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Report to the Congress; by Elmer B. Staats, Comptroller General.

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Authority: Employee Retirement Income Security Act (29 U.S.C. 1001). Welfare and Pension Plans Disclosure Act (29 U.S.C. 301).

The Employee Retirement Income Security Act (ERISA) requires private pension plans to meet extensive, complex minimum standards and reporting and disclosure requirements. Concerns were expressed about ERISA's effects on small businesses and their employees and the increase in pension plan terminations after enactment of the legislation.
Findings/Conclusions: The act did contribute to a large degree to pension plan terminations, but economic and other factors played a more significant role. The adverse effect on workers indicated by the number of terminations is misleading because: in terminations of plans attributed to ERISA, the plans generally did not meet the act's minimum participation and vesting requirements; participants of terminated plans had received or were to receive almost all of their vested benefits under existing plan provisions; and about 41% of the sponsors of terminating plans continued pension coverage for their employees through other plans. According to plan sponsors, major factors contributing to termination were the increased costs of providing benefits and revising and administering plans, the burden of meeting reporting and disclosure requirements, the need for clarifying regulations, and concern about penalties. The increased costs and provisions for compliance and reporting are necessary to insure employees' rights to receive adequate benefits. Agencies involved have made progress in providing guidelines for meeting requirements and have reduced the reporting and disclosure burden. Agencies should continue such efforts, consistent with the protection of participants. (HTW)

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Effect Of The Employee Retirement Income Security Act On The Termination Of Single Employer Defined Benefit Pension Plans

One hundred sixteen Members of the Congress, concerned that small businesses and their employees were being irreparably hurt by the act, requested that GAO examine the act's effects on small businesses. This is the first of two reports GAO will issue responding to the request.

This report discusses the effect of the act on about 7,300 pension plans terminating during the 21-month period from September 1974 to June 1976. About 93 percent of these plans had fewer than 100 participants. The second report will discuss the effects of the act on continuing pension plans with fewer than 100 participants.

HRD-78-90
APRIL 27, 1978

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

B-164292

To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the effect the Employee Retirement Income Security Act of 1974 had on the termination of single employer defined benefit pension plans and the resulting impact on American workers. It is the first of two reports responding to a request by 116 Members of Congress that we examine the effects of the act on small businesses. The second report will discuss the act's effects on ongoing pension plans with fewer than 100 participants.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget; the Secretaries of Labor and the Treasury; and the Executive Director, Pension Benefit Guaranty Corporation.

Elmer B. Staats
Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

EFFECT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT ON THE TERMINATION OF SINGLE EMPLOYER DEFINED BENEFIT PENSION PLANS

D I G E S T

A substantial increase in terminations of single employer-sponsored "defined benefit" pension plans in the 2 years after the Employee Retirement Income Security Act was enacted in 1974 and complaints about the burden and cost of meeting the act's requirements have indicated that the act was adversely affecting hundreds of thousands of American workers and thousands of American businesses.

GAO found that the act did contribute greatly to pension plan terminations. However, economic and other factors played a more significant role in decisions to terminate pension plans. (See ch. 2.)

The adverse effect on American workers indicated by the number of terminations is misleading. The effect has not been as great as it appeared becaus

--Where plan sponsors called the act a major reason for plan termination, the terminating plans generally did not meet the act's minimum participation and vesting requirements designed to make sure that employees would benefit from a pension plan without having to meet unreasonable years worked and age requirements.

--Participants of terminated plans had received or were to receive almost all of their vested benefits under existing plan provisions.

--About 41 percent of the sponsors of terminating pension plans continued pension coverage for their employees through new or other existing plans. Other employees had an opportunity to continue pension

coverage by starting individual retirement account plans. (See ch. 4.)

According to plan sponsors, under the act the increased cost of providing benefits and revising and administering plans, the burden of meeting reporting and disclosure requirements, the need for clarifying regulations, and the concern about penalties for not meeting requirements were major factors contributing to plan terminations. (See ch. 3.)

However, the increased cost of providing benefits and revising plans to meet the act's provisions and the penalties for not meeting the provisions are necessary to make sure that employees have a fair chance to participate in the plan and that participants receive earned pension benefits. The act's reporting and disclosure requirements are also a direct result of efforts to protect employees' benefits.

Lack of regulations clarifying the law's complex provisions resulted in confusion about how the legal requirements were to be met and concern about penalties for not meeting requirements. Further, reporting and disclosure requirements were burdensome and costly to plan sponsors. (See p. 29.)

The Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation (1) have made progress in providing pension plan sponsors and administrators with guidelines for meeting the legal requirements and (2) have lessened the reporting and disclosure burden by consolidating reports and reducing information required to be reported. (See pp. 17 and 18.)

Overall, the minimum participation, vesting, and funding standards and other provisions of the act should strengthen responsible management of new and continuing plans and give tens of millions of workers a better chance to earn and receive vested benefits without having to work an unreasonable number of years to an unreasonable age.

In addition, clarifying the act's requirements and reducing burdens on plan administrators should be continuing goals of the three agencies. Reduction in administrative burden should not be accomplished by compromising participant protection. (See p. 30.)

Officials of the three agencies were given an opportunity to review and comment on this report. On February 23, 1978, the Internal Revenue Service said that it had no comments or recommendations. On March 3, the Pension Benefit Guaranty Corporation said that the data in this report is credible and useful, and will help the Congress understand the impact of the act.

On March 6, Labor agreed with the report's conclusion that Government agencies responsible for administering the act should continuously seek ways to clarify its requirements. Labor believed that the agencies should seek ways to reduce the cost burden on private employee benefit plans, but not at the expense of participant protection.

Labor outlined the steps it has taken to more efficiently administer the act, reduce the uncertainty of plan administrators about the act's provisions and penalties for failure to meet its requirements, and reduce the paperwork burden of reporting and disclosure requirements. (See p. 30.)

Contents

ABBREVIATIONS

ERISA	Employee Retirement Income Security Act of 1974
GAO	General Accounting Office
IRS	Internal Revenue Service
PBGC	Pension Benefit Guaranty Corporation

CHAPTER 1

INTRODUCTION

On September 2, 1974, the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1001 et seq.) became the first comprehensive Federal legislation regulating the private system for providing working Americans with retirement income. The act requires private pension plans and plan administrators to meet extensive, complex minimum standards and reporting and disclosure requirements. It also establishes a Federal insurance program to guarantee payment of certain benefits to participants of defined benefit pension plans. Such plans provide definitely determinable benefits based on such factors as years of employment and compensation received.

During March 1976, 116 Members of Congress expressed to us their concern about ERISA's effects on small business and their belief that many small businesses and their employees were being irreparably hurt. They emphasized the large increase in the number of defined benefit pension plan terminations after ERISA's enactment and requested that we examine the act's effects on small businesses.

This is the first of two reports responding to these concerns. The second report will discuss ERISA's effects on ongoing pension plans with fewer than 100 participants.

This report discusses the act's effect on the termination of defined benefit pension plans. We directed our review at the total universe of terminating defined benefit plans because of the limited data at the time of our review on all types of terminated plans sponsored by small businesses. About 93 percent of the terminated pension plans covered by our review had fewer than 100 participants. On the average, the sponsors of these plans employed 47 full-time employees, of which 15 were participating in the terminating pension plans. An analysis of the size of pension plans covered by our review is included on page 32.

BACKGROUND

Originally, businesses established private pension plans to retain valuable employees, reduce labor turnover, and reward employees with long service. Although the development of private pension plans has largely resulted from business and labor initiative, the Federal Government has encouraged the growth of these plans through its tax laws. Essentially, the tax laws provide that (1) business contributions to pension plans are generally tax deductible, (2) earnings on the business contributions held by a pension plan are not taxed, and (3) employees do not pay taxes on the contribution made on their behalf to the pension plan and earnings on these contributions until the moneys are received.

For businesses to qualify for favorable tax treatment, the pension plans had to comply with a general framework of standards provided under the Internal Revenue Code. In general, the standards required pension plans to

--be established and operated for the exclusive benefit of employees;

--provide benefits in accordance with the provisions of the plan;

--provide benefits and pension coverage to employees that do not discriminate in favor of officers, shareholders, supervisors, or highly compensated employees; and

--provide that upon termination or discontinuance of contributions to the plan, employees' rights to benefits earned--to the extent funded--were non-forfeitable.

Until ERISA, the principal legislation other than the Internal Revenue Code specifically regulating pension plans was the Welfare and Pension Plans Disclosure Act, enacted in 1958 (29 U.S.C. 301 et seq.) and repealed by ERISA in 1974. The purpose of this act was to foster honest, responsible administration of pension plans by requiring public disclosure of information on plan operations.

The Welfare and Pension Plans Disclosure Act required administrators of pension plans covering over 25 employees to file a description of the plan and subsequent amendments with the Department of Labor. Annual financial reports were required from plans covering 100 or more participants. Also, the act gave participants and beneficiaries the right to obtain an up-to-date plan description and an adequate summary of the latest financial report from plan administrators. Further, the act required bonding of plan personnel in a position to cause a loss to the plan through fraud or dishonesty.

Although Labor was authorized to interpret and enforce the act's provisions, it was not authorized to prescribe plan provisions, help participants collect benefits, or otherwise interfere in the plans' internal management.

THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

ERISA, the first Federal legislation regulating the internal workings of private pension plans, was enacted because of indications that pension plan misuse and abuse was resulting in lost pension benefits to employees, even those with many years of service. ERISA's purpose is to make sure that an estimated 30 million participants in about 470,000 private pension plans receive earned benefits. The assets of these plans were estimated at $212 billion. Defined benefit plans account for about 20 percent of all private pension plans. However, it has been estimated that over three-fourths of all pension plan participants are covered by defined benefit plans.

ERISA changed previous Federal regulations under which businesses established private pension plans and obtained favorable tax treatment. ERISA neither requires businesses to establish, nor prohibits businesses from terminating, pension plans. However, with few exceptions, both continuing and new private pension plans must comply with the act's provisions.

To protect employees' interests, ERISA established comprehensive minimum standards and requirements that specify

--how employees become eligible to participate in pension plans (participation standards),

--how employees earn a nonforfeitable right to pension benefits (vesting standards),

--how the plans are to be funded (funding provisions),

--how the plans are to be operated in the best interests of plan participants (fiduciary standards), and

--to what extent plan information is to be reported and disclosed to the Federal Government and plan participants (reporting and disclosure requirements).

The act also established an insurance program for guaranteeing the payment of certain benefits to participants of defined benefit plans if a plan terminates without sufficient assets to provide vested benefits.

Responsibilities for carrying our ERISA's provisions are assigned to the Department of Labor, the Internal Revenue Service (IRS), and a new Government agency, the Pension Benefit Guaranty Corporation (PBGC). Labor is primarily responsible for issuing regulations on and enforcing ERISA's reporting, disclosure, and fiduciary provisions. IRS issues regulations on, and enforces the act's participation, vesting, and funding provisions. PBGC administers the defined benefit plan termination insurance program. To enforce its provisions, ERISA generally provides civil enforcement authority. Criminal enforcement authority is also provided for any willful violation of the reporting and disclosure provisions. Cases involving embezzlement, kickbacks, or related violations are to be referred to the Department of Justice for prosecution under the U.S. Criminal Code.

SCOPE OF REVIEW

We reviewed a sample of all federally insured defined benefit pension plans sponsored by single employers who notified PBGC of their intent to terminate plans during the 21-month period from September 2, 1974--the date ERISA was enacted--to June 1976. We took a 10-percent random sample--731 plans--of the approximately 7,300 defined benefit plans reported by employers to be terminated during this period. We sent questionnaires requesting information on the reasons for plan termination and continuing pension coverage to the sample of plans and received 595 responses--a response rate of 81 percent. The questionnaire results are summarized in appendix I.

We also discussed the details of plan termination with representatives of 63 of the plan sponsors who indicated that ERISA was a major factor in the decision to terminate their pension plans. The 63 plans were in California, Florida, Georgia, Illinois, New York, and Pennsylvania. In addition, we reviewed the information on the 63 plans maintained by PBGC at its Washington, D.C., headquarters. We also spoke with selected consulting firms that helped administer some of the pension plans in our sample.

We reviewed applicable legislation, regulations, publications, and other information related to pension plan terminations. We also interviewed headquarters officials of the Department of Labor, IRS, and PBGC.

CHAPTER 2

NON-ERISA FACTORS CONTRIBUTED SIGNIFICANTLY

TO PENSION PLAN TERMINATIONS

The Employee Retirement Income Security Act established minimum standards and requirements for the operation and administration of private pension plans to ensure that plan participants receive their earned pension benefits. ERISA also established an insurance program to guarantee, within certain limits, the benefits of participants of terminated defined benefit plans. During 1975, almost 4,000 defined benefit pension plans were terminated. This was an 82-percent increase over the estimated 2,200 plans that were terminated during 1974. Many Members of Congress, pension plan sponsors, and plan administrators expressed concern that ERISA was causing the significant increase in terminations and could be unnecessarily harming private pension plans and their participants.

Although the act was a major factor in many pension plan terminations, other factors played a more significant role. About 35 percent of the 595 responses to our questionnaire noted both ERISA and non-ERISA factors as major reasons 1/ for plan terminations. However, non-ERISA factors were noted by about 44 percent of the responses and ERISA by about 17 percent of the responses as the only major reason for plan termination. Almost 80 percent of the 595 questionnaire responses noted non-ERISA factors as major reasons for plan termination, whereas about 53 percent noted ERISA as a major reason.

The following table shows the number and percentage of our sample that indicated ERISA and/or non-ERISA factors as a major reason for plan termination.

1/The questionnaire asked respondents to indicate whether ERISA or non-ERISA factors had little or no, some, moderate, substantial, or a very great effect on or was the only reason for plan termination. For reporting purposes, however, we considered any response of moderate or greater as a major reason for plan termination.

Major termination factors	ERISA Number of plans	ERISA Percent	Non-ERISA Number of plans	Non-ERISA Percent	Total Number of plans	Total Percent
ERISA only	103	17.3	-	-	103	17.3
Non-ERISA only	-	-	263	44.2	263	44.2
Both ERISA and non-ERISA	210	35.3	210	35.3	210	35.3
No major factor indicated	-	-	-	-	19	3.2
Total	313	52.6	473	79.5	595	100

Based on the sample results, we estimate that non-ERISA factors played a major role in the decision to terminate 5,811 of the 7,310 defined benefit plans that were terminated during the period from September 1974 to June 1976. ERISA played a major role in the decision to terminate 3,845 of the plans during this period. The following table details the estimated effect ERISA and other factors had on decisions to terminate pension plans during the 21-month period.

Major termination factors	Terminations (note a) ERISA Number of plans	ERISA Percent	Non-ERISA Number of plans	Non-ERISA Percent	Total Number of plans	Total Percent
ERISA only	1,265	17.3	-	-	1,265	17.3
Non-ERISA only	-	-	3,231	44.2	3,231	44.2
Both ERISA and non-ERISA	2,580	35.3	2,580	35.3	2,580	35.3
No major factor indicated	-	-	-	-	234	3.2
Total	3,845	52.6	5,311	79.5	7,310	100

a/Projected number of plans terminating due to ERISA and non-ERISA factors have a statistical reliability of 95 percent, subject to a maximum sampling error of plus or minus 3.8 percent.

The 473 respondents that indicated non-ERISA factors as a major reason for plan termination most often noted adverse business conditions, the plans' unsuitability for meeting employee or employer needs, the cost of providing benefits, and the administrative cost and burden of the plan as the specific termination causes. The following table shows the number and percentage of specific non-ERISA circumstances noted by the 473 responses as having a major effect on termination decisions.

		Number of respondents	Percent
1.	Adverse business conditions	176	37
2.	Cost of providing benefits became greater than expected (other than ERISA-based costs)	176	37
3.	Administrative burden and associated costs of running the plan were greater than expected (other than ERISA-based costs)	136	29
4.	Plan did not meet the employer's needs	109	23
5.	Plan did not meet employees' needs	104	22
6.	Investment performance was lower than expected	65	14
7.	Dissolution of the business	59	12
8.	Change of ownership	54	11
9.	Lack of participation by employees	26	5
10.	Closing of a subsidiary, plant, division, etc.	25	5
11.	Bankruptcy	7	1
12.	Other	58	12
	Total	a/995	

a/Totals more than 473 because many respondents noted more than one non-ERISA reason having a major effect.

An analysis of the specific ERISA-related factors contributing to plan termination decisions, as indicated by the 313 respondents who noted that ERISA was a major reason for termination, is presented in chapter 3.

CHAPTER 3

IMPACT OF ERISA ON DECISIONS

TO TERMINATE PENSION PLANS

The enactment of the Employee Retirement Income Security Act brought sweeping changes to the Federal Government's regulatory scheme to help ensure that American workers have an equitable right to and receive benefits promised by employers through private pension plans. To achieve this goal, ERISA established minimum standards and other requirements to govern the equitable character, proper administration, and financial soundness of pension plans. The act also requires plan sponsors and administrators to report and disclose to employees and three Federal agencies--the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation--financial and other information on plan operations. To further protect participants, ERISA provided enforcement remedies and established an insurance program to guarantee, within certain limits, the benefits promised by defined benefit pension plans.

Complaints about the burden and cost of meeting ERISA requirements and the significant increase in pension plan terminations gave strong indications that ERISA was greatly affecting plan sponsors and administrators and causing increased terminations. Our review indicates that ERISA contributed significantly to plan sponsors' decisions to terminate plans. However, as pointed out in chapter 2, other factors also contributed significantly to the terminations.

Of the 595 respondents to our questionnaire, 313 (53 percent) identified ERISA as a major reason for plan termination. (It should be noted, however, that 210 (67 percent) of the 313 respondents indicated that ERISA was not the only major reason.) The 313 respondents indicated that the cost and administrative burden to begin and continue to meet ERISA requirements, the lack of clarifying regulations on what was required, and the potential penalties for not meeting the requirements were major factors in decisions to terminate plans. Another major factor was the objection in principle to Federal regulation of private pension plans voluntarily established and funded by employers.

COSTS--A MAJOR TERMINATION FACTOR

Of the 313 respondents identifying ERISA as a major reason for plan termination, 246 (79 percent) indicated that anticipated increased costs due to the act had a major effect on the decision to terminate the plan. Of the 246 respondents, 202 (82 percent) 1/ indicated that these anticipated cost increases were major and 173 (70 percent) responded that they were unacceptable.

Generally, the following three types of increased costs can be associated with ERISA:

--Benefit costs: to provide benefits excluding administrative costs.

--Initial costs: to amend the plans to meet ERISA standards.

--Administrative costs: to administer the plan.

Of the 246 respondents, about 82 percent indicated that administrative cost increases would have been major, about 72 percent indicated that benefit cost increases would have been major, and about 69 percent indicated that initial cost increases would have been major. However, according to the cost information provided by respondents, the anticipated benefit cost increases would have been much larger than the anticipated administrative cost increases. Forty-nine of the 246 respondents provided both administrative and benefit cost information. This information showed that the average anticipated increase in benefit costs was almost 13 times greater than the average anticipated increase in administrative costs.

Benefit costs

The amount of annual employer benefit contributions required by ERISA to fund pension plans can vary greatly depending on plan provisions. Revising plans to meet the minimum participation and vesting standards could increase the number of employees participating in pension plans and the amount of benefits to which these participants have a nonforfeitable right, even if they terminate employment. ERISA provides minimum funding standards to make sure that

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1/The questionnaire asked respondents to measure the extent of cost increases by indicating that there would be a little or no, moderate, or very large increase. For reporting purposes, however, we considered answers of moderate or very large as indicating major cost increases.

plans have enough money to pay promised benefits. For defined benefit plans, the act's funding standards require plan sponsors to fund for the estimated costs of future benefits. The annual cost for a defined benefit plan is computed using an actuarial cost method permitted by ERISA. Under any accepted method, the unfunded liability will be amortized if the plan is continued and the actuarial assumptions are realized.

Actuarial cost methods are techniques used to estimate and assign annually the costs of benefits accrued to plan participants in that year. A set of assumptions based on past or expected plan experience is used in conjunction with the actuarial cost method. These assumptions, which relate to expected future plan experience, may address such matters as the plan's investment performance, age and years of service of employees, increases in benefits, mortality rates of employees, and plan operational expenses. Unfunded liabilities are created by new or additional benefits provided to employees for past services, previous funding deficiencies, and unanticipated plan financial losses and experience.

Of the 246 respondents who indicated that ERISA costs were a major reason for termination, 177 (72 percent) considered anticipated benefit costs to be significant and 131 considered them to be unacceptable. The anticipated benefit cost information provided by 65 respondents indicated that ERISA would have increased average annual benefit costs by 96 percent--from $22,832 to $44,815. The following table shows the specific ERISA-related benefit factors--participation, vesting, and funding--that the 177 respondents believed would result in major cost increases.

	Responses	Percent of respondents
Cost to meet participation requirements	155	88
Cost to meet funding requirements	126	71
Cost to meet vesting requirements	120	68
Total	a/401	

a/Totals more than 177 because some respondents indicated that more than one benefit factor would result in a major cost increase.

Initial costs

Many plan sponsors anticipated significant costs to revise their plans to meet ERISA requirements. These costs, especially for smaller businesses and plans, could include legal, actuarial, and other consultant fees.

Of the 246 respondents who indicated that increased costs were a major reason for termination, 170 (69 percent) considered initial costs as a major cost element and 124 (50 percent) considered them to be unacceptable. According to 79 of the 246 respondents who provided us with estimates of anticipated initial costs, the average cost to revise a plan to meet ERISA requirements would have been $3,515.

We discussed the initial costs of revising plans to meet ERISA with 12 firms that administer pension plans for private companies. According to representatives of the firms, the initial costs they charged their clients to revise plans to comply with ERISA ranged from $500 to $2,000. Factors considered by the firms in determining charges included the types of changes that had to be made, the type of plan, and the number of plan participants. The president and vice president of one actuarial consulting firm with about 1,300 clients said that the initial costs charged to revise a pension plan to meet ERISA requirements was about $1,500 to $2,000. According to the president of another actuarial firm, the charges to revise a plan ranged from about $500 to $1,000. The representative of an insurance company advised us that such charges were included in the annual fee to administer the plan.

Administrative costs

ERISA requirements resulted in many plan sponsors anticipating substantial increases in annual costs to administer their pension plans. Additional administrative expenses could result from changes in recordkeeping practices, reporting and providing information to Government agencies and plan participants, and consulting fees for services and advice. Costs could also be incurred for bonding fiduciaries 1/ of the plan as required by ERISA and the purchase of insurance to protect fiduciaries from personal liability for plan administration.

1/A fiduciary is anyone who exercises discretionary control or authority over pension plan management or assets. A fiduciary may be the plan sponsor or administrator, or anyone with authority or responsibility in administering a plan.

Of the 246 respondents who considered costs to meet ERISA as a major reason for termination, 202 (82 percent) expected a major increase in administrative costs. Almost 56 percent considered the anticipated increase to be unacceptable. The anticipated administrative cost information provided by 74 plan sponsors indicated that ERISA would have increased average annual administrative costs by about 114 percent--from $2,110 to $4,525.

The most frequently noted factors anticipated to increase administrative costs to a major extent were consulting fees to actuaries or legal advisors and the cost of meeting ERISA's reporting and disclosure requirements. The following table shows the administrative cost elements that the 202 respondents believed would result in major cost increases.

Administrative cost factor	Number of respondents	Percent of respondents
Fees to consultants for advice or services	183	74
Reporting to Government agencies	176	72
Providing information to employees	133	54
Changes in recordkeeping practices	125	51
Obtaining fiduciary insurance to cover personal liability for proper plan administration	121	49
Bonding of fiduciaries	104	42
Employees to administer plan	72	29
Other factors, such as greater management attention	9	4
Total	a/923	

a/Totals more than 202 because some respondents indicated that a major cost increase was anticipated for more than one administrative cost factor.

A representative of a major insurance company that administers thousands of private pension plans told us that the company did not charge a separate administrative fee for plan administration before ERISA because the costs were included in the insurance premiums. However, because of the increase in administrative expenses due to ERISA, the insurance company established an additional annual fee. The fee was $400 per plan covering the first 10 participants and $10 for each additional participant.

According to a representative of a consulting firm, fees for administering plans were not increased because of ERISA. He said that the company charged $20 per participant for the first 30 participants and $10 for each additional participant. The minimum charge was $325. He noted that, since many of his clients' plans would have increased plan participation because of ERISA, the clients would experience increased administrative costs. For example, one of the firm's clients expected plan participation to increase from 25 to about 1,000 participants due to ERISA.

REPORTING AND DISCLOSURE REQUIREMENTS--A MAJOR TERMINATION FACTOR

ERISA requires pension plan administrators to report and disclose extensive information about pension plan operations and financial condition to the Department of Labor, IRS, PBGC, and plan participants and beneficiaries. According to many sponsors of terminated pension plans, this burden was a major reason for plan termination. At the time of our review, the principal reporting and disclosure requirements included the detailed and summary plan descriptions and annual reports to the three agencies.

The detailed and summary plan descriptions, which describe how the plan works, include information on plan eligibility and vesting requirements, procedures for presenting claims for benefits, and circumstances that could result in a participant becoming ineligible to participate or losing benefits. The detailed plan description is required to be furnished to Labor and the summary description is required to be furnished to both Labor and plan participants.

An annual report that had to be filed with Labor and IRS included financial statements and schedules showing such information as the current value of plan assets and liabilities, actuarial information for defined benefit plans, party-in-interest transactions, separated participants with deferred vested benefits, and information on plan modifications. A summary of the annual report had to be provided to plan participants and beneficiaries.

A premium payment and annual report had to be filed with PBGC for defined benefit pension plans covered under ERISA's termination insurance program. The report included information on the plan type (single or multiemployer plan), the number of participants, the annual insurance premium required to guarantee pensions to participants, and certain events that must be reported, such as adoption of an amendment to a plan that decreases payments to participants.

Plan administrators also are required to (1) furnish Labor and participants with information on plan amendments or modifications, (2) on request, furnish Labor with all documents, such as the trust agreement, relating to the plan, (3) routinely make available to plan participants the latest annual report and other documents, (4) when requested, furnish each participant with information on benefits earned and on when their benefits become vested, and (5) provide written notifications to employees of the terms and conditions of early retirement or joint and survivor options.

Of the 313 respondents who indicated that ERISA was a major reason for plan termination, 235 (75 percent) indicated that ERISA reporting and disclosure requirements had a major effect on their decisions to terminate their plans. Of the many reporting and disclosure requirements, the annual report, plan description, separated employees, plan modification, and reportable events requirements were noted most as having a major effect on plan termination decisions.

The following table lists the reporting and disclosure requirements indicated by 235 of the 313 respondents as having a major effect on plan terminations.

Reporting and disclosure requirement	Number of responses	Percent of respondents
1. Annual report to Labor and IRS	200	85
2. Notifying PBGC of reportable events	172	73
3. Filing plan modifications with Labor	169	72
4. Annual report to PBGC	167	71
5. Plan description to Labor	167	71
6. Notifying IRS of terminated employees with deferred vested benefits	158	67
7. Summary annual report to employees	140	60
8. Providing employees with requested statement of earned benefits	126	54
9. Notifying employees of plan amendments	125	53
10. Summary of plan modifications to employees	120	51
11. Summary of plan description to employees	118	50
12. Notifying terminated employees of their deferred vested benefits	95	40
13. Notifying employees of options for early retirement and/or joint and survivor benefits	92	39
Total	a/1,849	

a/Totals more than 235 because some respondents reported more than one reporting and disclosure requirement as having a major effect on plan terminations.

OTHER ERISA FACTORS THAT CONTRIBUTED TO PLAN TERMINATIONS

Of the 313 respondents who indicated that ERISA was a major reason for plan terminations, 271 (87 percent) noted other ERISA factors as major reasons for terminating pension plans. About 77 percent of the 271 respondents indicated that a major reason for termination was an objection in principle to Federal regulation of pension plans established and funded by employers.

About 74 percent of the 271 respondents indicated that a lack of clarifying regulations by Labor and IRS was a major reason for termination. Two previous GAO studies support this contention. (Our July 6, 1977, report to the Senate Committee on Human Resources, "Efforts to Implement the Employee Retirement Income Security Act of 1974 by the Department of Labor" (HRD-77-99), points out that, although Labor had identified 53 areas needing regulations to implement and clarify ERISA, only 15 regulations had been issued and another 10 proposed as of March 10, 1977. Also, we pointed out in an October 21, 1976, report to Congressman Alan Steelman (HRD-77-7) that Labor generally showed a lack of timely response to public inquiries on ERISA requirements.)

A significant number of respondents indicated that ERISA provisions directed at responsible management of pension plans were major reasons for termination. For example, ERISA requires that pension plan assets generally be used only to provide benefits and pay necessary administrative costs of the plan. Accordingly, fiduciaries, including plan trustees, are required to meet strict Federal standards in administering plans. Fiduciaries are required to perform their duties solely in the interest of plan participants and their beneficiaries according to the "prudent man" rule.

Under this rule, fiduciaries must perform their duties with the care, skill, prudence, and diligence that a prudent man, acting in a similar capacity and familiar with such matters, would use. To reduce the risk to the assets of defined benefit plans, fiduciaries are also required to diversify investments. Fiduciaries are personally liable for losses to the plan due to imprudent actions and may be subject to other enforcement actions, such as removal from office.

ERISA provides remedies for enforcing its provisions. For example, criminal and civil remedies are provided for enforcing the reporting and disclosure requirements. Civil remedies are provided for other violations. Further, sponsors of defined benefit plans are responsible for up to 30 percent of their net worth for the unfunded liabilities of terminated plans.

The following table summarizes the other ERISA factors that, according to 271 of the 313 respondents, had a major effect on plan termination decisions.

Termination decision factors	Number of responses	Percent of respondents
General principle of Federal regulation	208	77
Lack of clarifying regulations	201	74
Trustee responsibilities	173	64
Fiduciary personal liability	171	63
Funding requirement penalty	170	63
Reporting and disclosure requirement penalties	167	62
Employer liability for 30 percent of net worth for unfunded liability	152	56
Determination of "prudent" investments	120	44
Diversifying investment assets	88	32
Other factors, such as the time required to understand and implement the requirements and the potential penalties	4	1
Total	a/1,454	

a/Totals more than 271 because some respondents indicated more than one factor.

AGENCIES' ACTIONS TO REDUCE ERISA CONFUSION AND BURDEN

As pointed out, many plan sponsors indicated that the lack of regulations to clarify ERISA requirements and the administrative burden of ERISA were major reasons for plan terminations. The Department of Labor, IRS, and PBGC have taken action to alleviate these problems.

For example, the following table shows that the number of final, temporary, and proposed regulations issued by the agencies increased between September 30, 1976, and December 31, 1977.

	September 30, 1976 (note a)	December 31, 1977 (note a)
Labor:		
Final	13	22
Proposed or temporary (note b)	9	6
	22	28
IRS:		
Final	5	14
Proposed or temporary	33	46
	38	60
PBGC:		
Final	10	14
Proposed	3	9
	13	23
Total	73	111

a/Regulations cover one or more specific provisions of ERISA and vary in significance and complexity. Therefore, the table does not provide a basis for comparing the progress of one agency with another.

b/Proposed regulations are published in the Federal Register for comment and provide an indicator to plan administrators on how the plan should be administered with respect to the subject matter. Temporary regulations are also published in the Federal Register, but they are effective immediately and must be adhered to until final regulations are issued. The temporary regulations present the position of the agency issuing the regulations and generally are not expected to have any major changes when issued in final form.

Actions taken to reduce the administrative and paperwork burden cost to plan administrators included eliminating certain annual report information requirements, such as the independent public accountant's certification requirement for financial statements of pension plans with fewer than 100 participants. Also, beginning with the 1977 annual report, one annual report will be filed with IRS rather than individual reports with Labor, IRS, and PBGC.

In addition, each agency has established advisory groups and initiated studies to identify and determine how plan administrator problems and concerns can be further alleviated.

CHAPTER 4

THE INDICATED ADVERSE EFFECT OF PLAN TERMINATIONS ON PARTICIPANTS WAS MISLEADING

There is no doubt that ERISA contributed to the increase in terminations. However, our review showed that the adverse effect on American workers indicated by the large number of defined benefit pension plan terminations was misleading. The effect was not as great as it appeared because:

--Where ERISA was noted as a major reason for plan terminations, the terminating plans generally did not meet ERISA's minimum participation and vesting requirements designed to ensure that employees would benefit from a pension plan without having to meet unreasonable years worked and age requirements.

--Participants of terminated plans generally had received or were to receive almost all of their vested benefits under existing plan provisions.

--About 41 percent of the sponsors of terminated pension plans continued pension coverage for their employees through new or other existing pension plans. Other employees had an opportunity to continue pension coverage by starting individual retirement account plans.

MOST TERMINATING PLANS DID NOT MEET ERISA MINIMUM PARTICIPATION AND VESTING STANDARDS

ERISA established minimum participation and vesting standards so that employees do not have to work an unreasonable number of years before participating in and benefiting from a private pension plan. Vesting standards provide the criteria for ensuring that plan participants have a nonforfeitable (vested) right to accrued benefits. The further the terminating plans were from meeting these standards, the less the adverse impact the termination had on plan participants and employees of plan sponsors.

Of the 595 responses to our questionnaire, 313 (53 percent) noted that ERISA was a major reason for plan termination. Of the 313, 114 were located in California, Florida, Georgia, Illinois, New York, and Pennsylvania. We compared the plan provisions of 63 (55 percent) of the

114 plans with the ERISA minimum participation and vesting requirements. Sixty (95 percent) of the 63 plans did not meet one or both requirements, (94 percent did not meet the participation requirements and 56 percent did not meet the vesting requirements). We have no reason to believe that a review of all 313 plans would have produced significantly different findings.

Participation standards

Generally, ERISA provides that employees must be allowed to participate in a plan after they are 25 years old and have completed 1 year of service (minimum age and service requirements). However, a plan may provide for participation after 3 years of service and age 25 if employees are given a nonforfeitable right to 100 percent of accrued benefits when they begin to participate. To earn a year of service, an employee generally has to work 1,000 hours for the plan sponsor within a 12-month period.

A plan has to meet both the age and years of service criteria before compliance is achieved. Participation may be delayed for 6 months after both requirements are met, however, because participation must begin no later than the earlier of the start of the next plan year or 6 months after the requirements are met. For example, under the age 25 and 1 year of service requirements, an employee may be required to be 25-1/2 years old and work for 1-1/2 years before being allowed to participate in a plan.

Further, older employees may be excluded from participating in defined benefit pension plans if their age at the time of they begin employment is within 5 years of the plan's normal retirement age (maximum age requirement). For example, if a plan's normal retirement age is 65, an employee hired before age 60 must be allowed to participate in the plan, but an employee hired at age 60 or older may be denied participation.

Both the minimum age and service and the maximum age requirements have to be met before a plan meets ERISA's minimum participation standards. Of the 63 plans reviewed, 57 did not meet the minimum age and service requirements and 32 did not meet the maximum age requirement. Overall, 59 (almost 94 percent) of the 63 plans did not meet both. The 32 plans that did not meet the maximum age requirement required that older workers, to participate, begin employment an average of 9-1/2 years before reaching the plans' normal retirement age, rather than the 5 years required by ERISA.

To determine whether the 63 plans met the minimum age and service requirements, we compared the greatest age and years of service required under the plan provisions with the greatest age and years of service required under ERISA's general requirements. Plans that allowed employees to participate at age 25-1/2 and 1-1/2 years of service and plans that gave participants a nonforfeitable right to 100 percent of earned benefits at age 25-1/2 and 3-1/2 years of service were considered to meet ERISA's minimum age and service requirements.

Of the 63 plans, 57 did not meet the minimum age and service requirements (15 did not meet the age requirement and 57 did not meet the years of service requirement). The age required by the plans not meeting the minimum age requirement ranged from 26 to 35 and averaged 30. Twelve of the 15 plans required employees to be at least 30 before being eligible to participate.

The 57 plans that did not meet the years of service requirement required employees to work from 2 to 6 years before participating. About 74 percent of the plans required an employee to work 3 years or more before being allowed to participate.

The following table summarizes the age and years of service requirements for the 63 plans.

Years of service requirement	Age requirement: Up to 25-1/2	26 through 29	30	35	Total
	(plans)				
1-1/2	a/3	-	-	-	3
2	11	-	2	2	15
3	b/9	1	2	-	12
4	15	2	3	-	20
5	6	-	-	-	6
6	4	-	3	-	7
Total	c/48	3	10	2	63

a/Met the age 25 and 1 year of service requirement.

b/Three of these plans met the age 25 and 3 years of service requirements because the plans provided for 100 percent vesting after 3 years of service. The other six plans had more restrictive vesting requirements.

c/Met the age 25 requirement.

Because of the lack of available data, we could not determine the extent to which the restrictive participation provisions of the 57 plans would have kept employees from becoming plan participants in the long run. Based on information provided by sponsors of 15 of the plans, however, revising the plans to meet ERISA's minimum participation standards would have increased the number of employees participating from 35 to 4,000 percent.

As an example at the extreme, one plan sponsor operated a chain of fast food restaurants and employed about 1,400 full-time employees. The plan was considered tax qualified by IRS and required employees to be at least 30 years of age, have at least 5 years of service, and earn a salary greater than $550 per month to be eligible to participate. The plan sponsor said only 25 employees met these qualifications, mainly because of a high employee turnover rate. The sponsor believed that revising the plan's participation provisions to meet ERISA standards would permit about 1,000 additional employees to participate--a 4,000-percent increase.

Another plan sponsor operated a small retail business with 15 employees, of whom 5 participated in the plan. The plan required employees to be at least 30 years of age and work for 5 years before participating. According to the sponsor, revising the plan to meet the ERISA participation standards would have increased participation by 10 employees--a 200-percent increase.

Vesting standards

ERISA provides that participants of defined benefit plans have a nonforfeitable (vested) right to retirement benefits upon reaching the plans' normal retirement age. ERISA also provides that participants have a full and immediate vested right to accrued benefits resulting from their own contributions to a plan even if they terminate employment before retirement. Regarding accrued benefits resulting from employer contributions, ERISA provides three minimum vesting schedules that are generally governed by years of service. Under any of the schedules, participants must be at least 50 percent vested in their accrued benefits after 10 years of service and 100 percent vested after 15 years of service. Generally, every year a participant works for the plan sponsor for at least 1,000 hours after age 22 must be counted as a year of service.

Further, ERISA provides other vesting-related standards on such matters as (1) the effect on vesting rights of working less than 1,000 hours in a year, (2) the way accrued benefits are to be determined, and (3) the right of a surviving spouse to benefits.

To ascertain the degree to which plans terminating because of ERISA met the act's minimum vesting requirements, we compared these requirements with the length of time required for 50 and 100 percent vesting under the 63 plans we reviewed in detail. In making the comparison, we used the ERISA general requirements that all years of service after age 22 be counted in determining vesting rights.

Our comparison showed that 35 (almost 56 percent) of the 63 plans did not meet the vesting requirements. Of the 35 plans, 33 had vesting schedules. These schedules required participants to have an average of about 19 years of service before becoming 100 percent vested, or 4 years more than required by ERISA. The following table summarizes the years of service required by the 33 plans for participants to become 50 and 100 percent vested.

		100 percent vesting years of service										
	Years of service	15	16	17	18	20	22	23	24	25	26	Total plans
50 percent vesting	10	-	-	1	-	-	-	-	-	-	-	1
	11	-	4	-	-	-	-	-	-	-	-	4
	12	1	-	3	-	-	-	-	-	-	-	4
	13	-	-	1	3	1	-	-	-	-	-	5
	14	-	-	-	1	1	-	-	1	-	-	3
	15	a/1	-	-	-	2	-	-	-	-	-	3
	17	-	-	a/6	-	-	1	-	-	-	-	7
	18	-	-	-	a/1	-	-	-	1	-	-	2
	20	-	-	-	-	-	-	-	-	1	-	1
	21	-	-	-	-	-	-	-	-	-	1	1
	23	-	-	-	-	-	-	a/1	-	-	-	1
	26	-	-	-	-	-	-	-	-	-	a/1	1
	Total plans	2	4	11	5	4	1	1	2	1	2	33

a/Participants of these plans had no vesting rights until the vesting requirements were met, at which time they became 100 percent vested.

Of the 35 plans, 9 of the 33 that had vesting schedules, and the 2 that did not, required participants to meet a minimum age requirement before becoming vested at all. The minimum age required by these 11 plans for vesting ranged from 40 to 65 and averaged 50. Participants in these plans could lose benefits regardless of their years of service by terminating employment before reaching the specified age. For example, four plans required participants to be 50 years old before becoming vested in any part of their accrued benefits. A participant starting to work for the sponsors of these plans at age 22 could work for 28 years for the sponsor before having a vested right to any benefits.

The following table shows the age required by the 11 plans before participants were vested.

Age required	Number of plans
40	1
45	4
50	4
60	1
65	1
Total	11

TERMINATING PLAN PARTICIPANTS RECEIVED VESTED BENEFITS

According to the Pension Benefit Guaranty Corporation, 9,627 single employer defined benefit pension plans having about 214,000 participants gave notification of intent to terminate during the 25-month period after ERISA's passage--from September 1974 through September 1976. PBGC said most participants had received or were to receive benefits that had become vested under the terminating plans' provisions.

A principal purpose of ERISA was the creation of an insurance program to make sure that participants of single employer defined benefit pension plans receive promised benefits. The insurance program is administered by PBGC and guarantees, within certain limits, participants' accrued benefits vested under plan provisions at the time of termination. During 1977, the monthly benefits guaranteed by each participant of a terminating plan was generally limited to $937.50. 1/

PBGC reviews terminating pension plans to determine if the plans have sufficient assets to pay the guaranteed vested benefits of participants. If plan assets are sufficient, the plan administrator or trustee distributes them to participants through such distribution methods as lump-sum payments or purchases of annuities for participants. If plan assets are insufficient, PBGC, if necessary, becomes trustee, takes over plan assets, makes up the insufficiency through premium collections from ongoing plans and collections from terminating plan sponsors of up to 30 percent of the sponsors' net worth, and pays current and deferred benefits to participants.

According to PBGC, an estimated 227 (about 2 percent) of the 9,627 plans giving notice of termination during the period September 1974 through September 1976 had insufficient assets to pay guaranteed vested benefits. Presumably, the other 9,400 terminating plans had sufficient assets to pay guaranteed benefits. The 227 insufficient plans had about 19,000 participants with guaranteed vested benefits totaling about $144.5 million but had assets of only about $55.2 million. PBGC was to guarantee the other $89.3 million in vested benefits. Further, as of September 30, 1976, PBGC reported that about 8,000 of the 19,000 participants were entitled to receive monthly benefits totaling $950,000. The other 11,000 participants had deferred vesting rights to benefits to be paid when participants reached the specified retirement age of the plans.

The responses to our questionnaire indicated that the lump-sum payment and purchase of annuity methods were to be used most frequently in distributing assets. Of the 595 respondents, the 539 providing information on asset distribution indicated that one or more of the following distribution methods would be used:

1/When ERISA was enacted, the limit was $750. However, this limit is adjusted based on changes in the Social Security contribution and benefit base. According to PBGC, the maximum benefit guaranteed is based on the insurance limit in effect at the time of termination and is not further adjusted to reflect changes in limits.

Asset distribution method	Number of responses	Percent of respondents
Assets used to make lump-sum payments	318	59
Assets used to purchase annuities	159	29
Assets put into another employer-sponsored pension plan	65	12
Assets held in trust for plan participants until benefits due	34	6
Other asset distribution methods, such as placing funds in employees' individual retirement accounts or turning the assets over to PBGC	50	9
Total	a/626	

a/Totals more than 539 because some respondents indicated that more than one distribution method would be used.

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Data was not available to determine the extent to which participants lost vested benefits that exceeded the maximum guaranteed by PBGC. Nor was data available to determine the extent to which participants and employees lost accrued benefits because they had not worked long enough as of termination to become vested. According to PBGC officials, however, only a few participants lost vested benefits because they exceeded the maximum guaranteed by PBGC.

CONTINUING PENSION COVERAGE FOR MANY TERMINATING PLAN PARTICIPANTS

The large increase in terminating single employer defined benefit pension plans after passage of ERISA indicated that the act might be the cause of hundreds of thousands of plan participants not having continuing private pension coverage and an unknown number of workers not having the opportunity to participate in a private pension plan.

Of the 595 questionnaire respondents, 524 indicated whether participants of terminating pension plans would have continuing employer-sponsored pension coverage. Of the 524 respondents, 216 (about 41 percent) indicated that their employees would continue to have private pension coverage through new or existing employer-sponsored pension plans. The following table shows the pension coverage status of the 524 respondents.

Pension coverage	Number of responses	Percent of responses
No coverage	308	59
New plan established	83	16
Another existing plan	54	10
New plan to be established	29	6
Other types of coverage	50	10
Total	524	a/101

a/Does not total 100 percent due to rounding.

The new or other existing plans, while having to meet ERISA's minimum standards, were not all defined benefit pension plans. The act does not require an employer to sponsor a pension plan and does not mandate the type of plan an employer may establish. This facet of ERISA permits the sponsor to establish the plan most suited to the operational nature and financial condition of the business.

Of the 216 respondents continuing employee pension coverage, 199 indicated how the continuing pension coverage would be provided. About 46 percent of the 199 respondents indicated that a profit sharing plan would be used. With a profit sharing plan, the employer's contribution to the plan is based on company profits. A percentage of the profits is to be passed on to employees each year. The amounts are generally allocated to individuals in direct proportion to their salaries. The employer contributions required for defined benefit plans, however, are based on complex actuarial estimates of plan assets needed to pay future benefits based on participant earnings and years of service and, under ERISA, generally cannot be reduced in lean business years. A profit sharing plan may be more appropriate for a newly established or marginally profitable company, since little or no contribution to the pension fund would be required during poor business years.

The following shows the types of plans to be used by the 199 respondents to provide continuing pension coverage for their employees.

Type of plan	Number of respondents	Percent of respondents
Profit sharing	92	46
Defined benefit	30	15
Money purchase (note a)	25	13
Employer sponsored individual retirement account (note b)	20	10
Other, such as savings or thrift and employee stock ownership (notes c, d)	32	16
Total	199	100

a/A money purchase plan is similar to a profit sharing plan, but the contribution rate does not vary from year to year. Generally, the employer contributes a specified amount or a percentage of an employee's pay, and this contribution must be made regardless of whether profits are made.

b/In an employer sponsored individual retirement account plan, an employer sets aside money (from business funds and/or a portion of an employee's salary) in individual accounts for retirement savings.

c/In a savings or thrift plan, both the employee and employer contribute. These plans generally provide a range of contributions, and the employer's contribution is usually related to the amount or rate of employee contributions.

d/In an employee stock ownership plan, an employer sets aside money (from business funds and/or a portion of an employee's salary) to invest primarily in stock of the employer.

Employees who were not provided continuing pension coverage by employers could continue pension coverage through individual retirement accounts. An individual retirement account is a retirement savings plan that allows employees not covered by a tax-qualified private pension plan to set aside part of their earnings for which Federal taxes are deferred until benefits are received.

CHAPTER 5

CONCLUSIONS AND AGENCY COMMENTS

CONCLUSIONS

The substantial increase in single employer-sponsored defined benefit pension plan terminations in the 2 years after enactment of the Employee Retirement Income Security Act and complaints about the burden and cost of meeting the act's requirements indicated that the act was a major cause of terminations and was adversely affecting hundreds of thousands of American workers and thousands of American businesses.

Our review showed that ERISA did contribute significantly to defined benefit pension plan terminations. However, economic and other non-ERISA factors played a more significant role in sponsors' decisions to terminate such plans.

Also, the adverse effect on American workers indicated by the number of terminations was misleading. The effect was not as great as it appeared because:

--Where plan sponsors noted ERISA as a major reason for plan terminations, the terminating plans generally did not meet the act's minimum participation and vesting requirements designed to ensure that employees would benefit from a pension plan without having to meet unreasonable years worked and age requirements.

--Participants of terminated plans had received or were to receive almost all of their vested benefits under existing plan provisions.

--About 41 percent of the sponsors of terminating pension plans continued pension coverage for their employees through new or other existing plans. Other employees had an opportunity to continue pension coverage by starting individual retirement account plans.

According to plan sponsors, the increased cost of providing benefits and revising and administering plans, the burden of meeting reporting and disclosure requirements, the need for clarifying regulations, and the concern about penalties for not meeting requirements were major ERISA factors contributing to plan terminations. However, the increased cost of providing benefits and revising plans to meet ERISA provisions and the penalties for not meeting the provisions are necessary to make sure that employees have an equitable opportunity to participate in the plan and that participants receive earned pension benefits. ERISA's reporting and disclosure requirements are also a direct result of efforts to protect employees' benefits.

The lack of regulations clarifying ERISA's complex provisions resulted in confusion about how the act's requirements were to be met and concern about penalties for not meeting requirements. Further, the reporting and disclosure requirements were burdensome and costly to plan sponsors. The Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation, however, have made progress in providing pension plan sponsors and administrators with guidelines for meeting ERISA requirements and have lessened the reporting and disclosure burden by consolidating reports and reducing information required to be reported.

Overall, the minimum participation, vesting, and funding standards and other provisions of ERISA should enhance responsible management of new and continuing plans and give tens of millions of workers a better chance to earn and receive vested benefits without having to work an unreasonable number of years and reach an unreasonable age. In addition, we believe that clarifying ERISA requirements and reducing burdens on plan administrators should be a continuing goal of the three agencies. However, a reduction in administrative burden should not be accomplished by compromising participant protection.

AGENCY COMMENTS

Labor, IRS, and PBGC officials were given an opportunity to review and comment on this report. On February 23, 1978, IRS said that it had no comments or recommendations. On March 3, 1978, PBGC said that the data in our report is credible and useful, and will help the Congress understand the impact of ERISA on defined benefit pension plans.

In a March 6, 1978, letter Labor agreed that Government agencies responsible for administering ERISA should continuously seek ways to clarify its requirements. Labor also agreed that the agencies should seek ways to reduce the cost burden on private employee benefit plans, but not at the expense of participant protection. Labor outlined the steps it has taken to (1) administer ERISA more efficiently, (2) reduce the uncertainty of plan administrators about the act's provisions and penalties for failure to meet its requirements, and (3) reduce the paperwork burden of reporting and disclosure requirements. (See app. III.)

SUMMARY OF QUESTIONNAIRE RESULTS

For the period September 2, 1974, to June 1976, an estimated 7,310 businesses had notified the Pension Benefit Guaranty Corporation that they were terminating single employer-sponsored defined benefit pension plans. We randomly selected and sent questionnaires to 731 of these businesses to obtain information on what effect the Employee Retirement Income Security Act had on decisions to terminate their plans. A total of 595 businesses responded to the questionnaire.

The following summarizes the questionnaire and the answers to specific questions. Because some businesses did not answer or gave more than one answer to specific questions, the number of responses to individual questions vary.

A. PLAN BACKGROUND

1. Question - What was the average number of employees participating in the pension plan and full-time employees employed during the fiscal year in which the plan terminated?

   Answer - The following summarizes the information provided by the 534 businesses that provided information on the average number of employees participating in the pension plan and the 521 businesses that provided information on the average number of full-time employees employed.

Plan size (number of participants)	Pension plan participants: Number of plans	Pension plan participants: Average number of plan participants	Full-time employees: Number of plans	Full-time employees: Average number of employees (note a)
1 to 10	297	5	291	21
11 to 25	117	17	114	73
26 to 50	60	36	56	77
51 to 99	24	73	24	155
100 to 199 (note b)	18	135	18	344
200 to 399	15	288	15	549
400 and over	3	704	3	1,415
Total	534		521	
Overall average (note b)		30		79

a/The average number of employees exceeds the average number of participants because some employees did not meet the plans' participation requirements or the plans were designed to cover only a part of the workforce, such as hourly paid employees.

b/One employer employing 14,000 employees terminated a pension plan that had 155 participating employees. The plan was designed to cover only a part of the workforce. This plan was excluded so as not to distort the results.

2. <u>Question</u> - Who was the pension plan designed to cover?

   <u>Answer</u> - Of the 548 businesses responding to this question:

338	said the plan was designed to cover all of the workforce and
210	said the plan was designed to cover only a portion of the workforce, i.e., hourly employees or a particular group of employees.
548	Total

3. <u>Question</u> - How was the pension plan established?

   <u>Answer</u> - Of the 547 businesses responding to this question:

515	said they voluntarily started the plans,
23	said the plans were started through negotiations with an employee union,
3	said the plans were started through negotiations with an employee group (other than a union), and
6	gave other explanations of how the plans were started, such as a former owner established the plan.
547	Total

4. Question - During the period of time the pension plan was in operation, how was the plan funded?

Answer - Of the 551 businesses responding to this question:

479 said the plans were financed entirely by the employer,

47 said the plans were financed by employer and mandatory employee contributions,

24 said the plans were financed by employer and voluntary employee contributions, and

1 indicated that another method of plan financing was used which required employees to pay for certain insurance policies.

551 Total

5. Question - At its termination, was the plan subject to union negotiation or covered by a collective bargaining agreement?

Answer - Of the 553 businesses responding to this question, 34 said the plans were subject to union negotiation or a collective bargaining agreement.

6. <u>Question</u> - How are the terminated pension plan assets being distributed to plan participants?

<u>Answer</u> - The 539 businesses responding to this question indicated that one or more of the following asset distribution methods would be used:

318 said that assets would be used to make lump sum payments to persons covered by the terminating plans,

159 said that assets would be used to purchase annuities for plan participants,

65 said that assets would be put into another employer-sponsored pension plan,

34 said that assets would be held in trust for plan participants until benefits were due,

8 said that assets would be taken over by PBGC, and

42 indicated other asset distribution methods would be used, such as placing funds in employees' individual retirement accounts.

a/626

a/Totals more than 539 because businesses indicated that multiple distribution methods would be used.

B. CAUSE OF TERMINATION

1. Question - To what extent was the decision to terminate the pension plan caused by any of the 12 following non-ERISA circumstances?

   Answer - The 560 businesses responding to this question indicated the extent to which one or more of the following 12 non-ERISA circumstances contributed to the decision to terminate the plan.

	Extent Circumstances Caused the Termination (see note)						
Non-ERISA circumstance	Little or no	Some	Moderate	Substantial	Very great	Only reason	Total
1. Dissolution of the business	X	X	X	X	X	59	59
2. Bankruptcy	X	X	X	X	X	7	7
3. Closing of a subsidiary, plant, etc.	27	4	-	-	1	24	56
4. Change of ownership	26	7	2	8	17	27	87
5. Adverse business conditions	193	42	33	41	102	X	411
6. Plan did not meet needs of employer	235	29	17	32	60	X	373
7. Plan did not meet needs of employees	236	31	16	33	55	X	371
8. Lack of employee participation	317	4	5	6	15	X	347
9. Cost of benefits became greater than expected (non-ERISA-based costs)	190	28	27	46	103	X	394
10. Investment performance was lower than expected	265	27	17	17	31	X	357
11. Plan administrative burden and costs were greater than expected (non-ERISA-based costs)	207	38	32	37	67	X	381
12. Other non-ERISA circumstances	63	1	-	5	53	X	122

Note: X denotes specific characteristics of the question not asked. The question was designed to obtain a scaled response to determine the relative impact of each circumstance. A scaled response was not allowed for circumstances 1 and 2 because the occurrence of either circumstance should have been the only reason for termination. An "only reason" answer was not allowed for circumstances 5 through 12 because such an answer would have restricted a scaled response.

2. <u>Question</u> - Overall, what effect did ERISA have on the decision to terminate the plan?

<u>Answer</u> - Of the 595 businesses responding to this question:

244	said ERISA had <u>no effect</u> on the termination,
14	said ERISA had <u>little effect</u> on the termination,
24	said ERISA had <u>some effect</u> on the termination,
31	said ERISA had a <u>moderate effect</u> on the termination,
79	said ERISA had a <u>substantial effect</u> on the termination,
108	said ERISA had a <u>very great effect</u> on the termination,
95	said ERISA was the <u>only reason</u> for the termination.
595	Total

<u>Explanatory note</u>: The 244 businesses that said ERISA had no effect on the plan termination were asked not to answer questions 3 through 11 of section B on the cause of termination. The following data in this section summarizes the information provided by the 351 businesses that said ERISA had an effect on the decision to terminate the plan.

3. Question - To what extent did increased costs due to ERISA affect the decision to terminate the plan?

Answer - Of the 338 businesses responding to this question:

16	said costs did not increase due to ERISA,
25	said increased cost had no effect,
10	said increased cost had little effect,
38	said increased cost had some effect,
27	said increased cost had a moderate effect,
78	said increased cost had a substantial effect,
82	said increased cost had a very great effect,
62	said increased cost was the only reason for terminating the plan.
338	Total

Explanatory note: Of the 338 businesses responding to question 3, the 297 that said increased costs due to ERISA had an effect on the termination decision were asked to complete the following six questions. The other 41 were directed to go to question number 10.

4. Request - If increased costs due to ERISA were a consideration in terminating the plan, provide estimates of what the following three categories of costs would be with and without ERISA requirements.

--Administrative costs - to administer the pension plan annually, including consulting or legal fees, insurance premiums, administrative costs (i.e. recordkeeping), reporting and disclosure to the government and your employees.

--Benefit costs - to provide for annual benefits excluding administrative costs as shown above.

--Initial costs - to meet ERISA requirements, including amending plan documents, obtaining tax qualification and associated professional fees.

Response - Following is a summary of responses provided by businesses on the change in administrative and benefit costs and ERISA initial costs.

Administrative costs	Number of responses	Average cost
Without ERISA requirements	85	$ 2,003
With ERISA requirements	85	4,231
Benefit costs		
Without ERISA requirements	72	22,356
With ERISA requirements	72	42,670
ERISA inital costs	94	3,162

5. Request - Considering changes in administrative costs resulting from ERISA, indicate the extent of the cost increases for each of the 9 types of cost.

Response - Following is a summary of responses provided by the 265 businesses on the 9 types of administrative costs.

	Extent of cost increase					
	Little or no	Moderate	Very large	Data not available	Not applicable	Total
1. Changes in record-keeping practices	75	88	58	19	8	248
2. Number of employees needed to manage the plan	116	68	19	16	24	243
3. Fees to consultants, actuaries, insurance companies, or legal advisors for services or advice	14	71	149	13	6	253
4. Obtaining fiduciary insurance to cover personal liability	69	78	55	26	20	248
5. Reporting to Government agencies	18	102	110	19	5	254
6. Reporting and providing data and information to employees	60	100	60	19	11	250
7. Bonding of fiduciaries	75	80	37	29	25	246
8. Other administrative costs	14	7	16	25	29	91
9. Overall administrative costs	11	71	102	20	11	215

6. Request - Considering changes in benefit costs resulting from ERISA, indicate the extent of the cost increase for each of the 5 types of cost.

Response - Following is a summary of responses provided by the 264 businesses on the types of benefit costs.

	Extent of cost increase					
	Little or no	Moderate	Very large	Data not available	Not applicable	Total
1. Contributions required to provide benefits to employees entering the plan due to the new eligibility standards	50	50	125	18	15	258
2. Costs of providing benefits to terminating employees due to new vesting provisions	70	71	71	19	21	252
3. Contributions required to meet new minimum funding standards	73	59	84	25	17	258
4. Other benefit costs	11	2	6	31	33	83
5. Overall benefit costs	29	38	90	29	17	203

7. Request - For the initial costs resulting from ERISA, indicate the extent of the cost increase for each of the 3 types of cost.

Response - Following is a summary of the responses provided by 267 businesses on the 3 types of initial costs.

	Extent of cost increase					
	Little or no	Moderate	Very large	Data not available	Not applicable	Total
1. Amending plan to meet ERISA requirements	25	97	103	30	9	264
2. Other initial costs	20	16	20	35	29	120
3. Overall initial costs	24	63	70	35	13	205

8. Question - Considering changes in the combined administrative, benefit, and initial costs resulting from ERISA, indicate the extent of the changes.

Answer - Of the 258 businesses responding to this question:

3 said the combined costs represented little or no cost increase,

13 said the combined costs represented some cost increase,

50 said the combined costs represented a moderate cost increase,

90 said the combined costs represented a substantial cost increase, and

102 said the combined costs represented a very large cost increase.

258 Total

9. Question - Considering the changes in administrative, benefit, and initial costs resulting from ERISA, how acceptable or unacceptable is the change in each of the four categories listed?

Answer - Following is a summary of the responses provided by 250 businesses.

	Acceptability of cost changes					
	Acceptable		Neither acceptable nor	Unacceptable		
Change in costs	Very	Somewhat	unacceptable	Somewhat	Very	Total
1. Administrative	9	51	30	54	99	243
2. Benefit	17	32	42	46	100	237
3. Initial	11	44	48	46	89	238
4. Total of administrative, benefit, and initial	4	19	20	53	143	239

10. Request - Considering other provisions of ERISA--those without determinable costs--indicate the effect each of the 11 listed items had on the decision to terminate the pension plan.

Response - Following is a summary of the responses provided by 326 businesses on the 11 cost items.

Nondeterminable cost items	Effect on termination: Little or no	Moderate	Very great	No experience	Not applicable	Total
1. Potential penalty for not fully meeting the reporting and disclosure requirements	103	73	97	25	11	309
2. Potential penalty for not complying with the funding requirements in any one year	95	57	122	19	17	310
3. Potential personal liabilities resulting from the fiduciary requirements	92	65	115	23	13	308
4. Potential 30 percent employer liability covering unfunded vested benefits at termination	96	46	115	30	15	302
5. Responsibilities placed on pension plan trustees	94	73	113	16	11	307
6. Determining what "prudent" investments are	132	55	69	23	25	304
7. Required diversification of pension plan assets	156	48	45	27	27	303
8. Lack of clarifying regulations by the Department of Labor and Internal Revenue Service	59	67	149	23	10	308
9. General principle of Federal regulatory effort over a pension plan voluntarily established by an employer and funded in its entirety by employer contributions	62	46	179	14	6	307
10. Other	11	2	20	8	19	60
11. Overall effect of ERISA provisions without determinable costs	34	64	161	11	7	277

11. Request - Considering the ERISA reporting and disclosure requirements, indicate the effect each of the 15 listed items had on the decision to terminate the pension plan.

Response - Following is a summary of the responses provided by 319 businesses.

ERISA reporting and disclosure requirements	Effect on termination: Little or no	Moderate	Very great	No experience	Not applicable	Total
1. Annual financial report to the Department of Labor and Internal Revenue Service including schedules for insurance and actuarial data	75	98	115	18	6	312
2. Summary annual report to employees	140	86	62	16	5	309
3. Annual report and premium payment to the Pension Benefit Guaranty Corporation	105	87	93	14	7	306
4. Registration statement to IRS of separated employees having deferred vested benefits	98	89	76	33	11	307
5. Plan description to be sent to Labor	113	96	82	14	6	311
6. Summary plan description to employees	162	72	52	16	7	309
7. Substantial plan modification to be filed with Labor	95	82	100	24	8	309
8. Summary of plan modifications to be given to employees	145	76	53	22	8	304
9. Notification to participants of early retirement or joint and survivor option	167	64	33	26	10	300
10. Providing participants with a statement of earned benefits on request	144	86	45	22	8	305
11. Notification to terminated employees of their deferred vested benefit	164	63	37	29	12	305
12. Notifying employees concerning plan amendments prior to applying for tax qualified status from IRS	132	76	56	29	11	304
13. Notifying PBGC of reportable events	86	95	88	29	8	306
14. Other	16	1	17	15	18	67
15. Overall effect of the ERISA reporting and disclosure requirements	62	88	113	14	8	285

C. CURRENT COVERAGE

1. Question - Which of the 6 listed categories best describes the current status of employees previously covered by the terminated pension plan?

   Answer - Of the 520 businesses responding to this question:

83	said a new employer-sponsored retirement plan was established to cover those employees,
29	said a new employer-sponsored retirement plan is expected to be established soon to cover those employees,
34	said a separate but preexisting employer-sponsored retirement plan covering those employees is still in effect,
20	said a separate but preexisting employer-sponsored retirement plan was amended (or will be amended soon) to include those employees,
50	specified some other form of coverage for those employees, and
308	said no further employer-sponsored retirement coverage is expected for those employees at this time.
524	Total

2. Question - If employer-sponsored retirement coverage is to be continued for those employees previously covered by the terminated plan, which of the following describes the type of plan providing the continuing coverage?

Answer - Of the 205 businesses responding to this question:

91	said the continuing coverage would be provided by a profit sharing plan,
30	said the continuing coverage would be provided by a defined benefit plan,
24	said the continuing coverage would be provided by a money purchase plan,
17	said the continuing coverage would be provided by an employer-sponsored individual retirement account plan,
7	said the continuing coverage would be provided by a savings or thrift plan,
6	said the continuing coverage would be provided by an employee stock ownership plan,
5	said the continuing coverage would be provided by a target benefit plan,
1	said the continuing coverage would be provided by a stock bonus plan, and
24	said the continuing coverage would be provided through some other type of plan or arrangement.
205	Total

3. Question - If retirement coverage is to be continued, to what extent do the 10 listed items describe the reason for switching to a new plan?

Answer - Following is a summary of responses provided by 183 businesses.

Reasons for switching to new plan	Effect of the reasons: Little or no	Moderate	Very great	No experience	Not applicable	Total
1. More control over contribution levels	37	24	73	3	29	166
2. More flexibility in annual contributions	38	21	78	4	26	167
3. Elimination of 30 percent employer liability	55	13	46	12	40	166
4. Reduction of actuarial consulting fees	49	30	49	8	30	166
5. Reduction of recordkeeping costs	47	32	50	8	27	164
6. Elimination of unfunded liability	54	11	52	11	38	166
7. Easier to administer	36	24	80	4	22	166
8. Reduction of annual contribution costs	58	18	44	9	35	164
9. To consolidate preexisting plans	54	6	22	6	64	152
10. Other reasons	0	1	22	1	12	36

U.S. GENERAL ACCOUNTING OFFICE
SURVEY OF SMALL BUSINESSES
TERMINATING DEFINED BENEFIT PENSION PLANS

I. IDENTIFICATION

1. Please provide the name and address of your business.

____
(Name of Business)

____
(Address)

____

____
(City) (State) (Zip Code)

2. Please provide the name, title and telephone number of the person to be contacted if further information is required.

____
(Name)

____
(Title)

____
(Area Code) (Telephone Number)

II. PLAN BACKGROUND

3. What was the average number of employees participating in the pension plan during the fiscal year in which the plan terminated?

__________ participants

4. What was the average number of employees (considered as full-time employees) employed during the fiscal year in which the plan terminated?

__________ employees

5. Who was the pension plan designed to cover? *(Check one.)*

1 ☐ All of the work force (excluding age or service requirements)

2 ☐ A portion of the work force, i.e., hourly employees or particular group of employees

6. How was the pension plan established? *(Check one.)*

1 ☐ Voluntarily by employer

2 ☐ Through negotiations with an employee union

3 ☐ Through negotiations with an employee group

4 ☐ Other *(please specify)* __________

7. During the period of time the pension plan was in operation, how was the plan funded? *(Check one.)*

1 ☐ 100% by contributions of the employer

2 ☐ By employer and voluntary contributions by employees

3 ☐ By employer and mandatory contributions by employees

4 ☐ Other *(please specify)* __________

8. At its termination, was the plan subject to union negotiation or covered by a collective bargaining agreement? *(Check one.)*

1 ☐ Yes

2 ☐ No

– 1 –

9. Which of the following describes the distribution or proposed distribution of the pension plan assets at the termination of the plan? *(Check those which apply.)*

1 ☐ Assets are to be held in a wasting trust to provide benefits to persons covered by the terminating plan when the benefits are due.

2 ☐ Assets are to be rolled over into another employer sponsored plan providing retirement benefits.

3 ☐ Assets are to be used to purchase annuities for the persons covered by the terminating plan.

4 ☐ Assets are to be used to make lump sum payments to persons covered by the terminating plan.

5 ☐ Assets are to be taken over by the Pension Benefit Guaranty Corporation.

6 ☐ Other *(please specify)* ______________________________

* * *

Please consider the reason(s) why you terminated your pension plan. It may be that the Employee Retirement Income Security Act of 1974 (ERISA) played a role or some other factors may have influenced your decision. We would like to know how various ERISA and non-ERISA factors may have influenced you. The following questions attempt to do this.

III. CAUSES FOR TERMINATION

10. To what extent was the decision to terminate caused by any of the following non-ERISA circumstances? *(Check one box per item.)*

	1–Little or no extent	2–Some extent	3–Moderate extent	4–Substantial extent	5–Very great extent	6–Only reason	7–Not applicable
(1) Dissolution of the business							
(2) Bankruptcy							
(3) Closing of a subsidiary, plant, division, etc.							
(4) Change of ownership							
(5) Adverse business conditions							
(6) Plan did not meet needs of the employer							
(7) Plan did not meet needs of the employees							
(8) Lack of participation by employees							
(9) Cost of providing benefits became greater than expected (other than ERISA based costs)							
(10) Investment performance was lower than expected							
(11) Administrative burden and associated costs of running the plan were greater than expected (non-ERISA based costs)							
(12) Other non-ERISA circumstances *(please specify)* ______							

11. Overall, what effect did ERISA have on the decision to terminate your plan? *(Check one.)*

1 ☐ No effect *(GO TO QUESTION 21)*

2 ☐ Little effect *(GO TO QUESTION 12)*

3 ☐ Some effect *(GO TO QUESTION 12)*

4 ☐ Moderate effect *(GO TO QUESTION 12)*

5 ☐ Substantial effect *(GO TO QUESTION 12)*

6 ☐ Very great effect *(GO TO QUESTION 12)*

7 ☐ Only reason for terminating *(GO TO QUESTION 12)*

12. To what extent did increased costs due to ERISA affect the decision to terminate the plan? *(Check one.)*

1 ☐ Costs did not increase due to ERISA *(GO TO QUESTION 19)*

2 ☐ No extent *(GO TO QUESTION 19)*

3 ☐ Little extent *(GO TO QUESTION 13)*

4 ☐ Some extent *(GO TO QUESTION 13)*

5 ☐ Moderate extent *(GO TO QUESTION 13)*

6 ☐ Substantial extent *(GO TO QUESTION 13)*

7 ☐ Very great extent *(GO TO QUESTION 13)*

8 ☐ Only reason for terminating *(GO TO QUESTION 13)*

13. If increased costs due to ERISA were a consideration in terminating the plan, for each of the items listed below (administrative, benefit and initial costs):

[1] estimate the amount needed without the ERISA requirements

[2] estimate the amount needed with the ERISA requirements

If estimates are not available enter N/A

	[1] Cost without ERISA requirements	[2] Cost with ERISA requirements
(1) ADMINISTRATIVE COSTS – to administer the pension plan annually including consulting or legal fees, insurance premiums, administrative costs (i.e., recordkeeping), reporting and disclosure to the government and your employees.		
(2) BENEFIT COSTS – to provide for annual benefits excluding administrative costs as shown above.		
(3) INITIAL COSTS – to meet ERISA requirements including amending plan documents, obtaining tax qualification, and associated professional fees.		

– 3 –

14. Consider any change in ADMINISTRATIVE COSTS shown in Question 13. For each element listed below and the sum of all elements together indicate what kind of COST the item has associated with it. *(Check one box per item.)*

	1–Little or no cost increase	2–Moderate cost increase	3–Very large cost increase	4–Data not available to determine	5–Not applicable
(1) Changes in recordkeeping practices					
(2) Number of employees needed to manage the plan					
(3) Fees to consultants, actuaries, insurance companies or legal advisors for services or advice					
(4) Obtaining fiduciary insurance to cover personal liability					
(5) Reporting to government agencies					
(6) Reporting and providing data and information to employees					
(7) Bonding of fiduciaries					
(8) Other administrative costs *(please specify)*__________					
(9) Overall administrative costs (sum of all elements)					

15. Consider any change in BENEFIT COSTS shown in Question 13. For each element listed below and the sum of all elements together indicate what kind of cost the item has associated with it. *(Check one box per item.)*

	1–Little or no cost increase	2–Moderate cost increase	3–Very large cost increase	4–Data not available to determine	5–Not applicable
(1) Contributions required to provide benefits to employees entering the plan due to the new eligibility standards.					
(2) Costs associated with providing benefits to terminating employees due to the new vesting provisions.					
(3) Contributions required to meet the new minimum funding standards					
(4) Other benefit costs *(please specify)*__________					
(5) Overall benefit costs (sum of all elements)					

16. Consider the INITIAL COSTS mentioned in Question 13. For each element listed below and the sum of all elements together indicate what kind of cost the item has associated with it. *(Check one box per item.)*

	1–Little or no cost increase	2–Moderate cost increase	3–Very large cost increase	4–Data not available to determine	5–Not applicable
(1) Amending plan to meet ERISA requirements					
(2) Other initial costs *(please specify)* ________					
(3) Overall initial costs (sum of all elements)					

17. Consider the ADMINISTRATIVE, BENEFIT and INITIAL COSTS combined. Indicate what kind of cost this represents. *(Check one.)*

1 ☐ Little or no cost increase

2 ☐ Some cost increase

3 ☐ Moderate cost increase

4 ☐ Substantial cost increase

5 ☐ Very large cost increase

18. Consider the administrative, benefit and initial costs <u>without</u> and <u>with</u> ERISA as you indicated them in Question 13. How acceptable or unacceptable is the change in each of the three types of costs and the overall costs combined? *(Check one box for each item.)*

Change in	Very Acceptable 1	Somewhat Acceptable 2	Neither Acceptable nor Unacceptable 3	Somewhat Unacceptable 4	Very Unacceptable 5
(1) Administrative costs					
(2) Benefit costs					
(3) Initial costs					
(4) Total of administrative, benefit, and initial costs					

19. Listed below are a number of other provisions of ERISA (those without determinable costs). Indicate the effect that each had on the decision to terminate your pension plan. *(Check one box for each item.)*

	1–Little or no effect	2–Moderate effect	3–Very great effect	4–No experience to determine	5–Not applicable
(1) Potential penalty for not fully meeting the reporting and disclosure requirements					
(2) Potential penalty for not complying with the funding requirements in any ONE YEAR					
(3) Potential personal liabilities resulting from the fiduciary requirements					
(4) Potential 30% employer liability covering unfunded vested benefits at termination					
(5) Responsibilities placed on pension plan trustees					
(6) Determining what "prudent" investments are					
(7) Required diversification of pension plan assets					
(8) Lack of clarifying regulations by the Department of Labor and Internal Revenue Service					
(9) General principle of Federal regulatory effort over a pension plan voluntarily established by an employer and funded in its entirety by employer contributions.					
(10) Other *(please specify)* ______					
(11) Overall effect of ERISA provisions without determinable costs (sum of all listed above)					

20. Listed below are a number of ERISA reporting and disclosure requirements. Indicate the effect that each had on the decision to terminate your pension plan. *(Check one box per item.)*

ERISA Requirement	1–Little or no effect	2–Moderate effect	3–Very great effect	4–No experience to determine	5–Not applicable
(1) Annual financial report to the Department of Labor and Internal Revenue Service including schedules for insurance and actuarial data					
(2) Summary annual report to employees					
(3) Annual report and premium payment to the Pension Benefit Guaranty Corporation					
(4) Registration statement to IRS of separated employees having deferred vested benefits					
(5) Plan description to be sent to Department of Labor					
(6) Summary plan description to employees					
(7) Substantial plan modification to be file ith Department of Labor					
(8) Summary of plan modifications to be employees					
(9) Notification to participants of early re. nd survivor option					
(10) Providing participants with a statement o. earned benefits on request					
(11) Notification to terminated employees of their deferred vested benefit					
(12) Notifying employees concerning plan amendments prior to applying for tax qualified status from IRS					
(13) Notifying the Pension Benefit Guaranty Corporation of reportable events					
(14) Other *(please describe)* ______					
(15) Overall effect of the ERISA reporting and disclosure requirements (summation of the above listed requirements)					

IV. CURRENT COVERAGE

21. For the employees previously covered by the pension plan which was terminated, which of the following best describes their current status? *(Check one.)*

1 ☐ A new employer sponsored retirement plan was established to cover those employees

2 ☐ A new employer sponsored retirement plan is expected to be established soon to cover those employees

3 ☐ A separate but pre-existing employer sponsored retirement plan previously covering those employees is still in effect

4 ☐ A separate but pre-existing employer sponsored retirement plan was amended (or will be amended soon) to include those employees

5 ☐ Other *(p'ease specify)*____________

6 ☐ No further employer sponsored retirement coverage for those employees is expected at this time. *(If #6, GO TO QUESTION 24)*

22. If employer sponsored retirement coverage is to be continued for those employees previously covered by the terminated plan, which of the following most closely describes the type plan providing the continuing coverage? *(Check one.)*

1 ☐ Defined benefit pension plan

2 ☐ Target benefit pension plan

3 ☐ Money purchase pension plan

4 ☐ Savings or thrift pension plan

5 ☐ Profit sharing plan

6 ☐ Stock bonus plan

7 ☐ Employee stock ownership plan

8 ☐ Employer sponsored Individual Retirement Account plan (IRA)

9 ☐ Other *(please describe)*____________

23. If retirement coverage for your employees is to be continued, to what extent do each of the following describe the reason for switching to a new plan? *(Check one box per item.)*

	1–Little or no effect	2–Moderate effect	3–Very great effect	4–No experience to determine	5–Not applicable
(1) More control over contribution levels					
(2) More flexibility in annual contributions					
(3) Elimination of 30% employer liability					
(4) Reduction of actuarial consulting fees					
(5) Reduction of recordkeeping costs					
(6) Elimination of unfunded liability					
(7) Easier to administer					
(8) Reduction of annual contribution costs					
(9) To consolidate pre-existing plans					
(10) Other *(please specify)* ________					

24. If you desire to amplify your response to any of the questions or provide additional comments on the effect of ERISA please do so on a separate sheet of paper and attach it to the questionnaire.

THANK YOU FOR YOUR PARTICIPATION. WE APPRECIATE YOUR COOPERATION.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

March 6, 19'78

Mr. Gregory J. Ahart
Director, Human Resources
Division
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Ahart:

We appreciate the opportunity to review your draft report entitled "Effect of the Employee Retirement Income Security Act on the Termination of Single Employer Defined Benefit Plans." We agree with the report's conclusion that government agencies responsible for the administration of ERISA should continuously seek ways to clarify ERISA requirements. We do agree that the agencies should seeks ways to reduce the cost burden on private employee benefit plans, but not at the expense of participant protection.

We are enclosing for your use in finalizing this report an outline of the steps the Department of Labor has taken to:

(1) Improve the efficiency of administering ERISA.

(2) Reduce the uncertainty of plan administrators about ERISA's provisions and penalities for failure to meet ERISA's requirements.

(3) Reduce the paperwork burden of reporting and disclosure requirements.

If we can be of further assistance, please contact Ian Lanoff, the Administrator of the Pension and Welfare Benefit Programs. He and his staff are available to provide further explanations and input.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Enclosure

PENSION AND WELFARE BENEFIT PROGRAMS ACCOMPLISHMENTS

TABLE OF CONTENTS

PENSION AND WELFARE BENEFIT PROGRAMS

I. INTRODUCTION

Implementing ERISA represents one of LMSA's primary responsibilities and over the last year we have made considerable progress in a number of program areas. A greater emphasis has been placed on improving the quality of the compliance program by providing increased support to the field staff. Efforts have been made to increase the information available to participants about their plans and their rights. We have expedited the issuance of regulations and exemptions. A special effort is underway to reduce the paper-work burden while maintaining the needed standards of public disclosure.

II. COMPLIANCE EFFORTS

The increased emphasis placed on compliance activities has involved the development of a number of program elements designed to increase the effectiveness of the field staff.

A. The development of an over-all compliance strategy document

This document was produced by a joint field-National Office task force. It satisfies a long expressed need to improve dialogue between the field and the National Office. It is the first such document to communicate enforcement policy and the future direction of our compliance program.

B. The development of a field compliance manual

The compliance manual is now in the final stages of review and will be distributed to all field offices no later than March 1, 1978. The manual provides complete guidance to field compliance officers investigating potential violations of ERISA. It was developed with considerable input from field employees.

C. The development of a computerized compliance audit

A system has been developed and implemented to direct compliance efforts based on a computerized review of the annual financial reports. This permits us to identify major abuses affecting large number of participants and potentially involving substantial monetary losses. This project is being refined to consider additional factors such as administrative costs and plan characteristics.

D. Fiduciary training

In December, we conducted a training course for both field and National Office employees on ERISA fiduciary provisions. This training course represented the first comprehensive treatment of the fiduciary provisions contained in ERISA and the regulations issued by the Department pertaining to those provisions. Seven additional sessions are scheduled.

III. REGULATIONS AND EXEMPTIONS

We have accelerated the issuance of final regulations and the granting of exemptions from ERISA's prohibited transactions.

A. Regulations issued since January 1, 1977

Claims Procedure (5/27/77)
Service Provider (6/24/77)
Summary Plan Description (7/19/77)
Statement of Rights (7/19/77)
Employee Stock Ownership Plans (ESOPs) (9/2/77)
Plan Divestiture (9/20/77)
Indicia of Ownership (10/4/77)

Temporary Final

Optional Method for Disclosure, Multiemployer Plans (2/11/77)
403(b), Tax-sheltered Annuities (12/2/77)

Proposed

Reduction of Annual Reporting Requirements (11/29/77)

B. Regulations to be issued in 1978

Severance Pay
Annual Reporting Requirements
Suspension of Benefits
Transitional Rules
Supplemental Payments
Prudence in Investments
Record keeping Requirements -- Benefit Status Reports
Acquisitions/Sales
Arbitration
Church Plans
Government Plans
Bonding
Maintenance of Assets in Trust

C. Class Exemptions issued since 1/1/77

These are often issued in response to many individual requests relating to the same plan practice.

Final:

Name

Investment Advisors, In-House (4/8/77)
Investment Advisors, Out-House (4/8/77)
Transfer-In (6/21/77)
Transfer-Out (6/21/77)
Pension Consultants (6/24/77)
ABC Extension (7/1/77)

Proposed:

Name

Pooled Separate Account
Apprenticeship and Training Plans
Customer Notes

D. Individual Exemptions

In CY 1977, PWBP processed 302 individual exemptions. This is approximately three times the number of all individual exemptions processed in prior years. The break-down, by category, is as follows:

Covered by Granted Exemptions

a. Class	85
b. Individual	11

Denied

a. On merits	22
b. Failure to respond	60
c. Withdrawn	73

Closed by regulations (e.g. Service Provider Regulations): 8
Closed by Rulings (e.g. coverage available under existing statutory exemptions): 38 Insufficient Application 5

TOTAL PROCESSED: 302

IV. RECEIPT AND PROCESSING OF REPORTS

A. Reducing the paperwork burden

We have attempted to reduce the paperwork burden of ERISA. In April of 1977, we entered into an agreement with the IRS to permit plans to file the Annual Report form at one place and on one date. Beginning in 1978, plan administrators will send the 5500 form solely to the IRS. This single filing is estimated to reduce the reporting costs to plans by $550,000.

On November 29, 1977, we proposed the following changes to simplify current reporting requirements:

1. A limitation of the categories of 3 percent transactions that will trigger the reporting of all other transactions with a person involved in a 3 percent transaction.

2. A reduction of requirements for reporting investment assets that were acquired and then disposed of within the plan year.

3. And, the elimination of the requirement that an amended form EBS-1 be filed 60 days after a material modification of the plan.

Two other proposed changes in the 1977 Annual Report form to reduce paperwork were also announced. These were the elimination of the requirement (1) that all assets be reported at "book value" and (2) that employee benefit plans report acquisitions and dispositions in the aggregate for each category of pension assets.

B. Technical Aids

During CY 1977, we prepared and widely distributed a slide show on how to fill out the 5500 Annual Report form. PWBP estimates that nearly 250 viewings were held, reaching some 6,000 plan advisors and administrators. In addition, we published a reporting and disclosure guide for use by employee benefit plan administrators in meeting the reporting requirements of ERISA. The publication shows the reports required, the dates on which they are due, the offices to which they must be sent, and presents brief information reminders for each required report.

C. Receipt and Disclosure

We are continuing to receive and process a large volume of annual reports and summary plan descriptions.

a. As of January 9, 1978, we had received 552,000 EBS-1 plan description forms. Approximately 542,000 (98%) are microfiched and available for public disclosure.

b. As of the same date, we had received 578,000 1975 Annual Reports. Aproximately 488,000 (84%) are microfiched and available for public disclosure.

c. As of the same date, we had received 362,000 1976 Annual Reports. Approximately 148,000 (41%) are microfiched and available for public disclosure.

d. As of January 27, 1978, over 400,000 summary plan descriptions had been received.

D. SPD Review

We are developing an SPD review and evaluation program to test SPDs for accuracy, completeness and readability. We have identified a variety of alternative review methods and the personnel needs associated with each. This includes developing a priority scheme for selecting SPDs for review. We anticipate implementing the total evaluation program this spring.

V. COMMUNICATIONS AND PUBLIC SERVICES

We have directed our public information resources to two groups which we feel need them most: the individuals covered by employee benefit plans and small plans which often lack the professional expertise larger plans utilize in complying with ERISA's reporting and disclosure requirements. Accordingly, we are negotiating with the Small Business Administration to use its expertise in reaching the owners of small business. It may be possible to use their volunteer support group, the Service Corps of Retired Executives (SCORE), to leverage our public service resources.

In FY 1977, approximately 1.8 million publications were distributed to the public. In 1978, we anticipate wider distribution of our publications through the additional facilities of the National Technical Information Service of the Department of Commerce.

A. In 1977, we issued the following publications:

Reporting and Disclosure Guide
How to File a Claim for Benefits
SPD Checklist

B. In 1977, we produced the following audio-visual programs:

Filing the Form 5500
SPDs and You

C. Publications/audio-visual programs planned for 1978:

Survivor Annuities (booklet)
Participant Rights under ERISA (booklet)
You and ERISA (revised slide show)
Filing the Form 5500 (revised slide show for small plans)
Filing the Form 5500 (revised slide show for large plans)

D. Inquiries handled and anticipated

In FY 1977, we received 200,000 inquiries from the public. Of these, 198,000 (99%) were processed. In 1978, we anticipate receiving 242,000 inquiries.

PRINCIPAL OFFICIALS RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
DEPARTMENT OF LABOR		
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 (note a):		
Ian David Lanoff	May 1977	Present
J. Vernon Ballard (acting)	Jan. 1977	May 1977
William J. Chadwick	Oct. 1976	Jan. 1977
James D. Hutchinson (note b)	June 1975	Oct. 1976
J. Vernon Ballard (acting)	Dec. 1974	June 1975
DEPARTMENT OF THE TREASURY		
SECRETARY OF THE TREASURY:		
W. Michael Blumenthal	Jan. 1977	Present
William E. Simon	May 1974	Jan. 1977

	Tenure of office	
	From	To
DEPARTMENT OF THE TREASURY (continued)		
COMMISSIONER OF INTERNAL REVENUE:		
Jerome Kurtz	May 1977	Present
William E. Williams (acting)	Feb. 1977	May 1977
Donald C. Alexander	May 1973	Feb. 1977
ASSISTANT COMMISSIONER, EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS (note c):		
Alvin D. Lurie	Feb. 1975	Present
Alvin D. Lurie (acting)	Oct. 1974	Feb. 1975
PENSION BENEFIT GUARANTY CORPORATION (note d)		
EXECUTIVE DIRECTOR:		
Matthew M. Lind	Nov. 1977	Present
Matthew M. Lind (acting)	Dec. 1976	Nov. 1977
Kenneth L. Houck	Feb. 1976	Nov. 1976
Steven E. Schanes	Aug. 1975	Feb. 1976
Steven E. Schanes (acting)	Nov. 1974	Aug. 1975
Charles E. Skopic (acting)	Sept. 1974	Nov. 1974

a/The Office of Employee Benefits 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 Benefits 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.

b/First Administrator of Pension and Welfare Benefit Programs.

c/The Office of Employee Plans and Exempt Organizations was established on December 2, 1974, to administer the Department of the Treasury's responsibilities under ERISA.

d/The Pension Benefit Guaranty Corporation was established under title IV of ERISA to provide termination insurance for most defined benefit pension plans should they terminate with insufficient funds to pay guaranteed benefits.