the participant with a snapshot picture of plan financial activities and a good initial appraisal of the plan's financial condition. The SAR will also inform participants and beneficiaries of the additional financial information that is available about the plan and how it can be obtained. We believe that in this new form the SAR will encourage participants to take an interest in the financial outline and operations of their plan, an outcome which is supportive of the Department's enforcement effort and consistent with the overall purpose of ERISA.

Another recent Department effort concerning reporting requirements, which we testified about before this Subcommittee on June 14, 1978, involves changes to the disclosure of pension fund benefit liabilities in Schedule B of the Annual Report. As we indicated then, we undertook a review which resulted in a set of proposals that will help participants and other interested parties gain a clearer picture of pension plan obligations. At the same time, our approach has been to find the least costly and burdensome of several alternative ways to produce this necessary information.

The Department also initiated a study during the past year to identify administrative changes to Annual Report requirements that would reduce paperwork without discarding information needed by participants, beneficiaries or Federal agencies. Based on this study, we established significantly simplified reporting requirements in the annual reporting regulations issued on March 10, 1978. A major paperwork reduction was provided by permitting plans to report a material modification by including a summary of the change with the Annual Report rather than reporting the amendment or a plan termination on the Plan Description form, the EBS-1, within 60 days. This eliminated an entire form that plans had been required to fill out. The new regulations also reduce the reporting requirements of plans with respect to short term investments triggered by three percent transactions and of assets that were acquired and disposed of within the plan year. In addition, they eliminate the requirement that all assets be reported at book value and that plans report acquisitions and dispositions in the aggregate for each category of pension assets.

Another major cause of dissatisfaction among plan administrators was the ERISA requirement that the Annual Report had to be filed with both the Department of Labor and the IRS, and on different dates. We have resolved this issue administratively through a memorandum of understanding between the Department and the IRS, signed in April, 1977, that ended this practice.

Earlier, the Department had taken a series of actions that alleviated reporting and afforded significant cost savings to plans. This included exempting one million insured welfare plans from reporting and disclosure requirements, developing simplified annual report forms for all plans of 100 or fewer participants, waiving the requirement of an accountant's opinion for small plans, requiring actuarial information only from plans subject to the minimum funding standards, waiving the need for an accountant's opinion relating to information provided by regulated banks or insurance companies, and exempting apprenticeship plans from all but the initial filings of the Plan Description and Annual Report.

The Department has also taken steps to assist plans in preparing the annual reports and to make the plan information more readily available to the public. We developed, and widely distributed, a slide show on how to fill out the reports, and also published a reporting guide for employee benefit plan administrators. Significantly, we have shifted emphasis in the Department's technical assistance program to direct our efforts at the smaller employer programs.

ERISA grants the Department certain discretion concerning the application of the reporting and disclosure requirements. I believe our record of actions demonstrates that this discretion provides substantial latitude which we have utilized to develop meaningful requirements that relieved plans of unnecessary burdens.

STUDIES ON THE IMPACT OF ERISA REQUIREMENTS

To assist in identifying those reporting and disclosure requirements, which administrators of some small plans have suggested are unjustifiably expensive, Mr. Chairman, with your permission, at this time I wish to submit a copy of the Department sponsored a study on administrative costs of small plans, this study for inclusion in the hearing record. The study involved the collection and analysis of data from two surveys. The primary survey was of a stratified random sample of sponsors of small private pension plans with 100 or fewer participants. The second survey was of selected firms providing administrative services to small plans.

Due to a poor response to the plan sponsor survey, as well as problems with the completion of the survey instrument by those who did respond, the results cannot be generalized to the universe of small pension plans. The surveys did, however, provide instructive case studies on costs incurred by a group of 611 small pension plans during a three-year period that included the first two years subsequent to the passage of ERISA.

The first survey showed that the 611 plans experienced median total cost increases of 63% over this period. While it is difficult to generalize from some of the disaggregated data, it appears that over half of the costs that were listed by plan sponsors as "ERISA related" were one-time expenditures incurred in bringing the plans into compliance with ERISA.

The results indicated a significant increase in administrative costs of these 611 small pension plans from 1974 to 1976. By far the largest single cost item listed by plan sponsors as "ERISA-related" was for plan amendments to meet minimum standards. The establishment of minimum plan standards is one of the most significant aspects of ERISA since it increases the opportunities of employees in firms with pension plans to participate and receive benefits from their plans.

The study also indicated that the initial costs associated with recordkeeping, reporting, and disclosure were high for the 611 plans studied during this period. Through a combination of improved plan recordkeeping, increased familiarity with reporting and disclosure requirements, and continuing efforts by Government agencies to reduce and simplify these requirements, substantial decreases in costs are, we believe, occurring.

Some have contended that the enactment of ERISA has brought with it an increase in plan terminations. The General Accounting Office (GAO) recently conducted a study on post-ERISA plan terminations which reviewed not only the incidence of terminations, but also the reasons for individual terminations. The study found that non-ERISA factors were more significant in causing terminations than ERISA's requirements. Where ERISA factors were found to play a significant role in plan terminations, this was generally based on the plan's failure to meet minimum ERISA protections, such as eliminating lengthy service requirements, rather than because of paperwork or other administrative burdens. While the study found that reporting and disclosure burdens were the cause of some terminations, the GAO concluded that the administering agencies have made significant progress in lessening paperwork and in issuing clarifying requirements.

FUTURE PAPERWORK REDUCTIONS

Building on the progress we have made to administer ERISA's reporting and disclosure provisions in a meaningful and sensible manner, the Department is considering measures that will further reduce paperwork. We have been working with the IRS on combining their Form 5300, required as part of obtaining tax qualification, with the Department's Plan Description Form, EBS-1. It should be recognized that while only tax qualified pension plans fill out the Form 5300, an additional 100,000 welfare plans and non-tax qualified pension plans are required to submit the EBS-1. Also, unlike the Form EBS-1, the Form 5300 represents a one time filing. Because of these differences, we are also seeking other alternatives to the requirement that a Form EBS-1 be filed with the Department at the time a plan is established.

Another proposal we are considering involves developing a number of predesigned forms for the Summary Plan Description (SPD) where the adminis-

trator would insert information in blank spaces. This would be similar to the approach I described earlier which we hope to take for the Summary Annual Report. This would be especially helpful for small plans.

Work is also underway on developing a format for the benefits statement which ERISA requires that plans furnish participants upon request. I believe that the approach being taken by the Department on this issue adequately takes into consideration the cost to plans in complying with this important requirement.

S. 3193—THE ERISA PAPERWORK REDUCTION ACT

With regard to the provisions of S. 3193, we are still studying the implications of your proposal, which, as I understand, requires that all plans, including those not seeking tax qualified status, to obtain determination letters at the time the plan is created. As I mentioned earlier, this proposal may not be necessary in light of our joint efforts with the IRS to combine the Form 5300 and the Form EBS–1.

In considering the cyclical annual report proposal contained in S. 3193, it is important to distinguish between the cost of filling out the form itself as opposed to the expense of compiling the information which is reported. If the data required by the form is already maintained by the plan for its regular operations, the cost of filling out the form may be minimal. In designing the Annual Report form, and in making the paperwork reduction changes this past year, the Department has sought to request information in the manner that it is retained by plans for their own purposes.

The more important consideration, however, is the impact of this proposal upon the Government's compliance efforts. Whether reducing the frequency of filing Annual Reports, as called for in S. 3193, and replacing them with summary reports, would substantially impair the Government's compliance efforts, requires further analysis by the Department before we can adopt a definitive position. Regarding small plans, it must now be recognized that they are very much as susceptible to financial abuses as larger plans. For example, the Department's computerized audit program found that 46% of plans with 100 or fewer participants reported party-in-interest transactions compared to 8% of larger plans. Also, regarding smaller plans, we have already devised a shorter more simplified annual report for them, the three page 5500–C.

Mr. Chairman, I promise that the Department will examine this proposal further along with other means of reducing paperwork, and will advise the Subcommittee when we have formed a final opinion regarding its merits. We support the intent of the bill's proposal to formulate a booklet to assist small plans in complying with ERISA. The Department has developed publications for this purpose and we intend to continue this effort. As I already mentioned, a new thrust of our technical assistance efforts is to employ our limited resources to provide guidance to smaller plans.

In conclusion, Mr. Chairman, based on the Department's experience in administering ERISA's reporting and disclosure requirements, we believe these provisions in their present statutory form are both necessary and viable. ERISA has opened the book on plan financial activities and has eliminated the mystery of how individuals qualify for benefits. Employing its statutory discretion, the Department has had considerable success in reducing reporting requirements and expects to continue to make progress within the law's present mandate. In this regard, the Department's objectives are to eliminate unnecessary paperwork required of employee benefit plans, to increase the quality of information to its most useful form, and to avoid duplication of reporting to the Government agencies which administer the law.

This concludes my prepared remarks. I will be glad to answer any questions you may have.

Senator BENTSEN. Our next witness is Mr. Michael Klein, Jr., Price Waterhouse.

We are pleased to have you this morning. If you would proceed with your testimony.

STATEMENT OF MICHAEL F. KLEIN, JR., PRICE WATERHOUSE & CO.

Mr. KLEIN. Thank you, Mr. Chairman. My name is Michael F. Klein, Jr., and I am a partner in the firm of Price Waterhouse. I am

here today to discuss S. 3193. I appreciate the opportunity to appear before you today to discuss the important subject of reducing the paperwork burden created by the various reporting and disclosing requirements under ERISA.

I wish to emphasize, at the outset, that our concerns in this regard are suggestions for improvement that have been directed principally toward small plan sponsors—small plans. Although some of our suggestions may be appropriate for large plans as well, we simply have not had an opportunity to think that through to the extent to which those suggestions may also be applicable to large plan reporting and disclosure.

Furthermore, we have not considered the extent to which the suggestions might be applicable to multiemployer plans or to master and prototype plans.

Our prime concern has been what many small-plan sponsors perceive as the unreasonable paperwork burden created by ERISA with associated unreasonably high administrative costs.

Many informed observers believe that this perception has contributed in a significant way to the numerous termination of small plans which have occurred since ERISA and to the falloff in new plan starts.

Now, there may not be conclusive evidence to date that ERISA's reporting and disclosure requirements have been as significant a consideration in this regard as minimum standards and the other substantive provisions of ERISA and perhaps not everyone is yet convinced that it is not ERISA in general, rather than some other factors, which has been the principal culprit in causing the observed increases in plan terminations and the decline in new plan starts.

Nevertheless, it is difficult to see how anyone could object to the amendments which would have the effect of reducing the paperwork burdens of small plans if it can be done in a manner which preserves the truly essential right to know both plan participants and Government.

Moreover, any changes must be accomplished in a manner which would not be perceived by small plan sponsors and their advisers is, in itself, a disruptive major upheaval, that is, requiring that once again, a complete new set of rules be mastered and new procedures devised.

Any such perception could well be counter productive, even though introduced as a simplification measure. With this cautionary note, I will turn to our specific comments and suggestions regarding the bill.

In formulating our views, our basic approach was that no forms or documents, that is, paper, should have to be filed with the Government unless the Government can, and will, use that paper for some necessary and useful purpose. Similarly, no paper should be required to be given to participants that will not be informative or meaningful to them.

Now, I am mindful that some of our suggestions could be impacted by the implementation by any of the various reorganization proposals which are presently under consideration, which have, as their common objective—and a very good one—the elimination of dual jurisdiction over various plan matters by both IRS and the Department of Labor. Therefore, I will simply use the term "Government" throughout my

presentation with the intent of describing a filing with a single agency or department, whatever that agency may ultimately turn out to be.

Now, let me turn to the matter of the determination letter process. One part of the bill would require that an advance determination letter be obtained by every retirement plan claiming tax qualification and that the determination letter request be consolidated with the present EBS-1 filing.

Under present law, every pension plan is required to register with the Government via an EBS-1 filing, but no plan is required to undertake the advanced determination letter process as a condition for claiming tax-qualified status.

But, in fact, almost all plans which claims tax-qualified status do seek a determination letter, and to the best of my knowledge, every prudent pension consultant advises clients to do so.

Thus, although at first blush, making a filing mandatory, which presently is discretionary would seem contrary to the theme of paperwork simplification. In fact, the number of plans which would be affected is minimal.

The important point is that, in order to minimize annual reporting requirements, a substantive initial plan registration process is necessary.

Let me make it clear that, in using the term registration, it is most certainly not my intention to imply the meaning which that term has under the security laws. I simply mean that the initial information in the possession of Government would have to be greater than an EBS-1 alone provides.

In substance, then the determination letter process would become a plan registration letter process, a by product of which would be the issuance of a determination letter for any plan which seeks to operate as a tax-qualified plan.

Of course, transitional rules should not require that existing plans be registered.

Staggered annual reporting. Given that sufficient information would be supplied in the initial registration process to establish a comprehensive data base file on the plan, we believe annual reporting of 4 out of each 5 succeeding years could be reduced to a single-page form which we believe, could be included with the sponsor's tax return. The purpose of this form would be, No. 1, to upgrade the data base to exception reporting and No. 2, provide essential statistical information maintaining current data on the private pension plan universe, such things as number of participants, total assets, that sort of thing. Very simple.

The update information could be provided through a series of yes or no answers relating to a series of events essential to keep the plan registration file current. Plans having no changes to report, which would likely include the majority of plans in any one year would simply check off all no answers. In that case, the employer would file nothing more than the single-page form. Since it would simply be one page on a tax return, it would not likely be perceived by the plan sponsor as a burdensome ERISA filing.

If a yes answer is checked, the plan sponsor would be asked to file relevant data. For example, a yes answer to a question of whether the plan has been amended, could require that a copy of the amend-

ment be filed with the Government, perhaps with a simple transmittal form on which the amendment could be keyed to whether it affects minimum standards, or any other area which is sensitive to maintenance of qualified status.

As contrasted with the way the reporting and amendments is presently handled, there should be both a significant cost-savings for the small employer and a more complete Government file.

Under present rules, the employer is required to summarize the amendment with his annual report in lieu of the prior requirement to file an amended EBS-1. But an employer desiring a determination letter that the amendment will not adversely affect plan qualification is required to submit to IRS the same forms and voluminous data it had to submit with the original termination request.

IRS, in turn, reviews not just the amendment, but the entire plan as if it were an original filing. That is an expensive process. Probably for that reason, some employers do not submit every amendment to IRS for a redetermination, but only those which the employer judges would have a substantive effect on qualification. Where an amendment has not been submitted, IRS files on the plan may be incomplete.

Under the procedure we suggest, every amendment would have to be filed with the Government, but without requiring the present voluminous qualification forms and accompanying data. It would be up to Government, on reviewing the filing, to request additional information or challenge continued plan qualification if it saw a problem. Unless notified to the contrary by Government within some reasonable time following the problem, the employer would be entitled to presume continued plan qualification.

Actuarial and insurance data. Under staggered reporting, the present schedule A, which is insurance information, and schedule B, actuarial information, would not be required except at the 5-year intervals. We would suggest, however, that insurance and actuarial data, wherever applicable, be included with the plan registrtiaon information. That is not presently required.

Now, ERISA's section 103(d) requires an actuarial evaluation only once every 3 years. Because of the need to file schedule B to file an annual report each year which must be attested to by an enrolled actuary, the sponsor of a small, defined benefit plan must retain an enrolled actuary each year.

Where the plan contains insurance, it must also bear the cost of schedule A preparation each year.

Under staggered reporting, the small plan sponsor would be required to retain the services of an enrolled actuary only a plan inception, or a significant amendment affecting funding, and every 5 years thereafter.

The net effect, the enrolled actuary would certify the initial funding requirements and maximum tax deductible amounts at plan inception and to compliance with the minimum funding standards at 5-year intervals thereafter.

The contents of the 5-year report. In addition to actuarial and insurance information, the 5-year report should require financial statements and other information similar to that on present form 500-C. However, the report certainly should not require a complete recapitulation of the prior 4 years. That would be counterproductive and it

would likely be less expensive, in that event, to file a complete annual report every year.

In addition, with a comprehensive data base of the continuing information could be preprinted on the form and sent to the employer requiring only that the employer note any changes.

I have some material in my prepared remarks on form SSA which is required by section 6057 of the Internal Revenue Code having to do with reporting vested benefits. I would simply not that that would present a continuing problem under the bill and I refer to my remarks on that in the prepared testimony.

Perhaps I can sum up what we see as the advantages of staggered reporting. It seems evident that paperwork of small plan sponsors could be significantly reduced by staggered reporting with a commensurate reduction of plan administrative costs.

Only at the inception of a plan would the information required to be filed be greater than under present law, but that is the very time when professional pension advisers are most involved with the plan design and implementation anyway.

Most of the additional information which would be filed as part of the plan registration at that time—that is, actuarial cost data and insurance information—is of a type which is normally prepared at plan inception, at any event, the information of the plan sponsor.

As to Government, staggered annual reporting would sharply reduce the number of forms which Government receives each year but is not really able to do much with.

When it is recognized that about 90 percent of pension plans are small plans, and that staggered reporting would reduce, by about 80 percent, the number of 5500(c) type reports received each year, the reduction of the administrative burden on Government should be evidence.

Moreover, we believe that the sizable reduction in the volume of paper filed with the Government need not entail any significant falloff in Government's ability to monitor ERISA compliance and to protect participant's rights. It should be obvious to anyone that Government simply cannot audit more than a small percentage of all the 5500(c) forms presently filed each year. If properly communicated and implemented, staggered reporting need not be read by employers as a signal that an audit could be expected only once every 5 years—that is, for the year for which the full report is filed.

Now, with regard to participants, it is obvious that staggered reporting would, in most years, reduce the quantity of information that could be furnished participants via the summary annual report or SAR's but we, along with any pension professionals, have been of the view that presently required SAR's are, by and large, rather useless documents for participants. For that reason, we support proposals for complete elimination of the SAR requirements.

In our view, after the summary plan description, the most useful piece of information which can be given to a participant is a statement summarizing and explaining the benefits which that participant has earned.

Senator BENTSEN. Mr. Klein, this testimony is very important to us and we are going to take it in its entirety but, because of the time

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limitations and other witnesses that we have, I would ask you to summarize it in the next 4 or 5 minutes.

Mr. KLEIN. Yes; I would be happy to. The only remaining section has to do with the booklet on recordkeeping.

In our view, done correctly, that could be a very useful document for employers have been bombarded with regulations. It could explain what they need to report in great detail. No one tells them just what kind of records are necessary to maintain in order to meet these requirements. What do these requirements really mean? Why are they important? What does the employer have to do and why?

If that kind of booklet were written in a very positive friendly manner—not a "Thou must" type of booklet, but a very positive publication, I think it could go a long way toward quieting some small sponsor fears about miscompliance and perhaps the best way I could sum up our views on the booklet matter is to refer to an old joke which I am sure most of us have heard all too often.

It concerns the person who knocks on a small businessman's door and introduce himself by saying, I am from the Government and I am here to help you. The challenge for Government in producing this booklet will be to refute that old joke.

Thank you very much.

Senator BENTSEN. Thank you very much, and we may want to recall you, if you stay here.

[The prepared statement of Mr. Klein follows:]

STATEMENT OF MICHAEL F. KLEIN, JR., PRICE WATERHOUSE & CO.

My name is Michael F. Klein, Jr., and I am a partner in the firm of Price Waterhouse & Co. I appreciate the opportunity to appear before you today to discuss the important subject of reducing the paperwork burden created by the various reporting and disclosure requirements under ERISA.

I wish to emphasize at the outset that our concerns in this regard, and our suggestions for improvement, have been directed principally toward small plan sponsors. Although some of our suggestions may be appropriate for large plans as well, we simply have not had an opportunity to think through the extent, if any, to which those suggestions may also be applicable to large plan reporting and disclosure. Furthermore, we have not considered the extent to which the suggestions might be applicable to multiemployer plans, or to master and prototype plans.

Our prime concern has been what many small plan sponsors perceive as the unreasonable paperwork burden caused by ERISA, with associated unreasonably high administrative costs. Many informed observers believe that this perception has contributed in a signicant way to the numerous terminations of small plans which have occurred since ERISA, and to the falloff in new plan starts.

There may not be conclusive evidence to date that ERISA's reporting and disclosure requirements have been as significant a consideration in this regard as minimum standards and the other substantive provisions of ERISA. And perhaps not everyone is yet convinced that it is ERISA in general, rather than some other factors, which has been the principal culprit in causing the observed increases in plan terminations and the decline of new plan starts.

Nevertheless, it is difficult to see how anyone could object to amendments which would have the effect of reducing the paperwork burden for small plans, if it can be done in a manner which preserves the truly essential rights to know of both plan participants and government. Further, any changes must be accomplished in a manner which would not be perceived by small plan sponsors and their advisers as in itself a disruptive major upheaval, that is, requiring that once again a complete new set of rules be mastered, and new procedures devised. Any such perception could well be counterproductive, even though introduced as a simplification measure.

With this cautionary note, I will turn to our specific comments and suggestions regarding the bill. In formulating our views, our basic approach was that

no forms or documents, for example, paper, should have to be filed with the government unless the government can and will use that paper for some necessary and useful purpose. Similarly, no paper should be required to be given to participants that will not be informative or meaningful to them.

I am mindful that some of our suggestions could be impacted by the implementation of any of the various reorganization proposals presently under consideration, which have as their common objective the elimination of dual jurisdiction over various plan matters by both IRS and the Department of Labor. Therefore, I shall simply use the term "government" throughout my presentation, with the intent of describing a filing with a single agency or department, whatever that agency may ultimately turn out to be.

DETERMINATION LETTER PROCESS

One part of the bill would require that an advance determination letter be obtained by every retirement plan claiming tax qualification, and that the determination letter request be consolidated with the present EBS-1 form (plan description) filing.

Under present law, every pension plan is required to register with the government via an EBS-1 filing, but no plan is required to undertake the advance determination letter process as a condition for claiming tax-qualified status. But, in fact, almost all plans which claim tax-qualified status do seek a determination letter, and to the best of my knowledge every prudent pension consultant advises its clients to do so.

Thus although at first blush making a filing mandatory which presently is discretionary would seem contrary to the theme of paperwork simplification, in fact the number of plans which could be affected is minimal. The important point is that in order to minimize annual reporting requirements, a substantive initial plan registration process is necessary. But let me make it clear that in using the term "registration," it is most certainly not my intention to imply the meaning which that term has under the securities laws. I simply mean that the initial information in possession of government would have to be greater than the EBS-1 form alone presently provides.

In substance then, the determination letter process would become a plan registration process, a byproduct of which would be the issuance of a determination letter for any plan which seeks to operate as a tax-qualified plan. Of course, transitional rules should not require that existing plans re-register.

ANNUAL REPORTING

Given that sufficient information would be supplied in the initial registration process to establish a comprehensive data base file on the plan, annual reporting for four out of each five succeeding years could, we believe, be reduced to a single page form which could be included with the sponsor's tax return. The purpose of this form would be to:

1. Update the data base through exception reporting, and
2. Provide essential statistical information for maintaining current data on the private pension plan universe. That could probably be confined to such data as: number of participants; total plan assets; and total employer and employee contributions to the plan.

The update information could be provided through a series of yes or no answers relating to events essential to keep the plan registration file current. Plans having no changes to report, which would likely include the majority of plans, would simply check off all "no" answers. In that case, the employer would file nothing more than the single page form. Since it would simply be one page in a tax return, it would not likely be perceived by the plan sponsor as a burdensome ERISA filing.

If a "yes" answer is checked, the plan sponsor would be asked to file the relevant data. For example, a "yes" answer to a question whether the plan has been amended would require that a copy of the amendment be filed with the government, perhaps with a simple transmittal form on which the amendment could be keyed to whether it affects minimum standards or any other area which is sensitive to the maintenance of qualified status.

As contrasted with the way the reporting of amendments is presently handled, there should be both a significant cost saving for the small employer, and a more complete government file. Under present rules, the employer is required to report the amendment by filing an amended EBS-1. It must also check "yes"

for the plan amendment question on the annual report form 5500-C, but no information regarding the amendment is required to be filed with the annual report. Finally, an employer desiring a determination letter that the amendment will not adversely affect plan qualification is required to submit to IRS the same forms and voluminous data that it had to submit with the original determination letter request. IRS in turn reviews not just the amendment but the entire plan, as if it were an original filing.

That is an expensive process. Probably for that reason some employers do not submit every amendment to IRS for a redetermination, but only those which the employer judges may have a substantive effect on qualification. Where an amendment has not been submitted, IRS files on the plan are incomplete.

Under the procedure we suggest, every amendment would have to be filed with the government, but without requiring the present voluminous qualification forms and accompanying data. It would be up to government, on reviewing the filing, to request additional information or challenge continued plan qualification if it saw a problem. Unless notified to the contrary by government within some reasonable period of time following the filing, the employer would be entitled to presume continued plan qualification.

ACTUARIAL AND INSURANCE DATA

Under staggered reporting, the present schedule A (insurance information) and schedule B (actuarial information) would not be required except at the 5-year intervals. We would suggest, however, that insurance and actuarial data (where applicable) be included with the original plan registration information. That is not presently required.

ERISA section 103(d) requires an actuarial valuation only once every three years. But because of the need to file schedule B with the annual report each year, which must be attested to by an enrolled actuary, the sponsor of a small defined benefit plan must retain an enrolled actuary each year. Where the plan contains insurance, it must also incur the cost of schedule A preparation each year.

Under staggered reporting, the small plan sponsor would be required to retain the services of an enrolled actuary only at plan inception (or a significant amendment affecting funding), and every 5 years thereafter. Insurance information would be required only at similar intervals.

In net effect, the enrolled actuary would certify to the plan's initial minimum funding requirements and maximum tax deductible amounts at plan inception, and to compliance with the minimum funding standards at 5-year intervals thereafter. Of course, nothing would preclude an employer from obtaining more frequent valuations if it wished.

CONTENTS OF THE 5-YEAR REPORT

In addition to actuarial and insurance information, where applicable, the 5-year report should require plan financial statements and other information similar to that on present form 5500-C. However, the report certainly should not require a complete recapitulation of the prior 4 years. That would be counterproductive, since it would likely be less expensive in that event to continue to file a full annual report every year.

In addition, with a comprehensive data base, some of the continuing information could be preprinted on the form sent to the employer, requiring only that the employer note any changes.

FORM SSA

Section 6057 of the Internal Revenue Code requires that the plan administrator file with the Internal Revenue Service each year information which includes principally a listing of participants who terminated during the plan year with deferred vested benefits, and the amounts of those benefits. That information is required to be supplied on form SSA, which must be included with the annual report of the plan filed on the 5500 series of forms. The vested benefit information must also be reported to each affected participant.

The bill does not address the section 6057 information requirement, thus leaving in limbo the status of form SSA under staggered reporting. It would seem possible for form SSA also to be filed with the employer's income tax return. It might also be possible to include that form with the payroll tax return, recognizing that the Social Security Administration is the ultimate recipient of the

vested benefit data on the form. Information on the payroll tax return is also routinely furnished to the Social Security Administration.

However, the section 6057 information requirements deserve reconsideration. The basic concept is that when an individual applies for social security benefits, the government can remind him (or her) that he is entitled to deferred vested benefits from the plans of one or more former employers. But under present law, data must be reported even for benefits which will be entirely paid out before age 62. Thus some data must be reported which is useless for the intended purpose, and in fact may mislead individuals applying for social security benefits to believe they are entitled to private plan benefits they have long since received. The proper scope of section 6057 should be evaluated

STAGGERED REPORTING—SUMMARY OF ADVANTAGES

It seems evident that paperwork for small plan sponsors could be significantly reduced by staggered reporting, with a commensurate reduction of plan administrative costs. Only at the inception of a plan would the information required to be filed be greater than under present law. But that is the very time when professional pension advisers are most involved with the plan design and implementation anyway. Most of the additional information which would be filed as part of the plan registration at that time, that is, actuarial cost data and insurance information, is of a type which is normally prepared at plan inception in any event, for the information of the plan sponsor.

As to government, staggered annual reporting would sharply reduce the number of forms which government receives each year, but is not really able to do much with. When it is recognized that about 90 percent of all pension plans are small plans, and that staggered reporting would reduce by 80 percent the number of 5500-C type reports received each year, the reduction of the administrative burden on government should be evident.

Moreover, we believe that this sizeable reduction in the volume of paper filed with government need not entail any significant falloff in government's ability to minitor ERISA compliance and protect participants' rights. It should be obvious to anyone that government simply cannot audit more than a small percentage of all the 5500-C forms presently filed each year. If properly communicated and implemented, staggered reporting need not be read by employers as a signal that an audit could be expected only once every 5 years, that is, for the year for which the full report is filed.

On the contrary, audit plans could be designed to utilize the plan registration and staggered reporting system in a manner which would flag sensitive areas in advance—for example, plan features which might lead to discrimination in operation, or a potential for fiduciary violations. In other words, the high-risk areas could be identified at the front end. Audit coverage could be planned accordingly, utilizing as additional input the exception reporting which would be part of the annual tax return filing.

As I will explain in discussing the record keeping booklet which the bill would also require, reduction of reporting obligations does not mean that employers would not continue to be required to maintain adequate and accurate records for each plan year. Thus, auditing would still be feasible for what might be called the "off years," that is the four out of every five years for which a full report would not be required.

With regard to participants, it is obvious that staggered reporting would for most years reduce the quantity of information which could be furnished to participants via the summary annual reports or "SAR's." But we, along with many pension professionals, have been of the view that the presently required SAR's are by and large rather useless documents for participants. For that reason we support proposals for complete elimination of the SAR requirement.

In our view, after the summary plan description, the most useful piece of information which can be given to a participant is a statement summarizing and explaining the benefits which that participant has earned. Under section 105 of ERISA, a participant who specifically requests a benefit statement must be furnished one, but not more than once each year. ERISA does not require that benefit statements be distributed to all participants routinely.

We believe that the furnishing of benefit statements should be encouraged not only because they help participants understand their plan better, but because it is usually in the employer's own best interest as well. A properly communicated plan generally gives the employer better value for its benefit dollar.

The booklet which I shall discuss next could be used to encourage more widespread dissemination of benefit statements. Moreover, it seems appropriate that the potential cost effect of mandating annual benefit statements should at least be studied. There is some evidence that, in the case of plans handled by professional administration firms, the additional cost would not be very great because those firms have already geared up their systems to produce the benefit statements which under ERISA participants presently have the right to request.

BOOKLET ON PLAN RECORDKEEPING

Plan reporting and plan recordkeeping are two different things. Whatever the periodic reporting requirements may be, there is a minimum level of recordkeeping below which a plan simply cannot function—that is, it cannot accurately keep track of benefit entitlements or plan assets. That was true prior to ERISA, and it is still true. What ERISA did in this regard was to raise the minimum level of required recordkeeping, particularly with respect to benefit entitlements.

Government has issued voluminous technical regulations which specify in great detail the measurement of factors affecting benefit entitlement, such as years of service and breaks in service. By and large those regulations are unintelligible to small plan sponsors. What government has not done is issue any real guidelines for small business which either explain those concepts in an understandable manner, or describe the type of records which are necessary to apply those concepts in practice to accurately determine years of service, breaks in service, and similar factors.

Both participants and employers can suffer as a result—participants by not having the benefits to which they are entitled determined accurately, and employers by being exposed to the liabilities which suits by aggrieved participants could cause.

For these reasons, we enthusiastically support the provision of the bill which would require government to issue a booklet to assist small employers with plan recordkeeping. But to be useful, the booklet be extremely well written from a very positive viewpoint.

The booklet must be written in a style which is comprehensible to the small businessman, and it must have a friendly, constructive, and helpful aura about it. It should not convey an imperious "thou must" tone, but rather should communicate in a very practical way why good plan recordkeeping is beneficial to both the employer and participants.

The booklet should be quite specific in describing the types of records necessary to be maintained for various types of plans, and for how long they must be kept. It should relate the recordkeeping to year of service, break in service, benefit accrual and other concepts in a direct way, and in so doing should explain those concepts in comprehensible fashion and make it clear why they are important to the successful operation of the plan.

The booklet should explain how, wherever possible, records commonly kept by small business such as payroll records can be adapted at low cost for plan recordkeeping as well.

There can be many beneficial side effects for government from such a booklet. For example, we understand that at present many forms 5500–C are received incomplete or with obviously incorrect data. One reason is lack of familiarity with some of the terminology used on the form, and the reasons for it. A good booklet could go a long way toward helping small plan sponsors better discharge the reporting obligations which would remain under staggered reporting, and thus help government get better data.

Because it is so important that the booklet be very well written, it is apparent that the 60-day period described in the bill for its production is unrealistic.

Perhaps the best way I can sum up on the booklet matter is to refer to an old joke which I am sure most of us have heard all too often. It concerns the person who knocks on a small businessman's door and introduces himself by saying "I'm from the government, and I'm here to help you." The challenge to government in producing this booklet will be to refute that old joke.

Senator BENTSEN. I would like to have Senator Lugar, who is cosponsor of this piece of legislation, come forward now and be heard. Would you take a seat, please?

Senator Lugar, we are very pleased to have you here this morning. We are delighted to have your testimony.

STATEMENT OF SENATOR RICHARD G. LUGAR

Senator LUGAR. Mr. Chairman, I am pleased to have this opportunity to testify today on the need for prompt legislative action to resolve a difficult problem facing the small business community in this country. The problem is, of course, the impact that the reporting requirements of the Employment Retirement Income Security Act have had on pension plan terminations and initiations.

I believe that S. 3193, the ERISA Paperwork Reduction Act, which I have joined in cosponsoring with you, Mr. Chairman, addresses this problem in a responsible fashion. I am hopeful this legislation will receive favorable comment at these hearings and will be adopted this year by the Senate and, ultimately, by the full Congress.

Mr. Chairman, the Congress enacted ERISA in 1974 in an effort to provide greater asurance to employees nationwide that their pension and profit-sharing plans would provide reliable sources of retirement income.

As a critic of ERISA, I do not argue with its stated objective. To the contrary, I believe that this recent Federal law has had a positive effect on employee benefits because of its vesting and funding requirements.

The importance of the private pension system cannot be overemphasized. Our recent experience with legislation to shoreup the faltering social security system clearly demonstrates the need for a reliable private pension system.

Nevertheless, ERISA has had a substantial effect on existing pension plans, causing extensive terminations and has discouraged the initiation of new plans. Internal Revenue Commissioner, Jerome Kurtz testified last year before a congressional subcommittee that as many as 30 percent of the Nation's 500,000 private pension plans may have been terminated since ERISA was enacted almost 4 years ago. This is disturbing news to those of us who want to see the private pension system bear a heavier share of retirement income needs in this country.

The Internal Revenue Service recently published data which shows that the ratio of new plans to terminated plans reached a high in 1968 with a 16.5 ratio and registered a precipitous drop after the enactment of ERISA to a 3.7 ratio in 1975 and a 1.2 ratio in 1976. These figures are certainly cause for deep concern.

Last autumn, I mailed a questionnaire to approximately 15,000 Indiana businesses in order that I might learn, in detail, what has happened to pension plans in Indiana since enactment of ERISA. The more than 2,000 responses that I received have been informative, both for their statistical content, and the wealth of accompanying comments.

The results of my study indicate that the number of employees in a firm relates more directly to terminations, contemplated terminations, or the lack of any plan at all than does any other factor.

For example, in closely held corporations of less than 50 employees, 48 percent never had a plan; 9 percent had a plan, but terminated; 9 percent was considering termination; 34 percent continued to have a plan.

In contrast, in closely held corporations with between 101 and 500 employees, only 17 percent never had a plan: 7 percent had a plan but terminated; 9 percent were contemplating termination; and 67 percent continue to have a plan.

The form that I mailed to Indiana businesses requested that the firms indicate their reasons for their pension plan decisions. I believe that the responses I have received to this particular inquiry strike at the heart of the problem. Eighty-seven percent of firms with less than 50 employees mentioned ERISA as a reason for terminating their pension plans. Eighty-five percent of all firms which had terminated their plans cited ERISA as a reason for termination.

Sixty-four percent of these firms with less than 50 employees mentioned ERISA as a reason for planning or contemplating termination. Sixty-one percent of all firms in this category listed ERISA as a reason for their doing so.

Forty-six percent of those firms with less than 50 employees which have never initiated a plan and did not intend to initiate one cited ERISA as a reason. Forty-eight percent of all firms in this category named ERISA as a reason.

My study clearly shows that ERISA has been the principal reason for plan terminations and decisions by employers not to initiate plans. It is true that the recent economic recession influenced plan terminations and stifled the creation of new plans. Business cycles might always exert such influences. However, the evidence reveals a deeper problem for private pension plans than the red ink of an economic recession.

Mr. Chairman, S. 3193, the ERISA Paperwork Reduction Act, addresses the major problem created by ERISA. This bill recognized the need for a reporting arrangement that provides the Federal Government with useful and adequate information but which does not establish compliance costs at such a level that will promote plan termination or discourage plans from being established.

While all plans would be required under S. 3193 to obtain a so-called determination letter from the Internal Revenue Service at the time a plan is created, most plans already obtain this letter as a tax-planning device. This requirement would allow regulators to develop and collect relevant information regarding the future of each plan's operations. As it is now common practice to obtain a determination letter, establishing it as a requirement would not add to plan costs.

The reduced annual reporting envisioned in S. 3193 is a great strength in this legislation. The extensive report now required annually would only have to be filed every 5 years with a simplified annual report in the intervening years, which could be filed along with the plan sponsor's tax return. This staggered filing system would expedite the audit process and strengthen ERISA.

Mr. Chairman, I look forward to continuing to work with you on this important issue, and I am hopeful that the Congress will adopt a provision based on S. 3193 during this session of the Congress.

Senator BENTSEN. Senator Lugar, your testimony will certainly be helpful to us, and I am very pleased to have you coauthor and cosponsor this piece of legislation.

I know of your long interest in trying to cut back on redtape and burdens of paperwork on small businessmen across the country.

Senator MATSUNAGA. I would just congratulate you, Senator Lugar, on your fine statement. I think your survey indicates what businessmen throughout the country are bothered most with, in reference to retirement plans.

I am somewhat concerned about the reason your respondents gave for discontinuing existing plans or not establishing new plans.

What part of ERISA in particular was mentioned by your respondents?

Senator LUGAR. Well, Senator Matsunaga, the chart that I have in front of me which is published as part of the Congressional Record does not go into the particular letters or comments that were made.

[The following was subsequently supplied for the record:]

[From the Congressional Record, Jan. 25, 1978]

SENATE

STUDY OF THE EFFECTS OF ERISA ON PRIVATE PENSION PLANS IN INDIANA

Mr. LUGAR. Mr. President, in 1974, Congress enacted the Employment Retirement Income Security Act (ERISA) in an effort to provide greater assurance to employees nationwide that their pension and profit-sharing plans would provide reliable sources of retirement income. After only 3 years, the evidence indicates that financial and administrative burdens of complying with ERISA have led many employers to terminate their plans.

Internal Revenue Service Commissioner Jerome Kurtz recently testified before a congressional subcommittee that as many as 30 percent of the Nation's 500,000 private pension plans may have gone out of business since ERISA was enacted. This news disturbed me greatly.

Last autumn I mailed a questionnaire to approximately 15,000 Indiana businesses so that I might learn in detail what has occurred with pension plans in Indiana since enactment of ERISA. The more than 2,000 responses that I have received have been informative both for their statistical content and wealth of accompanying comments.

Mr. President, the increase in pension plan terminations and the decrease in the adoption of new plans since enactment of ERISA has led various groups and individuals to examine the effects of ERISA on private pension plans. Among these are plan termination studies currently underway at the General Accounting Office and the Department of Labor.

IRS already has published data in this area. The following chart represents the yearly totals of new plans and terminated plans from 1965 through 1976, together with the ratio between the two:

TAX-QUALIFIED CORPORATE PLANS

Year	New plans	Terminated plans	Ratio of new plans to terminated
1965	13,532	1,036	13.1
1966	18,183	1,210	15.0
1967	20,521	1,307	15.7
1968	23,782	1,443	16.5
1969	28,075	1,729	16.2
1970	32,574	2,306	14.1
1971	40,664	3,335	12.2
1972	49,335	3,520	14.0
1973	59,605	4,130	14.4
1974	59,385	4,604	12.9
1975	30,039	8,108	3.7
1976 [1]	[2] 14,270	11,909	1.2

[1] Through September 1976.
[2] Includes a small number of plans for the self-employed.

Source: Internal Revenue Service.

These figures show that the ratio of new plans to terminated plans reached a high in 1968, with a 16.5 ratio and registered a precipitous drop after the enatcment of ERISA to a 3.7 ratio in 1975 and a 1.2 ratio in 1976.

This IRS data asks two basic questions relating to the effects of ERISA on private pension plans. First, what factors contributed to the rapid increase in plan terminations? Was ERISA the principal cause of these terminations? If so, which new costs or administrative burdens were considered overly burdensome? What influence did the economic recession have on plan terminations?

Second, what factors contributed to the decrease in plan initiations after 1974? Again, has ERISA been the key factor here? If so, which new requirements chilled interest in establishing new plans?

These are vital questions which deserve careful scrutiny. Commissioner Kurtz has drawn attention to the post-ERISA experience of existing plans. The future viability and scope of private pension systems requires that attention be drawn to the marked decline in new plan initiations.

I as unanimous consent that the study form I mailed to Indiana businesses be printed in the Record.

There being no objection, the study form was ordered to be printed in the Record, as follows:

SENATOR DICK LUGAR STUDY: IRS APPROVED PENSION AND/OR PROFIT SHARING PLANS IN INDIANA SINCE ENACTMENT OF ERISA

Firm Name (Optional): ———.

Type of Business: — Partnership — Closed Corporation — Publicly Held Corporation.

Number of Employees: ——.

Section A: Does your firm have, or has it ever had, a qualified pension plan? —— If no, go to section B.

Who administers or administered it?: — Bank — Insurance Company — Consultant — Other: —.

Type of Plan: Defined Benefit, Defined Contribution: Profit Sharing or Money Purchase. ——————

Number of Participants: ——

Plan Formula: ———

Inception Date of Plan: ——

Has this plan been terminated? ——

If yes: Date terminated: ——

Reason: ——

If no: Are you considering or do you plan termination? ——

Section B. If your business does not currently have a qualified pension plan, Do you plan to initiate one? ——

If yes: Which type?: — Defined Benefit — Profit Sharing — Money Purchase.

If no: Do you plan to initiate an Individual Retirement Account (IRA)? ——

What percentage of employees have or would initiate an IRA? —

Reason for not initiating a qualified pension plan: —

Return to: ERISA Study, % Senator Dick Lugar, 5107 Dirksen SOB, Washington, D.C. 20510.

Mr. LUGAR. The folowing is a tabulation and percentage breakdown of the responses I have received to my ERISA study mailer. I ask unanimous consent that it be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Lugar ERISA study	0 to 10	11 to 25	26 to 50	Total, 0 to 50 (percent)	51 to 100	101 to 500	500-plus	Total, 51 to 500-plus (percent)	Grand total	Percent of total
Publicly held corporation:										
Never had	8	12	6	19	7	3	2	3	38	10
Had but terminated	3	4	5	9	1	1	3	1	17	5
Contemplating termination	3	6	6	11	2	5	2	5	24	6
Have	13	25	45	61	33	86	75	91	287	79
Close corporation:										
Never had	115	93	64	48	31	26	0	17	329	38
Had but terminated	20	17	16	9	11	10	0	7	74	8
Contemplating termination	13	24	12	9	0	14	0	9	63	7
Have	56	60	78	34	92	100	22	67	408	47
Partnership/sole proprietor:										
Never had	31	6	2	72	0	0	0	0	39	67
Had but terminated	0	1	2	6	2	0	0	....	5	9
Contemplating termination	0	0	0	0	0	0	0	0	0	0
Have	0	30	0	22	1	1	0	....	14	24
Total									1,298	....

Mr. LUGAR. These figures indicate that the size of a firm more directly relates to terminations, contemplated terminations, or the lack of any plan at all, than does the form of the business; that is, publicly held corporations, closely held corporations, partnerships/sole proprietorships.

Combining the responses for firms with 0 to 50 employees yields the following results: For publicly held corporations, 19 percent never had a plan; 9 percent had a plan but terminated; 11 percent were contemplating termination; and 61 percent continued to have a plan without considering termination. For closely held corporations of 0 to 50 employees, 48 percent never had a plan, 9 percent had a plan but terminated; 9 percent were contemplating termination; and 34 percent continued to have a plan. For partnerships/sole proprietorships of that same employee range, 72 percent never had a plan; 6 percent had a plan but terminated; none were contemplating termination; and 22 percent continued to have a plan.

In contrast, businesses with between 101 and 500 employees had the following experience: For publicly held corporations of that employee size, 3 percent never had plans; 1 percent had terminated their plans; 5 percent were contemplating termination; and 91 percent continued to have a plan. For closely held corporations of that same employee range, 17 percent never had a plan; 7 percent had a plan but terminated; 9 percent were contemplating termination; and 67 percent continue to have a plan. For partnerships/sole proprietorships of that employee range, 100 percent continued to have a plan.

I would like to include at this point two letters from constituents who are professional consultants in the private pension field. These two letters articulate the thoughts and frustrations which were included on many of the returned questionnaires. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

INDIANAPOLIS, IND.,
November 2, 1977.

ERISA Study.

Senator DICK LUGAR,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR LUGAR: A client forwarded a copy of your October 25, 1977 letter to my office with the request that I forward my observations to your study committee.

Since the enactment of ERISA, I have personally recommended the termination of four (4) plans and the initiation of three (3) others. This is primarily because the new legislation has made it economically impractical to have a corporation plan unless the corporation is willing to commit a minimum annual contribution of $25,000. There is also some feeling among small business managers and owners that the government's encroachment into the regulation private enterprise is becoming unbearable, and therefore the plans should be terminated regardless of the tax benefit.

There is no doubt that certain regulation is desirable and necessary. However, the legislation which divided authority over this function to more than one Federal agency creates unnecessary and monstrous reporting requirements. It is probable that it has also created significant bickering among the agencies as to who has authority over what.

The current legislation on social security taxes is going to make it impossible for many additional employers to continue their private retirement plans. In fact, from my brief conversations with business and professional men, the increases in F.I.C.A. and self-employment taxes will create major political and economic problems for the next decade.

It seems to me that the Federal government is attempting to enforce and administer ill-conceived legislation on private retirement plans when the Federal Social Security system appears to be the largest mismanaged and actuarially unsound program in history.

Yours very truly,

JOHN T. O'CONNOR.

BLOOMINGTON, IND.
November 1, 1977.

ERISA Study.

Senator RICHARD G. LUGAR,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR LUGAR: We are in receipt of your letter and questionnaire concerning the effects of ERISA on business men and their pension or profit sharing plans. You will note that I have not completed your questionnaire, but would like to take this opportunity to make some comments on this subject.

The questionnaire does not apply to our office since we are a pension consulting firm, and obviously we are able to handle and administrate our own plan at a very minimal cost. Our firm deals strictly and exclusively in the pension and profit sharing area. We are members of the Retirement Administrators and Designers of America (RADA) which, as you may already know, is a group of twenty-three of the nation's top pension consultants. Collectively we administer several thousand plans and have trust assets totaling several hundred million dollars. As you might guess, we are very definitely affected by ERISA.

Speaking for our firm only and not the RADA group as a whole, we are in constant communications with employers who wish to terminate their plan, largely due to the effects of ERISA, I might add. This ERISA Act, which was to have helped the business man and his employees, has instead turned into a nightmare of reporting and disclosure which of course leads to astronomically increasing administrative costs. Because of this the business man, and especially the small business man, can very often not afford to have a retirement plan at all simply because of the administrative cost! And even though we are 100% solidly behind the intent of ERISA to provide greater assurance to employees that their pension or profit sharing plans would provide reliable sources of retirement income, ERISA has thus far robbed more employees of their pension income from such plans than it has secured for them!

Enclosed you will find an article which we just received from one of our study guides. I feel that this article is very sufficient in displaying the type of situations that exist in Indiana, as well as the nation as a whole. Just to give you an example on a typical small business with four participants under its plan, a contribution might be, say, $5,000. Using my enclosed article as a reference, the administrative cost of $1,491 represents 30% o the annual contribution to the plan! This is avery common situation.

In closing I would just like to express my appreciation for your attention in this matter. Anyaction taken which will help alleviate the problem of reporting and disclosure brought on by ERISA will be appreciated by ourselves, our clients and collleagues. Especially important to ourselves as well as our other colleagues would be the area of commission disclosure.

With kindest personal regards.

Sincerely,

JAMES I. HOLDEN, Jr.

Mr. LUGAR. Mr. John T. O'Connor's letter specifies that he has recommended the termination of four plans and the initiation of three others since the enactment of ERISA. It is his professional opinion that ERISA has made it economically impractical for a plan to be initiated unless the firm is willing to commit a minimum annual contribution of $25,000. Mr. O'Connor attributes this amount to the increased administrative costs mandated by ERISA.

Mr. James I. Holden, Jr.'s letter expresses the thought that while he and other plan administrators are completely in agreement with the stated objective of ERISA in providing greater assurance to employees that their pension or profit-sharing plans will provide reliable sources of retirement income, ERISA has thus far robbed more employees of their pension income than it has secured for them.

The form I mailed to Indiana businesses requested that the firms indicate their reasons for never initiating a plan, terminating a plan, or contemplating termination of a plan. I believe the responses to this question strike at the heart of the questions raised earlier concerning the effect ERISA has had on private pension plans.

The following charts are a tabulation and percentage breakdown of the reasons given by Indiana businesses for terminating plans, planning, or considering termination of plans, and never initiating or not intending to initiate plans.

I ask unanimous consent that the charts be printed in the RECORD.

There being no objection, the charts were ordered to be printed in the RECORD, as follows:

REASONS FOR TERMINATION OF PLAN

Lugar ERISA study	0 to 10	11 to 25	26 to 50	Total, 0 to 50 (percent)	51 to 100	101 to 500	500-plus	Total, 51 to 500-plus (percent)	Grand total	Percent of total
No reason given	0	0	1	1	0	0	0	0	1	1
ERISA not mentioned:										
Change in ownership	0	0	0	0	0	0	0	0	0	0
Liquidation/disolution/closing	1	0	0	1	0	0	0	0	1	1
Adverse business	0	1	0	1	0	0	0	0	1	1
Plan too costly	1	1	0	3	1	0	0	4	3	3
Employer/employee needs not met	0	0	0	0	0	0	0	0	0	0
Other	0	4	0	6	2	2	0	17	8	9
ERISA mentioned:										
Cost of ERISA	5	10	7	32	3	4	1	36	30	33
Other ERISA factors	13	12	8	49	3	4	0	30	40	44
ERISA combined with other reasons	1	1	2	6	1	2	0	13	7	8
Total	21	29	18		10	12	1		91	100

REASONS FOR PLANNING OR CONSIDERING TERMINATION OF PLAN

Lugar ERISA study	0 to 10	11 to 25	26 to 50	Total, 0 to 50 (percent)	51 to 100	101 to 500	500-plus	Total, 51 to 500-plus (percent)	Grand total	Percent of total
No reason given	2	9	7	31	1	0	2	100	21	34
ERISA not mentioned:										
Change in ownership	0	0	0	0	0	0	0	0	0	0
Liquidation/dissolution/closing	0	0	0	0	0	0	0		0	0
Adverse business	0	0	0	0	0	0	0	0	0	0
Plan too costly	0	0	0	0	0	0	0	0	0	0
Employer/employee needs not met	0	0	0	0	0	0	0	0	0	0
Other	1	0	2	5	0	0	0	0	3	5
ERISA mentioned:										
Cost of ERISA	4	8	6	31	0	0	0	0	18	30
Other ERISA factors	4	8	7	33	0	0	0	0	19	31
ERISA combined with other reasons	0	0	0	0	0	0	0	0	0	0
Total	11	25	22		1	0	2		61	100

REASONS FOR NEVER INITIATING AND NOT PLANNING TO INITIATE A PLAN

No reason given	17	6	5	9	1	0	1	9	30	9
ERISA not mentioned:										
Change in ownership	0	1	0	1	0	0	0	0	1	0
Liquidation/dissolution/closing	0	0	0	0	0	0	0	0	0	0
Adverse business	6	4	3	4	0	0	0	0	13	4
Plan too costly	25	10	7	14	4	2	0	14	48	14
Employer/employee needs not met	19	11	5	12	0	1	0	10	36	10
Other	23	11	10	14	3	4	1	15	52	15
ERISA mentioned:										
Cost of ERISA	2	0	1	1	1	0	0	1	4	1
Other ERISA factors	30	40	29	33	12	10	0	35	121	35
ERISA combined with other reasons	17	14	4	12	3	4	0	12	42	1
Total	139	97	64	....	24	21	2	....	347	100

Mr. LUGAR. Mr. President, these figures provide startling insights into the effect ERISA has had on plans in existence when ERISA was enacted and on firms which never initiated plans. The categories utilized in these charts are the same as those used by the Pension Benefit Guarantee Corporation in its "Analysis of Single Employer Defined Benefit Plan Termination, 1976."

Eighty-seven percent of firms with less than 50 employees mentioned ERISA as a reason for terminating their pension plans. Eighty-five percent of all firms which had terminated their plans cited ERISA as a reason for termination.

Sixty-four percent of those firms with less than 50 employees mentioned ERISA as a reason for planning or contemplating termination. Sixty-one percent of all firms in this category listed ERISA as a reason for their doing so.

Forty-six percent of those firms with less than 50 employees which have never initiated a plan and did not intend to initiate one cited ERISA as a reason. Forty-eight percent of all firms in this category named ERISA as a reason.

Mr. President, the IRS data cited earlier demonstrates that the ratio of new pension plans to terminated plans has narrowed sharply. Existing plans have terminated and firms without pension plans for their employees are not acting to initiate new plans.

My study clearly shows that ERISA has been the moving force behind plan terminations and decisions by employers not to initiate plans. It is true that the recent economic recession influenced plan terminations and stifled the creation of new plans. Business cycles will always exert influences of that kind. However, the evidence reveals a deeper problem for private pension plans than the red ink of an economic recession.

I believe that if the Congress examines the evidence it will conclude that ERISA must be amended to make it a more reasonable law. The results of my study indicate that the administrative burdens imposed by ERISA have hit hardest on the small employer. Large firms have for the most part continued their pension plans.

Small firms do not have the resources to meet both the vesting and administrative costs involved in complying with ERISA. They need legislation to ease the burden that only recently has been placed on them by this act of the Congress. I pledge my support and energy toward achieving this end.

Senator LUGAR. Therefore, let me simply respond to my own recollection of reading that mail and from conversations with small businessmen.

I would say that the responses were not sophisticated responses in the sense that small business had analyzed the risks carefully. They saw the predicament as one in which they were confounded by the regulations as they read them, by the whole idea of attempting to conform, and by the costs that they contemplated, in trying to work with a CPA, with an attorney, or with whoever they may have found.

As I have visited offices of small plants, they indicated that on certain days of the year, namely the day, I presume, prior to the deadline that all operations in the office stopped, that each member of the office staff, regardless of competence tried to do his or her best to conform and get the papers out and to make certain that they were in compliance and, having gone through that situation, they conveyed this idea to other people who did not have plans and scared them, quite frankly.

I think this is the nature of the situation, that in a relatively small business the amount of staff required to understand this is limited.

Now, the bill that we are considering today will not terminate all of that concern, but it does move in a direction that is sympathetic. It says to the small businessman that we understand the problem and the abnormal amount of time as a percentage of your staff work that may be involved in this, and the Federal Government does listen, does respond, and, as a result, we believe that employee pensions are impartant and we would like to make it easier for you as a private employer to provide this service.

Senator MATSUNAGA. I do not know whether you were in the audience earlier when the witness from the Department of Labor testified that the Department now has a slide show instructing businessmen on how a plan should be established and administered.

Now, the joke with which Mr. Klein ended his testimony seemed to indicate that maybe we will have some difficulty even with slide shows, but do you think there ever will come a time when businessmen will believe a representative of Government when he says, "I have come to help you"?

Senator LUGAR. Yes, I think that time will come and I would suggest, in all due respect, that this bill is such a response. In other words, having heard from many small businessmen that the degree of reporting is excessive an honest attempt is being made by this subcommittee, and by the overall committee, to respond. Not to obliterate the act, but simply to say, we hear you and we think there is merit in trying to cut back on the paperwork.

Senator MATSUNAGA. As a cosponsor of the measure, I tend to agree, but hope springs eternal.

Senator BENTSEN. Senator Packwood?

Senator PACKWOOD. I might add to Mr. Klein's joke the additional one about the businessman who says, "Thank God, I don't get all the Government I pay for."

Senator BENTSEN. May I have the Texas rights to that?

Senator PACKWOOD. What you have illustrated here is not just a problem with ERISA. It is also the poor devil out there who has to deal with OSHA, and an Internal Revenue Code that is almost beyond comprehension, without the help of a very well-trained CPA or lawyer—not just any CPA or lawyer. One day Government regulations will get to the place, if they continue in the direction they are going, where a canny attorney is going to go before a Federal court and say that you can no longer presume that a person knows the law, and it is an unconstitutional infringement of the due process clause to presume that a person can, and some court will accept that theory.

We cannot expect people in business to go on, and on, and on grasping arcane regulations that only a very few bureaucats understand, if even they understand them.

I think this legislation that you and the others have introduced is an excellent step in the right direction.

I have no questions.

Senator BENTSEN. Thank you very much, Senator Lugar.

Senator LUGAR. Thank you, Mr. Chairman.

Senator BENTSEN. Our next witness is Karen Ferguson of the Pension Rights Center. If you would proceed, Ms. Ferguson?

STATEMENT OF KAREN W. FERGUSON, DIRECTOR, PENSION RIGHTS CENTER, ACCOMPANIED BY JAY W. TOWER, STAFF ATTORNEY

Ms. FERGUSON. Mr. Chairman, members of the subcommittee. I am Karen Ferguson, director of the Pension Rights Center, a public interest group organized to protect the pension rights of American workers. With me today is Jay Tower, the center's staff attorney. With your permission, Mr. Tower will present our comments on S. 3193, the ERISA Paperwork Reduction Act. First, however, I would like to comment on S. 3140, the Simplified Pension Plan Act.

In our opinion, the Simplified Pension Plan Act is a truly excellent and far-reaching proposal. The act builds on the employer-sponsored IRA concept. It eliminates the most serious drawbacks of code section 408(c) and it adds a very substantial incentive to small employers to provide much-needed retirement income protection for their employees.

It is a fact of American life that few employees can or will set aside sufficient portions of their take-home pay to provide for retirement. Although IRA's are being set up, this far there are only slightly more than 2 million in effect and, as Mr. Halperin noted earlier, these have largely been set up by the persons least in need of additional retirement income protection.

Where IRA's have been set up, they are providing an immediately vested fully portable source of retirement income. If the person setting up IRA's start early enough and contribute something for every year they work, they will end up with a retirement income which, while not large, is also not insignificant.

Very important from the point of view of dependent homemakers is the fact that IRA's, unlike other pension plans, are not forfeited at an employee's death.

Despite the existence of code section 408(c) there has, up until now, been no incentive for employers to set up IRA's for their employees. In fact, there have been allegations that IRA's have provided a disincentive for employers to provide for their employees.

Some employers, we have been told, have terminated pre-existing pension plans and set up IRA's only for themselves. There has also been some reluctance to encourage employee-sponsored IRA's since, under 408(c), it is legally permissible for plans to discriminate in favor of company officials, or other highly compensated individuals.

The Pension Simplification Act eliminates these problems. Although employers can still set up IRA's for themselves, they cannot take advantage of the higher Keogh-type limits provided by the act unless they also provide IRA's for their employees. And provide those IRA's on a nondiscriminatory basis.

There are a couple of points that may need clarification. For example, it should be made plain that employers setting up such a plan must cover all of their employees.

Most important—and here we differ very strongly with the Treasury—we believe that these plans should not be permitted to take social security benefits into account in figuring contribution levels.

You might also want to consider the possibility of adding a further incentive to encourage employers to set up these plans. This incentive could take the form of higher interest rates for these plans, since what we call SPPA plans will involve long-term money and the economies of scale that go with setting up more than one IRA account at a time. There may be good reason for higher yield for these accounts.

Although up until now the Treasury has been notably reluctant to compete with the private sector in the sale of IRA's, it might well be consistent with sound public policy, given the expansion of pension protection that could result, were the Treasury to take the initiative to spur competition by setting higher interest rates for these plans, if they are set up through U.S. retirement plan bonds.

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Whether or not the subcommitte determines that retirement plan bonds should be used to provide this additional incentive, you may want to consider the fact that use of these bonds could very substantially reduce paperwork for small employers.

This is because the retirement plan bonds would eliminate the need for the small employer to set up a plan or file any plan documents. Employers could merely check a box on their corporate income tax returns, indicating that U.S. retirement plan bonds had been purchased for employees pursuant to the Pension Plan Simplification Act and indicate the aggregate amount invested.

IRS could then use Bureau of Public Debt Records for spot audits to check compliance with the contribution limit and nondiscrimination requirements.

For those employers who set up SPPA plans through financial institutions, the reporting requirements could require some additional information, but the burden would still be negligible. There would be no necessity for any plan reporting at all. As in the case of the retirement plan bonds, employers could indicate on their tax returns that they had set up or contributed to SPPA plans for their employees during the taxable year.

The only further requirement could be an affidavit attached to the return in which the employer would list the number of employees for whom contributions had been made, the percentage of compensation contributed for those below the $7,500 ceiling, the names and the salaries for those for whom the $7,500 maximum had been contributed, and the institution or institutions receiving the contributions.

We would be happy to work with subcommittee staff in working out these other details.

At a time when there is intense pressure on Congress to limit the protections afforded by our pension laws, the Simplified Pension Plan Act represents a bold initiative in the direction of expanding those protections.

Mr. TOWER. Mr. Chairman, the Pension Rights Center shares your concern over needlessly burdensome costs to plan sponsors resulting from inefficient regulation and jurisdictional overlap. S. 3193, the ERISA Paperwork Reduction Act seeks to eliminate some of this burden through consolidation and reduction of forms.

We fully support sections 2 and 3 of the bill regarding consolidation of the plan description information with the initial qualification procedure. We would, however, ask that the legislation make clear that the information required by ERISA section 102(a)(2) remain readily available to plan participants.

We further agree with the chairman's judgment that a booklet prepared to illustrate methods of internal recordkeeping could indeed prove useful in efforts to minimize the need of plans for external service providers, thus reducing the costs to the plans.

Senator BENTSEN. Let me interrupt you just for a moment. They have just sounded a vote on the floor of the Senate. I am going to have to ask you to summarize in 3 minutes. We will take your full testimony for the record, we are very appreciative of it.

Mr. TOWER. The ERISA Paperwork Reduction Act substantially reduces the amount of financial information available annually to Government and plan participants. The primay reason given for this dras-

tic, across-the-board curtailment in annual reporting is the alleged burden of administrative costs.

The introduction to the act refers to the recent study by Price Waterhouse. This study concluded that ERISA has added undue costs to the administration of small plans. In arriving at this conclusion, Price Waterhouse relied extensively on pure cost data. Little consideration was given to either the benefit received by plan sponsors in return for financial disclosure or the benefit of such disclosure to participants.

These requirements are essentially a trade-off for permitting employers and unions to retain some degree of control over fund assets and for permitting plans both to deny benefits to certain employees who are covered by the plan and to delay full funding.

The study totally fails to recognize that many of the small employers who have incurred substantial reporting costs have done so because of the complexity of plan financial transactions that they have decided to make in efforts to retain control over the assets.

Although we do not agree with either the Price Waterhouse premises or conclusions, we do recognize that there are classes of plans for which extensive protections may not be necessary. Such plans are most likely to be those where the employers have relinquished control of plan assets and where benefits vest immediately on a nondiscriminatory basis.

The Price Waterhouse report could conceivably serve as a basis for further Department action. Price Waterhouse has suggested a scheme for small plans that would, in most years, require less reporting than is now required and would require much more reporting than is presently required every third or fifth year.

While there is room for argument as the need for administrative action with regard to small plans, we have found no evidence whatsoever that would justify the wholesale elimination of detailed annual reports specified by section 4 of the ERISA Paperwork Reduction Act.

The elimination of detailed annual reports for either small or large plans would impede enforcement efforts with the Department of Labor, efforts which rely heavily upon comparison of annual figures to trigger official investigation. Moreover, this annual reporting makes it possible for participants, investigative reporters and other members of the public to assess the financial condition of particular pension plans.

Department officials have repeatedly told us of the critical value of participant-supplied leads to enforcement of ERISA's fiduciary provisions. Indeed, Department statistics indicate that for the period 1976 through 1977, over 53 percent of the Department's investigations were the result of participant initiative—initiative, in many cases, dependent entirely upon the use of form 5500 annual reports.

Indeed, one need only look at recent newspaper accounts of Labor Department investigation of Teamster pension funds to appreciate the importance of participant access to annual report forms.

Investigators from PROD—the Professional Driver's Council—using information culled from form 5500, have, unearthed fraudulent commission and fee arrangements, imprudent loans, and investments and discriminatory plans.

The PROD initiatives have been responsible for a substantial portion of the Labor Department's ongoing investigations of the International Brotherhood of Teamsters.

In conclusion, Mr. Chairman, we believe it to be in the best interests of plan participants and beneficiaries for this subcommittee to report out S. 3140, the Pension Plan Simplification Act and sections 2, 3, and 5 of S. 3193, the ERISA Paperwork Reduction Act.

Senator BENTSEN. Well, with the experience and background of your organization, we are very appreciative to have your comments, Ms. Ferguson and Mr. Tower.

[The prepared statement of Ms. Ferguson and Mr. Tower follows:]

STATEMENT OF KAREN W. FERGUSON AND JAY W. TOWER PENSION RIGHTS CENTER

Mr. Chairman, members of the subcommittee, I am Karen W. Ferguson, director of the Pension Rights Center, a public interest group organized to protect the pension rights of American workers. With me today is Jay W. Tower, the center's staff attorney. With your permission, Mr. Tower will present our comments on S. 3193, the ERISA Paperwork Reduction Act. First, however, I should like to comment on S. 3140, the Simplified Pension Plan Act.

In our opinion, the Simplified Pension Plan Act is a truly excellent and far-reaching proposal. The act builds on the IRC section 408(c) employer-sponsored IRA concept, eliminates the most serious drawbacks of Section 408(c) and adds a very substantial incentive to small employers to provide much needed retirement income protection for their employees.

It is a fact of American life that few employees can or will set aside sufficient portions of their take-home pay to provide for retirement. Although IRAs are being set up, thus far there are only slightly more than 2 million in effect,[1] and these are largely set up by the persons least in need of additional retirement income protection.

At the same time, where IRAs have been set up they are providing an immediately vested, fully portable source of retirement income. If the persons setting up IRAs start early enough and contribute something for every year they work, they will end up with a retirement income which while not large is also not insignificant. Very important from the point of view of dependent homemakers is the fact that IRAs are not forfeitable by reason of death.

Despite the existence of IRC section 408(c), there has up until now been no incentive for employers to set up IRAs for their employees. In fact, there have been allegations that IRAs have provided a disincentive to employers to provide for their employees. Some employers have terminated preexisting pension plans and set up IRAs only for themselves.

There has also been some reluctance to encourage employer-sponsored IRAs since under Section 408(c) it is legally permissible for plans to discriminate in favor of company officials or other highly compensated individuals.

The Pension Plan Simplification Act eliminates these problems: Although employers can still set up IRAs for themselves, they cannot take advantage of the higher-Keogh-type limits provided by the act, unless they also provide IRAs for their employees and provide those IRAs on a nondiscriminatory basis.

There are a couple of minor points that may need clarification. For example, it should be made plain that employers setting up an SPPA plan must cover all of their employees[2] and that they cannot take social security benefits into account in figuring contribution levels. In addition, the subcommittee may want to provide for a minimum contribution in these instances where company officials are earning more than $50,000.[3]

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[1] Out of 40 million potentially eligible persons.

[2] With the possible exception of those employees covered by a pre-existing collectively bargained multiemployer plan who opt to remain covered under that plan.

[3] Where the salary of company officials is more than $50,000, there is the very real possibility that employees will be disadvantaged. Because of the $7,500 ceiling, as executives' salaries increase, the percentage contributed for rank and file employees decreases. For example, if the company president is earning $50,000, and makes a $7,500 contribution to his or her own IRA, the company must contribute 15 percent of compensation to the employees' IRAs. If, however, the company president's salary is $150,000, since $7,500 is 5 percent of $150,000, the company need only contribute 5 perecnt of pay to the lower-paid employees' IRAs.

The subcommittee may want to consider the possibility of adding an additional incentive in the form of higher interest rates for SPPA plans. Since SPPA plans will involve long-term money and the economies of scale that go with setting up more than one IRA account at a time, there may be good reason for a higher yield for these accounts. Although up until now the Treasury has been notably reluctant to compete with the private sector in the sale of IRAs, it might very well be consistent with sound public policy—given the expansion of pension protection that could result—were the Treasury to take the initiative to spur competition by setting higher interest rates for SPAA set up through U.S. Retirement Plan Bonds.[4]

Whether or not the Subcommittee determines that U.S. Retirement Plan Bonds should be used to provide an additional incentive to setting up SPPA plans, you may want to consider the fact that use of these bonds could very substantially reduce paperwork for very small employers. This is because the Retirement Plan Bonds could eliminate the need for the small employer to set up a "plan" or file any plan documents. Employers could merely check a box on their corporate income tax returns indicating that U.S. Retirement Plan Bonds have been purchased for employees pursuant to the Pension Plan Simplification Act and indicate the agregate amount invested. IRS could then use Bureau of Public Debt records for spot audits to check compliance with the contribution limit and nondiscrimination requirements.

For employers setting up SPPA plans through financial institutions the reporting requirements could require some additional information, but the burden would be negligible. There would be no necessity for any "plan" reporting at all. As in the case of the Retirement Plan Bonds employers could indicate on their tax returns that they had set up or contributed to SPPA plans for their employees during the taxable year. The only further requirements could be an affidavit attached to the return in which the employer would list the number of employees for whom contributions had been made, the percentage of compensation contributed for those below the $7,500 ceiling, the names and salaries of those employees for which the $7,500 maximum had been contributed, and the institution or institutions receiving the contributions.

We would be happy to work with subcommittee staff in working out these and other details.

At a time when there is intense pressure on Congress to limit the protections afforded by our pension laws the Simplified Pension Plan Act represents a bold initiative in the direction of expanding protections.

Mr. Chairman, the Pension Rights Center shares your concern over needlessly burdensome costs to plan sponsors resulting from inefficient regulation and jurisdictional overlap. S. 3193, the "ERISA Paperwork Reduction Act" seeks to eliminate some of this burden through consolidation and reduction of forms.

We fully support sections 2 and 3 of the Bill, regarding consolidation of plan description information with the initial qualification procedure. We would, however, ask that the legislation make clear that the information required by ERISA section 102(a)(2) remain readily available to plan participants.

We further agree with the Chairman's judgment that a booklet prepared to illustrate methods of internal recordkeeping could prove useful in efforts to minimize the need of plans for external service providers, thus reducing costs to plans.

The "ERISA Paperwork Reduction Act" would substantially reduce the amount of financial information available annually to the government and plan participants. Specifically, Section 4 of the Act would substitute a one-page "simplified" form for the annual report now required. Detailed reporting (for both large and small plans) would only be required once every five years. The dissemination of information to participants would be within the sole discretion of the Secretaries of Labor and Treasury. The primary reason for this drastic across the board curtailment in annual reporting is the alleged buden of administrative costs.

The introduction to the Act refers to a recent study of small plan costs by Price Waterhouse & Co. as the basis for the legislative proposals we are considering today. This study concluded that ERISA has added undue costs to the administration of small plans (plans with less than 100 participants).

In arriving at the conclusion that administrative costs to small plans where excessively burdensome, Price Waterhouse & Co. relied extensively on pure cost

[4] This could, of course, be done without legislation, but legislation may well be necessary given the Treasury's stance to date.

data. Little consideration was given to either the benefit received by plan sponsors in return for financial disclosure or the benefit of such disclosure to participants.[5]

The ERISA annual reporting requirements serve two basic purposes. They are meant to provide a mechanism for ensuring: (1) That plan moneys are invested prudently and solely in the interest of participants; and (2) That the funding and nondiscrimination requirements of the law are met.

These requirements are essentially a tradeoff for permitting employers and unions to retain some degree of control over fund assets, and for permitting plans both to deny benefits to certain employees covered by the plan and to delay full funding.

The study totally fails to recognize that many of the small employers who incurred substantial reporting costs may have done so because of the complexity of plan financial transactions over which they retained effective control. Reporting requirements are imposed on these employers to protect participants from the possibility that the employers may be tempted to use plan assets for their own advantage. The cost to the employers of meeting these requirements is more than outweighed by the alvantages of retaining a substantial degree of control over plan investment practices.

Similarly, the study points to the relatively high cost of a plan actuarial report, but neglects to point out that small employers who set up a defined benefit plan, do so solely for the very substantial cost advantages associated with this kind of plan. Employers who choose defined benefit plans over employer-sponsored IRA arrangements may have higher administrative costs resulting from having information that will tell the Internal Revenue Service whether their plans run afoul of antidiscrimination rules. At the same time, however, they will also have the very substantial cost savings that result from not having to pay pensions to a substantial percentage of their employees.[6]

The Price Waterhouse study gives no indication whatsoever of where detailed reporting is and is not cost-justified from the employer's viewpoint or where it is essential to protect participants' rights.

Although we do not agree with either the Price Waterhouse premises or conclusions, we recognize that there are classes of plans for which extensive protections may not be necessary. Such plans are most likely to be those where the employers have relinquished control of plan assets and where benefits vest immediately on a nondiscriminatory basis. An S. 3140 Simplified Pension Plan would be an example of a plan having both of these attributes.

Given the fact that 80 percent of small plans are defined contribution plans and that the vast majority of small plans are either invested in pooled trusts or are insured, extensive annual reporting protections may not be universally necessary. This has been recognized by the Department of Labor. Accordingly, the Department has exercised its section 104 authority to simplify reports by promulgating forms 5500-C and 5500-K relieving small plans of the requirements of filing the schedule of assets held for investment purposes and the schedule of 3 percent transactions. In addition, the Department has exercised its discretion to waive the independent accountant's statement for all small plans (and to further waive the requirements of sections 102 and 103 for most welfare benefit plans.)[7]

The price Waterhouse report could conceivably serve as a basis for further Department action. Price Waterhouse has suggested a scheme for small plans that would in most years require less reporting than is now required and would require much more reporting than is presently required every third or fifth year.

Without knowing what information Price Waterhouse proposes to eliminate from the Forms 5500-C and 5500-K further comment would be speculative. The

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[5] The Price Waterhouse study did not address the reporting required of large plans. Thus there is no basis for extrapolating the study's conclusions to large plans. Indeed, to the limited degree to which Price Waterhouse considered large plans at all, findings were held to the view that economies of scale applied.

[6] The study also fails to differentiate between professional corporations, well able to absorb the costs of actuarial reports, and the more conventional small business. Consultants have told us that professional corporations set up by doctors and lawyers with very large incomes are becoming the predominant type of "small plans." When we called IRS for a breakdown of how many small plans were "P.C.'s", we were told that such information was not available. IRS undertook a study to provide such data at one time, but a decision was made to stop the study apparently due to political pressure.

[7] We have been told that the insurance industry is seeking a waiver of the schedule B actuarial statement for insured plans.

expanded reporting required every 3 to 5 years may well make sense for those small plans most likely to be vulnerable to abuse.

While there is room for argument as to the need for administrative action with regard to small plans, we have found no evidence whatsoever that would justify the wholesale elimination of detailed annual reports specified by section 4 of the "ERISA Paperwork Reduction Act".

The elimination of detailed annual reports for either small or large plans would impede enforcement efforts of the Department of Labor. The Department relies heavily upon comparison of annual figures to trigger official investigations. Moreover, annual reporting makes it possible for participants, investigative reporters, and other members of the public to assess the financial condition of particular pension plans. Department officials have repeatedly told us of the critical value of participantsupplied leads to enforcement of ERISA's fiduciary provisions. Indeed, Department statistics indicate that for the 2-year period 1976 through 1977, over 53 percent of the Department's investigations were the result of participant (or other private person) initiative—initiative in many cases dependent entirely upon the use of Form 5500 annual reports.

One need only look at recent newspaper accounts of Labor Department investigations into Teamster pension funds to appreciate the importance of participant access to annual report forms. Investigators from PROD—the Professional Drivers Council, using information culled from Forms 5500 have unearthed fraudulent commission and fee arrangements, imprudent loans and investments and discriminatory plans. The PROD initiatives have been responsible for 67 percent of the Labor Department's ongoing investigations of the IBT.

In conclusion, Mr. Chairman, we believe it to be in the best interests of plan participants and beneficiaries for this subcommittee to report out S. 3140, the "Pension Plan Simplification act" and sections 2, 3, and 5 of S. 3193, the "ERISA Paperwork Reduction Act."

Senator BENTSEN. Thank you. Because of that vote, we will now stand adjourned.

[Thereupon, at 12:05 p.m., the subcommittee adjourned.]

[By direction of the chairman the following communications were made a part of the record:]

[From the New York Times, June 25, 1978]

A MIGHTY UPROAR OVER A TRUCKER'S PENSION

(By Julius Duscha)

Washington—In 1973, John B. Daniel, a Chicago truck driver, retired after 22 years' membership in the pension fund of Teamsters Local 705 with every expectation of receiving a pension of $400 a month. He was ruled ineligible. An involuntary layoff of three and a half months prevented his fulfilling the fund's requirement of 20 consecutive years of work.

Mr. Daniel sued and today the 68-year-old truck driver's case has become a cause célèbre—with the Labor Department, the National Association of Manufacturers, major unions of the A.F.L.-C.I.O., the International Brotherhood of Teamsters and many large corporations all arrayed against him.

Mr. Daniel's lawyers argued in Federal court that he was never told of the pension plan's risks—including the requirement of 20 years of uninterrupted work. Mr. Daniel won and was upheld on appeal. An employee's interest in a private pension plan, the United States Court of Appeals ruled last year, should be treated like a security and be subject to the antifraud provisions of the Securities Exchange Acts. Those provisions include a requirement that the risks inherent in the purchase of a security be clearly stated.

The ruling means that the nation's 500,000 private pension plans, with assets of $280 billion, would fall under regulation of the Securities and Exchange Commission. The unusual alliance of business and labor seeks to prevent this when the Daniel case is aired in Senate hearings this summer and in the Supreme Court in the fall.

If the Supreme Court upholds the Appeals Court decision, pension-fund trustees will have to tell employees of the risks inherent in a plan—largely the slim chances (often no more than 1 in 3) that most workers will ever receive a pension because of long vesting periods and death before retirement age. If employers do not outline these risks the S.E.C. could bring charges.

Private pensions are already regulated by both the Labor Department and the Internal Revenue Service under the Employee Retirement Income Security Act of 1974.

Under ERISA, as the act is known, a worker will not lose pension rights that he has built up unless the break in service is longer than the time he has worked. Thus, for example, a person could work for a company for five years, be gone for three, and come back with the 5-year credit toward his pension.

But under ERISA, information given employees about pension funds can be limited to the positive aspects of the plans, and workers still may not understand many of the limitations.

Labor and business say there is already enough regulation of private pension funds. They say they fear that if the Supreme Court upholds the decision the nation's private pension plans, which cover 45 million persons, will be subject to so many similar suits that the soundness of some of the plans might be jeopardized. A recent study commissioned by the Labor Department estimated that potential pension-fund liabilities under the Daniel decision could range from $3.5 billion to $39.6 billion.

Senator Harrison A. Williams Jr., chairman of the Senate Human Resources Committee, which has jurisdiction over labor and pension legislation, and Senator Jacob K. Javits of New York, the ranking Republican member, in May introduced legislation that would take jurisdiction away from the Federal courts in any claim that the interest of an employee in a pension plan was a security. A subcommittee plans to hold hearings in August on the proposal, which is part of a legislative package making largely technical changes in ERISA. It is unlikely, however, that Congress will approve the bill this year because of a heavy legislative schedule.

In introducing the legislation, Senator Williams, a New Jersey Democrat, said, "I know it is tempting to look at this case in David and Goliath terms. But I think it is a mistake to do that. If pension plans are terminated—as some have already been—because of increased costs and liabilities imposed on plan sponsors, who loses? It's the employees who lose. As I understand it any plan sponsor who puts out a plan booklet describing the plan in a way that is deliberately misleading is violating ERISA. Heavy involvement by the Securities and Exchange Commission won't really enhance protections for employees. It will add no new rights for employees that are not now present under ERISA, other labor laws and the Internal Revenue Code."

Although Mr. Javits said he had mixed emotions about the Daniel case because Mr. Daniel was denied a pension after working 22 years as a truck driver, the Senator said that the decision "creates the potential for the imposition of large unforeseen liabilities, the termination of certain pension plans, the imposition of disclosure requirements which duplicate those of ERISA and the addition of another body of law and another regulatory agency to an already crowded legal landscape."

"The S.E.C.," said George Meany, president of the American Federation of Labor and Congress of Industrial Organizations, "is evidently proceeding on the theory that the greater number of laws that are piled one on the other the more protection is afforded employees. That theory is unsound. To superimpose the securities laws on the regulatory scheme provided in ERISA would at best create overlapping and duplicative jurisdictions with the attendant costs in confusion and uncertainty."

Supporters of the Daniel decision range from Ralph Nader's Pension Rights Center in Washington to the Gray Panthers, a national organization of elderly persons headquartered in Philadelphia "The astonishing thing," said Karen Ferguson, a lawyer who works for the Pension Rights Center, "is that the rationale advanced for the bill is nonsense and is known to be so by its sponsors.

"They say," she continued, "that they are worried that if Mr. Daniel is upheld by the Supreme Court it will mean that plans will have to pay pensions to everyone who has worked under plans in recent years because no one has been told that they might lose out, and that would bankrupt the plans. The fact is that the Supreme Court has never imposed retroactive liability when to do so would impose an undue burden. There is a whole line of Supreme Court cases saying exactly this.

"What's really at stake here," Miss Ferguson maintained, "is that George Meany and big business are terrified that people might have to be told that there's a risk of loss inherent in their plans."

Even under the ERISA reforms a person generally must work for 10 years for a company or under the jurisdiction of multi-employer plans in such industries as trucking and the building, clothing and maritime trades before being vested under a pension plan and thus guaranteed some benefits on reaching retirement age. In today's mobile society workers frequently move before working 10 years in a job.

Other risks inherent in pension plans include, in addition to death before retirement age, the possibility that the pension plan will be terminated before a person retires and that its assets will not be sufficient to pay off pensions. ERISA provides some insurance for the payment of benefits, but few plans are fully insured.

The argument over the Daniel case is full of anamolies and ironies. The labor-business alliance against Mr. Daniel comes about because labor leaders are among the trustees of multi-employer plans Company plans may be the subject of collective bargaining but they are generally administered by the company involved. Representing union interests in the fight is the National Coordinating Committee of Multiemployer Plans while business interests are represented by the ERISA Industry Committee made up of 83 companies including G.M., I.B.M. and Exxon.

The Labor Department filed a brief in the Appeals Court opposing Mr. Daniel's position while at the same time it is investigating irregularities in Teamsters pension funds and has generally argued that more information about pension plans should be made available to workers. Stephen Sacher, the lawyer who as the Labor Department's associate solicitor general in 1978 was in charge of marshaling the department's arguments against Mr. Daniel, is now a member of the Human Resources Committee staff and Senator William's principal adviser on pension matters.

As for Mr. Daniel, he lives quietly on a small Social Security pension with his wife in Chicago, anxiously awaiting the outcome of this case.

MAYER, BROWN & PLATT,
Washington, D.C., July 14, 1978.

Hon. LLOYD BENTSEN,
Chairman, Subcommittee on Private Pension Plans and Employee Fringe Benefits, Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR BENTSEN: This statement is submitted on behalf of The ERISA Industry Committee (ERIC) for the record of the subcommittee's recent hearings on S. 3140 and S. 3193.

ERIC's 85 members include half of the Nation's fifty largest industrial companies and represent a cross section of the Nation's largest retailers, utilities, banks and insurers. ERIC members sponsor over 750 retirement plans which pay benefits to some 1.5 million retirees and other beneficiaries. The approximately 8.5 million participants in pension plans sponsored by ERIC members represent about 20 percent of all participants in private pension plans.

ERIC strongly supports the general objectives of S. 3140 and S. 3193 to reduce ERIC's paperwork burden and otherwise to reduce the burdens of compliance with ERISA.

Nevertheless, ERIC is troubled by the provision in S. 3193 that would require all plans to obtain advance determination letters from the Internal Revenue Service in order to be recognized as qualified plans under the Internal Revenue Code, and ERIC is opposed to the Treasury's suggestion in its testimony before the subcommittee that the simplified plans contemplated by S. 3140 be made subject to the President's proposed new social security integration rules.

Let us also note that in the limited time which has been available, neither of these bills has been exhaustively considered by ERIC and, accordingly, if more time were available, it is possible that additional comments would be made. In short, the following thoughts do not necessarily exhaust ERIC's comments regarding these two bills.

DETERMINATION LETTERS

S. 3193 would combine the form for requesting determination letters from the Internal Revenue Service and the Labor Department's EBS-1 form, the plan description form required pursuant to ERISA section 102(a)(2). S. 3193 would also require filing the annual return (Form 5500) only once every 5 years and sim-

plified annual returns in the intervening years. ERIC generally applauds efforts to simplify and reduce the reporting requirements under ERISA.

As an adjunct to these proposals, section 2 of S. 3193 would apparently require that a plan obtain a determination letter from the Internal Revenue Service before its tax qualification would be recognized. ERIC is concerned that, as proposed, this section could be detrimental to plan participants and beneficiaries, may not be adequately coordinated with other sections of the Code added or amended by ERISA, and could cause severe disruption in common plan practices.

Although section 2 is not precise, its intent seems to be to treat any plan as not qualified under the code until a determination letter is issued by the Service. It is not uncommon to adopt a plan or amend an existing plan toward the end of the sponsor's taxable year, make contributions to the plan for that year, claim a deduction for the contribution on the employer's return for the year when it is filed, and not to report the contributions as income to the covered employees. All of this assumes that the plan as adopted or amended is then qualified under the code. Nevertheless, determination letters which are customarily sought with regard to such plans generally are not issued by the Service until well after the close of the taxable year in which the plan is established or amended.

Particular care should be taken to assure that year-end plan adoptions and amendments would not be hindered or precluded in view of the fact that a plan would normally not be able to obtain an advance determination letter prior to the close of the employer's taxable year in which the plan is adopted or amended. Otherwise, adoptions of plans would be delayed to the detriment of employees because if, in effect, a plan is not qualified until a determination letter is issued, there would be no basis for claiming a deduction for contributions made during the taxable year of adoption or amendment to a qualified plan, and contributions made to a nonqualified plan would not be deductible under Code section 404(a)(5) unless recognized by the employees as income. Similarly, amendments to existing plans could call into question the tax status of the plan and the treatment of required contributions to it. These concerns, in turn, would raise the question of whether there is a "reportable event" for PBGC purposes.

Congress focused on similar concerns when ERISA amended Code section 401(b) regarding remedial plan amendments and added new Code section 7476 regarding declaratory judgments on plan qualification by the Tax Court. It was then recognized that disputes regarding plan qualifications may arise either when the plan is adopted or amended. The Ways and Means Committee Report stated:

> The time allowed for remedial changes may be too short for a plan to be cured to qualify as of the year in which it is established. . . . Additionally, plan amendments (which may be as significant as newly established plans) may not be retroactively cured. As a result of these limitations, plans may not be qualified, to the detriment of employers and employees. House of Representatives Report No. 93-807, 93d Congress, 2d Session, 166, 1974-3 (Supp.) C.B. 236, 401.

Thus, Code section 401(b), as amended by ERISA, allows employers to adopt plans or amend plans, to make or continue making contributions to them while any dispute is being resolved, and to make any necessary remedial amendments retroactively. This policy should be carefully preserved.

We also note that in Assistant Commissioner Winborne's testimony before the subcommittee on June 27, 1978, he suggested that section 2 might be applicable not only to initial qualifications of new plans, but also with respect to "material modifications" of existing plans. By "material modification", Assistant Commissioner Winborne apparently had in mind the provision in ERISA section 102(a)(2) which requires amendment of the plan's description whenever a material modification of a plan is adopted. However, what might be a material modification for Labor Department purposes may have no effect on plan qualification. For example, a collectively bargained plan might be amended to increase significantly employer contributions. Certainly, such a change is material to plan participants and beneficiaries and, thus, for Labor Department purposes. However, such a change would not affect the tax qualification of the plan. Similarly, the addition of investment options for employee directed accounts, a change in plan administrator or trustee, a change in the procedure for claiming benefits, and other similar changes require a new plan descritpion under ERISA section 102(a)(2), but such modifications have no relevance to plan qualification under the code.

In summary, while ERIC members generally obtain determination letters with respect to the adoption of new plans or amendments to existing plans, the proposed provision in S. 3193 which would require the obtaining of an advance determination letter from the Service as a condition of plan qualification needs further study and clarification. The prospect of eliminating unnecessary forms is attractive, but ERIC cannot support section 2 of S. 3193 in its present form.

SOCIAL SECURITY INTEGRATION

ERIC strongly objects to the suggestion by Daniel I. Halperin, the Treasury's Tax Legislative Counsel, in his testimony before the Subcommittee on June 27, 1978, that the simplified plans contemplated by S. 3140 be made subject to the Social Security integration proposals made earlier this year by the President as part of his tax program.

In his testimony, Mr. Halperin suggested that "the primary objection [to the President's integration proposal] has been the cost and administrative problems associated with amendments rather than the ongoing costs of meeting the proposed ratio" or other arguments directed to the merits of the proposals. Therefore, Mr. Halperin concluded that there should be no objection to adopting the proposed integration rules for new plans, such as the simplified plans contemplated by S. 3140.

On March 13, 1978, we presented testimony on behalf of ERIC before the Committee on Ways and Means regarding, among other things, the President's integration proposal. ERIC objected to the proposal on several grounds, including the cost and disruption which would be occasioned by the required amendments of existing plans.

In addition, ERIC strongly objected to the integration proposal as contrary to the purposes of and potentially inconsistent with various imminent studies, including those of the President's own Commission on Pension Policy (which was then known as the Presidential Retirement Policy Commission).

Furthermore, ERIC objected that the proposal would be most detrimental to employees earning $20,000 to $50,000 and bearing the most significant portion of the increases in social security taxes. Thus, although the President''s proposal might have the effect of assuring benefits for some lower paid employees, it would reduce benefits for many other "middle level" employees.

We also note that in his testimony before the Subcommittee on Labor Standards of the House Committee on Education and Labor on May 17, 1978, Mr. Halperin indicated that the Treasury has solicited views on a "minimum benefit" approach to integration which would be fundamentally different from and in lieu of the President's initial proposal. This suggests that the Treasury itself recognizes that there are serious objections to the merits of its initial proposal. In any event, it seems particularly inappropriate to suggest adoption of that initial proposal while the alternative proposal is being considered by concerned persons and the entire subject of Social Security integration is before the various commissions which have been given the responsibility to consider it.

Finally, we note that S. 3140 would subject the "simplified pension plans" to the integration rules currently in Code section 401(a). Adoption of the totally different set of rules to govern integration of this new class of plans would add to the complexity of the Code and its administration. Such added complexity is particularly not warranted at this time.

In short, ERIC strongly objected to the merits of the President's integration proposal and strongly urges that it not be adopted now as a part of the Simplified Pension Plan Act. We request that the attached copy of our testimony before the Ways and Means Committee be made a part of the Subcommittee's record of the hearings on S. 3140. Your attention is specifically drawn to pages 10 through 34 dealing with the President's integration proposal.

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We would appreciate the opportunity to answer any questions which you, the Subcommittee or the staff might have.

Respectfully submitted,

JERRY L. OPPENHEIMER.
ROBERT H. SWART.

STATEMENT OF JERRY L. OPPENHEIMER, ON BEHALF OF THE ERISA INDUSTRY COMMITTEE (ERIC)

Mr. Chairman and members of the committee, I am Jerry L. Oppenheimer, a member of the firm of Mayer, Brown & Platt, Washington, D.C. I am accompanied by my partner, Robert H. Swart, and by representatives of America Telephone & Telegraph Co., Bankers Trust Co., Bethlehem Steel Corp., Exxon Corp., General Motors Corp., Metropolitan Life Insurance Co., J. C. Penney Co., Inc., and TRW Inc.

SUMMARY OF POSITION

We appear today on behalf of the ERISA Industry Committee (ERIC) to urge most stongly that any bill reported by this committee reject three of the President's recommendations regarding employee benefits. Specifically, we subject to the proposals:

to establish new rules to govern integration of social security and private retirement plans;

to establish new discrimination rules for certain welfare benefit plans; and

to repeal the $5,000 death benefit exclusion.

ERIC is seriously concerned that the President's proposals—

could well be inconsistent with the recommendations of two eminent commissions charged with developing comprehensive national retirement income and welfare policies;

would cause serious and costly disruption for employers and plans;

would engender staggering additional regulations, rulings, plan amendments, summary plan descriptions, and reports and attendant expense;

could result in additional plan terminations; and

are technically deficient.

In addition, the Social Security integration proposal would be most detrimental to the same employees who will bear the greatest portion of the recently enacted Social Security tax increase.

The welfare plan discrimination proposal would embroil the Internal Revenue Service (the "Service") in value judgments regarding life styles and other essentially private matters.

None of these proposals is essential to the President's tax program; none would raise significant revenue; and none has any compelling merit to mandate its quick enactment.

Accordingly, ERIC respectfully urges this Committee to defer action on these proposals until a complete review of their need and of their merit is completed and national policies regarding retirement income and health and welfare benefits are established.

I. INTRODUCTION

A. ERIC REPRESENTS A MAJOR SEGMENT OF PRIVATE PLAN SPONSORS

As may be suggested by those who accompany us today, ERIC's some 83 members include half of the Nation's 50 largest industrial companies and represent a cross-section of the Nation's largest retailers, utilities, banks and insurers.

ERIC members are genuinely concerned about the well-being of their approximately seven million employees (and of those employees' beneficiaries) who are protected by retirement and welfare plans. ERIC members sponsor over 750 retirement plans which pay benefits to some 1.5 million retirees and other beneficiaries. The approximately 8.5 million participants (employees, retirees and other beneficiaries) of pension plans sponsored by ERIC members represent about 20 percent of all participants in private pension plans.[1] ERIC members also sponsor over 1,500 welfare plans which provide benefits to over 22 million beneficiaries.

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[1] Comprehensive data regarding private pension and welfare programs and persons covered by them is not available. The statistics cited herein regarding plans of ERIC members has been principally derived from the Plan Descriptions (Forms EBS–1) filed with the Labor Department. It is generally accepted that there are somewhere between 30 and 45 million participants in private pension programs. See, e.g., House Committee on Ways and Means, Report on H.R. 12885, H.R. Rept. No. 93–807, 93d Cong., second sess. 3 (1974), 1974–3 C.B. (Supp.) 236, 238; S. Rept. No. 93–383, 93d Cong., first sess. 2–3 (1973), 1974–3 C.B. (Supp.) 80, 81–82; Statement of Gregory J. Ahart, Director, Human Resources Division, U.S. General Accounting Office (the "GAO"), before the Subcommittee on Retirement Income and Employment of the House Select Committee on Aging (the "Rooney subcommittee"), at 2 (February 27, 1978). It is uncertain whether these estimates use the same definition of "participant" (i.e., covered employees, retirees, and other beneficiaries) as that used on the Forms EBS–1 from which the ERIC statistics are derived. In any event, it is clear that participants in pension plans sponsored by ERIC members are not less than 15 percent of all participants in private pension programs and might be as many as 25 perecnt of such participants. ERIC members sponsor nearly one-quarter of the five hundred largest retirement plans, ranked by assets. Derived from listing of the 500 largest plans, Vol. 6, No. 1 Pensions and Investments 5 (Jan. 2, 1978). The 500 largest plans had assets as of Dec. 31, 1976, of approximately $120 billion, according to this listing. Id. at 1.

According to Pension Benefit Guarantee Corp. (the "PBGC") statistics, plans with over 1,000 participants represent slightly over ten percent of defined benefit retirement plans, but cover over 80 percent of all participants in such plans; and plans with over 10,000 participants represent less than 1 percent of defined benefit retirement plans, but cover over one-half of all participants in such plans.[2] Most ERIC members sponsor plans with more than 10,000 participants, and ERIC generally represents a cross-section of the employee benefit plan sponsors which provide the significant majority of all plan benefits.

B. THE EMPLOYEE BENEFITS PROPOSALS ARE UNTIMELY AND DISRUPTIVE AND SHOULD BE REJECTED

The enactment of the Employee Retirement Income Security Act of 1974 (ERISA) has caused major changes in the design and operation of employee benefit plans. Often it is far simpler to enact a law than to implement or administer it. The Labor Department, the Service, the PBGC and other agencies involved have been diligent, but much remains to be done by them before ERISA is or can be fully implemented.

Many regulations remain to be adopted or proposed; many applications for exemptions are pending; and late last year the Congress delayed the application of important ERISA provisions administered by the PBGC.[3] One result of ERISA has been the review of virtually all employee benefit plans and the amendment of countless numbers of them. The Service's processes for approving amendments to retirement plans are still ongoing. Indeed, both this committee's Subcommittee on Oversight and the Service are concerned that many plans have not requested post-ERISA determination letters;[4] and the rate of terminations of existing plans is higher, and the rate of adoptions of new plans significantly less, than in the years prior to ERISA.[5] In short, the concerned agencies and the private sector are still learning to live with ERISA.

The proposed changes would engender further disruption. The development of reglations would take years and would be fraught with difficulty. All plans would have to be examined to determine if they meet the new standards. The status of many plans would be uncertain in the absence of regulations and other necessary guidance. Significant numbers of existing plans would require amendment; some such amendments might be relatively limited in substantive effect, but all would result in major administrative expense to both plans and the government, including the costs of preparing, printing and providing the amended summary

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[2] PBGC Annual Rept. 18 (1975–76). Defined benefit plans, which are the only plans subject to PBGC jurisdiction, account for about 20 percent of the estimated 470,000 pension plans, but cover about 75 perecnt of the estimated 30 million pension plan participants. Statement of Gregory J. Ahart, supra note 1, at 2.

[3] Public Law 95–214, 91 Stat. 1501 (Dec. 19, 1977).

[4] For example, in IR–1883 (Sept. 13, 1977), the Service announced the mailing of a questionnaire to 305,357 plans which had not requested revised determination letters subsequent to ERISA to determine if such plans were still in existence or would be terminated. As of Feb. 3, 1978, 68,567 addresses had failed to respond. Statement of Alvin D. Lurie, Ass't. Comm'r. (Employee Plans and Exempt Organizations), before the Subcommittee on Oversight, House Committee on Ways and Means, at 2 (Feb. 16, 1978).

[5] The Service has received termination applications from 47,068 plans during the 3 years since ERISA was enacted, and the ratio of determination letters issued by the Service regarding new plan qualifications to such letters regarding terminations has decreased from approximately 14 to 1 prior to ERISA to about 2 to 1. Statement of Alvin D. Lurie, supra note 4 at 1, 3. See also Statement of Alvin D. Lurie, Ass't. Comm'r. (Employee Plans and Exempt Organizations), before the Rooney subcommittee, at 1–3 (Feb. 27, 1978). Table A, attached, is copied from a recent study of terminations by the Congressional Research Service of the Library of Congress (the "CRS"). That table demonstrates that the reduced ratio is due both to a great increase in terminations and a significant decrease in new plans since ERISA. The CRS study projected that 9,123 terminations would have occurred without ERISA in 1974 through 1976, whereas the actual total was 23,967 (263 percent greater). Ray Schmitt, Major Issues Facing the Private Pension System, CRS, at CRS–10 (Jan. 27, 1978) (hereinafter "CRS Study"). According to a GAO survey, ERISA played a major role in 53 percent of the terminations occurring between September 1974 and June 1976. Statement of Gregory J. Ahart, supra note 2, at 4. In a survey of Indiana employers by Senator Lugar, 85 percent of those who had terminated plans cited ERISA as the primary reason, and 48 percent of those without plans cited ERISA as the primary deterrent to adopting them. 124 Cong. Rec. S. 461–64 (daily ed. Jan. 25, 1978). These and similar statistics led to this Committee's Oversight Subcommittee Hearings, the Rooney Subcommittee Hearings, and similar expressions of Congressional concern. See, e.g., Oversight P.R. No. 21, Subcommittee on Oversight, House Committee on Ways and Means (Feb. 7, 1978); Opening remarks of Congressman Rooney, Press Release, Subcommittee on Retirement Income and Employment, House Select Committee on Aging (Feb. 15, 1978).

plan descriptions required by ERISA[6] and of obtaining determination letters from the Service.

Enactment of these proposals would compound the uncertain effect on plans of major Congressional action last year: First, the Social Security Amendments of 1977[7] substantially increased the rates and coverages of the taxes supporting the Social Security system and revised the benefits which will be provided retirees thereunder.[8] Second, the imminent extension of the Age Discrimination in Employment Act[9] to those under seventy will necessitate a review, if not substantive revision and requalification, of most private pension and welfare plans.

As recognized in the Budget Summary accompanying the President's Budget Message, released just 2 days after his Tax Message:

"These and other changes require that the structure of, and interrelationship among, retirement programs in the United States—Federal, State and local, or private—be carefully evaluated."[10]

Similarly, the National Commission on Social Security (the "National Commission") created by the Social Security Amendments of 1977 will study the relationship of governmental and private retirement and annuity programs and welfare plans and report to the Congress.[11] ERIC strongly urges this committee to defer the President's proposals regarding employee benefits until the recommendations emanating from the in-depth studies of the Commissions contemplated by this committee, the Congress, and the President are available.

II. INTEGRATION OF SOCIAL SECURITY AND PRIVATE PLANS

The recommendation to provide new integration rules is most troublesome. In summary, integration is the emthod by which a particular employer properly coordinates the private retirement programs designed by him for the benefit of his employees with the publicly mandated, but privately funded,[12] Social Security system to achieve an appropriate retirement income which does not discriminate in favor of owners, officers or the highly compensated as opposed

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[6] ERISA section 104(b)(1)(B) requires that a summary of any material modification in the plan and in the information required in the summary plan description be furnished to each participant and each beneficiary who is receiving benefits under the plan not later than 210 days after the close of the plan year in which the change is adopted. ERISA section 104(a)(1)(C) requires that a copy of the summary description be filed with the Secretary of Labor at the same time. Labor Department regulation section 2520.104b–4(c) excuses notice to any beneficiary whose benefits are not directly affected by the change. In addition, ERISA section 104(a)(1)(D) requires the plan administrator to file any material modification with the Secretary of Labor within 60 days after it is adopted or occurs. Labor Department regulation section 2520.104a–4 currently requires this notification to be made by an amended EBS–1 (Plan Description); however, the Labor Department has recently proposed to modify this section to omit the duplicative filing. 42 Fed. Reg. 60899 (Nov. 29, 1977).

[7] Public Law 95–216, 91 Stat. 1509 (Dec. 20, 1977).

[8] We note this committee recently indicated concern with the potential effects of the new law, narrowly defeating a proposal to include in its report to the Budget Committee a reduction in next year's scheduled social security tax increase. Washington Post, Mar. 2, 1978, at A–1. See also H.R. 10668 introduced on Feb. 1, 1978, by Mr. Burke (with 120 cosponsors); H.R. 10754 introduced on Feb. 6, 1978, by Mr. Mikva; H.R. 11011 introduced on Feb. 21, 1978, by Mr. Conable. While the administration supports a "second look" at last year's amendments (Washington Post, Feb. 10, 1978, at F–3 (reporting Secretary Blumenthal's remarks before the Joint Economic Committee on Feb. 9, 1978)), its present position is that "such reconsideration need not and should not be conducted in haste" this year. Testimony of W. Michael Blumenthal, Secretary of The Treasury, before the House Budget Committee, Treasury News at 4 (Mar. 8, 1978).

[9] On Mar. 2, 1978, the conferees reached tentative agreement on reconciling the differences in H.R. 5383, as passed by the House of Representatives on Sept. 23, 1977, and as passed by the Senate on Oct. 19, 1977. N.Y. Times, Mar. 3, 1978, at D–11.

[10] Budget Summary, The Budget of the U.S. Government, 1979, at 18 (Jan. 23, 1978).

[11] Section 361 of Public Law 95–216, 91 Stat. 1556–58.

[12] The present integration rules recognize that social security benefits are provided by equal taxes on employers and employees. The Treasury is concerned that the Social Security System is essentially a "pay-as-you-go" program and that "there is only a small correlation between an employee's benefits under social security and the amount an employer contributes for that employee". The President's 1978 Tax Program, Detailed Descriptions and Supporting Analyses of the Proposals, U.S. Department of the Treasury, at 151–52 (Jan. 30, 1978) (the "Detailed Descriptions"). It may be true that social security taxes primarily fund current benefits rather than a particular employee's future benefits; nonetheless, on an aggregate basis, employers fund one-half of all social security benefits, and no employee is entitled to social security unless his employer has paid such taxes on his behalf. In fashioning a sound retirement income policy and, within that context, specific rules regarding integration, these substantial employer contributions cannot be disregarded.

to the rank and file. Integration has been permitted by the Internal Revenue Code since 1942.[13]

The current integration rules are highly complex, are said by some to rest on a questionable foundation, may be outdated, and, particularly in view of the ever increasing Social Security wage base and benefits, are probably in need of significant revision. Undoubtedly, as the Treasury asserts, some abuse exists. However, we note that the abuses delineated by the Treasury in its detailed analysis relate principally to plans to small employers.[14] Although data is extremely difficult to obtain, we believe that the vast majority of large retirement plans currently provide benefits to all their retirees, in addition to the benefits provided by Social Security.[15]

A. INTEGRATION IS THE SUBJECT OF SEVERAL IMMINENT STUDIES

The Social Security integration rules may need revision, but the Treasury's proposal is premature, fragmentary, and costly and presents significant technical difficulties. This Committee recognized the need to revise the integration rules in 1974 during its considerations of ERISA.[16] Because of the complexities involved and the potentially adverse impact on existing plans,[17] the Congress deferred action at that time on a recommended "freeze" on future integration.[18]

Nonetheless, the Conferees on ERISA followed this Committee's recommendation that the Joint Pension Task Force conduct a 2-year study of Social Security integration.[19] That study has not been undertaken.

Late last year, as a part of the Social Security Amendments of 1977, the Congress adopted the recommendation of Congressman Jenkins[20] to create the National Commission with a mandate to conduct ". . . a continuing study, investigation, and review of . . . the adequacy of benefits including the measurement of an adequate retirement income, . . . the impact of such programs on, and their relation to . . . nongovernmental retirement and annuity programs, [and] medical delivery systems, [and] . . . the integration of such current Federal programs with private retirement programs. . . ."[21]

Within 2 years, the Commission is to report to the Congress specific recommendations regarding these and other issues.[22]

Similarly, as noted above, the President recognized in his Budget Message that a complete, careful, and exhaustive evaluation of the nation's myriad retirement systems must be undertaken. Accordingly, his proposed budget "reflects proposed legislation to establish a Presidential Retirement Policy Commission . . . [which] will be asked to make specific recommendations for reforms in the systems to insure that workers have adequate coverage and benefits".[23] The Presidential Commission is expected to complete its reports within two years.[24]

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[13] Section 162(a) of the Revenue Act of 1942, 56 Stat. 798, added paragraphs (3), (4), (5), and (6) to section 165(a) of the Internal Revenue Code of 1939. Those sections, with minor modifications, are now sections 401(a) (3) through (6) of the Internal Revenue Code of 1954, as amended (the "Code").

[14] Detailed descriptions at 150.

[15] Table B-1, attached, is derived from a sample of 540 individuals who retire din 1977 from 23 different ERIC members and, in our view, is representative of benefits provided by plans sponsored by most major employers.

[16] Report on H.R. 12855, H.R. Rept. 93-807, 93d Cong., second sess. 69 (1974) ; 1974-3 C.B. (supp.) 236, 304.

[17] 120 Cong. Rec. 29202 (1974) (remarks of Congressman Ullman) ; 120 Cong. Rec. 29928 (1974) (remarks of Senator Williams).

[18] This was accomplished by the unusual parliamentary procedure of amending the Conference Report by means of a Concurrent Resolution.

[19] Conference Report on H.R. 2, H.R. Rept. No. 93-1280, 93d Cong., second sess. 280 (1974) ; 1974-3 C.B. 415, 441.

[20] Congressman Jenkins originally proposed an amendment to create a National Commission on Social Security during the consideration by this committee of H.R. 9346, 95th Cong., first sess. (1977). Although rejected by the committee on a tie vote, the amendment was adopted during the House floor debate. 123 Cong. Rec. H 11649-60 (daily ed. Oct. 27. 1977).

[21] Section 361 of Public Law 95-216, 91 Stat. 1557.

[22] The first two Commission members, Wilbur J. Cohen and Robert J. Myers, are highly qualified, and were appointed by the Speaker of the House on Feb. 6, 1978. 124 Cong. Rec. H. 654 (daily ed. Feb. 6, 1978).

[23] The Budget of the U.S. Government, 1979, at 18.

[24] The President's tax proposals do not treat Railroad Retirement Benefits. Presumably, they would be considered by the Presidential and National Commissions. We also note that concurrently with these hearings, the Rooney subcommittee is continuing its hearings entitled "Retirement Income Security : The State of the Nation's Private Pension System". Today, it is to receive testimony on the respective roles of social security, private and public pension plans, and IRA's; the level of retirement income to be provided by each such source; the effect of integration, including the Treasury's proposals; and the impact of the Social Security Amendments of 1977 on private pension plans. Press Release, Rooney subcommittee (Mar. 3, 1978).

ERIC strongly supports these congressional and Presidential efforts to develop a cohesive national retirement income policy. It will support and assist the work of the Commissions.

B. INTEGRATION IS ESSENTIAL TO A SOUND NATIONAL RETIREMENT POLICY

Integration of Social Security with private pension plans is a key element of any national retirement income policy. The object of both private plans and Social Security is one: to achieve an adequate retirement income. Social Security, through its limited covered wage base and benefits, is "weighted" in favor of lower income employees. Integration by private pension programs is used to attempt to provide for all employees a reasonable level of retirement income, without any employee receiving total disposable retirement income in excess of disposable pre-retirement income. Thus, the recent CRS study of "Major Issues Facing the Private Pension System" concluded that: "There appears to be nothing inherently wrong in excluding low and moderate income individuals from a private pension plan if the income replacement rate from social security is high enough."[25]

We believe that the members of this committee would agree that there is normally no reason to give lower paid employees an incentive to retire early by placing lower paid employees an incentive to retire early by placing them in a better position financially than they would have enjoyed had they continued working. Such a result would be inconsistent with the purpose of the social security system and private retirement programs. We are not arguing that social security alone is sufficient for most retirees, rather that the benefits to be provided by private retirement programs must be adequately integrated with retirement income provided by social security.

We reiterate that the current system of integration probably should not be continued in its current form indefinitely. However, additional fragmentary legislation in the guise of tax reform should not be adopted prior to the completion of the extensive in-depth studies of the Presidential and National Commissions.

C. THE ADMINISTRATION'S PROPOSAL IS FRAGMENTARY AND DISRUPTIVE AND COULD LEAD TO ADDITIONAL TERMINATIONS

In this connection, we note that the Treasury itself appears to indicate that it ultimately favors a different form of integration than the one it has recommended.[26] In any event, it may well be that the studies which have been and will be commissioned will recommend a better method of integration as part of our national retirement policy. If that is the case and the present proposals were adopted, retirement plan benefit formulae would be amended to comply with the present recommendations and then, within a few years, would be amended again to comply with further changes.

In this regard we note that ERISA requires that defined benefit plans be adequately funded[27] to provide benefits which may be payable 30 or more years in the future. Funding is complex and cannot undergo frequent changes without

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[25] CRS study, supra note 5, at CRS-19. The public is being informed of the need for and the purpose of integration, as witnessed in the following questions and answers from a recent article in the Washington Post:

Q: What has the social security law to do with private pensions?

A: Most pensions are deliberately designed to piggyback on social security.

. . . Low-paid workers may receive only social security, or social security plus a small private pension. As you move up the income scale, social security checks are supplemented with higher and higher private pensions.

Q: Isn't that unfair to low-paid employees?

A: Not if you look at total retirement income. Companies set pension levels in relation to a worker's earnings. The objective is to provide a total retirement benefit—from combined social security and private pension—that will keep the workers' standards of living from falling sharply.

In 1978, the social security check of a low-paid worker amounts to 50 to 60 perecnt of his final year's pay. . . . That check is untaxed, and he's allowed a certain amount of earnings on top of it. So he may enter retirement without a big [decline in his] standard of living, even without a private pension.

By contrast, the social security check of a middle-income worker is only 20 to 30 percent of his final year's pay. Without a supplement from a private pension, his standard of living would plunge. An upper-income worker gets only 10 to 15 percent of pay from Social Security, so he depends heavily on his pension to maintain a modicum of his way of life. Jane Bryant Quinn, Social Security and Private Pensions, Washington Post, Feb. 27, 1978, at D-7.

[26] The Treasury suggests that, principally because of the resulting complexity, it rejected an alternative proposal that plans be considered properly integrated if they provide a minimum benefit to lower paid employees. Detailed description at 152. There are other potential difficulties with this alternative. For example, the cost of the alternative and the role of savings and similar plans which may also provide significant retirement security would have to be considered.

[27] ERISA sections 302–05; Code section 412 (added by ERISA).

major disruptions. Termination have increased since the enactment of ERISA,[28] the enormous costs associated with repeated changes in private retirement plan requirements every three or four years could well be more than many employers are willing to sustain; the combination of revising plans and summary plan descriptions, resubmitting plans to the Service, and the concomitant administrative costs [29] could well lead to additional terminations.

D. THE PROPOSAL IS NOT ESSENTIAL TO THE PRESIDENT'S TAX PROGRAM

We note that Secretary Blumenthal, in his testimony before this committee, urged that the President's program be considered as an integral whole and that the revenue cutting provisions not be passed without also adopting the revenue raising and so-called "reform" provisions.[30] Without addressing the merit of this position, we note that the integration proposal, although one of the President's 'reforms', has no stated revenue impact.[31] Indeed, the Treasury indicates that, depending on the action that plan sponsors take, there may be a decrease in revenues. Accordingly, this provision is not necessary to maintain the President's balance of revenue raising and revenue cutting proposals and can easily be omitted without even the suggestion of damage to the President's program as a whole.

E. THE PROPOSAL WOULD NOT ELIMINATE COMPLEXITY

Two of the Treasury's major goals in proposing the revised integration rules are to reduce the complexity currently associated with existing integration tests and to make them more readily understandable by plan participants.[32] The integration proposal would not achieve these goals.

After several years of controversy and uncertainty, the integration rules were substantially revised in 1971.[33] In order to avoid the expense associated with a complete revision of benefits accrued for past service, the President appropriately proposes transitional rules similar to those adopted in 1971. They allow existing integration formulae to be used with respect to benefits which have accrued prior to the effective date of the new provisions.[34]

Consider the complexity and the difficulty in explaining to employees the benefit formula and integration method used prior to 1978, the revised benefit formula an integration method adopted to comply with the proposals, and the transitional rules for phasing in the new formula and integration method.[35]

Moreover, it should be noted that the current basis of the integration tests is relatively straightforward and simple.[36] The complexity arises not from the statement of the integration rule, but from the detail necessary to apply any such rule to varying types of plan formulae.[37] For example, many plans are partially funded through employee contributions. The Treasury has indicated that in all contributory offset plans, adjustments would be required before ap-

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[28] See supra note 5.

[29] See section G infra. at 25–27.

[30] Statement of W. Michael Blumenthal, Secretary of the Treasury, on the President's Tax Program, before the House Committee on Ways and Means, Treasury News at 1 (Jan 30, 1978).

[31] Detailed Descriptions at 160.

[32] Id. at 152.

[33] From 1957 until the issuance of T.D. 6982 (Nov. 12, 1968), 37.5 percent of the primary social security benefit (PIA) could be taken into account in determining whether a plan was properly integrated. T.D. 6982 revised Treasury regulation section 1.401–3(e) to reduce the allowable integration level to 30 perecnt of PIA. The Service announced additional modifications in the integration tests in Rev. Ruls. 69–4, 1969–1 C.B. 118, and 69–5, 1969–1 C.B. 125. These changes caused such controversy and uncertainty that the Service returned to the 37.5 percent figure in T.D. 7134 (July 21, 1971) which adopted current Treasury regulation section 1.401–3(e). Shortly thereafter, the Service issued Rev. Rul. 71–446, 1971–2 C.B. 187, which retained some of the modifications made in the 1969 rulings, and it remains the basic document embodying the current integration tests.

[34] Detailed descriptions at 162–63.

[35] If subsequently different rules are adopted in response to the recommendations of the Presidential or National Commission, further complexity and confusion would be engendered in the form of an additional benefit formula and integration rule and further transitional rules.

[36] CRS Study at CRS–16.

[37] Simply stated, a plan is properly integrated if the differences in the rate of benefits (for a defined benefit plan) or contributions (for a defined contribution plan) between employees below the social security wage base (or the plan's integration level) does not exceed the employer's contribution to the employee's social security benefit. Under Treasury regulation section 1.401–3(e), the employer's contribution is computed as 37½ percent of the PIA of any employee. Rev. Rul. 71–446, 1971–2 C.B. 187, converts this 37½ percent factor into various rates to be applied to different types of benefit formulas and provides adjustments in those rates for certain common plan features.

plying its proposed test[38] and, similarly, for many, if not all, contributory step rate plans, adjustments would be required.[39] The details of such adjustments however, have not been announced. Similarly, adjustments are required under the Treasury's proposals for offset plans when the benefit is based on other than final pay.[40]

The Treasury would also permit employers to aggregate benefits provided by more than one plan to satisfy the test; [41] in the case of dissimilar plans, however, benefits would be converted to some common formula to apply the tests.[42] These types of adjustments result in added complexity.

The Treasury's tables [43] are misleading to some extent in that they each deal with a single benefit formula.[44] Many plans provide for minimum benefits for each year of service, alternative benefit formulae under the same plan, or "caps" or maximums on either the benefit to be provided under the plan or the amount of Social Security which is taken into account. The present details of the Treasury's proposal deal with none of these features, nor has any proposal been made by the Treasury for dealing with so-called "reverse integration" formulae, which frequently benefit lower paid employees. We have been informally advised that the Service would establish special rules and regulations covering such matters.

The detailed rules needed to cover all of these situations, of necessity, will be complex. Furthermore, the process of adopting regulations implementing these rules will be lengthy, and many plans could not be tested under the proposals until regulations are adopted.

F. THE PROPOSAL WOULD AFFECT MANY PLANS

The Treasury asserts that: "The integration rules proposed here will substantially affect only plans which tend to be highly discriminatory in favor of higher-paid persons. . . . On the other hand, plans designed to provide for the retirement of employees at all levels . . . will generally continue to meet the integration tests. For these plans, any required changes will generally be relatively minor." [45] Surveys of ERIC members have shown that these statements cannot be sustained.

ERIC members maintain very few so-called "pure excess" plans which provide no benefits to lower paid employees.[46] The plans maintained by ERIC members generally provide benefits in addition to Social Security for all retirees.[47] In the absence of all of the relevant details and regulations, it is impossible to measure the impact of the proposals. Nonetheless, based on recent surveys, it is our best judgment that changes in benefit formulae, generally significant in nature, to comply with the proposal would have to be made by 40 to 50 percent of ERIC members and that the proposals would have a major impact on a large number of major retirement plans.

In addition, application of the proposal could be uneven or capricious: one plan formula (for example, 1.5 percent per year of service offset by 50 percent of social security, ratably reduced for service less than 30 years) may fail the tests while a substantially similar plan (for example, 1.5 percent per year of service less 1.5 percent of Social Security per year of service) would satisfy the proposal. Both formulae satisfy present requirements, and their benefits are essentially identical. Nonetheless, one plan would bear the costs of amendment

[38] Detailed descriptions at 162.
[39] Id. at 160–61.
[40] Id. at 162.
[41] Detailed descriptions at 161.
[42] For example, complex calculations would be required to combine benefits from a contributory profit-sharing or money purchase pension plan with a defined benefit offset plan.
[43] Detailed descriptions at 154–59.
[44] We also disagree with the Treasury's assertion, at page 153, that the tables contain "common" formulae. The formulae generally do not reflect formulae currently used by ERIC members participating in recent surveys. See text infra. at 27–28.
[45] Detailed descriptions at 153.
[46] The most recent Bankers Trust Co. study of 202 plans sponsored by 190 of the largest corporations, many of whom are ERIC members, found that only 2 percent of the plans were "pure excess" plans. 1975 Study of Corporate Pension Plans. Bankers Trust Co.. New York, 27–28 (the "Bankers Trust Study"). The study's detailed analysis of each employer's plans shows that in each case the pure excess plan was not the only plan applicable to the covered employees. Thus, these employers provide benefits to lower paid employees, and these excess plans could be continued if the combined benefits of the excess and other plans satisfy the proposed new tests. See Detailed Descriptions at 161.
[47] See table B–1, attached, which indicates that the plans of 23 ERIC members provide substantial benefits to 540 individuals in the sample who retired in 1977, including those at lower income levels.

while the other would fortuitously satisfy the new tests. Two similarly designed plans should not be so dissimilarly treated.

G. THE PROPOSAL IS EXPENSIVE

Any change in benefit formulae would be expensive. In the absence of many important details,[48] it is impossible to estimate how expensive. However, increasing benefits for all participants (or decreasing the amount of Social Security taken into account) would be costly.[49] In some cases, collective bargaining contracts would be renegotiated.[50] Once revised benefit formulae are adopted, plans must be resubmitted to the Service for amended determination letters. The Service has not yet processed all determination requests necessitated by ERISA. Significant time and expense of both employers and the Service would be required in the additional determination process.

Other attendant indirect costs would also be significant. The summary plan descriptions required by ERISA would have to be revised, printed, and provided to all participants.[51] The actuarial basis for funding the plan would have to be revised. Computer programs for determining benefits on retirement would have to be substantially revised. One program could not simply be substituted for another, since, under the transitional rules, benefits accrued prior to the effective date of the change could, and in most cases would, continue to be computed on the basis of the old formulae. Significant time could be consumed in explaining the resulting complex benefits formulae to retiring participants.[52]

H. THE PROPOSAL WOULD BE MOST DETRIMENTAL TO EMPLOYEES EARNING $20,000 TO $50,000 AND BEARING SIGNIFICANT INCREASES IN SOCIAL SECURITY TAXES

The Treasury asserts: "Some employers would change their plans by providing higher benefits for rank-and-file employees; others might shift their costs by providing somewhat lesser benefits for higher-paid persons to meet the need for more benefits for the lower-paid." [53]

The Treasury tables which accompany the proposal [54] assume in each case that benefits at the lower end of the scale would be increased; thus, benefits for all employees would be increased.

Generally, these examples and assumptions do not reflect benefit formulae currently used by major employers. The plans sponsored by the employers represented by ERIC are generally designed to provide career employees, those with 30 to 35 years service, with retirement income of 40 to 70 percent of preretirement income.[55] Thus, a typical step rate plan might provide 1 percent of final average pay per year of service under the integration level and 2 percent of final average pay above the integration level; and a typical offset plan might provide 1 to 2 percent of final average pay [56] per year of service reduced by 50 to 83⅓ percent of social security benefits. These formulae discriminate, if at all,

[48] The Treasury has not proposed the method for taking into account participants' contributions or all the rules for dealing with so-called "caps", multiple benefit formulae, combinations of plans, railroad retirement benefits, early retirement supplements, and similar common features. Detailed proposals dealing with these and similar issues must be available before the cost or effect of the proposals on retirement programs can be determined.

[49] For example, two companies have estimated their annual funding requirements would increase 50 and 75 percent, respectively, if the benefit formulae were increased to the offset rates currently used by their plans. Thus, we anticipate many sponsors would decrease benefits to the detriment principally of participants earning $20,000 to $50,000. See text infra. at 27–35.

[50] Even in the case of plans which are not subject to collective bargaining, the benefit formula may be derived from or designed to be consistent with benefits provided under a collectively bargained plan.

[51] See supra note 6.

[52] The problem would be exacerbated if additional change is required in the next few years as a result of legislation emanating from recommendations of the Presidential or National Commission.

[53] Detailed descriptions at 160.

[54] Id. at 154–59.

[55] See, e.g., Bankers Trust Study, tables 24–26 at 28–29. Note that maximum social security benefits have increased 45 percent since this study in 1975; thus, the combined retirement figures for 1978 retirees will be greater. See Bankers Trust Study at 28, for discussion of effect of pre-1975 increases in social security on sample.

[56] There was a marked shift from career average pay to final average pay formulae from 1970 to 1975. That trend has probably continued. Most remaining career average pay plans are step-rate plans. Bankers Trust Study at 27–8.

in favor of lower paid employees.[57] In addition, many plans have alternative benefit formulae which provide minimum benefits for each year of service, which also generally favor the lower paid employees. We also not that the Treasury's discussion generally contrasts employees earning $10,000 and $100,000 and, thus, completely ignores the vast majority of employees who fall somewhere in between and who may suffer most from the proposals.

Attached as table C is a chart currently used by one ERIC member to explain to its employees benefits from their noncontributory defined benefit offset plan. Comprehensive data has been difficult to obtain in the time available, but we believe table C is generally consistent with the range benefits typically provided by major employers.[58] As can be readily seen, an employee with $9,000 to $10,000 of final average pay receives in excess of 75 percent of his final average pay as a combination of the plan and primary Social Security benefit. This approximately equals after tax income while employed. If the employee is married, the spouse's social security benefit increases his post-retirement income to greater than 100 percent of his preretirement final average pay. Indeed, the after tax income of a married retiree is greater than his after tax income while employed up to a final average pay of approximately $14,000. Given that job related expenses are eliminated at retirement, that often one to two-thirds of retirement income is tax-exempt,[59] and that additional personal exemptions[60] and the retirement income credit[61] are normally available, married retirees with final average pay of $15,000 to $16,000[62] may, under existing law, actually be better off financially after retirement than while employed.

We note that table C also shows that for employees whose income is between $20,000 and $33,000,[63] the combined retirement income levels out at approximately 60 to 65 percent of final average pay for married retirees and 53 to 55 percent of final average pay for unmarried retirees.[64] From our surveys, this is within the replacement range which most major employers attempt to achieve.

Following the Treasury's example in its tables, attempts to bring this plan into compliance with the administration's proposals might be made either by increasing the percentage of final pay to equal the offset, which would result in nearly every employee having a higher retirement income than his after tax income while working, or reducing the Social Security offset percentage to the benefit percentage, which would result in approximately a 10 percent increase in the plan benefit. Thus, a married retiree with $15,000 final average pay would have a retirement income virtually equal to $15,000, and all those under $15,000 would have greater retirement pay than pay during employment. Similarly, a single employee earning $15,000 would have virtually the same after tax income after retirement as when employed. On the other side of the scale, a retiree whose final average pay was $33,000 would receive about 62 percent of his final

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[57] As demonstrated in tables B–2 and B–3, attached, lower paid employees receive a higher percentage of pre-retirement income from plan benefits and social security than do highly paid. See also Detailed descriptions, Treasury tables at 154–69; Bankers Trust Study, table 26 at 29.

[58] The plan benefits reflected in table C are very close to the median benefits found in the Bankers Trust Study. Median benefits provided by the 202 plans in the Bankers Trust Study were 29 percent of final average pay at $9,000, 32 percent at $15,000, 35 percent at $25,000, and 38 percent at $50,000. Over one-half of the plans fell within 5 percentage points of these figures. Bankers Trust Study at 29.

[59] Social security old-age benefits are tax-exempt (Rev. Rul. 70–217, 1970–1 C.B. 12, superceding I.T. 3447, 1941–1 C.B. 191) and indexed for inflation (42 U.S.C. section 415(i)(A)(ii) (Supp. 1974)).

[60] Code section 151(c) permits additional $750 exemptions for taxpayers and spouses over 65. The President has proposed replacing the exemption with a $240 tax credit, which is more advantageous to lower income taxpayers, and those over 65 would apparently be given additional credits in lieu of the present additional exemptions. Detailed descriptions at 27.

[61] Code section 37 allows taxpayers over 65 a tax credit equal to 15 percent of certain "section 37 income". The credit is reduced if section 37 income exceeds $7,500 for single taxpayers and $10,000 for married taxpayers filing jointly, again favoring lower income retirees.

[62] The median income for families was $13,719 in 1975; the mean income was $15,546. U.S. Census Bureau Current Population Reports, Consumer Income, series P–60, No. 105, table A, at 2 (June, 1977). Assuming that income increased annually at the same 6 percent rate as between 1974 and 1975, the median income in 1978 would be $16,340, and the mean would be $18,516.

[63] In 1975, 24 percent of families had income between $20,000 and $50,000. Ibid. Assuming the same 6 percent increase, between 30 and 35 percent of families would fall within that range in 1978. (No comparable data is available for families with income between $20,000 and $30,000.)

[64] If one were to extend the table to an employee whose final average pay is $100,000, his benefits from Social Security and the plan would be apprixmately 48 percent of final average pay, if unmarried, and if married, approximately 51 percent.

pay if unmarried, and 70 percent if married, very close to his preretirement after tax income. Plan sponsors may well find such benefits socially undesirable, as well as prohibitively expensive.

Instead of these steps, plan sponsors may elect to maintain their objectives of replacing a certain percentage of retirement income by lowering benefits for all levels of pay. Table D details a benefit formula that an employer has adopted to achieve about a 55 percent replacement of final preretirement pay for all single employees. The benefit formula is 2.0 percent of final average pay per year of service offset by 83⅓ percent of the current primary insurance amount (the maximum offset). The table also details the effects of three of the various ways in which the plan might be amended to comply with the proposal. We believe that they fairly represent the range of options available.

As shown by the first alternative in the table, reducing the offset to the 2.0 percent per year of service maximum permitted by the proposal increases the benefits provided by the plan nearly 80 percent for employees earning $10,000, about 45 percent for the $15,000 employee, and lesser amounts for all others. Most employers would find the significant cost increase occasioned by such a change prohibitive.

The second alternative in table D suggests that the employer might elect to maintain his replacement objective for employees earning $15,000 to $20,000 (the projected average 1978 family income) by reducing the benefit to 1.4 percent of final pay per year of service offset by 1.4 percent of the primary insurance amount per year of service. The table shows, however, that even this formula provides the $10,000 employee with nearly a 60 percent increase in plan benefits, while significantly reducing retirement income for that third of the work force earning more than $20,000.[65] In most situations, this change would result in a net increase in plan costs.

Thus, particularly in view of the recently enacted increases in Social Security taxes,[66] the sponsor may well elect the third alternative shown in table D, 1.1 percent of final average pay offset by 1.1 percent of social security. Benefits for those earning $10,000 or less would be essentially unchanged from the current plan. However, median income employees ($15,000 to $20,000) would lose about one-quarter of their plan benefits and those earning $20,000 to $50,000 would lose well over one-third of their plan benefits ($3,250 annually for those earning $25,000; nearly double that for those earning $40,000.[67] Such an amendment clearly would not further the goal of retirement security for these employees.

Similarly, all but one of the Treasury tables describing the effects on step rate plans assume that the employer will increase benefits below the integration level to meet the test. In view of the increases in social security taxes and the costs of increasing benefits, many employers may be strongly inclined to reduce retirement plan expenses as much as possible. One means of doing so and satisfying the proposed requirement would be to reduce benefits above the integration level. Such an amendment, of course, would not increase benefits for rank and file. Indeed, in many step rate plans the integration level was adopted several years ago when the social security wage base was significantly less, and the integration level has remained as low as $5,000; in such plans, the plan benefits of most rank and file employees would be reduced as well as those of the higher paid. It should also be recognized that, as long as the benefit formula must be amended in any event to meet the test, employers might increase existing integration levels, again reducing benefits of all employees above the old integration level, including rank and file.

In summary, the impact of the proposal may well fall mainly on the one-quarter to one-third of the work force earning $20,000 to $50,000. These are the same employees who bear the major portion of the recently enacted increases in social security taxes.

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[65] For example, retirement income for employees earning $25,000 and $40,000 would be reduced $1,750 and $3,600 per year, respectively.

[66] Increases in social security taxes and the costs of compliance with ERISA may influence sponsors to reduce overall pension costs by integrating previously unintegrated plans. CRS study at CRS–19. See also Detailed descriptions at 160. The same factors will influence sponsors to reduce the benefit level in previously integrated plans.

[67] ERISA would preclude employers from supplementing the retirement income of these employees through plans not qualified under the Internal Revenue Code. Funded plans are permitted by ERISA section 202 only if they cover substantially all employees, and ERISA sections 201 and 301 permit unfunded pay-as-you-go plans only for a select group of management or highly compensated employees.

III. Welfare Plan Discrimination

The President also proposes to apply new antidiscrimination rules to plans providing certain types of welfare benefits. This proposal would impose severe administrative burdens on plans, including those which are generally conceded not to be discriminatory; enforcement would demand social judgments by the Service and would be unduly burdensome; similar issues will be considered by the National and Presidential Commissions; and we note that the estimated revenue to be raised is very small.[68] Accordingly, the proposal is not essential to the President's tax program and should be rejected.

A. THE PROPOSAL IS UNTIMELY, FRAGMENTARY AND DISRUPTIVE AND NEEDS CAREFUL STUDY

The proposal needs careful study and thoughtful gestation before it can be seriously considered. The minimal improvements in "tax equity" potentially to be gained should be weighed carefully against the significant burdens imposed to achieve them. As more fully explained below, the administrative and compliance burdens associated with the proposal would be staggering. The proposed standards would call upon the Service to make social judgments beyond its expertise and the appropriate concerns of the government. Furthermore, the proposal would not achieve the administration's objectives of extending welfare plan coverage in all cases to all employees.

The proposal, in large part, is aimed at abuses in health services delivery, which is one of the topics to be considered by the National Commission.[69] Federal and private programs to be reviewed by the Presidential Commission include many welfare programs which would be affected by this proposal. Many private disability programs are integrated with social security, raising issues similar to those addressed above which should be considered in depth by both commissions.[70] Accordingly, this committee should defer the proposal until it is satisfied that a significant, broadly based problem exists;[71] until issues such as those discussed below can be fully and carefully considered; and until a workable proposal, coordinated with other programs, can be fashioned.

B. THE PROPOSAL WOULD ENGENDER SERIOUS ADMINISTRATIVE AND COMPLIANCE PROBLEMS

The Treasury would require that certain welfare plans not discriminate, either in design or in operation, in favor of employees who are officers, shareholders, or highly compensated.[72] However, the Service would not issue advance ruling whether a plan, as designed, complied with the test. Because of the consequences of failing to qualify, few employers have been willing to adopt retirement plans without an advance determination from the Service regarding discrimination. Employers could have a similar reluctance to continue existing or to adopt new welfare plans if no advance ruling could be obtained. Even the Treasury, however, apparently realizes that the required rulings procedure would be unduly expensive in light of the goals sought to be achieved.[73]

The requirement that welfare plans not discriminate in operation is even more troublesome. Most welfare plans are, at least in part, contributory. The Treasury

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[68] It is estimated to range from $32 to $36 million during calendar years 1979 to 1983. Detailed descriptions at 167.

[69] Section 361 of Public Law 95-216, 91 Stat. 1557, quoted supra at 13.

[70] Any changes at this time would be fragmentary and could result in requiring plan sponsors to make repeated changes in plan design every few years. See discussion supra at 17-18.

[71] We note that Treasury regulation section 1.79-1(b)(1)(iii)(d) contains rules prohibiting discrimination in group term life insurance programs where there are fewer than 10 participants, i.e. cases similar to those cited by Treasury. Similarly, benefits paid to higher compensated individuals from disability plans may already be taxable under Code section 105(d), whether or not the plans discriminate. Thus, the proposal may be unnecessary, ineffective, and duplicatory in these areas.

[72] The proposal would apply to plans described in Code sections 79, 105, and 106. Detailed descriptions at 167. The intended scope of the proposal, however, is unclear. For example, periodic physical examinations for key executives are provided to protect an employer's investment in highly valued personnel and normally do not constitute additional compensation or a fringe benefit. Similarly, periodic physical examinations may be dictated by Government regulations or working conditions for certain classes of employees who may be highly compensated, such as commercial pilots.

[73] A nondiscrimination provision would have applied to welfare plans under the House of Representatives version of the bill which became the Internal Revenue Code of 1954 (H.R. 8300, 83d Cong., second sess.). Concerns similar to these were the primary reasons the provision was rejected by the Senate and omitted by the Conference committee. See S. Rep. No. 1622, 83d Cong., second sess. 16, 53-54 (1954).

recognizes that, for many reasons, fewer rank and file employees than prohibited group employees generally elect all coverages under contributory plans.[74] Therefore, discrimination would not exist if "rank and file employees can reasonably afford" the contributions even if "a significant number of rank and file employees choose to make smaller contributions"[75] than the prohibited group.[76]

The provision would create an administrative nightmare. Who will determine what an employee can "reasonably afford", and how will it be determined? Would it be determined by compensation or by age, sex, family size and composition, geographical location, and similar factor?[77] The detail of the new regulations, rulings, reports and other forms could be staggering. The audit procedures of the Service should be concentrated on revenue collection, not social judgments, and we strongly protest the prospect of the Service's incursion into questions of life-style, family finances, and similar matters necessary to such a determination.

Furthermore, different groups legitimately perceive different health and welfare needs. A mine worker, for example, has different health concerns and requirements than an assembly line worker, and both differ from an office worker, particularly an executive. Top executives do, after all, tend to be older than assembly line workers, who are frequently young, single, and mobile. Similarly, an executive may value mental health coverage for his family, but a rank and file worker may consider it a worthless "extra", even if fully provided by the employer. Regional differences and market forces may also influence the choice of welfare plans for locations throughout the country. A scientific research facility in Georgia may provide different "fringes" to attract and retain qualified workers than a mill in Massachusetts, even though both are operated by the same employer. These are the types of factors which affect what an employer may provide employees.

In the case of any plan which is found to be discriminatory, the Treasury would impute income only to the prohibited group.[78] Even though discrimination by retirement plans in favor of the prohibited group has been banned since 1942,[79] the prohibited group remains undefined; indeed, the Service states that the definition is "relative" and not susceptible to a broadly applicable definition.[80] Thus, it would be impossible for any employer to determine conclusively which of its employees would have income if the plan were found to be discriminatory. How could he complete W-2s? Would he be required to await audit even if the plan were designed to be discriminatory?

Furthermore, the proposal gives no guidance how "employer contributions to the plan allocable to the prohibited group"[81] is to be determined or allocated among members of the prohibited group. How would costs be determined? Many employers partially self-insure welfare plans. Would their administrative costs be included, as well as insurance premiums paid? In the case of an unfunded, self-insured program, what would be the annual cost? Would the cost be allocable to covered employees on the same basis as if the plan were insured and annual premiums were paid? If so, who would determine what the annual premium would have been, and how will that determination be made?[82] Once the employer

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[74] Detailed descriptions at 169.

[75] Ibid.

[76] We assume that a welfare plan in which "reasonable" contributions are required for participation also would not be considered to be discriminatory merely because large numbers of rank and file employees elect not to be covered thereunder.

[77] A health plan in New York may cost considerably more than the same plan costs in Oregon. Would the employer be discriminating because more highly paid employees are covered by the New York plan? Or the cost to employees is different?

[78] Detailed descriptions at 166.

[79] See supra note 13.

[80] Rev. Rul. 69–398, 1969–2 C.B. 58 states:

> Revenue ruling 56–497, C.B. 1956–2, 284, indicates that with regard to qualified plans the terms "highly compensated" and "lower compensated" are relative and the distinction between them must be based upon the facts and circumstaces in each case. Thus, in a particular case, the compensation of all employees, those excluded from the plan as well as those included, is taken into account in determining what is meant by "highly compensated" under section 401(a)(3)(B) of the Code.

See also Rev. Rul. 70–200, 1970–1 C.B. 101; Rev. Rul. 74–256, 1974–1 C.B. 94; cf. Treasury regulation section 1.401–1(b)(3). As one court put it:

> The Commissioner found himself confronted with problems in administering the statute similar to those that Congress had encountered in drafting it. While there are attractions in the idea that a plan can be rejected under §§ 401(a) (3) and (4) only if it discriminates in favor of employees who would generally be regarded as "highly paid," it poses difficulties of administration which the tax court did nothing to resolve. Words like "high" and "highly" clamor for a referent. A 500-foot hill would look high in Central Park but not among the Grand Tetons or even at Lake Placid. Comm'r. v. Pepsi-Cola Niagara Bottling Corp., 399 F. 2d 390, 393 (2d Cir. 1968).

[81] Detailed descriptions at 166.

[82] If the treatment of the prohibited group in insured and uninsured plans were to significantly differ, employers may be influenced not to insure welfare plans, reducing the security of employees relying on such plans.

contribution is determined, how much of it would be allocable to rank and file employees who would not be affected by imputed income?

The allocation among members of the prohibited group might be made on the basis of the value of the plan to each member, but how would that value be determined? On the basis of cost or benefits paid? What if the allocations to members of the group exceed the employer contribution allocated to the group? Would the value of the same insurance coverage be identical for all members of the prohibited group? Even if one earns $50,000 and another $250,000? Even if family circumstances, age, health and other factors differ? Would all members of the prohibited group have imputed income on payment of benefits to only one member of the group by an unfunded plan?

C. THE PROPOSAL WOULD NOT NECESSARILY INCREASE WELFARE PLAN COVERAGE

Even if the prohibited group questions are adequately resolved, the proposal would not achieve the President's goal of extending welfare plan coverage to all employees.[83] For example, an employer may entirely exclude lower paid workers from welfare plan coverage, if no highly compensated employees were covered under the plan or if covered, highly compensated employees were willing to accept imputed income.[84]

Consider that an employer could limit coverage, under a particular welfare plan program to only those employees within a particular division, or to only white collar employees, or only to similar groups. Thus, the owner of a factory could provide generous welfare plan coverage to his clerical staff and salesmen, but none to the assembly line workers, if the owner were not covered or were willing to accept imputed income. In same cases, such a plan might even meet the discrimination tests presently applicable to retirement plans, and the owner-employee would have no imputed income.

D. THE PROPOSAL IS UNNECESSARILY BROAD AND WOULD BE EXPENSIVE

The abuses cited by the Treasury[85] to ustify this proposal all involve plans of small employers, generally with a single controlling shareholder.[86] Special rules are provided in many sections of the Internal Revenue Code for plans covering owner-employees.[87] Indeed, even if the discrimination rules for retirement plans are applied to welfare plans as proposed, the Treasury recommends special rules for plans of owner-employees.[88] ERIC submits that these special rules, standing alone, would be sufficient to correct the abuses cited.

The Treasury's proposed imposition of ERISA-type participation rules would require employers to provide health and other welfare benefits to part-time and seasonal[89] employees. Such a rule would be unworkable,[90] would frequently provide such persons with duplicate welfare plan coverage,[91] would be prohibitively expensive,[92] and must be rejected.

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[83] Detailed descriptions at 167–69.

[84] As noted supra at note 71, under Code section 105(d) higher compensated employees must generally recognize income upon receipt of disability plan payments. Accordingly, the proposal provides limited incentive to make such plans nondiscriminatory.

[85] Detailed descriptions at 165–66.

[86] Also, all of the examples involve health plans. As noted supra at note 71, discriminatory small group term life insurance programs do not qualify under Code section 79.

[87] See, e.g., Code sections 72(m)(5)(A) (annuities), 105(g) (disability programs), 401(d) (retirement plans), 404(e) (limts on contributions to retirement plans), 408(d) (retirement plans), 404(e) (limits on contributions to retirement plans), 408(d) (limitations on rollovers to individual retirement accounts), and 1379(d) (limits on contributions to subchapter S retirement plans).

[88] Detailed descriptions at 169–70.

[89] We note that 3½ years after ERISA's enactment, the Labor Department has not been able to define "seasonal employees" for purposes of ERISA section 202(a)(3)(B) (and Code section 410(a)(3)(B)) and has recently requested additional suggestions for an appropriate definition. 43 Fed. Reg. 7670 (Feb. 24, 1978).

[90] For example, under a pension plan, coverage can be determined at the end of each plan year, based on the employee's hours during that year. Welfare plans provide coverage for events occurring in the course of the plan year when it cannot be determined if the employee will satisfy the coverage tests. Similarly, when is a part-time employee "employed"? That is, must the employer's plan provide him health and accident benefits when he may be called for further work, but is not regularly scheduled–

[91] Many part-time employees are "moonlighters" covered by another employer's plan or retirees covered by a former employer's plan. In many cases, employer provided health and hospitalization benefits are limited to costs over a certain amount, offset by any other insurance benefits. Thus, the employee would have no benefit from the duplicate coverage.

[92] Pension plan contributions are generally based on the employee's compensation. Under the Treasury's proposal, employer contributions to medical plans could not reflect compensation. Detailed description at 169. One ERIC member has estimated that the cost of extending his conventional major medical/hospitalization plan to a part-time employee earning the minimum wage and regularly working 20 hours per week would exceed one-quarter of the employee's compensation.

IV. Death Benefit Exclusion

The President also proposes to repeal the $5,000 death benefit exclusion. His stated objection is that it benefits highly paid executives and, principally in the case of small enterprises with a single controlling employee, may be subject to abuse.[93]

The death benefit exclusion benefits all employees, including lower paid employees. It should be retained, and, given the inflation which has occurred since its initial adoption in 1951, it can be argued that it should be increased.

The revenue estimated to be raised by the proposal is very small.[94] The proposal is not an essential part of the President's tax program. Accordingly, it should be rejected.

A. THE DEATH BENEFIT EXCLUSION IS AVAILABLE TO ALL EMPLOYEES, IS AN ALTERNATIVE TO LIFE INSURANCE, AND IS PARTICULARLY IMPORTANT TO BENEFICIARIES OF RANK AND FILE EMPLOYEES

All taxpayers have an equal right to the death benefit exclusion, regardless of compensation. It was originally enacted[95] to exempt payments made by employers out of their general assets rather than through the vehicle of life insurance.[96] The reasons for the exclusion are as great today as they were in 1951.

Contrary to the Treasury's suggestion, the death benefit exclusion is important to low income taxpayers. Indeed, in a relative sense, it may be more important to them than to high income taxpayers. A lower paid employee is much less likely to have provided, through life insurance or otherwise, financial security for his family in the event of his unexpected death. Similarly, the $5,000 death benefit is often looked upon by employers as a means to assist a low income employee's family during the transition period from the employee's death until life insurance proceeds are paid, the spouse finds employment, or other benefits commence. The survivors of the higher bracket taxpayer are more likely to have other resources on which to rely.

The proposal would tax the recipient of the death beenfit, that is, the decedent's widow or orphan, not the decedent. The proposal seems to assume that the widow or orphan receiving the death benefit will be in the same income tax bracket as the decedent. In many cases, the beneficiary of a relatively high income employee may be a low income taxpayer. For example, a $57,500 per year employee may have a modest estate. His beneficiary may be without an independent source of income and, thus, may be in a very low income tax bracket.

The death benefit exclusion applies both to direct payments and to lump-sum distributions from qualified retirement plans. Although we are not certain, apparently under the proposal amounts received as lump-sum distributions from qualified retirement plans would no longer be excluded. Particularly with the stronger participation and vesting rules imposed by ERISA,[97] the beneficiaries of rank and file employees frequently receive far more than $5,000 as a lump-sum distribution from a qualified retirement plan upon the employe's death. At a minimum, the exclusion should be retained for such payments.

B. THE PROPOSAL IS OVERLY BOARD

Again, in the technical explanation, the Treasury focuses on abuses which may occur in the case of small, closely held enterprises.[98] If the abuses cited by the Treasury are deemed real and in need of immediate correction, any curative provisions should be carefully tailored to deal with such abuses.[99] The occurrence

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[93] Detailed descriptions at 174–76.

[94] It is estimated to range from $32 to $34 million during calendar years 1979 to 1983. Detailed descriptions at 175.

[95] The exclusion was enacted as section 302 of the Revenue Act of 1951, Public Law 183, Ch. 521. It is now Code section 101(b).

[96] Senate Rept. No. 781, 82d Cong., first sess. 50 (1951). We note also that Code section 105 was enacted simultaneously to equalize the treatment of benefits provided from insured and self-insured sickness and accident plans. See H.R. Rept. No. 1337, 83d Cong., second sess. 15 (1954). In many areas, larger employers self-insure. As in the current case, accumulations for such purposes are not deductible until the loss occurs.

[97] ERISA section 205 and Code section 401(a)(11) (added by ERISA) also "guarantee" that a surviving spouse, in certain instances, is paid at least a portion of the deceased spouse's accrued benefit.

[98] Detailed description at 175–76.

[99] We suggest that, if necessary, tests of permanence such as those suggested for welfare plans in the Detailed descriptions at 167–68 might be applied to death benefit programs.

of abuses in a few relatively isolated cases is not sufficient reason to repeal a generally applicable and socially desirable provision. Accordingly, the exclusion for payments which are provided equally to all employees should remain.

V. Conclusion

In conclusion, ERIC strongly urges this Committee to reject these employee benefit proposals. They are untimely and fraught with technical and administrative difficulties.

We appreciate the opportunity to present our views to the committee and would welcome your questions.

The following is excerpted from Ray Schmitt, Major Issues Facing The Private Pension System, Education and Public Welfare Division, Congressional Research Service—The Library of Congress (January 27, 1978) at CRS-10:

TAX-QUALIFIED CORPORATE PLANS

Year	New plans	Terminated plans	Ratio of new plans to terminated
1965	13,532	1,036	13.1
1966	18,183	1,210	15.0
1967	20,521	1,307	15.7
1968	23,782	1,443	16.5
1969	28,075	1,729	16.2
1970	32,574	2,306	14.1
1971	40,664	3,335	12.2
1972	49,335	3,520	14.0
1973	59,605	4,130	14.4
1974	59,385	4,604	12.9
1975	30,039	8,106	3.7
1976	25,820	15,859	1.6

* * * Based upon historical trends and economic data, the Congressional Research Service estimated that over 9,000 plans could have reasonably been expected to terminate in the 2 years following September 1974. ERISA may therefore only be responsible for the incremental increase over the anticipated number of plan terminations. However, this in itself is significant since the actual number of postenactment terminations (23,967) was over twice the extrapolated amount (9,123). (Footnote regarding projection methodology omitted.)

TABLE B-1.—PRIVATE PENSION AS A PERCENTAGE OF FINAL YEAR'S PAY[1]

Years of service	Final pay class: Up to $10,000	$10,000 to $20,000	$20,000 to $30,000	$30,000 to $40,000	$40,000 and over	All
Up to 5	3.5	3.2				3.4
5 to 10	7.7	7.0	5.9			7.3
10 to 20	12.7	15.7	16.4	[2] 12.9	[2] 15.5	15.0
20 to 30	23.1	24.8	27.8	25.1	[2] 32.7	25.4
30 and over	37.2	35.4	38.1	44.1	43.5	37.8
All service	16.2	27.4	32.9	39.5	38.7	28.6

[1] Based on a sample of 540 plan participates who retired in 1977 from 23 different companies.
[2] Less than 5 retired employees.

TABLE B-2.—PRIVATE PENSION PLUS PRIMARY SOCIAL SECURITY AS A PERCENTAGE OF FINAL YEAR'S PAY[1]

Years of service	Final pay class: Up to $10,000	$10,000 to $20,000	$20,000 to $30,000	$30,000 to $40,000	$40,000 and over	All
Up to 5	[2] 55.1	[2] 40.8				50.3
5 to 10	48.3	40.7	[2] 25.7			44.3
10 to 20	54.8	49.1	37.7	[2] 25.3	[2] 23.8	47.3
20 to 30	68.0	57.7	48.8	37.9	[2] 41.0	55.3
30 and over	80.9	67.0	58.8	58.1	51.0	63.4
All service	59.1	59.8	53.7	53.2	46.4	57.4

[1] Based on a sample of 540 plan participants who retired in 1977 from 23 different companies.
[2] Less than 5 retired employees.

TABLE B-3.—PRIVATE PENSION PLUS PRIMARY AND SPOUSE'S SOCIAL SECURITY AS A PERCENTAGE OF FINAL YEAR'S PAY[1]

Years of service	Final pay class: Up to $10,000	$10,000 to $20,000	$20,000 to $30,000	$30,000 to $40,000	$40,000 and over	All
Up to 5	[2] 77.7	[2] 59.6				70.5
5 to 10	70.7	55.0	[2] 35.6			62.4
10 to 20	79.8	65.9	48.5	[2] 31.5	[2] 28.0	62.6
20 to 30	[2] 98.5	72.7	59.6	44.3	[2] 45.1	68.1
30 and over	[2] 105.1	81.9	69.2	65.2	54.3	74.5
All service	81.2	75.4	64.3	59.8	49.7	70.5

[1] Based on a sample of 435 married plan participants who retired in 1977 from 23 different companies.
[2] Less than 5 retired employees.

TABLE C

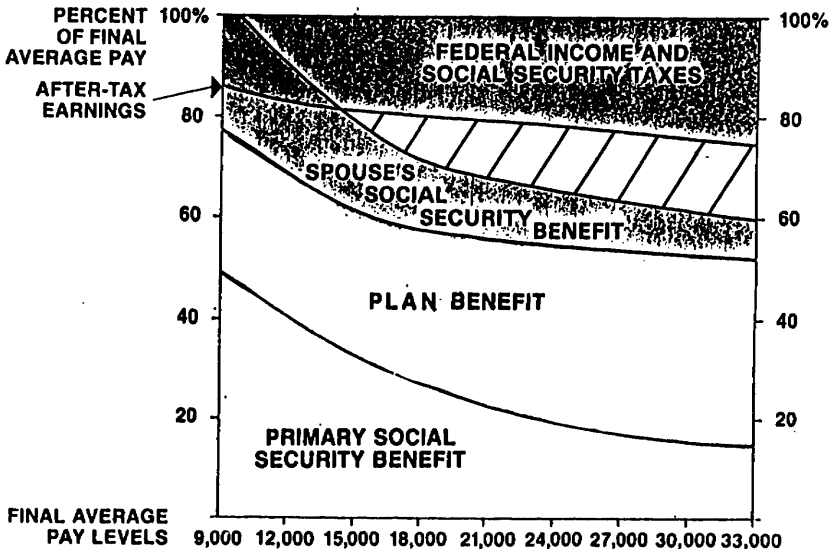

TABLE D.—SOME ALTERNATIVES TO COMPLY WITH ADMINISTRATION PROPOSAL EMPLOYER OBJECTIVE: ACHIEVE APPROXIMATELY 55 PERCENT EARNNIGS REPLACEMENT FOR SINGLE RETIREES

Integrated defined benefit offset plan	Replacement of earnings at retirement (percent of final pay) [1] for employees retiring in 1978				
	$10,000	$15,000	$25,000	$40,000	$100,000
Present plan: 2 percent FAE [2] per year of service (30 yr) less 83⅓ percent of primary insurance amount (PIA) (current maximum offset):					
Plan benefit	14	21	34	40	47
Plan benefit plus social security:					
Single employee	59	57	56	54	53
Married employee	82	75	67	61	56
Alternative No. 1: Offset reduced to 1 : 1 ratio, 2 percent FEA less 2 percent PIA per year of service (30 yr):					
Plan benefit	25	30	39	44	49
Plan benefit plus social security:					
Single employee	70	66	61	58	55
Married employee	93	84	72	65	58
Alternative No. 2: Benefit and offset rate reduced, 1 : 1 ratio, 1.4 percent FEA less 1.4 percent PIA per year of service (30 yr):					
Plan benefit	22	21	27	31	34
Plan benefit plus social security:					
Single employee	67	57	49	45	40
Married employee	90	75	60	52	43
Alternative No. 3: Benefit and offset reduced, 1 : 1 ratio, 1.1 percent FEA less 1.1 percent PIA per year of service (30 yr):					
Plan benefit	14	17	21	24	27
Plan benefit plus social security:					
Single employee	59	53	43	38	33
Married employee	82	71	54	45	36

[1] Assumes employees retire at age 65 in 1978 with 30 yr of service with employer (30 rather than 35 yr of service is used since many employers provide supplements for service over 30 yr).

[2] Final average pay (FAE) assumed to be average over last 5 yr; earnings are assumed to increase at 6 percent per year

AMERICAN BANKERS ASSOCIATION,
Washington, D.C., July 14, 1978.

Re: S. 3193—ERISA Paperwork Reduction Act and S. 3140—Simplified Pension Plan Act

Hon. LLOYD BENTSEN,
Chairman, Subcommittee on Private Pension Plans and Employee Fringe Benefits, U.S. Senate, Washington, D.C.

DEAR SENATOR BENTSEN: The American Bankers Association is a trade association composed of 13,254 banks, about 92 percent of the banks in the nation. Approximately 4,000 of these banks possess fiduciary powers, and many serve as trustees of employee benefit plans. The most recent FDIC report indicates that insured commercial banks serve as trustee of more than $180 billion of pension assets.

In our capacity as ERISA fiduciaries, and also as sponsors of employee benefit plans for our own employees, we commend you on your bill S. 3193, the ERISA Paperwork Reduction Act. If enacted, your bill will provide a significant opportunity to simplify and bring order and meaning to the reporting provisions of ERISA.

As trustee, it is our duty to supply plan sponsors who are our customers with the detail necessary for them to complete form 5500, the basic annual report called for by section 103 of ERISA. The requirements of that form and its regulations and instructions are regarded by our industry and, we believe, by most plan sponsors as costly, cumbersome, and often irrelevant. The problems have been further compounded by the fact that the form, regulations, and instructions continue to change yearly (and often after year-end) so that our efforts to adopt appropriate computer programs to capture the necessary detail for plan sponsors have been frustrated.

We believe that a major part of the difficulty is the unusual specificity of ERISA Section 103, especially subsections (b) and (c). Section 110 gives the Secretary a great deal of latitude on devising alternatives to the enumerated reporting requirements. While there has been some action to reduce the report-

ing burden, such as in response to certain recommendations of the Federal Paperwork Commission, it has not gone nearly far enough.

Your bill, S. 3193, would repeal ERISA section 103 and require the Secretaries of Treasury and Labor to develop a new reporting system: a 5-year report with staggered filing by plans and a much simplified interim annual report, with the contents to be developed administratively. We would be delighted to work with the Secretaries in the development of such a new reporting framework relevant to the protection of the interests of participants and beneficiaries.

We call your attention to the need also to modify ERISA section 104. Section 104 concerns disclosure to participants and is directly tied to the reporting requirements of existing section 103. Modification of section 103 without changing section 104 would only further complicate and confuse matters.

The Price Waterhouse and Co. recommendations, which you had published in the Congressional Record of June 12 at page S8990 contain, in the penultimate paragraph, a recommendation that we do not support. The Price Waterhouse recommendations would require that a "statement of accrued benefits be provided each year" to participants. ERISA does not currently require this, and the provision would greatly increase the administrative costs under the retirement plans of our members. Employees who are interested are currently free to ask for information about their accrued benefits and the employer is required by ERISA to respond to such requests. (Interestingly, footnote 3 to the Price Waterhouse study notes that projected benefits, rather than accrued benefits, are more useful to participants under a defined benefit plan; many plan sponsors provide information about projected benefits to their employees on a regular basis). We were glad to see that you did not incorporate this recommendation in S. 3193.

Regarding S. 3140, the Simplified Pension Plan Act, we are pleased to see the continuing attention given to the problem of how to structure a pension plan that smaller employers can provide to their employees. The basic need is to create a means by which small businesses can offer retirement income plans to employees without becoming inundated with complicated and time-consuming paperwork. We are quite interested in the approach taken by S. 3140 which builds on existing pension provisions. If enacted, the "simplified pension plan" could be quickly utilized by small businesses. The bill would allow smaller businessmen to make contributions up to the annual $7,500 Keogh limitations, but instead of establishing a separate trust fund, the contributions would be made directly into separate individual retirement accounts for each employee. This proposal relies on the employer-sponsored IRA concept while retaining existing standards for vesting, participation and non-discrimination that apply to Keogh plans. We support efforts such as found in S. 3140 to lessen the administrative burdens on small businesses thereby making it more attractive for them to offer pension plan coverage to a greater number of American workers.

Sincerely,

ROBERT L. BEVAN,
Associate Federal Legislative Counsel.