

DOCUMENT RESUME

Released 7/20/77

03054 - [A1993073] ~~(Restricted)~~

Efforts to Implement the Employee Retirement Income Security Act of 1974 by the Department of Labor. HRD-77-99; B-164292. July 6, 1977. 17 pp. + 2 appendices (2 pp.).

Report to Sen. Harrison A. Williams, Chairman, Senate Committee on Human Resources; Sen. Jacob K. Javits, Ranking Minority Member; by Elmer B. Staats, Comptroller General.

Issue Area: Income Security Programs: Programs to Protect Workers' Income (1306).

Contact: Human Resources Div.

Budget Function: Income Security: General Retirement and Disability Insurance (601).

Organization Concerned: Department of Labor.

Congressional Relevance: Senate Committee on Human Resources. Sen. Jacob K. Javits.

Authority: Employee Retirement Income Security Act of 1974.

Members of congressional committees, Department of Labor officials, and employee benefit plan administrators are concerned about problems Labor has experienced in administering the Employee Retirement Income Security Act of 1974, the first comprehensive Federal law regulating employee benefits. Specific concern has been expressed about delays in issuing regulations and acting on requests for exemptions from prohibited transactions. Findings/Conclusions: After over 2 years of program operations, the issue of how Labor should be organized to carry out its responsibilities has not been resolved. Labor has not determined the extent to which program inefficiencies exist and are caused by the organization structure which divides the responsibility for administering the act between two separate Labor organizations. Labor also has not determined the long-range enforcement needs of the program. Recommendations: Before making a decision on reorganization, the Secretary of Labor should assess the efficiency of the present Labor organizational structure for administering the Employee Retirement Income Security Act and the anticipated size of future program operations. The Secretary should also closely monitor the progress in issuing regulations and processing applications for exemptions from prohibited transactions so that these tasks can be accomplished without further delay. (SC)

RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.

03054 3023
RELEASED
7/20/77



REPORT TO THE SENATE COMMITTEE ON HUMAN RESOURCES

**BY THE COMPTROLLER GENERAL
OF THE UNITED STATES**

Efforts To Implement The Employee Retirement Income Security Act Of 1974 By The Department Of Labor

The Department of Labor assigns its responsibility for administering the Employee Retirement Income Security Act to two separate internal organizations. The Department is considering a reorganization based on allegations by previous program administrators that this structure is inefficient. However, before making a decision, the Secretary of Labor should assess the efficiency of the present organizational structure and the anticipated size of future program operations.

Although over 2 years have lapsed since passage of the act, the Department has much to do before implementation is complete. Prompt actions by the Department could have helped to reduce implementation problems. The Secretary of Labor should closely monitor the progress in issuing regulations and processing exemption applications to insure that these tasks are accomplished without further delay.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-164292

To the Chairman and
Ranking Minority Member
Committee on Human Resources
United States Senate

In response to your August 24, 1976, letter and subsequent instructions from the Committee, this report discusses the Department of Labor's organizational structure and problems in hiring professional staff for administering the Employee Retirement Income Security Act of 1974. It also discusses the status of regulations and applications for exemptions from transactions prohibited by the act.

As directed by your office, we did not obtain written agency comments. However, the contents of the report were discussed with Department of Labor officials, and their comments are incorporated where appropriate.

This report contains recommendations to the Secretary of Labor on page 17. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We will be in touch with your office in the near future to arrange for release of the report so that the requirement of section 236 can be set in motion.

A handwritten signature in cursive script, reading "Thomas B. Stites".

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE SENATE
COMMITTEE ON HUMAN
RESOURCES

EFFORTS TO IMPLEMENT
THE EMPLOYEE RETIREMENT
INCOME SECURITY ACT OF 1974
BY THE DEPARTMENT OF LABOR

D I G E S T

Members of congressional committees, Department of Labor officials, and employee benefit plan administrators are concerned about problems Labor has experienced in administering the Employee Retirement Income Security Act of 1974--the first comprehensive Federal law regulating employee benefits.

The purpose of the act is to protect the rights of the 35 to 40 million persons participating in private employee pension and welfare benefit plans. The act is administered jointly by the Departments of Labor and Treasury as well as the newly created Pension Benefit Guaranty Corporation.

Specific concern has been expressed about delays in issuing regulations and acting on requests for exemptions from prohibited transactions. Generally, business transactions between the administrator or other fiduciary of an employee benefit plan and parties who have an interest in the plan or its administration are prohibited by the act. Exemption from prohibited transactions may be granted if, among other things, it is in the interest of a plan and its participants.

REORGANIZATION CONSIDERED

After over 2 years of program operations, the issue of how Labor should be organized to carry out its responsibilities has not been resolved. Presently, two separate Labor organizations are responsible for administering the act. Labor is considering reorganization based on allegations by previous program administrators that this structure has caused confusion, conflicting orders, coordination difficulties, and misdirection of effort.

GAO found that Labor has not determined the extent to which program inefficiencies exist and are caused by the organizational structure. Further, Labor has not determined the long-range enforcement needs of the new program. Consideration of these matters in deciding on the organizational structure could prevent unneeded or multiple reorganizations. (See ch. 2 and ch. 5.)

ACTIONS TO IMPLEMENT
LAW NOT YET COMPLETED

Although over 2 years have lapsed since enactment of the Employee Retirement Income Security Act, Labor has much to do before implementation is complete. Of the 53 areas Labor identified as needing regulations to implement the act, only 15 regulations were issued and another 10 proposed as of March 10, 1977. Also, although actions were taken in October and November 1976 to reduce the backlog of applications for exemptions from prohibited transactions, over three-fourths of the 621 applications were awaiting final action as of March 9, 1977. (See ch. 4.)

Labor officials have often cited the lack of sufficient qualified professional personnel as a primary reason for the delay in issuing regulations and processing applications for exemptions from prohibited transactions. However, in December 1975, Labor was authorized additional positions for these activities.

GAO found that Labor did not begin filling these positions until 10 months later. Hiring was delayed, in part, because it took Labor 7 months to define the duties and qualification requirements of the new positions. As of March 1977, 40 of the 54 professional positions authorized were filled. (See ch. 3.)

Prompt actions by Labor could have helped to reduce implementation problems. Labor is especially subject to criticism for the delays

in hiring sufficient qualified staff. The law is complex, however, and it should be recognized that issuing regulations and rulings on exemptions result from complicated research, legal considerations, and Federal procedural requirements which are time consuming.

With additional staff, GAO believes that Labor now has the opportunity to quickly move forward in issuing regulations and acting on applications for exemptions from prohibited transactions. However, GAO believes that because of delays in taking decisive action to resolve problems in the past, the Secretary of Labor should closely monitor progress to identify and resolve problems. (See ch. 5.)

RECOMMENDATIONS

Before making a decision on reorganization, the Secretary of Labor should assess the efficiency of the present Labor organizational structure for administering the Employee Retirement Income Security Act and the anticipated size of future program operations. Also, the Secretary should closely monitor the progress in issuing regulations and processing applications for exemptions from prohibited transactions so that these tasks are accomplished without further delay.

GAO discussed the contents of this report with Labor officials on May 23, 1977. They concurred that reorganization is being considered and agreed that before any decision is made, there is a need to evaluate the efficiency of the present organizational structure.

Labor said that a contract was awarded on May 9, 1977, for a private contractor to evaluate field office activities and organizational structure. Concurrently, Labor will continue compiling data on enforcement needs which should provide an additional basis for deciding on the appropriate organizational structure.

C o n t e n t s

	<u>Page</u>
DIGEST	i
CHAPTER	
1 INTRODUCTION	1
Background	1
Scope of review	3
2 REORGANIZATION BEING CONSIDERED	4
Organization development	4
Concern over responsibility for field operations	5
Reorganization options considered	7
3 PROBLEMS IN HIRING PROFESSIONAL STAFF	8
Delays in filling professional positions	8
Efforts to obtain excepted hiring authority	10
4 STATUS OF REGULATIONS AND EXEMPTIONS	12
Actions to issue regulations	12
Status of regulations	12
Actions on applications for exemptions from prohibited transactions	13
Progress in processing exemptions	13
Actions taken to improve exemption processing	14
5 CONCLUSIONS AND RECOMMENDATIONS	16
Conclusions	16
Recommendations	17
APPENDIX	
I Letter dated August 24, 1976, from the Chairman and the Ranking Minority Member of the Senate Committee on Labor and Public Welfare	18
II Principal officials of the Department of Labor responsible for administering activities discussed in this report	20

ABBREVIATIONS

CSC Civil Service Commission

ERISA Employee Retirement Income Security Act
of 1974

GAO General Accounting Office

IRS Internal Revenue Service

LMSA Labor-Management Services Administration

ORSE Office of Regulatory Standards and Exceptions

PWBP Pension and Welfare Benefit Programs

CHAPTER 1

INTRODUCTION

On August 24, 1976, the Chairman and Ranking Minority Member of the Senate Committee on Labor and Public Welfare (now the Committee on Human Resources) requested that we review the Department of Labor's organization and management of its functions under the Employee Retirement Income Security Act of 1974 (ERISA).

The Chairman and Ranking Minority Member commented that Labor's Pension and Welfare Benefit Programs (PWBP) has reportedly encountered difficulties both inside and outside the Federal Government in hiring personnel with the required expertise to immediately contribute to the administration of ERISA. They pointed out that, according to Labor, hiring could not be achieved under existing Federal personnel regulations.

The Chairman and Ranking Minority Member were concerned that Labor had not been able to fill certain positions in that part of PWBP having the responsibility for acting on requests for exemptions from transactions prohibited by the act. They stated that failure to act quickly on these requests could significantly disrupt the normal, nonabusive practices of employee benefit plans and related industries. (See app. I.)

The Chairman and Ranking Minority Member requested that we determine the nature of hiring problems, steps taken to resolve the problems, and whether other avenues for solving the problems (short of legislation) have been exhausted. The Committee subsequently asked that we also describe:

- The present Labor organizational structure for carrying out ERISA activities and factors which should be considered before deciding whether to reorganize.
- The status of the backlog of regulations and applications for exemptions from prohibited transactions and actions taken to reduce the backlogs.

BACKGROUND

ERISA was enacted on September 2, 1974, and became the first comprehensive Federal law regulating private pensions. The purpose of ERISA is to protect the rights of an estimated 35 to 40 million persons participating in about 1.8 million private employee benefit plans. The law affects pension plans

which provide retirement benefits and welfare plans which provide other types of protective benefits, such as health insurance. Estimated assets of pension plans alone amount to about \$240 billion.

The impact of employee benefit plans on the people and economy of America, and the need to regulate such plans was recognized by the Congress in its enactment of ERISA. Administrators of pension and welfare plans are required to disclose plan information to participants and certain Federal agencies. Also, pension and welfare plans are subject to fiduciary standards to help insure that anyone having discretionary control over plan operations acts in the best interest of plan participants.

In addition, pension plans are required to conform to minimum participation, vesting, and funding standards. The participation standards are to insure that employees are not required to satisfy unreasonable age or service requirements before becoming eligible to participate. The vesting and funding standards are designed to provide greater assurance that a worker will not lose benefits even if he leaves his job and that funds are available to pay benefits when the employee reaches normal retirement age.

To protect employee benefit plan participants, the act generally prohibits administrators or other fiduciaries from engaging in business with a party-in-interest. Examples of a party-in-interest are the employer, a fiduciary of the plan, or other parties who have an interest in the plan or its administration.

Exemptions from prohibited transactions may be granted if, among other things, they are in the interest of a plan and its participants. Exemptions can be granted on an individual application, or if appropriate, a class exemption can be granted which affects a number of applications or a practice common to a particular industry. For example, a class exemption now being considered by Labor would permit insurance agents to receive sales commissions on services provided to pension plans, even though the agents may be parties-in-interest to the plans.

Responsibilities for carrying out the law's provisions are assigned to Labor, the Department of Treasury, and a new Government corporation named the Pension Benefit Guaranty Corporation. The Corporation guarantees payment of certain vested benefits to participants of defined benefit plans if a plan terminates without sufficient assets to provide promised benefits.

Labor has the primary responsibility for issuing regulations on and enforcing the reporting, disclosure, and fiduciary provisions of ERISA. Within Labor, the responsibility for administering the act is assigned to two separate organizations--the Pension and Welfare Benefit Programs and the Labor-Management Services Administration (LMSA). PWBP is responsible for overall program administration and enforcement. LMSA provides PWBP with field and management support. Field operations are carried out in 6 regional offices and 24 area offices throughout the United States and Puerto Rico. ERISA enforcement and technical assistance activities are primarily carried out by the LMSA area offices. In addition, Labor's Office of the Solicitor provides legal advice and assistance to PWBP.

Treasury's Internal Revenue Service (IRS) has the primary responsibility for issuing regulations on and enforcing the participation, vesting, and funding provisions of ERISA. PWBP and IRS share responsibility for acting on requests for exemptions from prohibited transactions.

Of the 555 Labor personnel positions authorized during fiscal year 1977 for administering ERISA, 325 were in PWBP, 269 in LMSA, and 61 in Labor's Office of the Solicitor. Of the 269 positions in LMSA, 239 were in field offices and 30 were at headquarters.

SCOPE OF REVIEW

We made our review at Labor headquarters in Washington, D.C., where we reviewed records relating to the organization established and hiring practices followed for implementing ERISA. We also examined records relating to Labor's efforts in developing regulations and acting on requests for exemptions from prohibited transactions. In addition, we interviewed Labor headquarters officials and LMSA officials in the Atlanta and Philadelphia regional and area offices and the San Francisco regional office. We discussed Labor's hiring practices with Civil Service Commission (CSC) officials.

Our review of hiring practices was primarily directed at the filling of professional positions authorized for PWBP's Office of Regulatory Standards and Exceptions (ORSE). These positions require technical expertise and relate to developing regulations and processing applications for exemptions from prohibited transactions.

CHAPTER 2

REORGANIZATION BEING CONSIDERED

After over 2 years of ERISA program operations, the question of how the Department of Labor should be organized to carry out its ERISA responsibilities has not been resolved. Under the present Labor organizational structure the responsibility for administering ERISA is assigned to two separate organizations--the Pension and Welfare Benefit Programs and the Labor-Management Services Administration. Generally, PWBP is responsible for establishing overall policy for the administration and enforcement of ERISA and providing guidance for carrying out established policies. PWBP is also responsible for issuing regulations, processing requests for exemptions from prohibited transactions, and reviewing and processing enforcement cases and reports filed by pension and welfare benefit plans. LMSA is responsible for providing PWBP with field and management operations support.

Based on allegations by previous administrators of PWBP that the present structure has caused confusion, conflicting orders, coordination difficulties, and a misdirection of effort, Labor is considering reorganization. However, the extent to which these alleged inefficiencies exist and are caused by the organizational structure has not been determined. Further, the anticipated long-range organizational needs to administer the new program have not been determined.

ORGANIZATION DEVELOPMENT

In November 1974, shortly after enactment of ERISA, the Secretary of Labor assigned the Department's responsibilities for administering ERISA to the Assistant Secretary for Labor-Management Relations, who also serves as the administrator of LMSA. In addition to administering ERISA, LMSA was responsible for the Federal Labor-Management Relations, Veterans Reemployment Rights, and Labor-Management Standards Enforcement programs. In December 1974, the Assistant Secretary established the Office of Employee Benefits Security (now PWBP) within LMSA to administer ERISA. In April 1975, the position of Administrator, PWBP, was established within LMSA to give the program activities more visibility within the Department.

In May 1976, the Secretary partially separated ERISA program administration from LMSA. The Secretary delegated responsibility for program administration and policy development to the Administrator, PWBP, while leaving the directing of field and management operations and systems services with LMSA. PWBP and LMSA are directly responsible to the Secretary and Under Secretary of Labor.

The segregation of responsibilities was further described in LMSA Order 2-7 dated January 21, 1977, in which the LMSA Assistant Administrator for Field Operations was given responsibility for the field staff and other LMSA components were given responsibility for management and systems support operations. The Office of Field Operations was directed to provide PWBP and LMSA headquarters components with field support. The management and systems support components were directed to provide PWBP and LMSA program components with information and data processing systems, budget, financial, and personnel management, and other services.

The order provided for the Office of Field Operations to consult with PWBP on all issues involving field employees assigned to ERISA activities. It also provided for PWBP to furnish program management and policy direction to these field employees through the Office of Field Operations. Any field office problems were to be discussed with the Administrator of PWBP and resolved by the Assistant Secretary of LMSA.

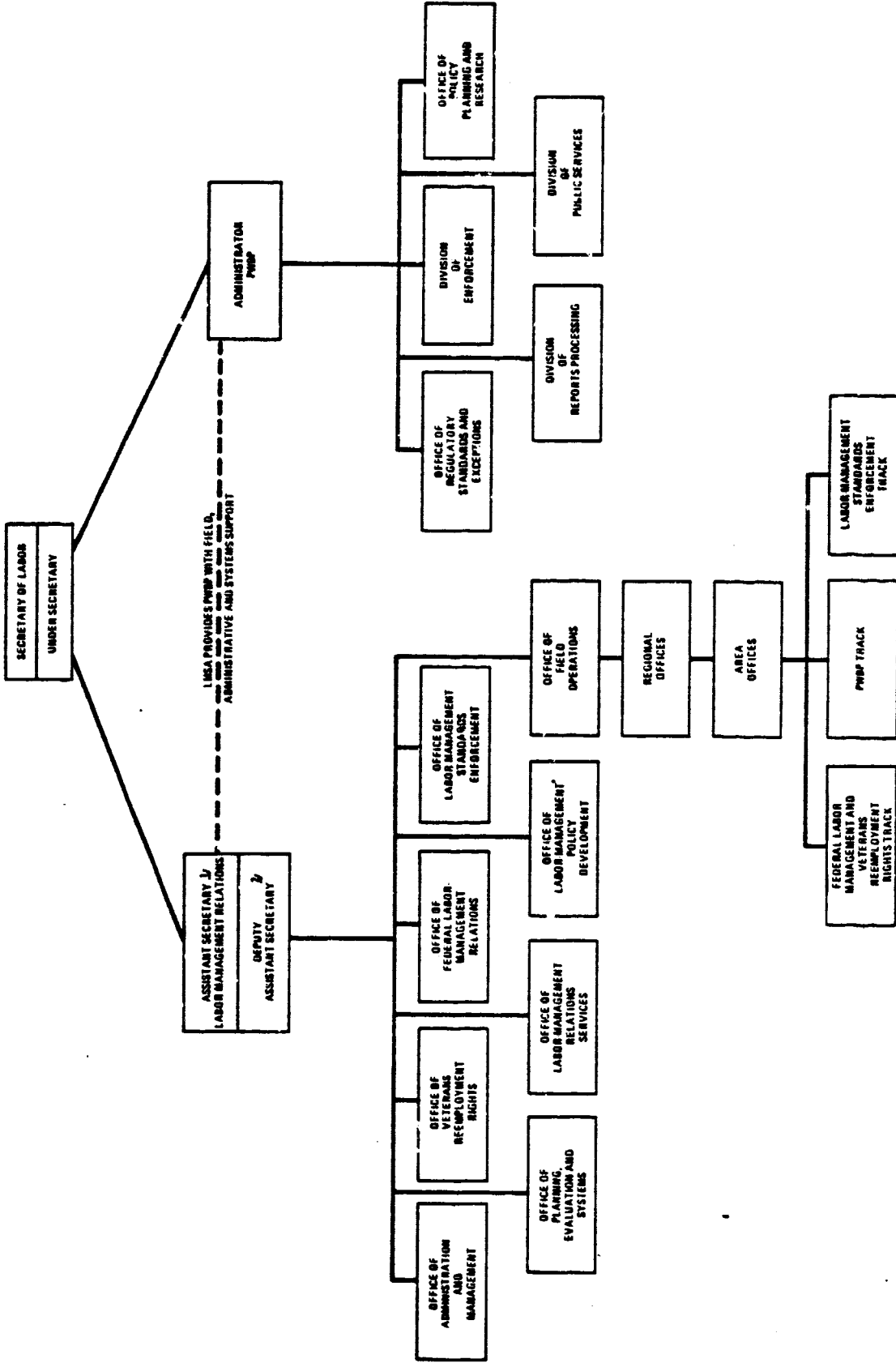
The Office of Field Operations directs LMSA and PWBP field program activities through six regional offices. Each regional office covers a specific geographical area and directs program operations through several area offices. Each area office makes investigations and provides technical assistance to insure compliance and generally carries out program objectives and priorities. Area office compliance personnel are assigned to specific program areas such as PWBP, which are referred to as "tracks."

The chart on the following page illustrates the organizational structure of LMSA and PWBP and the separation of responsibilities for administering ERISA activities.

CONCERN OVER RESPONSIBILITY FOR FIELD OPERATIONS

Previous administrators of PWBP were concerned about the effectiveness of the organizational structure; primarily of field operations, which is responsible for insuring compliance with ERISA and is the largest activity not under the direct control of PWBP. In December 1976, the Administrator felt that, without direct authority over ERISA field activities, enforcement efforts would founder.

Available Labor information indicates that during fiscal year 1976, ERISA field office track personnel were mainly directing their efforts at providing information and technical assistance to the public, with only about 19 percent of their time used for enforcement. On July 2, 1976, PWBP gave



1/ ALSO SERVES AS ADMINISTRATOR, LMSA
2/ ALSO SERVES AS DEPUTY ADMINISTRATOR, LMSA

field managers guidelines for setting field office priorities for the remainder of the fiscal year 1976 transition period and for fiscal year 1977. The guidelines called for 65 percent of ERISA field office track production time to be spent on enforcement and 35 percent on public service activities. This was a major change in direction, considering the limited ERISA enforcement activities during the first year and a half of program operations.

Available Labor information indicates that the ERISA field office track personnel spent an average of 49 percent of their time on enforcement activities (such as fiduciary investigations) during the first quarter of fiscal year 1977. LMSA Atlanta, Philadelphia, and San Francisco regional office officials said that the abrupt redirection of ERISA field activities and the lack of ERISA enforcement experience made it difficult to comply immediately with the new enforcement guidelines.

REORGANIZATION OPTIONS CONSIDERED

A Department issue analysis paper dated January 12, 1977, discusses options available to the Secretary on the organizational location of PWBP. Other than basically retaining the present structure, the options considered were completely separating or combining PWBP and LMSA. The analysis pointed out that either extreme would eliminate the fragmentation of responsibility under the present structure. The analysis also considered the number and grade structure of personnel necessary to implement the different organizational structures. The analysis did not address whether or not the present structure was inefficient as alleged or how reorganization would improve any specific inefficiencies that might exist.

Also, the anticipated size of Labor's future program operations to administer ERISA was not considered in the analysis. Although PWBP has redirected its existing field efforts toward greater enforcement, overall enforcement needs have not been assessed. Enforcement will become increasingly important in protecting employee benefit plan participants.

CHAPTER 3

PROBLEMS IN HIRING PROFESSIONAL STAFF

The Pension and Welfare Benefit Programs' Office of Regulatory Standards and Exceptions (ORSE) is responsible for issuing regulations and opinions to clarify the provisions of the Employee Retirement Income Security Act. ORSE is also responsible for acting on requests for exemptions from transactions prohibited by the act. Members of congressional committees, Labor officials, and employee benefit plan administrators were concerned about ORSE's slow progress in issuing regulations and processing requests for exemptions. (See ch. 4.)

Labor officials have often cited the lack of sufficient qualified professional personnel as a primary reason for regulation and exemption processing problems. Labor officials have also contended that the kinds and numbers of staff necessary to carry out ORSE responsibilities could not be obtained through normal civil service competitive hiring practices.

Until December 1975, ORSE was allocated a total of 22 professional positions. On December 18, 1975, the Congress authorized additional positions for PWBP, resulting in 41 additional professional positions being allocated to ORSE, and bringing the total number of professional positions in ORSE to 63. Subsequently, this number was reduced to 54 when 5 professional positions were reprogrammed to other PWBP offices and 4 were converted to clerical positions within ORSE.

Although the Congress authorized additional professional personnel positions for ORSE activities, hiring did not begin until 10 months later. We found that Labor took 7 months to define the duties and qualification requirements of the new positions. As of March 3, 1977, 40 of the 54 authorized ORSE professional positions had been filled. We also found that Labor's efforts to obtain authority for hiring outside the normal civil service competitive system were not successful. The positions were filled through the normal civil service competitive hiring process.

DELAYS IN FILLING PROFESSIONAL POSITIONS

The Civil Service Commission requires an agency to prepare position descriptions and qualification standards before hiring. A position description describes the principle duties, responsibilities, and supervisory relationships of a position. A qualification standard is a written statement of job

requirements such as experience, training, and ability. Recruited applicants are evaluated against the qualification standards to identify the most qualified applicant for a position.

Although ORSE was allocated 41 additional professional positions in December 1975, formal development of position descriptions and qualification standards did not begin until March 1976--3 months later. On February 11, 1976, Labor decided to contract for the development of position descriptions and qualification standards because of insufficient resources to perform this task. On March 29, 1976, Labor awarded a contract to a private individual for the development of 38 descriptions and standards for the 41 new professional positions. The contract, which was to be completed by May 13, 1976, called for descriptions and standards for several specialized positions, such as real estate specialist, actuary, corporate financial analyst, tax specialist, and pension and welfare benefit plan administration analyst.

The contract pointed out that PWBP had an urgent need for these position descriptions and qualifications standards and that the target date for filling the positions was May 1976. A PWBP official said that development of position descriptions and qualification standards was delayed partially because of the need to consider the organizational structure of ORSE and the types of experience and skills needed to carry out ORSE responsibilities. Also, the time required to prepare and award the contract contributed to the delay.

In May 1976, Labor decided to fill most of the 41 professional positions using a generalist job series entitled "Employee Benefit Plan Specialist" rather than the multiple specialist job series. Accordingly, the contract completion date was extended to June 18, 1976, to permit the contractor to develop the generalist series and complete the position descriptions and qualification standards for several selected specialist positions such as actuaries.

To qualify for the generalist job series, applicants needed general experience or education in business administration, finance, law, economics, accounting, or related fields. The generalist job series would also require experience in the administration, development, or analysis of employee pension and welfare benefit plans or funds. A PWBP official said that they decided to use a generalist job series to enhance recruitment. According to the official, the generalist job series would attract applicants who have a broad range of experience, including experience in the employee benefit plan area.

According to Labor officials, the position packages provided by the contractor by June 18, 1976, had to be revised by Labor personnel to more accurately reflect the duties and responsibilities of the positions. The qualification standards for the generalist job series were presented to CSC on July 30, 1976, over 7 months after the positions were authorized by the Congress. CSC approved the qualification standards on August 6, 1976.

Before approval of the qualification standards, Labor had received applications from over 660 persons who were qualified for the ORSE positions. As soon as CSC approved the qualification standards, Labor requested CSC to rate, register, and certify the eligibility of the applicants. This was completed by September 30, 1976, and the first job offers were made on October 22.

- - - -

As of March 3, 1977, 40 of the 54 ORSE professional positions had been filled, including 36 appointed under the generalist job series. Hiring action was underway for another nine positions, and was expected to begin for two others. Selection of three ORSE division chiefs was being withheld pending appointment of a new PWBP administrator.

EFFORTS TO OBTAIN EXCEPTED HIRING AUTHORITY

Before position descriptions and qualification standards had been developed, Labor officials contended that previous recruitment and selection efforts through normal CSC competitive hiring practices had not provided enough staff members with the kinds of expertise needed to carry out ORSE responsibilities. The officials contended that excepted hiring authority was necessary if ORSE was to obtain the personnel needed to adequately perform its assigned functions.

Excepted hiring authority refers to those positions which have been taken out of the competitive system by Federal statutes, by the President, or by CSC. CSC can except positions if it determines that the duties of any position are such that competitive examinations are impractical. Competitive examinations may consist of a written test or an evaluation of applicants' educational background and experience. If granted excepted hiring authority, an agency can fill positions without such competitive examinations.

CSC procedures require that an agency's request for excepted hiring authority include a detailed statement of why

the agency concluded that holding any examination to fill the positions is impractical.

Labor did not request excepted hiring authority from CSC. Instead, the Secretary of Labor, in a letter dated April 9, 1976, requested the Director of the Office of Management and Budget to support and, if necessary, intervene in obtaining excepted hiring authority from CSC for the ORSE professional positions. The Secretary emphasized the critical need for the staff and the inability to obtain sufficient qualified personnel through the normal competitive hiring process. According to Labor officials, the Office of Management and Budget never responded in writing to this request.

Labor officials did not contend that it was impractical to examine applicants for the ORSE professional positions, but that there was a scarcity of personnel within the Federal Government with the desired skills and expertise. According to CSC officials, scarcity of personnel within the Federal Government is not a valid reason for granting excepted hiring authority.

In May 1976, Labor officials decided that customary CSC competitive hiring practices would be used to fill the vacant positions.

CHAPTER 4

STATUS OF REGULATIONS AND EXEMPTIONS

Members of congressional committees, Labor officials, and employee benefit plan administrators have expressed concern about the delays in issuing regulations covering ERISA provisions and acting on requests for exemptions from transactions prohibited by ERISA. We found that Labor has taken a number of actions to reduce the delays.

Labor's actions to hire staff for issuing regulations and processing exemption requests are discussed in chapter 3. The status of Labor's efforts to implement regulations and process requests for exemptions from prohibited transactions follows.

ACTIONS TO ISSUE REGULATIONS

Regulations are intended to provide employee benefit plan administrators with guidelines and timeframes for complying with ERISA requirements, thus helping to protect the interests and rights of private employee benefit plan participants. PWBP is generally responsible for issuing regulations on and enforcing the ERISA fiduciary, reporting, and disclosure provisions. Although IRS is generally responsible for issuing regulations on and enforcing ERISA participation, vesting, and funding provisions, PWBP is responsible for issuing regulations which provide minimum standards on how an employee's service time will be computed for determining vesting and participation rights. Labor's Office of the Solicitor provides legal advice and assistance to PWBP on regulations. To reduce duplication and the compliance burden of employee benefit plan administrators, PWBP and IRS are required to consult and coordinate their related regulation activities.

Regulations cover one or more specific provisions of ERISA and vary in significance and complexity. Regulations are proposed and published in the Federal Register for public comment, and then issued after considering the comments. Although proposed regulations are subject to change, they do provide employee benefit plan administrators with tentative guidelines for complying with ERISA.

Status of regulations

PWBP has identified at least 53 areas where regulations are needed to implement ERISA. As of March 10, 1977, 15 of

the 53 regulations had been issued and another 10 proposed for public comment. Issuing regulations on complex legislative requirements is a complicated and time-consuming process. PWBP estimates that by the end of fiscal year 1977, 24 regulations will be issued and 9 proposed, and by the end of fiscal year 1978, 27 regulations will be issued and 26 proposed.

ACTIONS ON APPLICATIONS FOR EXEMPTIONS FROM PROHIBITED TRANSACTIONS

To insure that pension plan assets are not misused and are administered in the best interest of employee benefit plan participants, ERISA prohibits plan administrators from engaging in certain business transactions. For example, plan administrators may not deal with plan assets in their own interest or engage in business with a party having an interest in the plan. Parties-in-interest include the employer of plan participants, plan administrators, and certain other persons having a direct or indirect relationship with the plan. Prohibited transactions include the selling or leasing of property and the lending of money between a plan and a party-in-interest.

ERISA permits Labor and the Department of the Treasury to administratively grant exemptions from prohibited transactions. Exemptions are to prevent disrupting established business practices which are in the interest of the plan and plan participants. Applications for exemptions are filed with PWBP and IRS, who are required by ERISA to consult and coordinate their exemption processing activities.

Procedures for processing exemptions, established on April 28, 1975, require applicants to be given an opportunity for a conference to further present their views before a final decision is made to deny the application. The procedures also provide that a proposed decision to grant an exemption be published in the Federal Register so that interested persons can comment before a final decision is made.

Progress in processing exemptions

As of October 1, 1976, 499 exemption applications had been filed with Labor and IRS. Many of these applications had been pending for over a year and some as long as 2 years. However, exemptions affecting only 17 applications had been granted. Although no exemptions had been denied, 48 had been

closed administratively when they were withdrawn by the applicant or found to be covered by other provisions of ERISA.

As of March 9, 1977, the total number of applications had increased to 621. Exemptions affecting 23 applications had been granted, 38 applications had been denied, and another 92 closed administratively. The following table shows the status of exemption processing as of October 1, 1976 and March 9, 1977.

<u>Applications</u>	<u>Oct. 1, 1976</u>	<u>Mar. 9, 1977</u>
Granted	<u>a/17</u>	<u>a/23</u>
Denied	-	38
Administratively closed	48	92
Proposed for approval	5	<u>b/89</u>
Tentatively denied	69	85
Backlog	<u>360</u>	<u>294</u>
Total	<u>499</u>	<u>621</u>

a/Includes 13 applications covered by 2 class exemptions. A class exemption can affect a number of applications or a practice common to a particular industry.

b/Includes 83 applications covered by 5 proposed class exemptions.

Actions taken to improve exemption processing

According to Labor officials, aside from complex legislation and the diverse business practices involved, delays in processing exemption applications were caused by

- coordination problems between PWBP and IRS and
- insufficient qualified staff (see ch. 3).

In recognition of the need for improved interagency coordination, PWBP and IRS entered into a Memorandum of Understanding on October 4, 1976. This memorandum provided specific procedures for processing exemption applications and established time limits for each processing step. Further, on October 20, 1976, PWBP and IRS established timeframes for processing certain class exemptions.

Also, the Under Secretary of Labor, on November 2, 1976, called for immediate actions to substantially reduce the growing backlog within 6 months. In addition to processing the class exemption priorities agreed to by IRS and Labor, he directed that, by the end of April 1977:

- The Office of the Solicitor recommend final action on at least 50 applications.
- PWBP recommend final action on at least 35 applications. The Office of Solicitor was to review and approve the 35 applications for final action. Additionally, PWBP was directed to take action on the 80 individual pending applications which appeared to be covered by the class exemption priorities agreed to by IRS and Labor.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Although over 2 years have lapsed since enactment of the Employee Retirement Income Security Act, the Department of Labor has much to do before implementation is complete. Many regulations on standards imposed by ERISA have not been issued and PWB officials estimate that all regulations will not be issued until after fiscal year 1978. Also, although action was taken in October and November 1976 to reduce the backlog of applications for exemptions from prohibited transactions, over three-fourths of the applications are awaiting final action. Further, the issue of how Labor should be organized to carry out its ERISA responsibilities has not been resolved.

Prompt actions by Labor could have helped to reduce ERISA implementation problems. Labor is especially subject to criticism for the delays in hiring sufficient qualified staff--a primary cause of the slow progress in issuing regulations and processing exemption applications.

It should be recognized, however, that ERISA is a complex legislative package that took about 10 years to develop. Further, issuance of regulations and rulings on exemptions result from complex matters which involve time-consuming research, legal considerations, and Federal procedural requirements.

With its additional hired staff, we believe Labor now has the opportunity to quickly move forward in issuing regulations and acting on applications for exemptions from prohibited transactions. However, because of past delays in taking decisive action to resolve problems, the Secretary of Labor should closely monitor progress to identify and resolve problems.

Allegations by previous PWB administrators that the present organizational structure for administering ERISA is inefficient has led Labor to consider reorganization. However, Labor has not determined the extent to which these alleged inefficiencies exist or are caused by the organizational structure.

We could not determine whether reorganization is needed or what form it should take. The short time that the present organizational structure has been operating--less than a year--coupled with a recent major redirection of field office efforts

towards enforcement, provides little data to accurately measure the structure's efficiency. The increased enforcement during the first 3 months of fiscal year 1977, however, indicates a positive response by Labor-Management Services Administration field offices to comply with PWBP program goals.

Further, pension program enforcement needs have not been developed. A determination of these needs could have a substantial effect on the size of future Labor operations to administer ERISA.

Although we agree that the responsibility in the present organizational structure is divided, this should not, in our opinion, form the basis for a decision to reorganize. Consideration of identified management and program problems and anticipated long-range organizational needs could prevent unneeded or multiple reorganizations.

RECOMMENDATIONS

We recommend that the Secretary of Labor, before making a decision on reorganization, assess the efficiency of the present structure for administering ERISA and the anticipated size of future ERISA program operations. We also recommend that the Secretary closely monitor the progress in issuing regulations and processing applications for exemptions from prohibited transactions to see that these tasks are accomplished without further delay.

- - - -

We discussed this report with Labor officials on May 23, 1977. They agreed that reorganization is being considered and said that, before any decision is made, the efficiency of the present organizational structure should be evaluated. In this regard, they said that a contract was awarded on May 9, 1977, for a private contractor to evaluate LMSA field office activities and organizational structure. Concurrently, PWBP will continue compiling data on enforcement needs which should provide an additional basis for deciding on the appropriate organizational structure.

Pending the final organizational structure decision we were advised that the new PWBP administrator--appointed on May 23, 1977--will be responsible to the Assistant Secretary for Labor-Management Relations rather than directly to the Secretary of Labor.

JARROLD A. WILLIAMS, JR., N.J., D	JACK K.	N.Y.
JOHN R. RANDOLPH, W. VA.	RICHARD S.	WEIKER, PA.
LAWRENCE PELL, R. I.	ROBERT T.	OHIO
EDWARD M. KENNETH, MASS.	J. GLENN S.	JR., MD.
DAVID M. NELSON, WIS.	ROBERT T. STAFFORD, NY.	
WALTER W. MONDALE, MINN.	PAUL LARALT, NEV.	
THOMAS P. SACLTON, MD.		
ALAN GRANSTON, CALIF.		
WILLIAM B. HOYTHAWAY, MAINE		
JOHN A. BURRILL, N.H.		

United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

RONALD BLUMBERG, GENERAL COUNSEL
MARJORIE M. WHITTAKER, CHIEF CLERK

August 24, 1976

The Honorable Elmer Staats
Comptroller General of the United States
General Accounting Office
441 G Street
Washington, D. C. 20548

Dear General Staats:

This is to request that the General Accounting Office conduct a study of the Department of Labor's organization and management of its functions under the Employment Retirement Income Security Act of 1974 (ERISA) and report its findings directly to us as soon as is feasible. We need the information such a study will provide so that we may make a reasoned judgment whether further legislation is called for in this area.

Specifically, the Labor Department's Office of Employee Benefit Security has reportedly encountered difficulties in hiring qualified personnel from both inside and outside the Federal Government, with the requisite expertise to immediately contribute to the Department's effort to administer ERISA. We need to know the precise nature of the Department's problems and the steps which have already been taken by the Department in an effort to resolve these problems. We also need to know whether the Department has completely exhausted all already-existing avenues short of legislation.


As you know, ERISA provides Federal regulation aimed at protecting the retirement and welfare rights of American workers, retirees and their beneficiaries. In affording this protection, ERISA regulates private pension plans which affect in significant ways different parts of the Nation's economy not previously covered in one statute, including, for example, labor management collective bargaining relations, and the securities, banking and insurance industries.

Because of the breadth of the coverage provided in ERISA, Congress delegated the initial responsibility of interpreting and administering its provisions to three Federal agencies -- the Labor and Treasury Departments and the Internal Revenue Service. Obviously, these agencies cannot be expected to fulfill their responsibilities under ERISA if they are unable to hire the necessary expert personnel.

It was of great concern to us therefore, when we learned that the Labor Department, for example, has not been able to fill certain positions in that part of its program with responsibility for review and action upon requests for exemptions from statutory prohibitions which could otherwise significantly disrupt normal, nonabusive practices by employee benefit plans and related industries. The positions in question require expertise and familiarity with investment practices and the kinds of transactions typically carried out by such entities if the exemption applications are to receive adequate, full consideration. According to the Department, it has been its experience that persons with the necessary background are extremely scarce within the Federal Government, and, in the limited instances where they are available, hiring cannot be achieved under existing Federal personnel regulations.

In view of our strong support of the overall pension reform legislation, and in the spirit of affording the agencies who are charged with the operation of this program, every opportunity to achieve successful and efficient administration, we request that GAO conduct this study.

With best wishes,


Harrison A. Williams, Jr.
Chairman

Sincerely,


Jacob K. Javits
Ranking Minority Member

PRINCIPAL OFFICIALS OF
THE DEPARTMENT OF LABOR
RESPONSIBLE FOR ADMINISTERING
ACTIVITIES DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
SECRETARY OF LABOR:		
Ray Marshall	Jan. 1977	Present
William J. Usery, Jr.	Feb. 1976	Jan. 1977
John T. Dunlop	Mar. 1975	Jan. 1976
Peter J. Brennan	Feb. 1973	Mar. 1975
UNDER SECRETARY OF LABOR:		
Robert J. Brown	Mar. 1977	Present
Vacant	Jan. 1977	Mar. 1977
Michael H. Moskow	May 1976	Jan. 1977
Robert O. Aders	Sept. 1975	May 1976
Vacant	Feb. 1975	Sept. 1975
Richard F. Shubert	May 1973	Feb. 1975
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS:		
Francis X. Burkhardt	Mar. 1977	Present
Bernard E. DeLury	Apr. 1976	Feb. 1977
Paul J. Fasser	Apr. 1973	Apr. 1976
ADMINISTRATOR, PENSION AND WELFARE BENEFIT PROGRAMS: <u>1/</u>		
Ian David Lanoff	May 1977	Present
J. Vernon Ballard (acting)	Jan. 1977	May 1977
William J. Chadwick	Oct. 1976	Jan. 1977
James D. Hutchinson <u>2/</u>	June 1975	Oct. 1976
J. Vernon Ballard (acting)	Dec. 1974	June 1975

1/The Office of Employee Benefit Security was established on December 16, 1974, to administer the Department of Labor's responsibility under the Employee Retirement Income Security Act of 1974. The activities of the Office were originally directed by the Director, Office of Employee Benefit Security. In April 1975, the position of Administrator, Pension and Welfare Benefit Programs was established to direct the activities of the Office. In May 1976, the title of the Office of Employee Benefit Security was officially changed to the Pension and Welfare Benefit Programs.

2/First Administrator of Pension and Welfare Benefit Programs.