Landmark pension legislation has brought an era of progress—along with many irritations.

Fifteen Years of ERISA: It Wasn't Love at First Sight

by Irving Baldinger

In September, we will be observing, but not necessarily celebrating, the 15th anniversary of ERISA—the Employee Retirement Income Security Act of 1974.

Otherwise known as the Pension Reform Act, the measure was signed into law by then-President Gerald Ford on Labor Day of that year.

The act made the federal government a full-powered partner in the design and management of all private employee retirement and welfare benefit plans in the United States.

In spirit and in fact, this partnership was a shotgun marriage, performed under the stern glare of a vengeful Congress. Both parties to the arrangement—benefit plan principals and government agencies—regarded each other with suspicion, fear and hostility.

Trustees and administrators of benefit plans saw a massive volume of new and complex rules, procedures, restrictions and harsh penalties to be enforced by an impatient army of newly recruited bureaucrats. The government regulators saw a vast, largely unregulated array of multimillion-dollar funds, manipulated for personal gain by freewheeling trustees and managers, with little or no concern for the millions of plan participants.

So, it was not exactly a case of love at first sight.

The absence of positive passion was understandable. During the months preceding enactment of ERISA, the nation had been blitzed by an unrelenting stream of scandal stories in the press, in TV specials and in Congressional hearings, portraying alleged abuses in the conduct of employee benefit plans.

Benefit plan trustees and administrators were still licking their wounds from the beating inflicted on their public image; and the federal agencies, under pressure from Congress, appeared determined to make the pounding a permanent exercise.

There was, therefore, good reason to wonder whether these unlikely partners, bound together by a legislated shotgun wedding, could even tolerate each other, much less live happily ever after.

Yet today, after 15 years of peaceful coexistence, we can say with assurance that the partnership will endure. We in the benefit community are not living "happily ever after," but we are living. For their part, government regulators have apparently learned that peaceful and constructive coexistence is not an impossible dream.

Both sides—benefits people and government people—have learned from day-to-day observation and contact that the imagined monsters in the other camp are characters based almost entirely on myth, and not on fact.

Benefit plan trustees, administrators and related specialists are making good faith efforts—sometimes heroic efforts—to comply with the complex and exacting requirements of the law as specified in regulations that, in some cases, are devilishly complex.

On their part, the "bureaucrats" have exercised a large measure of restraint and fairness in explaining the provisions of the legislation and the implementing regulations, and in seeking voluntary compliance.

Positive Impact, but Imperfections Remain

Increasingly, there is a climate of mutual cooperation and respect. In this climate, it is possible to assess the positive impact of ERISA on the benefit plan universe.

Benefit plan provisions, eligibility rules and claims procedures—often presented with blurred outlines in pre-ERISA times—have been brought into sharper, clearer focus under the reporting and disclosure requirements of the legislation.

Financial accounting standards and fiscal responsibility rules mandated by ERISA have strengthened safeguards against careless, inefficient or dishonest handling of trust fund assets.

ERISA requirements on funding of pension programs have placed these plans on a sound financial footing to ensure that benefit levels are realistic and attainable. The security of present and future retirees is thereby enormously enhanced.

Provisions on prohibited transactions have generally reinforced the stricture that management of benefit plan assets must be guided solely and exclusively by the best interests of the plan participants. (Such firm restrictions can be, and have been, useful in protecting trustees and other fiduciaries from pressures to do favors, with plan assets, for deserving friends.)

In summary, employee benefit plans today are more soundly financed and more fairly managed under the standards of ERISA developed cooperatively by the benefit plan community and the governmental agencies.

Approaching this 15th anniversary, there is indeed much to celebrate. But there are many irritations and imperfections remaining, and much more joint effort and attention is needed.

Many ERISA rules are needlessly burdensome and wasteful and are a source of continued irritation. For example, the provision in the legislation requiring the distribution to all participants of the plan's summary annual report. Surely, a less costly method for making financial information available to participants requesting it could be developed by the Department of Labor and recommended to Congress.

Similarly, the "Statement of ERISA Rights," now required to be published as part of the summary plan description, could and should be subjected to a critical editorial review, with a "kinder and gentler" treatment of benefit plan principals—notably, modification of the encouragement now present to plan participants to file actions in the courts on matters that should be presented first to the plan's own appeals channels.

Clearly, there is also room for improvement on the side of benefit plan management. There are continuing instances of irregular conduct—much of it with innocent motivation and some of it otherwise—in the operations of employee benefit plans. The Department of Labor and the IRS, as agencies charged with ERISA enforcement, quite properly investigate suspected violations and, where appropriate, impose penalties enforced through the federal courts.

During a typical year, the DOL turns out an impressive volume of press releases on cases where unlawful actions have been uncovered. The releases detail the plan, individuals involved, nature of the violation and penalties assessed.

Production of these press releases are part of the DOL's enforcement strategy—they are likely to deter other plans and principals from engaging in similar practices. Reasonable people can agree that this is a valid purpose. However, it is also clear that the total impact on the public is a grossly distorted image of the benefit plan universe as one still riddled with inefficiency and/or corruption.

What is lacking, and urgently in order, is a balancing report from the DOL which annually receives and processes several hundred thousand annual reports of benefit plan operations. The cases of poorly managed or corruptly conducted plans constitute a tiny fraction of the total benefit plan universe.

Would it not be in order, reassuring to the public and fair to benefit plan principals, for the Department of Labor, at least once each year, to issue a press release stating the fact that well over 99% of the pension and welfare plans reporting to it are being operated responsibly and efficiently, delivering billions of dollars of health care and retirement benefits to their millions of participants?

What a wonderful and appropriate anniversary present that would be, this Labor Day, 1989! •

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Retirement Income Policy
(Continued from page 4)

like the imminence of destruction, it is passing strange that the fractionalized mind of the pension community has not been better focused on its means of preservation; or can anyone still really believe that the Great Flood is not at hand. The present process of pension legislation is not merely awry, as the title of the report suggests, it is verging on dysfunctional.

"Private pensions are one of the greatest resources of this nation, now estimated to represent well over $1 trillion of assets, the greatest single concentration of capital, the principal safety net for the retirement of our workers and their families, an investment pool without parallel—truly an unsurpassed national treasure. Yet, while we keep our more celebrated national treasures under glass in inviolate vaults in Washington's stately temples, pensions are constantly assaulted, reshaped, squeezed, trampled and in other ways violated.

"Pensions grew to their present robust state as a voluntary expression of business and a product of the collective bargaining process—driven, to be sure, by favorable tax incentives—in an environment of relative freedom from government intervention, at least until ERISA's passage and even immediately after that. It is certain that pension plans would not have so developed if they had had to achieve their growth in the recent post-ERISA legislative environment which has obtained for the past seven years or so; and it is just as certain that this mushrooming legislation will have devastating effects on survival of private pensions, let alone their further growth, if it is not soon reversed.

"Conversely, a meaningful simplification of the laws and a cutting back of governmental restrictions predictably will have an enormously salutary effect on further growth of the private pension system. The mere appointment of a pension law revision commission would electrify the pension community, signaling the beginning of the end of the age of angst in which it now operates. The adoption of a 'sense of Congress' resolution, proposing to declare a moratorium on further pension legislation, would likely bring such a surge of business euphoria as to rekindle the forces that enabled private pensions to achieve their present state of well-being. Even just a signal sent to the business community by the next Administration that it will press for pension simplification would be salubrious, giving hope that there is light at the end of a very long tunnel."

The commission's recommendations

(Continued on page 12)