PENSION LAWS AND REGULATIONS AFFECTING SMALL BUSINESS PLAN DECISIONS

submitted to the

OFFICE OF ADVOCACY
U.S. SMALL BUSINESS ADMINISTRATION

April 8, 1986

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PREFACE

This report was funded by the Office of Advocacy, U.S. Small Business Administration and was prepared by Justin Research Associates, Inc. Persons interviewed during the preparation of the report are listed in Appendix A. We are indebted to them. We are also particularly indebted to:

- Lena Zezulin of Hart Associates, who provided legal advice during the preparation of the report, and

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1.0 INTRODUCTION

The Employee Retirement Income Security Act of 1974 (ERISA) and subsequent pension legislation were enacted to respond to abuses in the private pension system that were denying pensions to many workers. Accordingly, most provisions of pension laws are intended to safeguard pension funds so that workers will have access to these funds upon retirement. As is the case with other wide-ranging laws, ERISA has had a number of apparently unintended consequences.

Primary among these unintended consequences has been a disproportionate burden on small business. This regulatory burden is why plan administration costs are high for small business, and is one of the reasons why per capita pension costs are substantially higher for small businesses than for large businesses.¹

These higher administrative costs in turn may increase small firms' costs of doing business (compared to large firms' costs) and reduce the amount of benefits that can be provided. If a small business cannot afford a plan, its ability to compete with large businesses for workers may be inhibited. The fact that many small firms do not have plans is the single most important reason why many workers are not covered by plans. Nearly three-quarters of private sector workers who are not covered by a pension plan work for a small business.²

This report identifies those aspects of pension regulations that have the greatest effect on small business, presents prospects for legislative and regulatory reform, and develops a framework for subsequent research on pension regulation. The report focuses on small single employer plans (i.e., those that serve only the employees of a single small business employer) and to a lesser extent addresses

¹For example, per capita pension costs paid by establishments with 500-999 workers were roughly half as much as per capita costs paid by establishments with 1 to 10 workers. See James Bell and Associates, Inc., "Coverage, Characteristics, Administration, and Costs of Pension and Health Benefits in Small Business," March 1984.

the problems of small employers participating in multi-employer plans (i.e., pension plans covering the employees of more than one employer, such as one covering a union whose members have different employers).

Chapters 2 through 7 each address major problem areas in regulations covering small business. For each of these problem areas, the discussion focuses on 1) the specific provisions of the law or regulations that cause problems to small businesses, 2) the purpose of these regulations, 3) a critique of the regulations, and 4) alternative means of achieving the protection designed by the regulation without an unnecessary burden on small business. Chapter 8 summarizes the conclusions of the analysis and provides a framework for future research on small business pension plan issues.

The remainder of this chapter will describe the regulations having the greatest impact on small business and how these were identified.

1.1 Background

After a period of increasing tax breaks to tax-qualified plans and requiring increased coverage of employees in tax-qualified plans, Congress began regulating the private pension system in 1958. The Welfare and Pension Plans Disclosure Act of 1958 called for greater communication to employees covered by pension plans about the operation and financing of benefit plans. With this additional information, employees were thought to be capable of policing their pension plans and administrators themselves without much government intervention.

Abuses in the private pension system continued, inspiring the enactment of ERISA in 1974. In the Act, Congress listed the reasons why it believed the legislation was necessary:

- Pension plans were financially unstable and there were no minimum solvency standards;
- Workers had lost retirement benefits when plans terminated without funds to pay their benefits;
- Pension plan managers did not have to meet strict standards of conduct;

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Workers had lost retirement benefits after long years of employment because of a break in service, and

Workers did not have available information about their pensions.

Accordingly, the major provisions of ERISA cover:

- reporting and disclosure;
- minimum participation, vesting, and benefit accrual standards;
- minimum funding standards;
- fiduciary standards; and
- plan termination insurance.

In addition, an extensive body of pension legislation has been enacted by Congress since ERISA. In most cases, these changes have taken the form of pension-related provisions in tax legislation of broader scope and objective. Significant changes have been made by the Revenue Act of 1978, the Multi-employer Pension Plan Amendments Act (MPPAA), the Economic Recovery Tax Act of 1981 (ERTA), the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Deficit Reduction Act of 1984 (DEFRA), and the Retirement Equity Act. Major changes affecting small business pension plans in these acts include:

- the introduction of a new tax-favored retirement plan aimed largely at small employers -- the Simplified Employee Pension (SEP);
- the requirement that employers withdrawing from multiemployer plans meet their obligations for unfunded benefits; and
- the development and modification of rules for so-called "top-heavy" pension plans.
1.2 Problems Small Businesses Have with Pension Regulations

Identifying the specific problems that small business has with pension regulations has been a large part of this study. This information was collected from a number of sources:

- Interviews with representatives of small business associations, actuaries, certified public accountants, pension consultants, as well as knowledgeable government officials in the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guarantee Corporation;
- A prior Justin Research Associates survey of small businesses on pension plan issues; and
- Other prior studies.

According to these sources, the two most significant regulatory problems facing small business pension plans are:

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3 Justin Research Associates, Inc., Issues Relating to Small Business Pension Plans, Report submitted to the U.S. Small Business Administration, May 24, 1985. Lack of revenues or profitability was the only factor cited more frequently than Federal regulations as a reason for not having a plan.

4 The proposal for this study had envisioned the use of a fourth source of information, regulatory flexibility analyses of pension regulations. These analyses describe the impact of final regulations on "small entities". Apparently, no such regulatory flexibility analyses have been prepared for any final pension regulations. Regulatory flexibility analyses do not apply to interpretive rules, only to substantive rulemaking, which essentially exempts IRS from having to prepare them. In addition, they do not have to be prepared if the head of the agency certifies that a final rule will not have a significant economic impact on a substantial number of small entities. The Department of Labor appears to have used this reasoning for all pension regulations developed after enactment of the Regulatory Flexibility Act.

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the frequency of changes affecting established small business pension plans; and

the overwhelming number of regulations and requirements necessary to properly maintain a pension plan.

In sum, there are too many regulations, and they are changed too often. Frequent changes in pension regulations increase the costs of administration. To modify a pension plan to comply with new regulations costs the employer approximately $800, in addition to the costs of maintaining a plan (approximately $1,000 to $2,000 per year). A further consequence of frequent pension law changes and of the complexity of the rules is that pension consultants, lawyers, and accountants cannot keep abreast of the changes and provide appropriate guidance to the small business owner interested in establishing or maintaining a pension plan. Moreover, about one-half of all small firms with plans administer their plans themselves. Frequent regulatory changes may force such firms to pay for professional assistance, drop their plans, or maintain a potentially unqualified plan. Finally, awareness of frequent regulatory changes may deter small businesses from establishing plans.

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5Major categories of costs include fees paid for studies and actuarial computations, the cost of preparing amendments and submitting them to IRS for approval, recordkeeping costs, and reporting and disclosure costs. Cost figures provided above do not include the costs of time spent by management on the pension plan.

6Reportedly, even IRS personnel fail to understand all the pension regulations, and approve plans that do not satisfy the rules and reject plans that do satisfy them. See Donald Grubbs, Jr., "Vesting, Portability, and Integration with Social Security Under Private Pension Plans," presented to the Subcommittee on Labor-Management Relations, Committee on Education and Labor, United States House of Representatives, April 2, 1985.

7James Bell and Associates, op. cit.

8Conversation with pension consultant, January 29, 1986.
There are two possible solutions to the problem of too frequent changes in the regulations:

- Require that plans be amended only every three or five years to come into compliance with new legislation. At that time all the cumulative required changes could be made; or

- Declare a moratorium on new pension legislation for a period of five to ten years.

The first approach would be adopted under RIPA. Changes under that Act would have to be taken into account in any plan as of December 31, 1990 or the date of the first plan amendment after the Act is enacted, whichever is earlier.

Solutions to the problems caused by the number and complexity of regulatory requirements are detailed throughout this report. In prior studies for SBA, small businesses and pension consultants indicated that several specific aspects of regulation are particularly burdensome. Small business respondents to a Justin Research Associates' survey found that the most burdensome regulations were (in order of the number of times that each was cited):

- reporting and disclosure requirements;
- top-heavy rules;
- fiduciary responsibility;
- funding requirements; and
- vesting requirements.

Respondents to an earlier survey specifically focused on Form 5500, controlled group requirements, percentage coverage requirements, and regulations under MPPAA. Small plans cited limitations on benefits as a major concern.9

The remainder of this report addresses specific pension provisions, the reasons for them, why they

9James Bell and Associates, op. cit.

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have adverse impacts on small business, and what can be done to improve the situation.
2.0 REPORTING AND DISCLOSURE

Current Requirements. ERISA, as amended, imposes substantial reporting and disclosure requirements upon pension plans. The reporting rules require that certain reports be filed with agencies of the Federal government. The disclosure rules require disclosure about plan rules and plan benefits to participants and beneficiaries.

Every pension plan must have two written documents establishing its existence: a trust instrument establishing a trust for the benefit of plan participants and beneficiaries, and a plan document containing the detailed rules under which the plan operates. Documents which must be made available to government agencies and plan participants and beneficiaries include:

- **Trust Instrument.**
  The trust instrument establishing the plan must be made available to plan participants upon request.\(^{10}\)

- **Plan Document.**
  The rules of the plan, frequently referred to as the plan document, must be filed with the Secretary of Labor.\(^{11}\) The rules must also be made available to participants.\(^{12}\) The plan document must contain detailed information about the plan and benefits, including 1) names and addresses of plan administrators and trustees, 2) requirements respecting eligibility for participation and benefits, 3) circumstances which may result in loss of benefits, 4) source of financing of the plan, and 5) procedures to be

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\(^{10}\)ERISA Section 104 (b) (2), 29 U.S.C. Section 1024 (b) (2).

\(^{11}\)ERISA Section 101 (b) (2), 29 U.S.C. Section 1021 (b) (2).

\(^{12}\)ERISA Section 104 (b) (4), 20 U.S.C. Section 1024 (b) (4).
followed in presenting claims for benefits.13

Summary Plan Description.
The plan must also prepare a summary plan description that describes the plan's eligibility provisions "in a manner calculated to be understood by the average plan participant."14 The summary plan description must be filed with the Secretary of Labor and distributed to plan participants.15

Modifications and Changes.
Any changes in the plan's rules must be reported to the Secretary of Labor.16

Termination Report.
If the plan is terminated, a termination report must be filed with the Secretary of Labor.17

Annual Report.
Every plan (excepting SEP-IRA plans) must prepare and file an annual report.18 These reports must be filed with the IRS, which provides copies to the Department of Labor and gives the Pension Guarantee Benefit Corporation specific information from the form. Small employers (i.e., with plans covering fewer than 100

13 See ERISA Section 102 (b), U.S.C. Section 1022 (b) for a list of all items that must be included.

14 ERISA Section 102 (a) (1), 29 U.S.C. Section 1022 (a) (1).

15 ERISA Sections 101 (b) (1) and 104 (a) (1) (C), and (b), 29 U.S.C. Sections 1021 (b) (1) and 1024 (a) (1) (C) and (b).

16 ERISA Sections 101 (b) (3) and 104 (a) (1) (D), 29 U.S.C. Sections 1021 (b) (3) and 1024 (a) (1) (D).

17 ERISA Section 101 (b) (5), 29 U.S.C. Section 1021 (b) (5).

18 ERISA Sections 101 (b) (4) and 103, 29 U.S.C. Sections 1021 (b) (4) and 1023.
participants) must file a complete report at least every three years (Form 5500-C), and must file a one-page registration statement in intervening years (Form 5500-R) unless the plan finds it simpler to use the 5500-C every year. The annual report must be made available to plan participants and must include:

- a statement of the plan's assets and liabilities.
- a listing of receipts and disbursements.
- the plan's investments.
- any transaction involving "parties in interest".
- loans made by the plan.
- any leases in default or leases to parties in interest.
- any trusts holding plan assets.
- the names and addresses of plan fiduciaries.
- the number of employees and how many are covered.
- information on any insurance companies used.
- for defined benefit plans, a state-

19 Firms in which the number of participants fluctuates above and below 100 can continue to use the short form as long as their plan has fewer than 120 participants.

20 According to the Department of Labor, approximately 20 percent of small business plans elect to file the 5500-C every year.

21 A party in interest is any person who provides service to the plan, any employer whose employees are covered by the plan, or any organization having members covered by the plan.
ment by an enrolled actuary as to the actuarial assumptions of the plan.

- **Summary Annual Report.**
  An abbreviated version of the annual report must be distributed to employees no later than two months after filing. The Department of Labor has prescribed forms to be used for these reports. An exception permits small plans for years in which the 5500-R form is used to furnish participants and beneficiaries either a copy of the 5500-R or a notice that a copy of the 5500-R may be obtained.

These and other pension plan reporting and disclosure requirements are summarized in Table 1.

**Reasons for the law.** Some reporting and disclosure requirements were in effect prior to ERISA. These, however, took the form of generalized information from which participants and beneficiaries would scrutinize the plan and ensure that the plan operates in the best interests of its participants and beneficiaries. The role of the Federal government in this process was minimal. It was expected that the information disclosed would enable employees to police their own plans. But by 1974, Congress felt that the limited information then available was insufficient for this purpose.

ERISA's more extensive requirements were intended to:

- furnish employees sufficient information so that a typical worker could understand how the plan works and what his or her benefits are; and

- enable the various Federal agencies involved to enforce the Act.

Notwithstanding the increased Federal role, the expanded reporting and disclosure requirements were intended to make the statute self-enforcing.

**Critique.** While the intent of Congress in this part of the law is clear, to protect the rights of participants and beneficiaries, this protection may not have been achieved in the most efficient manner possible. Some specific criticisms are that:

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Table 1
Pension Reporting and Disclosure Requirements

1. To plan participants

<table>
<thead>
<tr>
<th>Item</th>
<th>Automatically</th>
<th>On request</th>
<th>For review</th>
<th>When</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary Plan Description</td>
<td>X</td>
<td></td>
<td></td>
<td>within 90 days after employee joins plan; within 120 days after plan is subject to ERISA; new summary every 10 years</td>
</tr>
<tr>
<td>Plan Documents</td>
<td></td>
<td>X</td>
<td>X</td>
<td>10 days after review request; 30 days after request for copies</td>
</tr>
<tr>
<td>Summary of Material Modification</td>
<td>X</td>
<td></td>
<td></td>
<td>210 days after end of plan year in which modification is made</td>
</tr>
<tr>
<td>Annual Report (Form 5500-C)27</td>
<td></td>
<td>X</td>
<td>X</td>
<td>as soon as filed with IRS</td>
</tr>
<tr>
<td>Summary Annual Report</td>
<td>X</td>
<td></td>
<td></td>
<td>within 2 months after filing</td>
</tr>
<tr>
<td>Benefits Statement for terminating vested employees</td>
<td></td>
<td></td>
<td></td>
<td>within 180 days after end of plan year</td>
</tr>
<tr>
<td>Personal Pension Benefits Statement</td>
<td>X</td>
<td></td>
<td></td>
<td>60 days after request or 120 days after end of plan year</td>
</tr>
<tr>
<td>Explanation of Claims Denial</td>
<td>X</td>
<td></td>
<td></td>
<td>within 90 days</td>
</tr>
<tr>
<td>Plan Termination Report (Form 5310)</td>
<td>X</td>
<td>X</td>
<td></td>
<td>after report is filed with IRS</td>
</tr>
<tr>
<td>Joint and Survivor Notification</td>
<td>X</td>
<td></td>
<td></td>
<td>depends on plan provisions</td>
</tr>
<tr>
<td>Notification of Intent to Terminate</td>
<td>X</td>
<td></td>
<td></td>
<td>10 days prior to termination date</td>
</tr>
<tr>
<td>Notice to Interested Parties</td>
<td>X</td>
<td></td>
<td></td>
<td>2½ days before determination of plan status</td>
</tr>
</tbody>
</table>

27 Selected sample forms are provided in Appendix B.

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Table 1 (cont.)

Pension Reporting and Disclosure Requirements

2. To government agencies

<table>
<thead>
<tr>
<th>Item</th>
<th>Agency</th>
<th>When</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary Plan Description</td>
<td>DOL</td>
<td>120 days after plan becomes subject to ERISA; new summary every 10 years</td>
</tr>
<tr>
<td>Plan Documents</td>
<td>DOL</td>
<td>on request</td>
</tr>
<tr>
<td>Summary of Material Modification</td>
<td>DOL</td>
<td>210 days after end of plan year in which modification was made</td>
</tr>
<tr>
<td>Annual Report (Form 5500)</td>
<td>IRS</td>
<td>7 months after end of plan year</td>
</tr>
<tr>
<td>Annual Information Returns (Form 1099R)</td>
<td>IRS</td>
<td>30 days after end of plan year, for each beneficiary who receives a distribution</td>
</tr>
<tr>
<td>Plan Termination Report (Form 5310)</td>
<td>IRS</td>
<td>30 days prior to plan termination</td>
</tr>
<tr>
<td>Notification of Intent to Terminate</td>
<td>PBGC</td>
<td>(defined benefit plans); 10 days prior to termination</td>
</tr>
</tbody>
</table>

Source: Adapted from Allen, Everett T., Pension Planning, Homewood, IL: R.D. Irwin, 1984.
These rights are adequately protected by ERISA's other provisions on minimum coverage, vesting, and funding standards and fiduciary standards.

Federal agencies have apparently made only limited use of the voluminous amount of data required by ERISA. The National Pension Forum concluded that "information from annual reports and plan descriptions is not being effectively managed and utilized." 22

Summary plan information is so detailed that it cannot be completely comprehensible to the average plan participant. As a result, anecdotes abound about employees discarding their summary annual report without reading it. Many reporting requirements are better designed to assist compliance activities by the government than by plan participants.

Reporting and disclosure requirements have significant economies of scale. Because of these economies of scale, small business bears a greater relative burden to comply with reporting and disclosure requirements than does large business. The Department of Labor and the IRS, to partially alleviate this relative burden, have reduced the reporting requirements for small business, although the burden is still considerable for these businesses. At the same time, the IRS has stepped up enforcement efforts targeted at small businesses that have submitted incomplete forms. 23

Suggestions for Reform. No comprehensive determination has been made of the use of the information required from small business plans, how this serves the interests of plan participants and beneficiaries, and whether these uses justify the cost to small business. Some of the required information is used


23 Conversation with member of the Tax Forms Coordinating Committee.
for essential statistics and to identify plans with potential problems. However, an item-by-item review of the information required would almost certainly yield elements that are infrequently used, enabling the government to reduce the amount of data required in reports and/or the frequency of reports.

For example, current data requirements of questionable value include:

Form 5500-C

Question 15: Detailed information on plan investments (such as distinctions among types of publicly traded securities) is not necessary for either Department of Labor or participants, both of which could use a more generalized summary of assets to evaluate the performance of plan investments. Some form of this question is required by ERISA Section 103 (b) (3) (c).

Other Questions: A number of other questions are ambiguous or unnecessary for many plans, creating confusion among small business filers. For example, Questions 161 and 16c are ambiguous for plans for which the sponsor pays all the administrative expenses outside of the fund. Many questions and parts of the instructions are written so as to be comprehensible only by professional practitioners, such as Question 26a, "Does the plan satisfy the percentage tests of Code section 410 (b) (1) (A)?" Finally, items are not always clearly identified according to which type or types of plan they apply.

Schedule A: This form must be filed by every plan which provides benefits through insurance companies. Question 5(a) requires information on the basis of premium rates, extremely technical information which will not be understood by participants or beneficiaries. Moreover, premiums are not subject to Federal legislation. Nonetheless, this question is required by ERISA Section 103 (e) (2). 24


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Schedule B: This form, which must be filed annually for defined benefit plans subject to ERISA minimum funding requirements, requires the services of an enrolled actuary, a considerable expense to a small plan, and is one of several aspects of ERISA which discourage small business from maintaining defined benefit plans. At a minimum, the frequency at which this form is required could be reduced.

Summary Annual Report

As noted earlier, the information provided in the summary annual report is without interest to most participants and beneficiaries. Since the full annual report must be made available to participants and beneficiaries on request, this requirement could be eliminated.

Notice to Interested Parties

When a plan is amended, this notice must be sent to parties who have a right to intervene in the process. Since the passage of ERISA, over one million such notices have been sent out. But not one amendment has been changed as a result of these notices. This requirement could be eliminated.

Retiree Benefit Suspension Reminder

This is a notification sent to retirees informing them that their benefits will be suspended during certain periods of reemployment. This information is redundant -- it has already been provided to participants in the Summary Plan Description, and the information is always readily available in the Plan.

25 The Department of Labor estimates that less than 9 percent of active participants in pension plans request information concerning benefit entitlements in any given year. Because the information contained in the SAR deals with general financial matters, which is less relevant to participants, a considerably smaller percentage are interested in that.

26 Conversation with pension consultant, January 30, 1986.
In addition to reducing the number of questions and forms, the reporting burden would be reduced if forms were simplified, made more comprehensible to non-professionals, and designed to be consistent with standard business recordkeeping practices and with information made available by plan providers. As the situation currently stands, many items for the 5500 Series forms, for example, must be calculated solely for those forms.

The proposed comprehensive review of recordkeeping and disclosure requirements could be undertaken by the IRS and the Department of Labor with input and review from SBA. Valuable information on the difficulty small businesses have with specific data items could be provided by 1) the IRS Taxpayer Information and Education Service, which handles telephone requests for information on filling out IRS forms, and 2) the Department of Labor office that receives complaints on pension plan matters.

Another general strategy for reform of reporting and disclosure requirements would be to require only that data be made available (rather than distributed) to interested participants and beneficiaries. Documents which could be provided on request, rather than automatically, include the Summary Plan Description, the Summary of Material Modification, and the Summary Annual Report.

Finally, the reporting and disclosure burden would be reduced if IRS would change its forms less frequently.

None of these strategies would have to reduce participants' equity or rights protection. Section 110 of ERISA provides that the Department of Labor "may prescribe an alternative method for satisfying any requirement" if it is determined that the requirement is burdensome and that participants' and beneficiaries' rights would be respected. However, the extent of this authority to modify requirements is unclear and has not really been tested. The Department of Labor and IRS should investigate the feasibility of taking advantage of this flexibility to provide alternate means for small business to comply with ERISA's specific recordkeeping and disclosure requirements.
3.0 TOP HEAVY RULES AND RELATED REQUIREMENTS

Current Requirements. A "top heavy plan" is a plan in which more than 60 percent of the value of the accrued benefits is allocable to key employees. A "key employee" is, generally, an officer, one of the ten largest owners, a person owning more than 5 percent of the employer's stock, or a person owning more than 1 percent of the stock and whose annual compensation exceeds $150,000.

Top heavy plans are subject to restrictions that:28

- limit the amount of a participant's compensation that may be taken into account under a qualified plan to $200,000.
- provide more rapid vesting of benefits for plan participants who are non-key employees; choices are limited to full 3 year vesting or graduated 6 year vesting.
- provide minimum contributions or benefits for plan participants who are non-key employees; this minimum benefit may not be integrated with Social Security.
- reduce the aggregate limit on contributions and benefits in cases of combined plans for certain key employees.29

In addition, there are other maximum benefit and contribution rules for individuals that affect all qualified plans. Under a defined benefit plan, the limit for a contribution is that amount which would produce a benefit of $90,000 or 100 percent of the employee's average annual pay for the three consecutive years of highest pay, whichever is less. For a defined contribution plan, annual contributions by the employer are restricted to the lesser of 25 percent of annual pay or $30,000. For combined defined benefit and defined contribution plans, there

28 In addition, in all plans, whether or not top heavy, distributions to key employees who are 5 percent owners are restricted.

is a limit of 125 percent of the limits considered individually. 30

Reasons for the law. The top-heavy rules were principally designed to prevent discrimination against non-key employees in small plans. Other reasons cited for these rules are to reduce the loss of tax revenues and to eliminate disparities in the treatment of proprietary employees and self-employed persons.

Nondiscrimination rules already in existence were said to be insufficient because "in many instances the firms in which such proprietary employees work have few regular employers [so that] the requirement to finance nondiscriminatory benefits for the regular employees under qualified plans does not involve sufficient costs to limit the pension of proprietary employees."

Revenue protection was thought necessary because of the extent to which professional corporations (e.g., doctors, dentists, and lawyers) were using pension plans primarily as tax shelters rather than as a means of providing for retirement income. The third reason behind the top-heavy provisions in ERISA was to equalize the incentive structure for using a pension plan between corporations and sole proprietors or partnerships. Before ERISA, there was no limit to the contributions of a corporate employer, while there were such limitations for sole proprietors and partnerships.

Critique. Preventing discrimination against non-key employees in small plans is a legitimate concern. But rather than creating a framework for equitable pension benefits, top-heavy rules discriminate against small business, create unnecessary administrative burdens, and adversely impact benefits received by all employees.

30 Internal Revenue Code Section 415. The limit is 100 percent for top-heavy plans.
plans. Top-heavy rules as such put small business at a severe competitive disadvantage compared to large business. Almost all very small businesses are de facto top heavy.

The rules are extremely complex, particularly when the effect of top-heavy rules is combined with rules affecting contributions, benefits, and vesting. Examples are the rules necessary to determine whether a plan is top-heavy, the requirements which apply if the plan is top-heavy, and the limitations on combined defined benefit and defined contribution plans.

Dollar limitations on benefits or contributions indirectly impact all employees. Because of these limits, a generous percentage formula may not benefit key employees. In these cases, a less generous percentage formula is adopted for all employees, thereby reducing the pension benefits available to all employees. In addition, small businesses will typically not adopt pension plans that do not directly benefit their owners. Thus, any provision that creates an income drag on key employees (especially owners) will, by its very nature, penalize small business. As a result, fewer small businesses have pension plans than might otherwise be the case.

Suggestions for reform. One perspective is that top-heavy rules could be eliminated without allowing discrimination against non-key employees, as follows:

Earlier vesting than is provided for in ERISA may well be appropriate, but if this is so it should be provided for all employees, not just employees of small businesses. One solution would be to provide for minimum 3 or 5-year cliff vesting in all plans.

Since plans are now required to be nondiscriminatory, minimum benefit requirements are essentially redundant except for plans with aggressive integration features. "Integrated" plans take into account Social Security benefits in the calculation of pension benefits for employees. The result can be a major reduction or total loss of benefit for lower paid employees. However, if integration were limited or eliminated for all plans, special minimum benefit requirements for small business plans would be unnecessary.

Maximum compensation rules appear to be already redundant since there are limits on benefits and contributions.

However, it is also argued that 1) these changes alone would not eliminate discrimination in small plans (i.e., that other aspects of plans such as accrual rates could be designed to favor key employees), and 2) that all businesses should not be penalized for problems which largely occur in small businesses.32

Alternatively, the vesting, integration, and maximum compensation rules could be tightened for all plans, or benefit or contribution limits could be made simpler but stricter for all plans. Either of these alternatives would at least reduce the bias against small business that characterizes the current rules.

For example, one current legislative proposal would reduce the discriminatory impact of top-heavy rules by applying similar rules to all plans. This act would 1) reduce minimum vesting from 10 years to five years,33 2) limit integration (and simplify integration rules), and 3) set maximum compensation rules for all plans at an amount which currently is roughly equal to the level allowed under the top-heavy rules

32 Conversation with Congressional committee staff member, February 6, 1986.

33 A number of other pension reform bills introduced during this Congress, including the Economic Equity Act of 1985 (H.R. 2622), would also reduce minimum vesting to five years.
(i.e., 500 percent of the Social Security wage base). 34

However, the act under discussion, the Retirement Income Policy Act (RIPA), would also change integration and paperwork requirements, so that its cumulative effect on top-heavy plans is unclear.
4.0 FIDUCIARY RESPONSIBILITY

Current Requirements. ERISA imposes strict fiduciary obligations on those who have discretion or responsibility for the management, handling, or disposition of plan assets. Plan fiduciaries must establish the trust and the plan rules. They must accurately describe the plan to plan participants. They are required to observe the "prudent man" standard, which requires a standard of care "that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."35

The assets of the plan must be managed for the "exclusive purpose" of providing benefits to plan participants and beneficiaries.36 This means that the plan's assets cannot be invested for business or other purposes unrelated to the task of providing pension benefits. Thus, there is considerable limitation on a plan's ownership of stock in the employer's business.37

In general, fiduciaries are responsible for the success of plan investments. The most onerous provision of the rules concerning fiduciary behavior is the fact that fiduciaries are exposed to personal liability for breaches of fiduciary duty.38

Reasons for the law. Employees have a right to expect that trustees and administrators will handle their pension funds properly for the purposes for which they are intended and will not divert assets to improper uses. Despite the value of full reporting and disclosure provided for by ERISA, it was felt that those provisions were not in themselves sufficient to safeguard plan assets from such abuses as self-dealing, imprudent investing, and misappropriation of plan funds.

35ERISA Section 404 (a) (1) (B), 20 U.S.C. Section 1104 (a) (1) (B).
36ERISA Section 404 (a) (1) (A), 29 U.S.C. Section 1104 (a) (1) (A).
37However, an elaborate procedure for exemption is available.
38ERISA Section 409, 29 U.S.C. Section 1109.
Critique. While the fiduciary standards required by ERISA have corrected many abuses in the pension system, they have at the same time compelled many small businesses to use outside expert assistance in establishing and maintaining their pension plans. In a recent survey, over 50 percent of small business plans were found to use expert assistance.39 Expert assistance in this area is expensive. By increasing the cost of maintaining or establishing a pension plan, this acts to reduce the number of small businesses that have pension plans.

Small business owners who do serve as fiduciaries are unlikely to be experts in the area of pension law and funding, and many are not experts on financial investments. Moreover, many small business owners do not want to be viewed by their employees as controlling pension assets, regardless of investment success, because this can cause employee relations problems.40

The prudent man rule has had the effect of denying pension equity capital to small businesses, since the government has not clearly defined acceptable levels of risks for pension fund investments. Pension fund managers are accordingly unwilling to invest in what are viewed to be inherently more risky small businesses. Not only is a large proportion of the capital market unavailable to small business because of the prudent man rule, but also small business sees pension funds being used to support large business. This is a significant cause of concern among small business owners and operators.41

Recommendations for Reform. Any change to small business pension plan fiduciary requirements runs the risk of weakening pension plan protections. However, alternative mechanisms that should be examined to allow small pension funds more flexibility include:

clarifying the fiduciary requirements in

40Conversation with pension consultant, January 29, 1986.
41Conversations with pension consultants, January 29 and January 30, 1986.
the law. Current law has very vague standards (e.g., the "prudent man" standard). For example, the regulations could specify certain conservative investment vehicles, such as government bonds, that are per se responsible and prudent.

- mechanisms to allow pension funds to invest in small businesses (e.g., via Small Business Investment companies).
- exempting certain de minimis transactions from the rules.
5.0 **FUNDING REQUIREMENTS**

**Current Requirements.** Funding refers to the accumulation of assets in a pension plan so as to assure the availability of funds for beneficiaries. While many pension regulations apply to all pension plans, the laws and regulations on funding requirements often differ according to the type of pension plan.

Funding requirements are particularly strict for defined benefit plans. Defined benefit plans must fund the normal costs of current pension service credits, amortize experience losses, amortize any past service costs, and provide for any funding deficiencies that have occurred due to inadequate past funding.\(^2\)

Defined benefit plans are required to purchase termination insurance from the Pension Benefit Guaranty Corporation (PBGC). They must pay annual premiums which are based on the number of participants in the plan and whether the plan is a single-employer plan or a multiemployer plan. If a defined benefit plan terminates without sufficient assets to pay vested benefits, the PBGC guarantees the payments of at least a portion of the benefits.

If a terminated plan is not fully funded, an employer may have a liability to the PBGC up to 30 percent of employer net worth.\(^3\) Multiemployer pension plans impose withdrawal liability upon withdrawing employers to pay for any unfunded benefits.\(^4\)

Defined contribution plans do not incur such funding liabilities because they are only required to keep track of and invest the contributions made for each individual.

**Reasons for the law.** Prior to ERISA, a significant portion of pension plans was not adequately funded and were not accumulating sufficient assets to pay benefits in the future to covered employees. Many employees, as a result, were at risk of not receiving

\(^2\) ERISA Section 302, 29 U.S.C. Section 1082.

\(^3\) ERISA Section 4042, 29 U.S.C. Section 1342.

\(^4\) ERISA Section 4201, et seq., 29 U.S.C. Section 1381, et seq.
the pensions they expected because insufficient funds were available. Prior to ERISA, the law held that the annual contributions to a qualified plan had to be sufficient to pay the pension liabilities accrued currently plus interest due on unfunded accrued pension liabilities. It did not require contribution levels to take into account amortization of the principal amount of the unfunded liabilities.

Critique. The funding liability of defined benefit plans and the withdrawal liability for multi-employer plans can have a deleterious effect on small business credit availability. Many financial institutions will take into account unfunded liability, including withdrawal liability, when they are considering granting credit to a small business, no matter how remote a chance of its being imposed.

Moreover, employer funding liability in some cases makes the transfer of ownership of a small business in a multi-employer plan problematic, if not impossible. One case was identified where transfer of ownership of a small family-owned business to another family member would have required liquidation of part of the firm's assets, including essential equipment. This would have resulted in closing the plant to no one's benefit. 45

Recommendations for Reform. One possible alternative to the withdrawal liability provisions for defined benefit plans would be a waiver or reduction of net worth liability for small employers, but with higher premiums for employers whose plans are not fully funded. ERISA Section 4209 provides for a de minimis reduction of withdrawal liability to assist small firms. However, the reduction is calculated in such a way (the lesser of 3/4 of one percent of unfunded vested obligations or $50,000) that it does not help small firms in fully funded plans. 46

Calculating PBGC termination insurance premiums based on plan risk would probably make plans safer,

45 Conversation with pension consultant, January 29, 1986.

46 If withdrawal liability is allocated based on each employer's contributions and obligations, an individual firm in a multiemployer plan can have unfunded liabilities even if the plan as a whole is fully funded.

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reduce the number of plan terminations, and reduce premium rates for many multi-employer plans. However, this might increase premium rates for small, relatively undiversified single-employer plans.
6.0 VESTING REQUIREMENTS

Current Requirements. Vesting refers to the nonforfeitable right or interest which an employee participant acquires in a pension fund. Precise records must be maintained for all participants to document their time of service. Plans must comply with break-in-service rules, which add to a plan's recordkeeping requirements. When a participant who is not vested leaves a plan, he can return to the plan after the greater of five years or the years of prior service without losing any vesting rights. In addition, time served in the military and the first 501 hours lost due to maternity or paternity leave cannot be counted toward a break in service. Thus, plans may have to maintain records for former employees for a number of years.

Defined contribution plans quite frequently provide for immediate vesting, or for 100 percent vesting after a certain period. Defined benefit plans typically feature more complex vesting schedules.

Another concern in the area of vesting is the rights of plan beneficiaries who are survivors of plan participants. All plans which provide benefits in the form of an annuity (including some defined contribution plans) must provide for a "joint and survivor" form of benefit payment, which is automatically paid to a participant and, when the participant dies, to the participant's spouse. If a participant dies after becoming fully vested, but before retirement, the spouse is entitled to the survivor's benefit at the time the participant would have reached age 55. Also, pension benefits can be assigned to a former spouse by a valid state court domestic relations order. Thus, a plan may have to maintain records on spouses and former spouses of employees who are no longer working for the company.

Reasons for the law. Prior to ERISA, qualified employer plans were generally not required to provide vested rights to participating employees before retirement age. Under most plans, employees did not acquire vested rights until they had been employed for a fairly long period or were relatively mature. Only

\[\text{ERISA Section 203 (b) (3) (E), 29 U.S.C. Section 1053 (b) (3) (E).}\]

\[\text{ERISA Section 205, 29 U.S.C. Section 1055.}\]
one out of every three employees participating in employer-financed plans had a 50 percent or greater vested right to his accrued pension benefits. Thus, pension rights which had been slowly acquired over many years could be lost if the employee left or lost his job prior to retirement. In extreme cases employees lost pension rights at advanced ages as a result of being discharged shortly before they were eligible to retire. Such losses are inequitable since the pension contributions previously made on behalf of the employee may have been made in lieu of additional compensation.49

For these reasons, Congress concluded that it was desirable to provide a minimum standard of vesting for all qualified pension plans. However, the standard was relatively lenient because it was felt that:

- too rapid vesting would increase employer costs to such an extent as to curtail the creation of new retirement plans.
- providing 100 percent vesting after any specified number of years could give the employer an incentive to dismiss an employee rather than absorb the resulting sharp increase in pension plan costs.50

Critique. The impact of ERISA's vesting rules on small business can range from minor to severe, depending upon the type of plan chosen, the vesting schedule selected, and other factors. Today it is generally believed that ERISA's vesting rules are reasonable and, if anything, too lenient. Criticisms of the vesting rules revolve around two issues:

- The discriminatory treatment of small business. First, most small business

49 Vesting also has important economic implications. Workers tend to change jobs fairly frequently, especially in their younger years. The cyclical nature of certain industries creates job instability and frequent layoffs over a work career for employees in those industries. Less rapid vesting unjustifiably penalizes these employees and inhibits the mobility of labor.

plans are covered by the relatively severe vesting requirements in the top-heavy rules (see above). Second, the IRS is allowed to require earlier vesting than the usual standard if "there is reason to believe there will be an accrual of benefits ... tending to discriminate in favor of employees who are officers, shareholders, or highly compensated."51 In some IRS districts this has been arbitrarily read as applying to all small plans.52

The implicit requirement that precise records be maintained for all participants, other employees, former employees, and beneficiaries (including survivors, spouses, and former spouses of plan participants).

Suggestions for Reform. The vesting rules could be simplified and made more equitable by requiring 3 or 5-year cliff (i.e., full) vesting for all plans. The cost of such requirements would differ according to the type of plan under consideration, and the age and turnover of the firm's workforce:

- It has been estimated that five-year vesting would increase costs of defined benefit plans by from 0 percent to 7 percent of present plan costs and 0.0 percent to 0.2 percent of compensation costs for covered employees.53

- Another study estimated that a shift from 10-year to 5-year vesting would increase costs by 2.4 percent for defined benefit plans and 5.3 percent for defined contri-

51 Internal Revenue Code Section 411 (d) (1) (B).

52 Donald Grubbs, "Vesting, Portability and Integration...," op. cit.

However, five-year vesting might increase pension costs by as much as 40 percent at firms with young work forces and high turnover.

Three-year vesting is estimated to increase costs of defined benefit plans by from 0 percent to 10 percent of present plan costs and 0.0 percent to 0.3 percent of compensation costs for covered employees.\(^5^5\)

Moreover, stricter vesting rules such as these might reduce recordkeeping requirements for nonvested employees by reducing the number of nonvested employees at any given business.

As noted in Section 3.0, legislation has been introduced in the 99th Congress which would reduce minimum vesting from 10 years to five years.


\(^5^5\) Donald Grubbs, "Vesting, Portability, and Integration...", *op. cit.*
7.0 OTHER ASPECTS OF THE REGULATIONS

Other aspects of pension regulations cited by plan administrators and small businesses as having a negative impact on small plans include rules on simplified employee pension plans (SEPs) and 401(k) plans and controlled group requirements.

**Simplified Employee Pension Plans.**

**Current requirements.** SEPs are a tax favored retirement plan aimed largely at small firms. In a SEP plan, the employer makes a contribution directly to the employee’s IRA, subject to higher contribution limits than the employees themselves (15 percent of salary). SEPs require no formal plan or trust. All that is required is a written allocation formula (i.e., the proportion of salary that will be contributed by the employer) and completion of a half-page form (5305-SEP). Employer contributions are not dependent upon profits or any other criteria.

**Critique.** In return for its simplicity, the SEP has major disadvantages compared to other types of pension plans:

- the employer contribution is limited to 15 percent of salary;
- no voluntary contributions are permitted;
- tax penalties discourage premature withdrawal, even in hardship cases; and
- lump sum distributions do not qualify for 10-year averaging.

**Suggestions for Reform.** SEPs could be made a viable alternative for more small firms if the allowable employer contribution were raised and/or voluntary contributions were allowed.

RIPA would make SEPs slightly more attractive by 1) allowing employees covered by a SEP to choose between cash payments as salary and contributions to the SEP, and 2) relating SEP maximum compensation limits to the Social Security wage base. However, the deferral percentage of owner-employees would be limited to 1.5 times the average deferral percentage of all other participating employees.
Current requirements. 401(k) plans are a variation on conventional profit-sharing or thrift plans. Under these plans, employees can choose among taxable and nontaxable benefit options offered and paid for by the employer. In particular, employees can choose between take-home pay and retirement contributions on a year-to-year basis. 401(k) plans are especially advantageous to small business because 1) the employer's contributions can be flexible, based on the firm's profitability, 2) the plan easily adapts itself to the diverse preferences among a small group of employees, and 3) part of the cost of the plan is borne directly by the employees. On the other hand, 401(k) plans are complicated and expensive to administer.

Critique. 401(k) plans have special nondiscrimination requirements (in addition to the nondiscrimination requirements that apply to all plans) and are relatively complex and costly to administer.

The average deferral percentage of the highest paid one-third of all employees is compared to the deferral percentage for the lowest paid two-thirds, and one of the following tests must be passed:

- the average deferral percentage of the highest one-third must be not more than 1.5 times the percentage for the lowest two-thirds; or
- the spread between the deferral percentage of the highest one-third and the lowest two-thirds may not be more than three percent, and the deferral percentage paid the highest must not be more than 2.5 times the percentage of the lowest.

For employer contributions to be counted for this purpose, they must be nonforfeitable. This test must be applied each plan year.

Suggestions for Reform. 401(k) administration costs would be reduced considerably by simplifying or eliminating the special nondiscrimination requirements. For example, a flat dollar amount (either $50,000 or the Social Security maximum) could be used to distinguish between high and low paid employees.

However, current proposals regarding 401(k) plans would all reduce benefits available under these plans.

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The House-passed tax reform bill would severely restrict 401(k) plans by 1) reducing the amount that an employee could defer for any year to $7,000, 2) reducing dollar for dollar the amount an employee could contribute to an IRA, 3) making the nondiscrimination requirements more stringent and more complex, and 4) limiting so-called "hardship" withdrawals to elective deferrals.

Currently proposed pension legislation would similarly make the rules governing 401(k) plans more restrictive by 1) limiting allowable contributions to an IRA by the amount of salary reduction contributions to a retirement plan, and 2) allowing employees to make tax-free contributions only to retirement plans (i.e., not to savings plans).

Controlled Group Requirements.

Current requirements. ERISA requires that all employees of businesses which are under common control be treated as employed by a single employer. In addition, under ERISA's percentage coverage requirements, either 70 percent or more of all employees must be covered, or at least 70 percent of all employees must be eligible for coverage and at least 80 percent of all eligible employees must actively participate.

Critique. These requirements may force a company which has a pension plan and acquires another company to provide a plan to employees of the purchased firm even if the new firm is not sufficiently profitable to support a plan. Potential buyers without a plan and larger businesses are at a competitive advantage in this situation because they may not be required to provide a plan to employees of the acquired firm.

Suggestions for Reform. Providing at least a temporary exemption from the controlled group requirements for a small business with a plan which acquires another small business without a plan would alleviate some of the inequities.

56ERISA Section 210 (d).
8.0 **SUMMARY AND CONCLUSIONS**

This report identifies the most significant regulatory problems facing small business pension plans. These are:

- frequent changes in pension regulations;
- and
- the sheer number and complexity of the regulations.

Specific regulations with the greatest impact on small business are reporting and disclosure requirements and top-heavy rules. Other regulations that are burdensome to small business include fiduciary responsibilities, funding requirements, vesting requirements, rules regarding SEPs and 401(k) plans, and controlled group requirements. The total impact of the pension regulations is far greater than their individual impacts.57

A few of these problems are already being addressed. Legislation currently proposed would make pension regulations more equitable for small business, largely by tightening the rules for large business, and would give plans over four years to adopt these and other requirements of the Act. This legislation would also make SEPs a more attractive alternative for small firms, but would restrict benefits available under 401(k) plans. However, other aspects of the regulations which unduly restrict small business pension plans are not being adequately addressed.

In order to minimize the impact of pension regulations on small businesses, which might increase pension coverage of small business, it would be necessary to minimize the multiplicity of tasks faced by a pension administrator by:

- reducing and simplifying recordkeeping and disclosure requirements, e.g., by providing for fewer forms.
- permitting small businesses to adopt

57 The rash of new regulations may explain why the ratio of plan terminations to plan formations increased dramatically in recent years, from roughly 20 percent in 1978 through 1982 to 29 percent in 1983 and 44 percent in the first half of 1984. (See "Private Pension Plans: Which Way Are They Headed?" Congressional Research Service, August 1985, 10-11.)
simplified plan rules.

- providing approved model plans which, if adopted, would exempt the plan sponsor from some requirements.
- refraining from making frequent major changes in pension laws and regulations, or else from requiring frequent plan amendments to reflect changes.
- consolidating pension regulation in one agency.

Research Agenda. The most pressing area of research concerning small business pension plan regulation is how to reduce pension administration costs for small business. A prerequisite to efficient simplification of pension plan regulations is accurate data on the true cost to small business of aspects of compliance (for example, the time and resources required to complete the 5500 series forms). Other specific topics which could be addressed include:

- Simplification of Form 5500-C. For example, redesigning this form to use data already available in standard business recordkeeping formats and/or from plan providers.
- Simplified formats for the Summary Plan Description and Summary Annual Report which would be easier and less costly to prepare and would be comprehensible to employees.
- Simplification of maximum benefit calculations.
- Simplification of the election and timing rules under REA.
- Investigating the feasibility of negotiated rulemaking involving small business participants to develop alternatives to existing regulations.

Existing paperwork burden analysis estimates prepared by the Department of Labor are completely inadequate, as they are derived from a purely theoretical methodology.
In addition, neither regulators nor plan administrators appear to have any systematic understanding of what types of plans are appropriate for what types of small businesses. Research on the relationship between firm characteristics (for example, turnover, profitability trends, number of employees, and age of employees) and what types of pension plans would be most appropriate for those firms (in terms of benefits and administration costs) would provide a framework for more rational and informed plan choices.
APPENDIX A

LIST OF PERSONS INTERVIEWED
# LIST OF PERSONS INTERVIEWED

<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ernest Baptista</td>
<td>Worrell, Passananti, and Radoccia</td>
</tr>
<tr>
<td>Phyllis Borzi</td>
<td>Subcommittee on Labor Management Relations, Committee on Education and Labor, U.S. Senate</td>
</tr>
<tr>
<td>Timothy Bradley</td>
<td>Pennsylvania Small Business Development Center</td>
</tr>
<tr>
<td>Irene Cain</td>
<td>Internal Revenue Service, Taxpayer Information and Education Branch</td>
</tr>
<tr>
<td>Thomas Deal</td>
<td>Pension Benefit Guarantee Corporation</td>
</tr>
<tr>
<td>William Dennis</td>
<td>National Federation of Independent Business</td>
</tr>
<tr>
<td>Sam Gilbert</td>
<td>Pension Forum</td>
</tr>
<tr>
<td>Milton Grant</td>
<td>Internal Revenue Service, Tax Forms Coordinating Committee</td>
</tr>
<tr>
<td>Donald Grubbs</td>
<td>Buck Consultants</td>
</tr>
<tr>
<td>Gregory Hays</td>
<td>Deloitte, Haskins, &amp; Sells</td>
</tr>
<tr>
<td>Richard Ippolito</td>
<td>U.S. Department of Labor, Pension and Welfare Benefit Programs</td>
</tr>
<tr>
<td>Paul Jackson</td>
<td>Wyatt Co.</td>
</tr>
<tr>
<td>Michael Keeling</td>
<td>Small Business Council of America</td>
</tr>
<tr>
<td>Alicia Kershaw</td>
<td>Lane &amp; Edson</td>
</tr>
<tr>
<td>Herbert Liebenson</td>
<td>National Small Business Association</td>
</tr>
<tr>
<td>John Littman</td>
<td>National Associates</td>
</tr>
</tbody>
</table>

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### LIST OF PERSONS INTERVIEWED (CONT.)

<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
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</thead>
<tbody>
<tr>
<td>Lynne Rockwell</td>
<td>U.S. Department of Labor, Pension and Welfare Benefit Programs</td>
</tr>
<tr>
<td>Carlos Rosario</td>
<td>Internal Revenue Service, Taxpayer Information and Education Branch</td>
</tr>
<tr>
<td>James Wenthe</td>
<td>Georgia Small Business Development Center</td>
</tr>
</tbody>
</table>
APPENDIX B

SELECTED PENSION REPORTING FORMS
Return/Report of Employee Benefit Plan

(With fewer than 100 participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6039D, 6057(b) and 6058(a) of the Internal Revenue Code, referred to as the Code.

For the calendar plan year 1985 or fiscal plan year beginning , 1985, and ending , 19 .

Type or print in ink all entries on the form, schedules, and attachments. If an item does not apply, enter "N/A." File the manuals.

Caution: A penalty of $25 a day for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.

Welfare benefit plans including those described in Code sections 120, 125, and 127, need only complete certain items or may not be required to file—see instructions "What to File."

Keogh (HR 10) plans must check the box in item 5a(iii).

One participant plans file Form 5500-R for 1985 (see page 1 of the instructions).

See page 3 of the instructions for the new "Where to File" instructions.

If you have been granted an extension of time to file this form, you must attach a copy of the approved extension to this form.

Use 185 label. Otherwise, please print or type.

1a Name of plan sponsor (employer, if for a single employer plan) .........................................................
1b Employer identification number   

Address (number and street) ...........................................................................................................................
1c Telephone number of sponsor ( )

City or town, state and ZIP code ....................................................................................................................
1d If plan year changed since last return/report, check here □

2a Name of plan administrator (if same as plan sponsor enter "Same") ..............................................................
2b Administrator's employer identification no....................................................................................................

City or town, state and ZIP code ....................................................................................................................
2c Telephone number of administrator ( )

3 Is the name, address, and identification number of plan sponsor and/or plan administrator the same as the same appeared on the last return/report filed for this plan?  □ Yes  □ No. If "No," enter the information from the last return/report in a and/or b.

a Sponsor EIN .............................................................................................................................................

b Administrator EIN ....................................................................................................................................

c If 3a indicates a change in the sponsor's name and EIN, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.)  □ Yes  □ No

4 Check box to indicate the type of plan entity (check only one box):

a □ Single-employer plan

b □ Plan of controlled group of corporations or common control employers

c □ Multiemployer plan

d □ Multiple-employer-collectively-bargained plan

e □ Multiple-employer plan (other)

5a (i) Name of plan上年 ............................................................................................................................

(ii) Check if name of plan changed since the last return/report. □

(iii) Check this box if this is a Keogh (HR 10) plan. □

5b Effective date of plan .................................................................................................................................

5c Enter three-digit plan number □

6 Check at least one item in a or b and applicable items in c. a Welfare benefit plan (Plan numbers 501 through 999):

(i) □ Health insurance (ii) □ Life insurance (iii) □ Supplemental unemployment (iv) □ Other (specify) □

(v) □ Code section 120 (group legal services plan), (vi) □ Code section 125 (cafeteria plan),

(vii) □ Code section 127 (educational assistance program)

If you checked (v), (vi), or (vii), check if □ funded or □ unfunded.

b Pension benefit plan (Plan numbers 001 through 500): (i) □ Defined benefit plan—(indicate type of defined benefit plan below):

(A) □ Fixed benefit (B) □ Unit benefit (C) □ Flat benefit (D) □ Other (specify) □

(ii) □ Defined contribution plan—(indicate type of defined contribution plan below): (A) □ Profit-sharing (B) □ Stock bonus

(C) □ Target benefit (D) □ Other money purchase (E) □ Other (specify) □

(iii) □ Defined benefit plan with benefits based partly on balance of separate account of participant (Code section 414(k))

(iv) □ Annuity arrangement of a certain exempt organization (Code section 403(b)(11))

(v) □ Custodial account for regulated investment company stock (Code section 403(b)(7))

(vi) □ Pension plan utilizing individual retirement accounts or annuities (described in Code section 408) as the sole funding vehicle for providing benefits

(vii) □ Other (specify) □

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date □ Signature of employer/plan sponsor □

Date □ Signature of plan administrator □

For Paperwork Reduction Act Notice, see page 1 of the Instructions.
15 Plan assets and liabilities at the beginning and end of the current plan year (list all assets and liabilities at current value) A fully insured welfare plan or a pension plan with no trust and which is funded entirely by allocated insurance contracts which fully guarantee the amount of benefit payments should check the box and not complete the rest of this item.

Note: Include all plan assets and liabilities of a trust or separately maintained fund. If more than one trust/fund, report on a combined basis. Include all insurance values except for the value of that portion of an allocated insurance contract which fully guarantees the amount of benefit payments. Round off amounts to nearest dollar. If you have no assets to report enter "O" on line 15g.

### Assets

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<th>(a) Beginning of year</th>
<th>(b) End of year</th>
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<tbody>
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<tr>
<td>(i) Interest bearing</td>
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<tr>
<td>(ii) Non-interest bearing</td>
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<tr>
<td>(iii) Total cash (add (i) and (ii))</td>
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</tr>
<tr>
<td>b Receivables</td>
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<td>c Investments</td>
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<td>(i) Government securities</td>
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<tr>
<td>(ii) Pooled funds/mutual funds</td>
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<tr>
<td>(iii) Corporate (debt and equity instruments)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iv) Value of interest in master trust</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(v) Real estate and mortgages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(vi) Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(vii) Total investments (add (i) through (vi))</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d Building and other depreciable property used in plan operation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e Unallocated insurance contracts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f Other assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>g Total assets (add a(iii); b; c(vii); d; e and f)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Liabilities and Net Assets

<table>
<thead>
<tr>
<th></th>
<th>(a) Beginning of year</th>
<th>(b) End of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>h Payables</td>
<td></td>
<td></td>
</tr>
<tr>
<td>i Acquisition indebtedness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>j Other liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>k Total liabilities (add h through j)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>l Net assets (subtract k from g)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

16 Plan income, expenses and changes in net assets during the plan year. Include all income and expenses of a trust(s) or separately maintained fund(s), including any payments made for allocated insurance contracts. Round off amounts to nearest dollar.

<table>
<thead>
<tr>
<th></th>
<th>(a) Amount</th>
<th>(b) Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>a Contributions received or receivable in cash from:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Employer(s) (including contributions on behalf of self-employed individuals)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii) Others</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b Noncash contributions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c Earnings from investments (interest, dividends, rents, royalties)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d Net realized gain (loss) on sale or exchange of assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e Other income (specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f Total income (add a through e)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>g Distribution of benefits and payments to provide benefits:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Directly to participants or their beneficiaries.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) To insurance carrier or similar organization for provision of benefits (including prepaid medical plans)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii) To other organizations or individuals providing welfare benefits.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>h Interest expense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>i Administrative expenses (salaries, fees, commissions, insurance premiums).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>j Other expenses (specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>k Total expenses (add g through j)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>l Net income (subtract k from f)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>m Changes in net assets: (i) Unrealized appreciation (depreciation) of assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) Net investment gain (or loss) from all master trust investment accounts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii) Other changes (specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>n Net increase (decrease) in net assets for the year (add l and m)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>o Net assets at beginning of year (line 15i, column(a))</td>
<td></td>
<td></td>
</tr>
<tr>
<td>p Net assets at end of year (add n and o) (equals line 15i, column(b)).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
26 Information about employees of employer at end of the plan year. a Does the plan satisfy the percentage tests of Code section 410(b)(1)(A)? If "No," complete only b below and see Specific Instructions

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

b Total number of employees

c Number of employees excluded under the plan because of:

(ii) Employees on whose behalf retirement benefits were the subject of collective bargaining

(iii) Nonresident aliens who receive no earned income from United States sources

(iv) Total excluded (add (i), (ii) and (iii))

d Total number of employees not excluded (subtract c(iv) from b)

e Employees ineligible (specify reason)

f Employees eligible to participate (subtract e from d)

g Employees eligible but not participating

h Employees participating (subtract g from f)

27 Vesting (check only one box to indicate the vesting provisions of the plan):

a Full and immediate vesting, or full vesting within 3 years

b No vesting in years 1 through 9, and full vesting after the 10th year of service

c For each year of employment, beginning with the 4th year, vesting equal to 40% after 4 years of service, 5% additional for the next 2 years, and 10% additional for each of the next 5 years

d 100% vesting within 5 years after contributions are made (class year plan only)

e Other vesting

28 a Did the employer receive plan assets (including a return of contributions) since the last return/report Form 5500, 5500-C or 5500-K which was filed for this plan (or during this plan year if this is the initial return/report)?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

b If this is a defined benefit plan which provides for annual, automatic increases in the maximum dollar limitations under Code section 415, does the plan provide that any such increase is effective no earlier than the calendar year for which IRS determines that increase under Code section 415(d)?

(i) If "Yes," was a current appraisal of the value of the stock made immediately before any contribution of stock or purchase of the stock by the trust for the plan year covered by this return/report?

(ii) If (i) is "Yes," was the appraisal made by an unrelated third party?

29 Have any individuals performed services as a leased employee for this employer or for any other employer who is aggregated with this employer under section 414(b), (c), or (m)?

If "Yes," see instructions for completing item 26.

30 a Is this plan a top heavy plan within the meaning of Code section 416 for this plan year?

b If 30a is "Yes," complete (i), (ii) and (iii) below:

(i) Has the plan complied with the vesting requirements of Code section 416(b)?

(ii) Has the plan complied with the minimum benefit requirements of Code section 416(c)?

(iii) Has the plan complied with the limitation on compensation of Code section 416(d)?

If additional space is required for any item, attach additional sheets the same size as this form.
Registration Statement of Employee Benefit Plan

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6039D and 6058 of the Internal Revenue Code.

Caution: A penalty of $25 a day for the late filing of this return/report will be assessed unless reasonable cause is established—see General Instruction E.

One participant plans should file this form for 1985.

Plans described in Code sections 120, 125, and 127, complete the applicable box 5e, 5f, or 5g and see the instructions.

All filers should see page 1 of the instructions for new filing locations.

Except for one participant plans, do NOT file this form for the plan's first year or for the plan's final return/report. Instead file Form 5500-C. (See instruction B.)

1. Name of plan sponsor (employer, if for a single employer plan)
   - Employer identification number
   - Address (number and street)
   - City or town, state and ZIP code

2. Name of plan administrator (if same as plan sponsor, enter “Same”)
   - Administrator's employer identification number
   - Administrator's name
   - If a is completed, is this a change in sponsorship only? (See specific instructions for definition of sponsorship.)

3. Is the name, address and identification number of the plan sponsor and/or plan administrator the same as they appeared on the last return/report filed for this plan?
   - Yes
   - No

4. a) Name of plan
   - Effective date of plan
   - Enter three-digit plan number

5. Type of plan:
   - Defined benefit
   - Defined contribution (money purchase or profit-sharing)
   - Welfare benefit
   - Other (specify)

6. Plan information:
   - Was this plan terminated during this plan year or any prior plan year?
   - Was this plan amended during this plan year to reduce any participant's accrued benefits?
   - Has the plan experienced a funding deficiency for this plan year (defined benefit plans, attach Schedule B (Form 5500))?
   - Is this plan covered under the Pension Benefit Guaranty Corporation termination insurance program?

Total participants (i) Beginning of plan year (ii) End of plan year

Date

Signature of employer/plan sponsor

Date

Signature of plan administrator

For Paperwork Reduction Act Notice, see page 1 of Form 5500-C Instructions.