STATEMENT OF PROFESSOR KATHRYN J. KENNEDY

Testimony Before the Senate Finance Committee
Hearing on Enron: The Joint Committee on Taxation's Investigative Report
February 13, 2003

I. Introduction

Chairman Grassley, Ranking Member Baucus, and distinguished members of the Finance Committee, thank you for this opportunity to appear before you today to discuss executive compensation issues. I am Kathryn J. Kennedy, an associate professor of law at The John Marshall Law School in Chicago and director of the school's graduate programs in taxation and employee benefits law. Our school's graduate program in employee benefits law is the *only* one of its kind in the nation. I teach and oversee its curriculum in 18 different employee benefits courses -- ranging from executive compensation to health law to qualified retirement plans to employee stock ownership plans. As well as being an attorney, I am also an actuary. My research and scholarship also address employee benefits and related tax issues. I had the privilege of testifying before this Committee last April on executive compensation issues in the context of corporate governance.

The present text was submitted as requested on Tuesday, February 11, 2003, prior to the release of the Joint Committee of Taxation's investigative report on Enron. Thus, it does not address all the particular abuses uncovered under Enron's executive compensation plans. However, I am familiar with the terms of the Enron executive deferred compensation plans, and with the abuses that have been alleged in the area of executive deferred compensation plans and related security arrangements (such as rabbi trusts) by Enron and other employers.

II. Purpose of My Testimony

The purpose of my testimony is twofold - to explain the uses of nonqualified deferred compensation plans for executives with related security arrangements and to offer proposed legislation to eliminate the abuses that have been alleged in this area. Attached to my testimony are proposed legislative changes to Sections 61 and 83 of the Internal Revenue Code and proposed regulatory changes to ERISA. A fuller discussion of this proposed legislation and an analysis of the similar legislative proposals considered by the 107th Congress will appear in the March 2003 *Tax Management Compensation Planning Journal.*

In my testimony in April 2002, I reviewed the tax rules applicable to executive deferred compensation plans and reiterated that such plans do not provide a tax subsidy for executives. These rules have been summarized in a law review article I wrote last year, entitled "*A Primer on the Taxation of Executive Deferred Compensation Plans*," available at 35 THE JOHN MARSHALL LAW REVIEW 487 (2002).

Qualified pension and profit sharing plans confer a substantial tax subsidy to both the covered employee and the employer plan sponsor, as the employee incurs no current income for vested benefits while the employer enjoys a tax deduction for contributions made under such plans. In contrast, *nonqualified* pension and profit sharing plans covering executives enjoy no such tax subsidy. Instead, the employer retains the compensation of the executive and pays taxes on such amount, including any subsequent earnings. During this period of deferral, the deferred compensation must remain exposed to risk, thereby subjecting the employee to some type of possible loss or forfeiture until the payment is actually made. To do otherwise would subject the employee to immediate taxation although actual receipt of the benefit has been delayed.

Why then have these arrangements? Employers rely on nonqualified executive deferred compensation plans (a phrase coined by practitioners but not defined by the Code) to provide additional benefits to executives for deferral or retirement purposes. Nonqualified deferred compensation plans serve the legitimate need of permitting an executive to supplement his/her retirement income through either elective or nonelective deferrals of income. The limitations imposed on *qualified* pension and profit sharing plans certainly put pressure on employers and executives to supplement these retirement benefits through either current deferrals or future benefits. These nonqualified arrangements provide flexibility by permitting the executive to alter the timing of receipt of such compensation, while permitting employers to retain the use of the employees' compensation during the period of deferral. Employers legitimately use such plans as a retention device by either requiring future performance or providing for forfeiture upon the occurrence of certain events (*e.g.,* subsequent employment with a competitor). There is nothing inherently wrong with permitting nonqualified deferred compensation plans. In fact, deferring receipt of compensation puts the executive at risk that the monies will not be there at the time promised, something that an employer may wish to encourage. However, the tax code should not be misused in a way to remove that risk and still avoid reporting current income.

What tax rules are applicable to these plans to avoid current taxation to the executive? Nonqualified deferred compensation plans are designed to postpone the payment of benefits, and the accompanying taxation (to the executive) of such benefits, until some date or future event (*e.g.*, termination of employment, retirement, death). To avoid current income tax to the executive, the Code's constructive receipt *and* economic benefit rules must be satisfied.

Simply stated, the purpose of Code Section 61's constructive receipt rule is to impose *current* taxation on a taxpayer if he/she has an unfettered control in determining when income is taxable. Both parties may elect to defer compensation to a future period of time provided the election to defer is made in a "timely fashion." According to the Service, such election must be made *before* the period of service that involves the rendering of services. The Service permits an exception to this rule, thereby permitting subsequent elections to be made after the services have been rendered, if the deferral is subject to a "substantial risk of forfeiture." Examples of such risk include a significant limitation or duty on the expected payment (*e.g.,* payment only upon retirement, continued employment with the employer) or forfeiture of the payment upon a specific event (*e.g.,* subsequent employment with a competitor).

In 1978, Congress imposed a moratorium on the issuance of new guidance under the constructive receipt rules by Secretary of the Treasury. Therefore, the constructive receipt rules that are currently applicable are those determined in accordance with principles set forth in regulations, rulings and case law that were in effect as of February 1, 1978. As a result, the Service has been unable to address many of the abuses that have developed and are currently alleged.

While the constructive receipt rules assume that the taxpayer is in receipt of income but focuses on the *timing* of such income, the economic benefit doctrine of Code Section 83 focuses on whether the taxpayer has any ownership or other "economic benefit" in property that should result in current taxation. Thus, its focus is directed to *property* that the taxpayer may have received in connection with the executive deferred compensation plan. The Service has long maintained that an employer's unsecured and unfunded promise to pay deferred compensation is not property for purposes of Section 83.

Executives have sought various ways of "securing" the employer's promise to pay, especially in the context of an employer's later "change of heart" (employer's refusal to pay benefits in bad faith or without cause) or a change of control of the employer. The Service has affirmed the use of trusts against the risks of "change of heart" and "change of control" without triggering adverse income tax consequences for the executives. As long as the trust assets are available to the employer's creditors in the event of bankruptcy or insolvency, the employer's promise is neither funded nor secured for Section 83 purposes. Such devices have been coined "rabbi trusts," as the first Service private letter ruling affirming their use was in the context of a trust established for a rabbi by his congregation. For tax purposes, the rabbi trust is treated as an employer grantor trust; thus the income, losses, and deductions flow back to the employer. And, although there is no similar moratorium on the Service's ability to issue new guidance under the economic benefit rules, the Service has announced through its revenue procedures that it will not issue any rulings on rabbi trusts that are *outside* its model version, except in rare and unusual circumstances. This regulatory gap has caused ambiguity and made conditions ripe for abuse. Executives have been seeking to extend the use of rabbi trusts to secure against other types of events (*e.g.,* employer's declining financial health) and to shelter the trust assets in the event of employer bankruptcy or insolvency.

What abuses are we seeing in regards to nonqualified deferred compensation plans and their related security arrangements (such as rabbi trusts)?

List of Normal Distribution Dates: Many nonqualified deferred compensation plans are designed like qualified pension plans, allowing for the normal distribution of benefits upon certain events (*e.g.*, retirement, termination of employment, death or disability). Although the employee could theoretically terminate employment or retire in order to trigger distribution of benefits, the Service has viewed these limitations as *substantial* and therefore does not impose the doctrine of constructive receipt since the employee does not have unlimited rights to receive such income.

In its cornerstone ruling on constructive receipt (Rev. Rul. 60-31, 1960-1 C.B. 174, as modified by Rev. Rul. 64-279, 1964-2 C.B. 121), the Service permitted the following list of events upon which distribution could be made under a nonqualified deferred compensation plan: attainment of a certain age; becoming incapacitated; completion of a certain period of service; termination of employment; and reduction in hours worked from full-time to part-time. In a series of private letter rulings, the Service has expanded the list to include change of employer control; decrease of employer's net worth below $10 million; or employer's liquidation. *I recommend* Congress explicitly document the list of events that may be used under nonqualified deferred compensation plans to include separation from service; death or disability; retirement; attainment of a specified age; completion of a specified period of years; or a specified date. Permitting the list of events to include employer bankruptcy, insolvency or declining financial health may well be outside the control of the executive and thus not a concern from a constructive receipt standpoint. However, such a plan provision in conjunction with the use of a rabbi trust certainly provides the type of security to the employee that should result in taxation under Section 83.

Subsequent elections: These nonqualified deferred compensation plans generally contain provisions allowing participants to change their original election regarding *when* their plan distribution will begin and *what form* they will take (*e.g.*, installment payments or lump sum distribution). We are seeing plans that permit a change in timing and form of payment at any time. The Service's position is that the subsequent elections altering timing or form of payment may not be made. However, case law permits subsequent elections under the constructive receipt rules even after the performance of services as long as the participant does not have an unfettered right to receive the compensation at the time of the election.

To provide some compromise between the Service's rigid rulings and the flexibility needed by participants in the wake of changing events over a long period of deferral, *I recommend* allowing subsequent elections regarding the timing of payment, but requiring such elections be made at least 12 months in advance (or 24 months in advance in the case of a participant who is an officer, director or 10% owner). Instead of relying on the definition of the top 5 individuals who are "insiders" according to securities law, a more useful definition from the qualified plan context would subject all officers, directors and 10% owners to the more onerous standard. Subsequent changes to modify the form of payment (*e.g.*, from installment payments to lump sum) should also be permitted provided they are made at least 12 months in advance of payment.

Hardship and haircut provisions: Provisions under nonqualified deferred compensation plans typically permit participants to make *in-service* distributions from the plan either on account of "unforeseeable emergencies" or subject to a withdrawal penalty (*i.e.*, a haircut). As a hardship or unforeseeable emergency event is typically outside the control of the individual, adding this event to the list of permissible distribution dates should not cause any concern under the constructive receipt doctrine. In fact, the Service has affirmed the use of a withdrawal provision in the event of hardship or unforeseeable emergency. Some plans, however, have been extremely lenient in their definition of hardship and thus effectively permit unlimited withdrawal rights. If the definition of "unforeseeable emergency" is narrowly construed, such event is outside the control of the participant and thus should be a sufficient risk to avoid constructive receipt. Congress should explicitly define what constitutes a hardship or unforeseeable emergency.

Nonqualified deferred compensation plans are being drafted to permit unlimited in-service distributions, provided a financial penalty is incurred by the executive. The question is whether such a penalty is a substantial forfeiture, sufficient to avoid constructive receipt. Plans have set haircut penalties at 5% or even lower. While the Service has approved haircut provisions within the qualified plan context (when the constructive receipt rule was applicable), it has refused to rule on whether such provisions are appropriate under nonqualified plans. It certainly can be argued that the use of a financial penalty (*i.e.*, haircut) *if set at a sufficient level* (say 10%) does constitute a substantial risk of forfeiture, especially if the benefit was funded through elective participant deferrals. However, as Enron so clearly illustrates, a 10% penalty is meaningless if the participant is privy to the financial woes of its employer and is faced with a loss of 100% of his/her benefits. At that point, the interests of the executive and of the corporation are maximally mis-aligned. Thus, *I recommend* Congress affirm the use of haircut provisions with a minimum penalty of 10%, but limit the use of such provisions to participants who are *not* officers, directors or 10% owners.

So the officer, director or 10% owner wishing to remain in that capacity would be aligned with the corporate interest in no longer being able, with or without a haircut, to pull out funds potentially needed by the employer. Of course, the individual could retire under normal plan provisions and withdraw 100% of his/her nonqualified benefits with no haircut. Such withdrawal at retirement is, after all, the whole point of the plan. In the event of the employer's subsequent bankruptcy, the bankruptcy rules provide a look back provision to recoup payments to insiders within one year of bankruptcy.

Uses of security arrangements for nonqualified deferred compensation plans: The Service has affirmed under the economic benefit doctrine that a trust may be used (*e.g.*, rabbi trust) to protect executives from current or future management's change of control or change of heart. As a result, nonqualified deferred compensation plans often contain provisions, known as triggering mechanisms, that cause the automatic payout of benefits upon the occurrence of certain events or financial performance indicators.

I believe that legislation is necessary under Section 83 of the Code to restrict the use of all triggering mechanisms that would cause the plan to terminate or distribute all benefits except in the event of a change of control or a change of heart. These two triggers (change of control or change of heart) are appropriate because these deferrals are generally made with salaries and bonuses that the participants have earned and therefore should not be subject to the whims of a board of directors or new management. However, other triggering mechanisms that have been used by trusts (*e.g.*, the employer's declining financial health or its impending bankruptcy or insolvency) clearly afford the executives preferential treatment to such assets to the detriment of the employer's creditors. Thus protection under the economic benefit doctrine should not be extended. *I recommend* that Congress should specifically limit the triggering events to change of control or change of heart.

In addition, any assets used to secure participants' rights under nonqualified deferred compensation plans (*e.g.*, rabbi trust) should remain the sole property of the plan sponsor and be available at all times (until distribution) to the claims of the creditors. Plans have been moving these assets outside the jurisdiction of the U.S. courts (coined offshore rabbi trusts), to countries with strict asset protection laws, affording greater security for executives and lesser security for the employer's creditors. This defeats the intent of Section 83 to devote any underlying assets to meaningful protection of creditors. *I therefore further recommend* that Congress should impose the doctrine of economic benefit when rabbi trust assets are moved offshore.

Senate's initiatives during the 107th and 108th Congress

This Committee achieved substantial progress in reporting out S. 1971, the National Employee Savings and Trust Equity Guarantee (NESTEG) Act, last July during the 107th Congress. It sought to repeal the moratorium on the Secretary of the Treasury's authority to issue constructive receipt rulings for amounts under "private deferred compensation plans" that "improperly defer income." The criteria for what constitutes "improperly deferred income" were not set forth in the legislative proposal, but instead examples were provided for the Service through the Senate's report. These examples were not specific, but instead authorized the Service to engage in a "smell test." Such directive certainly does not provide practitioners with any meaningful guidance until the Service issues regulations. And even when the Service does issue regulations, the case law has not affirmed the Service's prior construction of constructive receipt. Given the terse statutory language and ambiguous legislative intent, it is unlikely that the regulations would be enforced by the courts. Thus, Congress must provide greater guidance and specificity to prevent the tax code being misused to confer benefits on the executives that should be taxable.

The committee report on S. 1971 also directed the Secretary of the Treasury to issue regulations addressing premature withdrawals on account of hardship and use of haircut provisions for premature withdrawals. As the Service presently permits premature withdrawals for hardship, it is not clear whether the reference in the report to "hardship" withdrawals is to eliminate their use or to require more guidance as to what constitutes hardship. Also the report does not specify whether haircut provisions should be totally eliminated from nonqualified deferred compensation plans regardless of the severity of the financial penalty imposed. The report for S. 1971 directed the Service to address through regulations the use of triggers and use of trusts where the rights of creditors to gain access to the funds is limited. But again there was no specificity as to what triggers would be valid and what triggers would be invalid.

On the first day of the 108th Congress, Senator Daschle and members of the Democratic Caucus introduced S. 9, the Pension Protection and Expansion Act of 2003. That proposal is also designed to curb abuses in the nonqualified deferred compensation and rabbi trust area. Those provisions are very similar to the legislative proposal of H.R. 3762, which was introduced in the 107th Congress by the Chair of the House Ways & Means Committee (referred to as the Thomas Bill), which attacked deferred compensation plans from a "funding" perspective. It would add a *new* Code provision (Section 409A), subjecting insiders to immediate tax for deferrals made pursuant to a "funded deferred compensation plan." It would also tax executives protected under offshore rabbi trusts.

While this new initiative provides more specificity, it has added to the complexity of the Code by adding a new Code Section, instead of simply amending Sections 61 and 83. It blurs the rules of constructive receipt and economic benefits by melding them together to defined a new term of art -- the "funded deferred compensation plan." As it applies only to the top five insiders of the employer, its impact would be limited. But more importantly, it is silent on the rules applicable to nonqualified deferred compensation plans maintained for non-insiders. Certainly that next step should be taken.

I urge Congress to take the lead and specify the constructive receipt and economic benefit rules that are applicable to nonqualified deferred compensation plans. Encouragement without more specificity should not be left to the Secretary of the Treasury and the courts. *I have recommended* the attached proposed legislation under Sections 61 and 83 of the Internal Revenue Code that will curb current abuses and provide necessary guidance for the establishment and maintenance of these plans. The proposal defines the applicable constructive receipt rules under Section 61 for nonqualified deferred compensation plans and then permits the use of certain security arrangements (*e.g.*, rabbi trusts) provided the funding rules under Section 83(c) are satisfied. This bifurcation makes it clear what provisions are valid under nonqualified deferred compensation plans and what types of security arrangements may be used, and for what purposes, to protect deferrals under such plans. And while regulations by the Secretary of the Treasury may be needed, sufficient specificity must be given to make guidance meaningful.

As these plans are covered under ERISA, are there applicable reporting and disclosure requirements to keep the government and shareholders or other stakeholders aware of them? ERISA presently provides for reporting and disclosure requirements for most employee benefit plans, not just those qualified under the Internal Revenue Code. However, the Department of Labor, through its regulations, has exempted top hat deferred compensation plans from most of these requirements. As a result, plan documents for such plans are not required to be filed with the Department of Labor, nor made available to employee and shareholders. Annual reporting requirements to the participants are also not required. Enron's scandal has highlighted the inadequacy of these rules as the terms of this firm's top hat plans were unavailable to employees and shareholders, and the amount of benefit payments made to various executives in advance of bankruptcy did not have to be reported. S. 1971 was silent regarding changes to be made ERISA's reporting and disclosure rules for these executive deferred compensation plans.

I believe ERISA has sufficient well-known and well-established reporting and disclosure rules applicable to employee benefits plans that should be applied equally to top hat arrangements. *I recommend* that financial information (that generally is reported on the annual Form 5500) also be required for top hat plans including: basic plan information; number of participants/beneficiaries; current account balances; list of current distributions by name and amounts; list of assets set aside in a rabbi trust or other security arrangement. Such information should also be reviewed by the plan sponsor's independent auditors and received a signed attestation of its accuracy. The attached proposal would direct the Secretary of Labor pursuant to his/her power under Section 110 of ERISA, to provide new regulations for nonqualified deferred compensation plans similar to those required under the general reporting and disclosure requirements for qualified pension or profit sharing plans.

Conclusion

Congress should use its current momentum in the wake of corporate scandals to shed some meaningful light on the questionable practices used by some nonqualified deferred compensation plans and related security arrangements. But saddling the Internal Revenue Service with the task of defining the rules without any meaningful legislative guidance neither corrects the problem in the near future, nor assists the Service in future litigation. *I recommend* that the Senate Finance Committee specifically amend Sections 61 and 83 of the Internal Revenue Code, providing immediate and concrete guidance applicable to nonqualified deferred compensation plans and any related security arrangements. In addition, the Secretary of Labor should be directed to remove the regulatory exemption from ERISA's reporting and disclosure rules for these plans and to apply time-tested similar rules that govern qualified plans. I look forward to working with you and your staff to implement these needed changes. Thank you for your consideration.

Respectfully Submitted,
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Attachment

Proposal to Change Section 61:

Within the context of Section 61, it is proposed that Congress add a new subsection (subsection (b)) to Section 61 which specifically exempts from current taxation deferrals under nonqualified executive compensation plans that satisfy the requirements of that subsection. The subsection is not intended to alter the current constructive receipt rules applicable to individual employment arrangements that are not regarded as nonqualified plans for purposes of section 61.

Section 61 of the Internal Revenue Code of 1986 (relating to gross income) is amended by adding the following new subsection:

" (b) Inclusion of Deferred Income under an Unfunded Nonqualified Deferred Compensation Plan -- In the case of a participant in an eligible nonqualified deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to such amounts, shall be includible in gross income under this section in the taxable year in which such compensation or other income is distributed to the participant or beneficiary.

(1) Eligible Nonqualified Deferred Compensation Plan Defined. - For purposes of this section, the term "eligible nonqualified deferred compensation plan" means a plan established and maintained by a plan sponsor providing for the deferral of compensation for services, other than under a plan qualified under section 401(a), a section 403(a) annuity plan, a tax-deferred annuity under section 403(b), a simplified employee pension under section 408(k), and eligible deferred compensation plans under section 457, -

(A) in which only employees or independent contractors (individuals or entities) who perform service for the plan sponsor may be participants,

(B) for plans permitting participants to elect to have deferrals of any compensation for services be made under such plan, such election must be made before the beginning of the participant's tax year in which the services are performed, except that an election may be made within 30 days of being eligible to participate in the plan or within 30 days of the plan's effective date,

(C) which meets the distribution requirements of subparagraph (2), and

(D) for plans permitting participants or beneficiaries to elect among alternate forms of distribution payments, such election must be made at least 12 months in advance of the first distribution payment.

(2) Distributable Requirements. –

(A) In General. -- For purposes of subparagraph (1)(C), a plan meets the distribution requirements of this subsection if -

(i) under the plan, amounts deferred, and any income attributable to, will not be made available to participants or beneficiaries earlier than -

(I) severance from employment, death, disability, retirement, or attainment of a specified age according to the terms of the plan,

(II) a specified date or completion of a fixed number of years as elected by the participant or beneficiary according to the terms of the plan, which may be subsequently altered by the participant or beneficiary according to the terms of the plan at least 12 months in advance of such date,

(III) upon an unforeseeable emergency (determined in a manner consistent with the Secretary's regulations under section 457), or

(IV) at any time as requested by the participant according to the terms of the plan, provided such distribution is subject to a financial penalty of at least 10%, and

(ii) for purposes of applying subparagraph (i) to any participant or beneficiary who is a director, officer or 10% principal owner of the plan sponsor, "24 months" shall be substituted for "12 months" in subparagraph (i)(II), and the withdrawal provisions of subparagraphs (i)(III) and (i)(IV) shall not be made available. For purposes of this subparagraph, the term "10 percent owner" means any person who would be described as a "5 percent owner" in section 416(i)(1)(B)(i) if "10 percent" were substituted for "5 percent" each place it appears therein.

(B) Notwithstanding subparagraph (A), amounts contributed by the plan sponsor on behalf of the participant under the plan which are not subject to a participant's distribution election nor the result of matching deferrals by the plan sponsor, including any income attributable to such amounts, may be paid in accordance with the terms of the plan at an earlier date than those described in subparagraph (i) above provided such amounts remain subject to a substantial risk of forfeiture (as that term is defined by section 83(c)) during the period of deferral until the actual time of receipt.

The amendment made by this section shall apply to amounts deferred after the date of the enactment of this Act in taxable years ending after such date.

Proposal to Change Section 83:

Section 83(c) of the Internal Revenue Code of 1986 (relating to special rules for property transferred in connection with performance of services) is amended by adding the following new paragraph:

(4) Use of Security Arrangements. -

(A) In General. In determining whether there is a transfer of property for purposes of subsection (a), if assets -

(i) are designated or otherwise available to protect a participant or beneficiary in the event of a change of control or change of intent by the plan sponsor with respect to benefits under a nonqualified deferred compensation plan (as defined by section 61(b)), such assets shall not be treated as property provided -

(I) the rights of the participant or beneficiary to such amounts shall be those of a general unsecured creditor of the plan sponsor,

(II) such assets remain solely the property of the plan sponsor and are available to satisfy the claims of its creditors at all times until distribution under the terms of the plan, and

(III) except as authorized the Secretary by regulation, the indicia of ownership of such assets must be held inside the jurisdiction of the courts of the United States.

(B) For purposes of subparagraph (A) –

(i) the term "change of control" means the purchase or other acquisition of more than 30% of the total outstanding stock or total voting stock of a stockholder-owned plan sponsor or more than 30% of the capital or profit interest in a non-stockholder-owned plan sponsor (as described by the Secretary by regulation), and

(ii) the term "change of intent" means either

(I) the plan sponsor's refusal to pay benefits under the terms of the nonqualified deferred compensation plan other than for reasons of bankruptcy or insolvency, or

(II) the plan sponsor's attempt to amend or terminate the existing terms of the nonqualified deferred compensation plan in a manner which adversely affects the payment of benefits already accrued under such plan.

The amendment made by this section shall apply to assets so designated or otherwise available after the date of the enactment of this Act in taxable years ending after such date.

Proposal to Change the Reporting and Disclosure Requirements of ERISA:

The Secretary of Labor is directed**,** pursuant to his/her authority under section 110 of the Act (88 Stat. 851), to provide new regulations applicable to unfunded or insured pension or profit sharing plans maintained by an employer for a select group of management or highly compensated employees requiring the disclosure of information similar to that required under the general reporting and disclosure requirements for pension or profit sharing plans.

Plan terms are to be disclosed to the Department of Labor upon plan adoption. The following financial information is also to be required for top hat plans on an annual basis, (similar to that generally reported on an annual Form 5500):

- basic plan information
- number of participants/beneficiaries
- current account balances/accrued benefit amounts
- current distributions: names and amount of yearly distributions
- assets set aside in a rabbi trust or other security arrangement.

Attestation of Plan Disclosure:

The Secretary of Labor is directed to require that the above information be reviewed by the plan sponsor's independent auditors and receive a signed attestation as to its accuracy.