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WASHINGTON, D.C. 20548



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Released 11/10/76

The Honorable Alan Steelman
House of Representatives

Dear Mr. Steelman:

In response to your July 16, 1975, request, we reviewed the Department of Labor's practices and procedures for responding to public inquiries on pension plan requirements imposed by the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001). We also compared the actual and approved staffing levels for the Department's pension activities.

You said a number of business firms maintaining pension plans were concerned that the Department was apparently reluctant and slow to respond to their inquiries with sufficient information for them to assess the impact on their ongoing pension plans of certain of the act's provisions. You asked us to find out

- whether there have been any significant delays by the Department in responding to inquiries received from employers on the act's requirements, and
- to what extent the Department has staffed its pension activity with respect to approved staffing levels.

The Employee Retirement Income Security Act is designed to protect the interests of workers who are participants and beneficiaries of private employee benefit plans. At the end of 1975, about 30 million employees were covered by about 500,000 pension plans sponsored by private corporations and 400,000 pension plans for the self-employed. In addition, there were an estimated 1 million employee welfare benefit plans. The Department is primarily responsible for insuring compliance with the act's fiduciary, reporting, and disclosure standards. Those responsibilities are carried out by the Office of Employee Benefits Security, established for this purpose in December 1974.

Our review was performed at the Office's national office headquarters in Washington, D.C., because the national office is responsible for responding to inquiries requiring interpretational or policy considerations. The national office also controls the transfer and allocation of personnel.

We reviewed (1) the procedures relating to the processing of public inquiries and (2) pertinent records relating to the authorization of staff for implementing the act and the attempts to secure the staff authorized. We interviewed Department officials responsible for responding to public inquiries and for obtaining the staff.

We randomly selected 761 inquiries submitted to the Office during the first year after the act's passage. However, we focused on 502 of the inquiries because the other 259 (1) did not require interpretational or policy considerations and were referred to field offices for response or (2) did not require Department of Labor response and were referred to other Federal agencies.

As requested by your office, we did not obtain formal comments from the Department; however, we discussed the contents of this report with Department officials and considered their views in preparing it.

TIMELINESS OF RESPONSES TO
INQUIRIES CONCERNING THE ACT

Department officials anticipated that, because the act was new and complex and affected many employers and employees, many inquiries would be received. To facilitate the processing of such inquiries, the Office of Employee Benefits Security designed a centralized recordkeeping system. Under this system, when an inquiry was received at the national office, a record of the inquiry would be established in a central control unit. The record would show (1) the date of the inquiry, (2) to whom it is assigned, and (3) the date a response is due. The inquiry would then be routed to the appropriate national office division or field office for response.

According to an Office official, for inquiries assigned by the central control unit, the response due date generally gave the assigned national office division about 14 days to respond. When the inquiry was answered, the records were to be updated to show the response date.

The Office did not institute an overall system of accountability over the inquiries; the inquiry control unit merely kept records of the inquiries received. Once an inquiry was assigned to a division for response, the control unit did not (1) routinely monitor the progress being made to respond or (2) hold the division accountable for responding within a specified period.

The control unit followed up on the status of a limited number of inquiries when specifically requested to do so by other departmental components, such as the Office of Legislative Affairs. The Office of Employee Benefits Security does not require that inquiries from the public that are not readily answerable be acknowledged.

Of the 502 inquiries included in our review that were assigned to Office divisions for response, for 25 there was insufficient data in the files to determine their final disposition. The other 477 generally required interpretational or policy considerations.

Our review of the 477 inquiries disclosed a general lack of timely response to the inquiries. Only 34 of the 477 had been answered by the response due date. The Office took over 90 days to respond to 92 of the inquiries. In addition, 14 inquiries averaging 477 days from their submission had not been responded to as of June 30, 1976. The following table shows, for the 92 inquiries that took over 90 days for response, what the inquiries involved and how long it took the Office to respond.

Nature of inquiries	Number of days for response				Total
	91 to 180	181 to 270	271 to 360	361 to 476	
Reporting and disclosure requirements	10	3	14	-	27
Fiduciary requirements	12	3	4	1	20
Applicability of the act	3	4	1	2	10
Employee benefit rights	16	3	-	-	19
Other	<u>12</u>	<u>2</u>	<u>2</u>	<u>-</u>	<u>16</u>
Total	<u>53</u>	<u>15</u>	<u>21</u>	<u>3</u>	<u>92</u>

Inquiries concerning reporting
and disclosure requirements

The act required employers whose pension plans were in existence before January 1, 1975, to submit detailed descriptive reports to the Department and to plan participants by April 30, 1975. However, the Office had not finalized the revised reporting form or issued final clarifying regulations by that date. Regulations formally postponing the reporting requirements were not promulgated until August 15, 1975.

All but 1 of the 27 inquiries concerning reporting and disclosure requirements that took over 90 days for response were submitted to the Office before regulations postponing the reporting requirements were issued. The inquirers (1) suggested alternative methods of complying with the act's requirements, (2) requested exemption from the requirements, or (3) requested interpretations of the requirements.

The Office generally did not respond to these inquiries until after the regulations were promulgated. For example, 15 of the inquiries were submitted during December 1974 and January 1975 requesting an alternative method of complying with the reporting and disclosure requirements. In each case, the inquirer proposed an alternative. The requests resulted from the plan administrators' desire to reduce the expense and confusion that would occur when the reports were later amended as a result of the need to amend plan documents in conjunction with other act requirements becoming effective after December 31, 1975.

According to an Office official, the Office preferred to address this issue by issuing clarifying regulations rather than by considering individual petitions. Only 1 of the 15 inquiries was answered before the final regulations were promulgated on August 15, 1975. The other 14 inquiries were answered during late October and early November. An average of 310 days elapsed from the date the 15 inquiries were submitted to the date of response.

The one inquiry submitted after the promulgation of the final regulations requested a clarification of a term contained in the regulations. The Office took 169 days to respond.

Inquiries concerning
fiduciary requirements

With certain exceptions, the act's fiduciary requirements became effective January 1, 1975. A fiduciary is anyone who exercises discretionary control or authority over plan management of assets or provides investment advice for compensation. The act establishes a strict code of conduct which fiduciaries must follow and which makes them personally liable for any losses resulting from their failing to meet their responsibilities. The fiduciary provisions further require that (1) plans be established and maintained under written documents outlining how the plan would be operated and managed, (2) plan assets, with some exceptions, be held in trust, (3) persons who handle funds or property be bonded, and (4) certain broad categories of transactions be prohibited.

Nine of the 20 inquiries concerning fiduciary requirements that took over 90 days for response dealt with the act's bonding requirements. The Office took from 109 to 288 days to advise five employers or their representatives that, if certain requirements were met, the fiduciaries of the pension plan would not have to be bonded. Another employer requested an extension of time to comply. The Office responded 289 days later by referring the employer to temporary regulations issued almost a year earlier. In responding to a pension plan administrator, the Office took 168 days to explain why the act exempted certain banks from the bonding requirements. Two of the nine inquiries were answered by phone 103 and 368 days after they were submitted.

Five inquiries requested that the requirement for amending existing plan documents for fiduciary requirements that were to become effective on January 1, 1975, be postponed. Three of these urged that the amendment requirements be postponed until December 31, 1975. Such a postponement would, to some degree, permit the employers to amend their existing plan documents in conjunction with other act requirements that would become effective starting January 1, 1976. During November 1974, the Office postponed the requirements until June 30, 1975. During June it further postponed the requirements until December 31, 1975. Three of the five inquiries were answered during July 1975; the other two were answered during August and October.

Two of the inquiries requested specific interpretations relating to fiduciary actions. One concerned the applicability of the personal liability provisions affecting a plan fiduciary

when a professional investment manager is hired. After 315 days, the Office advised the party that the subject would be covered in a forthcoming informational bulletin. The second inquiry concerned the provisions of the act requiring fiduciaries to act prudently. An answer was provided 239 days after the request.

Three of the 20 inquiries requested information on whether in certain circumstances insurance agents or consultants would be considered fiduciaries and subject to the act's provisions. The Office took an average of 117 days to respond to these inquiries.

The remaining inquiry asked whether regulations prohibited a pension plan trustee from investing about half of the plan's assets in a mortgage on the building occupied and owned by the corporation sponsoring the plan. The request was answered by telephone 179 days after the inquiry was submitted. No information was included in the files to indicate the nature of the response.

Inquiries concerning
applicability of the act

After the act's passage, many pension plan sponsors were unsure whether their plans were subject to its provisions. Ten of the inquiries that the Office took over 90 days to respond to concerned the act's applicability to specific plans. The inquiries asked (1) whether certain pension plans were governmental pension plans and thus exempt from the act's requirements, (2) whether the act applied to certain health insurance plans, and (3) whether certain pension plans were subject to the act's requirements in general.

In response to six inquiries requesting a determination of whether plans were governmental and thus exempt from the act, the Office took an average of 246 days to advise the employers that, because specific clarifying regulations had not been issued, it could not determine the act's coverage. The Office added that, if the employers still had questions after the regulations were issued, they should resubmit their inquiries. In one instance, such a response was provided in November 1975 after an employer had made three requests for a determination--on November 8, 1974, December 30, 1974, and May 14, 1975.

The remaining four inquiries were answered in an average of 250 days. The responses essentially provided clarification of act requirements.

Inquiries concerning
employee benefit rights

The act's vesting provisions require pension plans to provide nonforfeitable benefits to employees who have worked for a certain number of years. However, the vesting provisions were not effective until January 1, 1976, and are not entirely retroactive. Employees separating from employment, and thereby terminating their pension coverage, before the effective date of the vesting provisions would be entitled to benefits only under the terms of the existing plan rather than under the act's standards. Such employees' spouses would also be restricted to survivors' benefits under the terms of the same plan rather than under the act.

Included in our sample were 19 inquiries from employees or their spouses seeking information on their rights to benefits for which the Office took over 90 days to respond. These inquiries were responded to in an average of 126 days after their submission. Sixteen of the responses advised the inquirers of the act's nonretroactive features. Seven of the 16 responses added that the inquirers might benefit from engaging legal counsel to determine if their existing plan provisions were correctly implemented.

Other inquiries

The other 16 inquiries to which the Office took over 90 days to respond were either general complaints about the act or requests for regulations, forms, or general information. On the average, the Office took 161 days to respond. Three of the inquiries were from small businesses concerned with the burdens and cost of complying with the act. The Office acknowledged these in an average of 139 days.

Unanswered inquiries

Of the 477 inquiries the Office's divisions were responsible for responding to, 14 had not been answered as of June 30, 1976. Following is a breakdown of the unanswered inquiries and the elapsed time from the date of inquiry.

<u>Nature of inquiries</u>	<u>Number of inquiries</u>	<u>Number of days elapsed from inquiry date</u>
Request for exemption from bonding requirements	1	519
Question as to when the act's provisions apply to inquirier's pension plan	2	335, 623
Question on whether plan is a public plan and therefore exempt from the act's provisions	2	439, 478
Requests for exemption from prohibited transactions	4	428, 525, 575, 595
Requests for variance from vesting requirements	1	387
Clarification of the act's requirements for plan holdings	3	411, 440, 534
General inquiries	1	386

Of the 14 inquiries, 5 were being analyzed; 6 were being held pending the development of clarifying regulations, definitions, or procedural rules; 2 were undergoing legal review; and 1 was awaiting the signature of an Office official.

Conclusions

The Office's procedures provide that when an inquiry is received, a record should be established showing (1) the date of the inquiry, (2) to whom it is assigned, and (3) the date a response is due. The procedures also provide that when the inquiry is answered, the record should be updated to show the response date. However, we could not ascertain the disposition of 25 of the inquiries included in our random sample because of insufficient data in Office files. In addition, our review of the 477 inquiries for which Office divisions were responsible disclosed a general lack of timely response.

Accordingly, we believe that the Administrator of Pension and Welfare Benefit Programs should implement a centralized system of accountability and monitoring to insure that inquiries are answered within reasonably established response target dates. For inquiries

not readily answerable because of the absence of clarifying regulations or precedents, the system should provide for a prompt acknowledgement of the inquiries and controls to insure an eventual response.

Recommendation to the Secretary of Labor

To insure timely responses to public inquiries, we recommend that the Secretary of Labor direct the Administrator of Pension and Welfare Benefit Programs to implement a centralized system of accountability and monitoring of public inquiries, including a procedure for promptly acknowledging inquiries that are not readily answerable. The acknowledgement should indicate the reason for the delay.

We discussed the contents of this report with the Director, Office of Employee Benefits Security, on October 14, 1976. He agreed there is a need for better accountability and control over inquiries. He advised us that steps have been taken to implement such a system.

OFFICE STAFFING FOR ADMINISTERING THE ACT

During fiscal year 1975, the Office operated under a startup budget authority providing 435 staff positions to undertake certain preparatory activities during the act's first year. According to the Office, the initially authorized staff and resources were not sufficient to handle the rapidly growing volume of inquiries and complaints or the increasing demand for statutorily mandated guidance and services under the act. Accordingly, the Office requested an increase in authorized staff. The Department submitted to the Congress a request for an additional 150 positions. Congressional authorization for those positions, received in December 1975, brought the authorized staff level to 585.

Although the Department had requested from the Congress a substantial increase in staff for administering the act, the Office did not promptly fill all the staff positions authorized by the Congress. The following table shows the staffing authorized by the Congress and the progress the Department made in hiring staff to administer the act.

	Staff authorized		Actual staffing as of				
	<u>12/27/74</u>	<u>12/18/75</u>	<u>6/30/75</u>	<u>9/30/75</u>	<u>12/31/75</u>	<u>3/31/76</u>	<u>6/30/76</u>
National office	185	279	132	147	168	180	207
Field offices	169	209	80	109	118	119	189
Departmental support (legal, budget, and administrative)	<u>81</u>	<u>97</u>	<u>34</u>	<u>49</u>	<u>58</u>	<u>71</u>	<u>87</u>
	<u>435</u>	<u>585</u>	<u>246</u>	<u>305</u>	<u>344</u>	<u>370</u>	<u>483</u>

For the staff authorized on December 27, 1974, the Office set a goal of hiring 90 percent by June 30, 1975. Department officials said that, shortly after the hiring process commenced, they realized that hiring was proceeding more slowly than anticipated and that more action was needed to insure that authorized positions were filled on a timely basis.

The officials attributed this delay to the need to revise their operating plan because substantially fewer staff positions had been authorized than anticipated. The initial organization plan had provided for 1,845 positions. The actual staff authorization of 435 required a time-consuming revision in the mission of planned offices and duties of anticipated staff.

By late August 1975, the Department's personnel office, in conjunction with the Office of Employee Benefits Security, had completed the administrative requirements and initial recruitment for all the Office positions except 14 professional positions in the national office. Emphasis was to be placed on completing the necessary administrative requirements which had to be completed before recruitment for the 14 positions could begin. However, not until the second quarter of calendar year 1976 did the Office meet its 90-percent goal for staffing at the December 27, 1974, authorized level.

As of June 30, 1976, 102 of the 585 positions authorized were not filled. According to Office officials, most of the national office vacancies are expected to be filled soon after September 1976. Essentially, the 9-month lag from the receipt of the authorization in December 1975 to the hiring in September 1976 is attributable to the formalizing of new position responsibilities. Additionally, clearance was sought from the

Civil Service Commission to advertise positions outside the normal governmental system. According to Office officials, the clearance was necessary because few persons on Federal employment registers had the necessary pension-related background. The Office received the necessary clearance and began advertising the positions by the end of June 1976.

At the conclusion of our fieldwork during July 1976, except for 22 positions in the national office and 6 positions in the field, personnel actions were underway to finish staffing the Office.

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

Sincerely yours,

ACTING Comptroller General
of the United States