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ERISA UPDATE—NONINSURED PENSION PLANS

Moderator: EDWIN F. BOYNTON. Panelists: MILTON Q. ELLENBY, RONALD L. HANEBERG, ELIZABETH C. POSTON, ELLIS W. SCOTT*

1. Enrolled actuary status.

2. Valuation and certification problems.

3. Compliance procedures and practices.

4. Relationship with other professionals.

5. Miscellaneous related topics.

MR. ELLIS W. SCOTT: The Joint Board for the enrollment of actuaries was established in its current form on February 21, 1975. Since that date, the Joint Board has accomplished the following:

1. Issued, in final form, regulations governing the enrollment of actuaries during the period ending on December 31, 1975.
2. Prepared, administered, and graded three qualifying examinations.
3. Received, processed, and reviewed 3,900 applications for enrollment.
4. Issued enrollment certificates to 2,350 individuals.
5. Issued proposed regulations governing the enrollment of actuaries during the period beginning on January 1, 1976.

As indicated above, 3,900 applications were received, and 2,350 enrollment certificates were issued. The difference, 1,550, represents applications which are in process. In-process applications include the applications of individuals who have received letters of proposed denial, those for which proposed denial is contemplated, those which are awaiting action by the Joint Board, and those for which there is insufficient information to make a determination.

The Joint Board, under its by-laws, is to consist of five members. Currently, it is functioning with four members, with Rowland Cross serving as Chairman. Donald Grubbs, the former chairman, has resigned his position, and his replacement has not been named.

In the pending lawsuit regarding the regulations governing pre-1976 enrollments, the plaintiffs are challenging the authority of the Joint Board to include either an examination requirement or an education requirement as one of the conditions of eligibility for enrollment prior to January 1, 1976. The case has not been heard on the merits. However, the Government has filed a motion for dismissal.

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As I mentioned earlier, the Board, with the approval of the Secretaries of the Treasury and Labor, issued proposed regulations governing the eligibility of individuals applying for enrollment on or after January 1, 1976. Such regulations were published in the Federal Register on May 8, 1976. However, the regulation as published contained a substantive error. There was no indication that the basic actuarial knowledge requirement must be satisfied. A correction was printed in the Federal Register on June 1, 1976. To dispel any confusion that might arise because of the error, I shall summarize the eligibility requirements contained in the regulations.

First, however, I would like to indicate some of the background for the preparation of the proposed regulations. The Act provides that the standards and qualifications for individuals applying for enrollment on or after January 1, 1976 shall include:

1. Education and training in actuarial mathematics and methodology as evidenced by one of the following:
   a. A degree in actuarial mathematics or its equivalent from an accredited college or university.
   b. Successful completion of an examination of actuarial mathematics and methodology to be given by the Joint Board.
   c. Successful completion of other actuarial examinations deemed adequate by the Joint Board.
2. An appropriate period of responsible actuarial experience.

Basic to the Board's deliberations leading to the proposed regulation was the belief that standards and qualifications specified in the Act were minimum standards and qualifications. It was left to the Board's judgment, consistent with the legislative history, to determine the extent to which such minimums would be exceeded. In addition, there was a clear indication that eligibility standards applicable to those applying after December 31, 1975 should be more stringent than the standards applicable to those applying prior to January 1, 1976. Finally, in light of the Act's provision for acceptance of other actuarial examinations in lieu of the Board's examination, if such examinations are deemed adequate by the Joint Board, and to insure that all actuarial organizations would be treated equally, the Board decided that successful completion of proctored examinations of actuarial organizations will be allowed in place of Joint Board examinations only if, after careful analysis, the Joint Board determines that such examinations are at least equivalent to Joint Board examinations. The analysis would involve a comparison of subject areas covered, level of difficulty, and the minimum pass score.

Turning to the proposed regulations governing eligibility for post-1976 enrollments, the regulation, in general, provides that eligibility for enrollment for those applying on or after January 1, 1976 requires the following to be fulfilled:

1. An experience requirement.
2. A basic actuarial knowledge requirement.
3. A pension actuarial knowledge requirement.

The experience requirement is the same as that described in the pre-1976 regulation except that it must be accumulated during a ten-year period ending on the date of application. The basic actuarial knowledge requirement may be satisfied in any one of three ways:

1. Passing a Joint Board examination covering material that will include compound interest and topics in life contingencies.
2. Passing one or more proctored examinations which are given by an actuarial organization and which the Joint Board has determined cover substantially the same subject matter at at least a comparable level of difficulty and require at least the same level of confidence as the Joint Board examination.
3. Receipt of a Bachelor's or higher degree from an accredited college or university with a major in actuarial science or its equivalent.

The basic pension actuarial knowledge requirement may be satisfied in either of two ways:

1. Passing a Joint Board examination of actuarial mathematics and methodology related to pension plans, including the provisions of ERISA relating to minimum funding requirements and allocation of assets on plan termination.
2. Passing one or more proctored examinations which are given by an actuarial organization and which the Joint Board has determined cover substantially the same subject matter at at least a comparable level of difficulty and require at least the same level of confidence as the Joint Board examination.

In addition, the regulation contains a section comparable to the disreputable conduct section in the pre-1976 regulation which specifies acts which, if engaged in, will be grounds for denial of enrollment.

MR. EDWIN F. BOYNTON: Many actuaries are concerned about the credit for the equivalent examinations and the Joint Board examination. I take it the Joint Board has really not made a decision regarding the equivalency of examinations, but are there any comments you can make about what might be in prospect for giving credit for Society examinations?

MR. SCOTT: No, but I think two things are true:

1. It is not, at this point in time, definite what topics specifically and completely will be covered on each examination.

2. At this point, we are rather at a loss as to how we are going to make this comparison.

MR. BOYNTON: Will the establishment of the Joint Board examinations, and it appears there will be two examinations established, create a trend away from taking the Society examinations if you want to become a pension actuary?

MR. RONALD L. HANEBERG: I rather suspect that many people may stop at the Associateship level. They will need the first few years in order to satisfy the experience requirement and presumably will be taking actuarial examinations during that period of time. After they have completed the experience requirement and have become enrolled actuaries by taking either the examination of the Joint Board or some other examination, it may be very easy to stop there instead of going on as a great majority of actuaries have done. So, there is some potential concern that there will not be as many FSA's on the pension side as perhaps you would like to see.

MS. ELIZABETH C. POSTON: The Joint Board is going to have to cover pension matters that are not currently covered on the Associateship exams. Many pension matters are not covered until the Fellowship examinations, and so there will be a tendency to learn the pension matters and forget about Fellowship.

MR. BOYNTON: The recent change in the Society's syllabus, which was planned before the Joint Board requirements were known, does not help very much in establishing equivalent examinations to meet the Joint Board's requirement because the pension material has been scattered throughout the last three or four examinations of the Society. So, it will be more difficult to get an equivalent by passing one or two specified Society examinations.

MR. SCOTT: We are functioning under constraints about which we can do nothing. I do not think that the concern about the effect this may have on the Society or the Academy or the Society of Pension Actuaries is lost with the Board. We are concerned, but I do not see any way out of requiring the equivalency. We have to treat all of the organizations equally.

MR. BOYNTON: More generally, the law requires the administrator to retain an enrolled actuary to represent the plan beneficiaries. Are there any comments about the relationship with clients or agreements to reach an understanding as to what your role is as an enrolled actuary under ERISA?

MR. HANEBERG: Many plan documents indicate that the actuary for the plan will be appointed by the employer. Some go further and say that he will work for such and such a company, but that is a little too far perhaps. There is a real difficulty in doing that now. In the first instance, if the employer is not designated as the administrator, quite clearly the actuary cannot be appointed by the employer. So it must be certain that there is something in the document indicating that the tie-in is to the administrator. Secondly, there are potential difficulties as to how the actuary is being retained and who is being retained. From reading the law and from discussing the matter, there is no such thing as a corporate enrolled actuary. There are only individual enrolled actuaries. So, presumably, there is a difficulty with regard to who actually is the enrolled actuary for the plan. One of the requirements with regard to annual reporting is that you indicate whenever you have changed enrolled actuaries. So what we are suggesting, although we have not done it yet, is preparation of a rather simple letter by each client indicating that as the administrator they are retaining such and such a firm to operate as the enrolled actuary for their particular plan participants, that such firm will indicate who the enrolled actuary will be among members of its staff, and if there is a change in assignment from actuary to actuary, such firm will notify the client.

MR. BOYNTON: The law requires that if you change actuaries it becomes a reportable event. Has the Labor Department concerned itself with the problem of transfer of work among actuaries in the same firm with the possibility that there will be a different signature from one year to the next? Do you think it is a reportable event if it stays in the same firm?

MR. SCOTT: I should think not. One should perhaps look at the spirit of the law rather than a literal reading of the law. However, this is an area into which the Labor Department has not at all entered at this point in time.

MR. BOYNTON: The Academy has opened up affiliate membership to any enrolled actuary. As of June 1, of the 2,300 enrolled actuaries, 968 are not members of the Academy. Of the 968, roughly 250 are members of the Society of Actuaries. So, about 1,600 represent Society and/or Academy membership. A handful of people are only members of the Conference of Actuaries in Public Practice, and about 218 are members of the American Society of Pension Actuaries (ASPA). Thus, there are almost 500 who have no other organizational affiliation. The affiliate program undertaken by the Academy, as of a day or so ago, had 318 applications for affiliate membership in the Academy.

MR. SHRIRAM P. MULGUND: Mr. Scott said that out of 3,900 applications, 2,350 certificates have been issued. When will the others be dealt with?

MR. SCOTT: We are processing them as quickly as we can. It might be well to inform you that the Joint Board, as I said, consists of four members including two actuaries. Many of the cases that are being held in abeyance must be looked at by what we call an actuarial subcommittee. It is a lengthy process, and we cannot devote full time to it. It is only one of our many functions.

MR. WILLIAM ALEXANDER: Is it possible to make a retroactive application under the pre-1976 requirements?

MR. SCOTT: No. It is not possible.

MS. POSTON: What are consulting firms doing with those few members of their firms who are not Academy, Conference, or Society members, but did take the Joint Board's examination, passed it, and are now enrolled actuaries? Are you recognizing them and allowing them to sign actuarial reports?

MR. HANEBERG: I will answer that for our firm, no.

MR. BOYNTON: That is also true of our firm.

MR. MILTON Q. ELLENBY: To the best of my knowedge, that applies at Hansen also. Although, it is a weak formulation by our committee.

MR. RAYMOND E. PINCZKOWSKI, JR.: Why are some enrolled actuaries not allowed to sign reports?

MR. BOYNTON: We have not really made any analysis of the problem and have not tried to make a decision regarding such problem. We have not done it in the past because we did not have enrolled actuaries. In our own firm, we have always stressed membership in the Society of Actuaries being required to sign a report. So far, we have not seen the need to change that rule. I would not say we have made a serious consideration of how and when we will go about changing that rule.

MS. POSTON: We have given some consideration to it, and we probably will allow certain people who are enrolled to sign reports and others who are enrolled not to sign reports. There are areas where we do not agree with the Joint Board's decision, and we feel that the individual may technically just barely meet what the law says. We do not think he has had adequate experience to sign an actuarial report.

MR. BOYNTON: We are all familiar with the best estimate language in the statute. I wonder if some of our panel members might give their views on just what this best estimate language means and how it should be interpreted.

MR. ELLENBY: I am here because of some presumed familiarity with, or at least experience in the area of, multi-employer pension plans, or more specifically perhaps, Taft-Hartley pension plans, and perhaps some awareness of the unique characteristics that distinguish them from the unilateral or single employer sponsored pension program. In the Taft-Hartley area where we recently encountered considerable depressed employment, at least in the construction trade industries, we find it hard to rely upon recent experience as a reasonable gauge for making best estimates in the future. It is a little chancier in the Taft-Hartley field than in corporate plans where you have more consistency and uniformity in experience.

MR. HANEBERG: We have generally found that most of the plans do have assumptions that can be deemed to be the best estimate after looking at the results. There are some plans where, for one reason or another, the client wants to be very conservative with regard to his assumptions. These must now be changed, presumably, and will result in a reduced cost. Then there are some where, perhaps for good reason, the employer elected to use very liberal assumptions. A fairly large company that did not have a pension plan until a couple of years ago had a profit-sharing plan. The way they set up their pension plan was that half of the pension cost would be offset against the profit-sharing contribution for a particular year. They decided that they wanted to put as much money as they could into the profit-sharing plan, and they convinced us to use quite liberal assumptions. By quite liberal, I mean 6% interest and no salary scale. This is a very stable organization, and there was no problem with regard to making benefit payments from the plan. But, that was a situation where we were forced to make a change whether we liked it or not.

Another area for consideration is the realization of ancillary benefits. If you do not actually value them, you will probably have to indicate this on the Schedule B. We have found generally that for anything that is better than an actuarial equivalent type of calculation, some sort of ancillary cost should be associated with it.

MS. POSTON: There is a range of actuarial assumptions within which I personally would feel comfortable and, until experience proves that I was wrong, could certify. Although I personally prefer to choose each assumption individually so that it stands on its own two feet, I think that under the law, if you choose assumptions that in the aggregate are reasonable, the federal government will not be able to challenge you.

MR. BOYNTON: Does the best estimate refer just to actuarial assumptions or to actuarial assumptions and the funding method?

MS. POSTON: I think it refers only to actuarial assumptions, and you can choose among the various funding methods, with certain exceptions, and certify the particular company who prefers to use unit credit for their own particular financial reasons. As long as it is not a final average plan, I see nothing wrong with it.

MR. HANEBERG: It is easy in the case of actuarial assumptions to tell the client, I am sorry but we are going to have to change your assumptions to come up with the most reasonable costs. I do not think it is that easy with regard to the valuation method. I suspect that, if a client really pushed me into using unit credit, I would tend to be somewhat more conservative with my assumptions.

MR. SCOTT: Labor has done nothing in this area, but it would appear from reading ERISA that, when an actuary labels something as his best estimate, it should be an estimate that is based on assumptions that he has chosen, ignoring pressures from whomever they may come.

MR. HANEBERG: The law does say, with regard to reasonable actuarial assumptions, that it is on a basis of actuarial assumptions and methods which in the aggregate are reasonable. So, what you are saying can certainly be argued from the language of the law, but you cannot pass up the question with regard to the method that is being used.

MR. ELLENBY: In the Taft-Hartley area of recent years, we have had increasing pressures to reduce normal retirement age and to provide early retirement subsidy, generally in the form of a liberal reduction rate. The actuarial equivalent reduction is not very popular. It is not easily understood by employees. So, we have generally replaced it by a reduction rate of six-tenths of one percent per month or one-half of one percent per month which is more easily comprehended by the Taft-Hartley participant. A program that comes to mind is one where we reduced the rate to one-fourth of one percent per month, and reduced normal retirement age from 65 down to 62. With a 3% annual reduction, at age 55 we have a 79% benefit payment.

In the past in our initial actuarial assumptions, we were not too concerned about retirement rates where we had approximately an actuarial equivalent reduction. We are now becoming increasingly concerned with some pressures in programs to develop costs for 30-and-out early retirement provisions providing unreduced benefits after 30 years of service at any age. Over the last couple of years, I have found myself, instead of using the very simplified assumption of retirement at age 65, say, introducing some rather severe early retirement rates. It is a kind of educated guesstimate without making an experience analysis. It is an area where we do not know how hard we will be clobbered. This is one actuarial assumption where our best estimate should probably be supported by some kind of experience. I find, too, that we cannot use recent experience as our guide because, as these benefit levels become increasingly escalated and thereby increasingly more attractive to the participants in relation to their base hourly wage rate, this type of provision will have a very significant influence on the evolving experience. Therefore, we are probably going to introduce our best estimates. We will probably make experience analyses and add in some additional conservatism in that area.

There is one other actuarial assumption of the Taft-Hartley area that we are becoming increasingly concerned about and that is in the area of turnover rates. There is some question where we have chronic or periodic situations of depressed employment or in some industries where we have a declining workforce. In one group, over a 15-year period, the active participant force has diminished by about 50% with a corresponding increase in the burden of providing and sustaining the benefits payable to a sharply

increased number of beneficiaries. Therefore, we are going to look very carefully at the turnover rates. Traditionally, we have established turnover rates merely as a function of age. Yet, a more significant factor is the tenure of employment. I am most familiar with the retail clerks' pension programs throughout the country because we helped establish most of the programs in the midwest and southern parts of the country. The turnover rates we used were the heaviest turnover rates that we had in shop, our so-called standard for hourly-rated groups. They were completely inadequate, and we boosted them by about 50%. We have some areas where there is perhaps as much as 100% turnover in a period of a year or two for short-service, young employees. I think we will probably use some form of select and ultimate tables. Developing these tables becomes somewhat hairy because trying to define termination under Taft-Hartley situations is almost impossible. We have ins and outs all the time and multiple employers for a short period of time.

MR. BOYNTON: Do you think it is appropriate and legal to assume 100% turnover rates for short-service people; i.e., impose an additional waiting period requirement for valuation purposes?

MR. HANEBERG: If you have an industry with extremely high turnover, perhaps a one-year 100% turnover could be justified. I have one case which was set up with one of our other actuaries where complete turnover is assumed for employees under age 25 and two years of service. I am uncomfortable with it. I would be much more comfortable with something like 60% turnover the first year, 40% the second year, 20% the third year, and then grades into one of the standard tables.

MR. BOYNTON: An interesting item to be required in the actuarial statement is a catchall requesting other information which may be necessary to fully and fairly disclose the actuarial position of the plan. Suppose you are the actuary for a plan covering several hundred participants, and you are hired to represent the plan participants. Now suppose you find out, because you work with the employer of the plan, that the plant will be shut down next year. Is this pertinent, and should it be reported in the actuarial statement?

MS. POSTON: I do not think it has any place in the actuarial statement.

MR. SCOTT: This may be an area in which Labor would, as near as I can tell, have sole jurisdiction if the issue is going to be addressed at all. I have talked with one individual in Labor for whom I have respect and his feeling is that any comments the actuary makes would be regarding the status as of the valuation date. What happens after that, of course, will be reflected in subsequent reports.

MS. POSTON: I have been working on a rather interesting case where the Internal Revenue has brought that up as an issue. It involves a large corporation with a pension plan deduction that is going into court of claims for trial. One of the issues involved in the case was the fact that this particular industry was becoming unionized. Certain of its entities would go union and they would withdraw from the company pension plan. IRS has insisted that the actuary take into account, as a turnover assumption, the possibility that groups of employees will withdraw. I am working for the taxpayer side. I have never seen this as an issue before, and I do not know whether the court of claims will really deal with it.

MR. BOYNTON: One area in which we are waiting for regulations is the valuation of assets. Is the valuation of assets completely a part of the best estimate certification? Is it the actuary's responsibility? Does the employer have a voice in establishing methods of valuing assets?

MR. ELLENBY: We have traditionally used the valuation method of carrying assets at cost value, and at this present stage, I see no reason to change, pending final regulations. However, we will establish certain parameters, and when the market value and book value deviate by a certain defined percentage, we will probably use some kind of a moving average adjustment.

MS. POSTON: If we use any method of valuation that is reasonable, other than cost, the federal government will probably accept it. You can take input from the sponsor as to what method he wants. If the client wants to value bonds on amortized value, I see nothing wrong with his dictating that.

MR. BOYNTON: One of the very important problems that needs to be resolved in connection with the valuation of negotiated plans is the handling of step-up benefits which are built into labor contracts and plans. In the past, when you negotiated an agreement over a three to five-year period and provided for stepped-up benefits at the end of each year, the plans have generally been valued on the basis of the benefit schedule in effect on the valuation date. A question now being raised is whether we can continue to value the plan as in effect on the date of valuation, or must we look to the plan as written?

MR. HANEBERG: I have only one case of that type, and the client has agreed to value the plan on the old level because there are only about 150 people involved. I would prefer to use the final level, but if the contributions are such that the final level cannot be sustained with regard to the funding standard account, I would say that there is reason for using the lower amount and keeping the funding standard account in balance.

MS. POSTON: We will probably have to take into account future benefit increases. Therefore, we will probably not write the increase in benefit level into the plan document itself. Let it be in the labor contract with "if" and "but" statements as to what you are probably going to do, but not have it ironclad so that you can have the freedom to ignore the future increase because it is not yet part of the plan document.

MR. BOYNTON: Are you suggesting that certain unions will agree to a lot of "if" and "but" clauses about future amendments to the plan?

MS. POSTON: You may have difficulty with them, but if you tell them that the funding requirements will not be met if benefits are increased and written into the plan document, I think you have a pretty good argument.

MR. BOYNTON: Taft-Hartley plans have some unique problems in this area because of the fact that in addition to a step-up in benefits they may also have a step-up in contributions.

MR. ELLENBY: Quite a traditional and standard approach is to negotiate a two or three-tiered step-rate type of contribution schedule. For example, if we are currently receiving contributions at the rate of 30¢ per hour

and the contract provides for incremental steps of 10¢ per hour for each successive one-year period, we may end up at the tail end with a contribution rate of 50¢ at tier three which will sustain a given level of certain benefit improvements and meet the funding objective that the Board of Trustees has established. However, I can foresee problems under our funding standard account because in the initial year or second year of operations we are not going to satisfy our cost requirements. We are going to experience an actuarial deficiency. I would hope that the final regulations as they relate to multi-employer plans will have full cognizance of this dilemma and furnish some relief.

MR. BOYNTON: One of the elements of the funding standard account which has been ignored by many firms is the interest adjustment being required in all entries in the funding standard account. Has anyone developed any techniques for handling this element or for presenting to the client the reason why you are adjusting the results?

MS. POSTON: I am showing the beginning of the year figure and also how much should be added onto that figure for each month that payment is late.

MR. HANEBERG: What I will be doing is indicating what the minimum contribution is at the beginning of the year and what the minimum contribution will be at the end of the year with interest because the law apparently says that if you make the contribution after the close of the year you do not have to count the additional days beyond that.

MR. BOYNTON: Do you really think that you can get away with not adding interest to the contribution if it is made after the end of the year?

MR. HANEBERG: I think the law says that.

MR. BOYNTON: A lot of firms in the past did not pay a great deal of attention to gain and loss analysis, particularly by source or study of decrements, because it was unnecessary or not productive for small plans. Is anyone establishing new procedures to be able to monitor the experience of these plans more closely with respect to turnover and retirement ages?

MR. ELLENBY: In the Taft-Hartley area, I deal mostly with large cases, but I have a couple of very small plans. I am encountering some fee problems here, and I do not want to add to them by conducting an experience analysis. I think we are caught in a bind, from a business point of view, with respect to small plans. It costs as much to review and modify their programs as it does for slightly larger plans. If the cost is spread only on a per capita basis, the expense factor is rather exorbitant.

MS. POSTON: I am switching quite a few cases from frozen initial to entry age normal just so I can develop a figure for gain or loss. Perhaps down the line if I see that I am consistently getting gains or losses rather than a floating pattern, maybe I will have to go further than that. That is as far as I am going now.

MR. DAVIS H. ROENISCH: Do you have any evidence from the IRS, if you go to pure entry age normal, that they have abandoned their position that you have to apply the realized capital gains when determining the contribution?

MS. POSTON: There have always been many methods of smoothing out fluctuations in experience, and one of them is a direct reduction to the otherwise computed limit by gains from all sources, not just realized capital gains. I have heard some rumors that IRS may adopt other methods of amortizing gains rather than the direct reduction, but they already have at least two or three different methods of smoothing gains that are published in various revenue rulings.

MR. ROENISCH: We would like to shift over to entry age normal, but we are concerned. We think that the 40-year funding and the amortization requirements of 15 years and 30 years in the funding standard account substitute for the old revenue rulings.

MS. POSTON: I do not think IRS is going to do that.

MR. EDWIN P. JATKOWSKI: In your opinion, can you switch funding methods to entry age normal under the first year of ERISA without getting explicit approval?

MS. POSTON: I believe so, because I am doing it the moment before the first day of the plan year commencing in 1976. I could not do it next year.

MR. HANEBERG: This is definitely the year to do it if you are ever going to do it.

MR. BOYNTON: If past assumptions have been on the weak side, a change to meet the best estimate requirement might require a substantial increase in contribution. Is there any way of approaching the higher levels gradually, or must it be done all in one step once the certification period starts?

MR. SCOTT: The only relief I see is that the sponsor could apply for funding variance with the IRS.

MR. BOYNTON: I guess most of us are familiar with the so-called special reliance procedures which were announced many months ago and have now been extended to September wherein you may, by complying with the then-existing temporary or proposed regulations, be assured that your plan would continue to qualify after final regulations were published. I wonder what the general experience is in making use of the special reliance procedures?

MR. HANEBERG: Judging from everything I have heard, we are one of the rare companies who is interested in following this special reliance procedure. I guess there are two reasons for that. One is that we have a substantial number of fairly small clients, and we feel that it is preferable to only have to amend the document twice — once to comply with temporary, and once to comply with final regulations, assuming the final regs. will all be out before the reliance period ends. If you do not do that, presumably you will have to amend the document every time that a final regulation comes out. Secondly, I think there is some advantage to having something definite now, even if you perhaps go a little further than you have to. The major reason why you might not want to follow the special reliance procedure is that some of the positions taken in the preliminary or the temporary regulations may be more liberal than the final regulations that will come out. My personal opinion is there are not too many areas for our type of client where that is going to be a real problem, and it is nice to get something fairly well settled, at least for the next couple of years.

MR. ELLENBY: I see little merit, if any, in following special reliance procedures. My distinct preference is to amend and restate the plan in its entirety, or at least have the Board of Trustees adopt the resolution specifying certain changes which will comply with ERISA, instructing the plan manager to administer the program in accordance with these provisions, and authorizing the fund counsel to defer drafting this provision to implement the Board's decision to a later date. As a matter of fact, I would withhold submission of any amended restated plan to the IRS until the last possible moment. If the client is insistent upon an earlier submission and I do not think that that will necessarily result in an earlier determination letter at this state of the game, I will have the client adopt, at least in those fuzzy areas, as conservative a posture as possible. There is no problem if they have to retroactively provide certain improvements, but there is a definite problem if they have to attempt to retract on promised benefits.

MS. POSTON: I am not using it. I think it is not worth the paper it is written on.

MR. BOYNTON: At one of the meetings of the ERISA Regulations Industry Committee (ERIC) in Washington, which is an organization of mostly large companies that have been meeting with the government regulators for the past year or so to discuss proposed regulations, a survey was taken of the 74 large companies represented, and 71 of the 74 had made a firm decision they were not going to follow special reliance. One or two were on the fence, and only one had made a clear decision to go ahead and follow special reliance procedures. So, it does not seem to be very popular.

One of the most troublesome parts of the law in redrafting documents and setting up appropriate records has to do with the so-called 1,000-hour rule. You are probably all aware of some of the difficulties involved here. I wonder if maybe the panel members might discuss how they are handling the 1,000-hour rule in drafting documents, and whether or not they are going to follow the special reliance procedures in handling many of the sticky problems that come up, particularly in those situations where you have not been keeping a record of hours. What kind of years of service are you using? The proposed regulations provide for four different types of service credits, which could all be different. One was established in order to meet participation requirements, a second was for vesting service, a third was for a break-in-service rule, and the fourth would be for benefit service.

MS. POSTON: I have found that you must sit down with a client and explain what the law says, what the regulations say, what the current regulations say, and what the final regulations might say, and then let him make a decision on how far he wants to go with the regulations. In one instance, recently, the client wanted to go ahead, at least part of the way, towards complying with proposed regulations. So, we ended up with ten-year vesting, except, the way the vesting is written, nine years and three months of service are the equivalent of ten years. On the other hand, I was successful in talking them out of using nine years and three months as the equivalent of ten years of benefit accruals. Thus, we are still on complete years and complete months for benefit accruals. This obviously does not comply with proposed regulations.

I have other employers that have part-time employee problems. Many profit-sharing plans have people who work part-time. Some of them are not subject to the Fair Labor Standards Act because they are commissioned salesmen, for example, and the 1,000-hour rule of giving them credit for 1,000 hours is abhorrent. Therefore, we are putting all employees in the plan. The profit-sharing allocation is based on W-2 earnings, and that is reflective of how many hours they are working. I am using an elapsed time concept. They must have ten complete years of service to be 100% vested. These are the kind of things I am using to get around the hours rule. I do not know of any plan that I have been working on where we are complying with the hours rule all the way. I am particularly unhappy about prorating benefit accruals based on how many hours an employee happened to work during the year compared to the potential work year and obtaining .27% of a year's benefit accrual.

MR. HANEBERG: You have to know what records the clients have and you have to know what they want to do. Once they are known, the approach that we have frequently been utilizing is,first, with regard to eligibility in the plan, saying that anybody that was in the plan previously stays in the plan. Then, with regard to the 1,000-hours test, we are going to make a 1,000-hours test based on 1975 even though I think that is contrary to what the law probably says. The law probably says that if you have ever worked 1,000 hours, even if it was 15 years ago, you should be eligible for the plan. With regard to crediting of service for breaks-in-service rules, for vesting, and for benefits, we are attempting to use the same definition practically everywhere. We are generally defining future service in a fairly broad sense, unless the client has specific problems with regard to what they will include. For vesting and benefit accrual purposes, we are using elapsed time for past service and rounding up. For example, take a compliance date of 1/1/76. Someone who was employed on 12/1/71 has four and one-twelfth years of continuous service. We would give him credit for five years and then go into a 1,000-hour rule in the future. On this basis, a person can be vested under the ten-year rule with eight years and seven months, but it seems that this is the practical way to handle it. We will generally define credited service the same as vesting service and subtract any years for which a lump-sum distribution was made.

MR. ELLENBY: I would say that Taft-Hartley pension plans have more generally succeeded in complying with the ERISA requirements prior to the adoption of the act than have the unilateral programs. Traditionally, the Taft-Hartley pension plans have provided more liberal bases for determining benefit credits than the ERISA standard of 1,000 hours. Almost without exception, partial service credits have been granted for a relatively low number of hours of covered employment, and I have plans that range from 360 to about 520 hours as sufficient hours per calendar year to qualify for a partial pension credit. Similarly, the maximum base for a full year of benefit accrual falls in the range of perhaps 1400 and 1800 hours in contrast to corporate plans which tend to be weighted toward 2080 hours. Moreover, many of our Taft-Hartley plans, several years in advance of ERISA, provided for two distinct types of service credit in the sense that we perhaps anticipated the act -- service which is used for benefit eligibility purposes and service which is used in determining the amount of earned pension credits.

In those plans where the bargaining unit employees include a significant number of chronic part-time employees such as would be characteristic,

say, of the retail clerks, the Taft-Hartley Board of Trustees adopted extremely generous rules governing the acquisition of eligibility credits towards vesting. This was done for the deliberate purpose of fostering the benefit rights of the part-time participant. Accordingly, these plans provide a year of vesting credit for any calendar year in which the employee earned any benefit accrual credit. It is just a zero/one test. Traditionally the multi-employer plans have provided more liberal rules governing breaks in service than the single employer plans. A short period of unauthorized absence in many corporate plans caused a break in continuity of employment. Most of these plans are expressed in terms of continuity, and thus, a break in continuity cancelled a non-vested employee's prior credits. Most typically, a two-year break-in-service rule has prevailed under most of the multi-employer plans so that the employee who earned a service credit in the first quarter of a calendar year could conceivably absent himself from covered employment for a period of about 30 months and come back in the final quarter without suffering a break in service. Some of our plans provide even longer grace periods, one is five years and one is six years, although that is exceptional. Almost all provide liberal exemptions for such types of service breaks as excused absences, disability, sick leave, union or international service, military service, promotion in the industry, or transfer out of covered employment into non-covered employment.

MR. HANEBERG: I have heard a number of people say that they will write the plan so it complies with the regulations and the law, they will not worry about how it is administered in practice, and they will continue doing the same thing. That is a very dangerous attitude from any standpoint that you might want to take. It is preferable to write the plan the way you are going to administer it, even if it is contrary to some of the specific indications of the law.

MR. BOYNTON: How about service for vesting purposes before ERISA became applicable? Is this creating any special problems, or are you just simply taking existing records for that purpose?

MS. POSTON: I am using credited service accrued to date of compliance with ERISA because that was the existing plan rule. Part-time employees who were not included in the past start off with zero.

MR. BOYNTON: How about new eligibles -- persons who become eligible because of the change in the maximum age rules? For example, a plan that had an age 55 maximum eligibility age changes to age 60. Now you have some people who were hired before age 60 but never came into the plan. What do you do about these people in terms of crediting of service for benefits, vesting, and so on?

MS. POSTON: I think you have to give them past service credit for vesting purposes, but you do not have to for benefit accrual. Client reaction to this varies, and I find most of them, as long as they have to bring these people into the plan, will give them both vesting credit and benefit credit.

MR. ELLENBY: We use our credited service records, and that applies, as of the beginning of the plan year in 1976, with one exception. In the Taft-Hartley area, we have people who have been transferred by their employer

from the bargaining unit into some kind of managerial position which is no longer covered employment. As I understand ERISA, we must go back and provide vesting credits for periods of non-covered employment.

MR. BOYNTON: The Labor Department and IRS a couple of months ago held hearings because of the problems created by the 1,000-hour rule. There were many complaints and comments made on the problems that were created by being forced to comply with the 1,000-hour rule and establish new records that did not exist before. Ellis, can you offer any comments as to what the Labor Department might do in their considerations of this potential change in regulations regarding use of elapsed time rules or some alternative to the 1,000-hour rule?

MR. SCOTT: It is under consideration. This has been given top priority. A statement was made before the Congress recently, and there will be something forthcoming to indicate where the Department of Labor is going on this point in the very near future.

MR. BOYNTON: In companies where there are a large number of part-timers making it over the 1,000-hour mark, how are you handling the accrual of benefits? Ron indicated that he found best the approach of giving them a full year of benefit accrual if they meet the 1,000-hour rule regardless.

MR. HANEBERG: If you have people that stay part-timers and people that stay full-timers and if it is a salary-related plan, it works itself out rather neatly. There is a nasty situation where employees switch from part-time to full-time or full-time to part-time. In situations where that happens more than once every 15 years, the best approach for handling the situation is to blow up part-time earnings to full-time earnings, and then give credit for service only for the proportionate part of the year a person works. As long as you do not have any maximum in the plan, and as long as you are not too troubled about the fact that you are actually helping him a little bit in an integrated plan, the approach gets the job done. It will also take care of the people that are going back and forth between full-time and part-time, but I think that is the exception. The situation exists in hospitals, and a couple of other industries.

MR. BOYNTON: There are many problems connected with the qualified joint and survivor options, both the pre-retirement survivor option and the post-retirement option. Milt, you have done some work on the potential cost of the pre-retirement death benefits. Can you give us some of the results of your work?

MR. ELLENBY: Whether the plan sponsor elects to provide pre-retirement spouse survivorship benefit coverage as a free benefit or on an elective basis for which the employee will be actuarially assessed, it is my contention that the plan cannot avoid assuming the death benefit liabilities which are an inherent and inexorable consequence of the automatic operational features of the retirement joint and survivor annuity requirement under ERISA. Here, I am not referring to the relatively modest costs arising out of death-bed marriages or other purely antiselection elements, but rather the significant liabilities entailed by ERISA's imposition of what amounts to "freebee" pre-retirement survivorship benefits.

There are potentially three participant categories which, pursuant to the strictures of ERISA, will enjoy the blessings of the essentially free spouse survivorship coverage that Congress in its infinite wisdom bestowed upon the pension plan participants.

CATEGORY 1: THE EMPLOYEE WHO CONTINUES IN SERVICE AFTER SATISFYING THE PLAN'S EARLY RETIREMENT ELIGIBILITY REQUIREMENTS

Did I hear somebody say, "But hold on! The Act permits us to impose an appropriate actuarial charge on the employee to defray the cost of his death benefit protection." My response to that statement is that the actuarial charge is essentially an unmitigated sham, which will be assumed only by those participants who either have been ill-informed by the plan administrator or are basically unintelligent, because in fact they can enjoy full coverage without having to pay the actuarial charge (i.e., in all circumstances other than perhaps instantaneous death). They need merely survive long enough to file an application for the early retirement pension with the plan administrator, whereupon the automatic operation of the Qualified Joint and Survivor Annuity becomes immediately effective to vouchsafe payment of the spouse survivorship benefit.

Moreover, I am not even convinced that the plan administrator could successfully deny payments to the spouse of an employee who drops dead without any advance indication. Picture if you will the "li'l ol' widow" who weepingly claims in open court that her husband on his death-bed (and in the presence of his brother-in-law and other such "reliable" supportive witnesses) had tremulously requested early retirement, which was short-circuited solely because of the unavailability of a mere pension application form. In any such litigation, on which side would you want to place your bets?

CATEGORY 2: THE VESTED TERMINEE WHO ATTAINS THE PLAN'S EARLY RETIREMENT AGE OF, SAY, 55 BUT CHOOSES TO DEFER HIS PENSION COMMENCEMENT DATE TO NORMAL RETIREMENT AGE OF, SAY, 65.

Does not this employee also enjoy free death benefit coverage from age 55 on under the ERISA stipulations, since if need be, he can file a death-bed election to have payment of his deferred vested pension commence immediately (or perhaps after some short waiting period, presuming the regulations will so permit)? Here again, a claim might well be filed by the spouse of the former employee who dropped dead on the job (and, ironically, he was at the time working for a competitor of the subject plan sponsor).

If this does not "grab" you, consider the case of the unscrupulous employee who requests a copy of the deferred vested pension application form from the plan administrator when he terminates employment or shortly before he attains age 55, signs the application form without delay, but somehow omits both the date of his signing and his designation of the pension commencement date (both entries of which can be conveniently completed at a later date -- by the surviving spouse, if necessary). I would prefer to eschew commenting upon the legal aspects of this procedure.

CATEGORY 3: THE EMPLOYEE WHO INCURS TOTAL AND PERMANENT DISABILITY AFTER SATISFYING THE ELIGIBILITY REQUIREMENT FOR A DISABILITY RETIREMENT PENSION PROVIDED UNDER THE PLAN.

Once again, the automatic joint and survivor annuity must be provided if we are to comply with ERISA. The great bulk of deaths occurring before retirement will be preceded by a period of severe illness, disablement,

or hospitalization, in which case it behooves the wise employee to apply for disability retirement under the plan (which he can presumably revoke in the event of his recovery from his incapacity). The same protective action might well be taken by the employee who will be undergoing a risky surgical operation. In each such case, the employee in the event of his death will undoubtedly be deemed to have satisfied the plan's "total and permanent" disability test, since death would seem to constitute fairly conclusive presumptive evidence of both the totality and permanence of his disability condition. Even if the plan provides a five- or six-month waiting period for disability pension, and even though ERISA permits a deferral of the spouse survivorship benefit to the decedent's 55th birthday, we believe there can be significant death benefit liabilities incurred by plans which provide disability pensions under liberal age and service eligibility requirements.

By way of summary, I strongly believe that the pension consultant is performing a substantial disservice to both his client and plan participants if he fails to apprise (a) his client of the death benefit cost implications engendered by ERISA, and (b) the plan administrator of the need (when furnishing clear and complete information to employees concerning the pre-retirement coverage option) to fully disclose the intrinsic protection that exists under the law if the employee chooses not to exercise the optional election. Personally, I have been advising my clients that failure to adopt a free pre-retirement spouse survivorship benefit under the plan constitutes, in a sense, discrimination against their less intelligent or more ignorant employees and that, in any event, we intend to recognize the anticipated resultant death benefit costs in our actuarial valuations.

MR. BOYNTON: Does not the availability of a two-year suicide clause help give some protection to that?

MR. ELLENBY: I think you will find that very few plans are going to go into these administrative nuisance areas. Most plans will probably not provide advance selection. Certainly, in the Taft-Hartley field, it is an extremely difficult problem to reach employees who are geographically widely dispersed. We are going to have a problem even in first reaching and communicating to them at the time of retirement, and we can hardly trust this type of communications project to union officers at various locations around the area. At least in the Taft-Hartley area, I do not see any feasible way of having an advance selection requirement without encountering all kinds of administrative difficulty.

In the Taft-Hartley area, we have rather modest lump-sum death benefit coverage under the health and welfare program, and you are really asking an employee to weigh the value of a lifetime 50% survivorship benefit which almost invariably, at least in the Taft-Hartley area, will exceed the proceeds from the health and welfare program. Most programs will probably, if they do install an advance selection requirement, limit it to one year because this coincides nicely with the one-year marital requirement under the Act. Also, I think one year is a period over which life can be easily sustained even in terminal situations.

MR. BOYNTON: Are any clients adjusting other death benefit programs to reflect the joint and survivor coverage?

MS. POSTON: No.

MR. HANEBERG: No.

MR. ELLENBY: No.

MR. BOYNTON: I know of some clients who have reduced the amount of group life at age 55 if there is an eligible spouse.

How about integration problems? If the plan is fully integrated, what steps are being taken to include this period of pre-retirement death benefit coverage without running into integration problems?

MS. POSTON: Literal reading of integration rules indicate that if you do provide this pre-retirement coverage you must make an adjustment in the limit. A year, maybe even longer than a year ago, Don Grubbs said that they were working on a revenue ruling which would provide that, if an integrated plan provided the absolute minimum pre-retirement ERISA spouse annuity, i.e., early retirement and joint and one-half reductions, then they would require no adjustment to the integration limit, but IRS still has not come out with it.

MR. HANEBERG: We have reached the same conclusion without having any idea that IRS might change it. We have a couple of cases where we are going to file the integration worksheet, if you wish, and just say that we were forced by administrative reasons under ERISA to include this in our plan. We are, therefore, not adjusting for the pre-retirement spouse's death benefit. I am looking forward to the first confrontation with the IRS over this.

MR. BOYNTON: I have one large client that shifted the disability benefits from the pension plan to a 501(c)(9) trust to be sure that they met the minimum integration rules.

One of the troublesome areas of the proposed regulations on joint and survivor is, of course, the handling of disability retirements under coverage which is implied or stated in the proposed regulation. Does the panel wish to comment on what they are doing in the plans they are working on regarding this rather awkward incidence of death benefits associated with disability retirements?

MS. POSTON: Currently I am ignoring the proposed regulations and not providing ERISA death benefits to those people who become disabled.

MR. BOYNTON: I think a lot of us are hoping it will go away in final regulations, and speaking for many of the plans I work on, I am ignoring it.

MR. HANEBERG: That is basically what we are doing, although we have, in general, given the right where immediate disability benefits were payable to lock into the joint and one-half survivor. Whether that meets the technical requirements of the law or not, I am not certain, but we are hoping it will go away too.

We were originally recommending to all of our clients that they put in the automatic joint and survivor pre-retirement death benefit on a no cost basis. If a plan had no pre-retirement death benefit prior to that time, there is no problem, but, if the plan did have pre-retirement death benefits prior to that time, you can run into a rather nasty problem with regard to who should be the beneficiary and how the benefits should be paid. Let us take a fairly common example of a well-compensated executive who names a trust as his beneficiary in order to take maximum availability of the estate tax exclusion with regard to pre-retirement death benefits. If you write an automatic pre-retirement joint and survivor benefit for him, his spouse will become his beneficiary, and the amount might not be paid in a lump sum. So, the approach we have generally been taking is to allow people to elect out of the joint and survivor benefit, even if it is on a no cost basis. It is a little complicated, but what I am saying is the actuarial value of the benefits may be exactly the same under the two alternatives. What is important is who is named the beneficiary. By providing information that says your spouse will automatically be named your beneficiary unless you indicate to the contrary, you protect the estate tax shelter, and you also give your client the advantage of avoiding a large amount of administrative bother.

MR. BOYNTON: Many of us probably still have plans that have not yet been amended, and I suspect maybe have not even reached basic decisions on the handling of some of these pre-retirement death benefits. Milt, how are you handling the situations where the plan has not been amended, and people who die after 1/1/76 may be entitled to benefits by law but not by the plan?

MR. ELLENBY: We are irrevocably committed and obligated to assume on the employee's behalf that he would have exercised whatever opportunities are available under the Act. I think we have to honor this in the event of death prior to implementing the plan with the ERISA provisions, and we are committed to providing the surviving spouse benefits.

MR. HARRY D. MORGAN: The administrative complications, the communications complications with the employees, and the antiselection complications, even though possibly not as far as Milton suggests, are such that I believe before long plans will be amended to provide for the pre-retirement survivor spouse coverage without cost to the employees. I do not think an employer should give it away at this time if there is a labor negotiating situation involved, but instead, defer it until the next negotiating session so that the cost is recognized as part of the package that is settled on. One point I do want to make here, because so many in the audience represent the insurance industry, is that I am surprised that the insurance industry has not previously taken a stronger position in this area. There is nothing in ERISA right now which would seem to allow any group life insurance coverage to be an offset against the value of the surviving spouse pension. In time, the surviving spouse pension will be provided from the pension plan and an employer will almost certainly not pay the cost of both kinds of death benefits. I think the insurance industry should take that into consideration.

MR. PINCZKOWSKI: The auto-workers plan has the standard joint and survivor benefit in it already, but it provides in the fine print that, if the person is receiving the bridge and transition benefits which are outside the pension plan, he does not get the automatic joint and survivor benefit

from the pension plan. Does that situation, as it exists now, satisfy ERISA, or must we pay someone who is eligible under the UAW to get the automatic joint and survivor benefit, i.e., someone who has in effect satisfied the requirements for early retirement, an additional joint and survivor benefit during the months when he is drawing bridge and transition benefits?

MS. POSTON: It would seem to me that you would have to allow him to have the joint and survivor benefit if he died while he was getting these other benefits.

MR. BOYNTON: I think we will all welcome some kind of regulation or ruling which says that you can provide these benefits from other sources. I do not read ERISA to allow that right now.

Over the years the actuarial profession has developed relationships with other professionals, particularly the accounting profession and the legal profession. Because of all the plan redrafting necessitated by ERISA, we are running into the necessity of obtaining legal documents prepared by people like Ron. How are you handling the drafting of these documents in order to keep your relationships clean with the legal profession and to avoid an unauthorized practice of law?

MR. HANEBERG: The first problem is the current definition of unauthorized practice of law by the legal profession. Under the definition, you cannot do anything. Anything that deals with the drafting of a document or the giving of tax advice is the unauthorized practice of law. But, we have found that the vast majority of attorneys, and we are not talking about attorneys in Chicago or New York or Washington or other sophisticated areas around the country, will admit that they have no idea of what they are doing in the area of defined benefit plans. The procedure that we have been following with regard to drafting under ERISA is that we are requiring each client to obtain from his attorney a written authorization for us to prepare the initial draft. If we do not get this initial authorization, presumably we will not have anything to do with the plan. There is a very simple reason for that, as probably all of you have found if you have worked with attorneys in other than the major areas around the country. The reason is that the attorneys just cannot draft the plan. You must go back over it three or four or five times in order to make any progress. So in the area of defined benefit plans, we are saying we want to do the drafting because we have a better idea of how it should be done. We are going to have to administer the plan, and we want the client to come up with a letter from his attorney telling us to draft the plan for the review of the attorney because the attorney will add some things outside ERISA like labor law provisions, trust provisions, and so on. I would say that of the plans we handle in the defined benefit area, more than 98% of them are following that procedure. We are very strong in that area. It is contrary to the guidelines, but I think most attorneys recognize that the guidelines simply cannot be enforced.

MR. BOYNTON: You mention the unauthorized practice of law and the rules which now exist. The American Bar Association Committee on the Unauthorized Practice of Law had a hearing in New York in April, and the Academy presented testimony to the committee. I was one of the witnesses. The situation is that a 1961 opinion was released by the American Bar Association as an

advisory opinion to the state and local bar associations who have the direct responsibility for implemention. Under that opinion, you cannot write words on a piece of paper and hand it to a client, or you could be accused of unauthorized practice of law. It was so ridiculous that very few people paid any attention to it and continued preparing drafts for review by attorneys. Most lawyers prefer it that way because they recognize their own lack of expertise in this area.

The New York Bar Association last fall, I believe, adopted a new revised opinion on the unauthorized practice of law in connection with employee benefit plans. It is quite different in structure and nature from the original 1961 opinion. It is far better, and it does not prohibit a layman from preparing a draft of a document for review by an attorney. It emphasizes that the attorney must take the responsibility for the document, and I do not think that any of us disagree. But, it does indicate also a lack of understanding of how pension plans and employee benefit plans generally run and how they are prepared. One of the statements in the New York opinion is that the most important consideration in the design of a pension plan is the tax consideration. Well, it is a consideration, and it is maybe number nine or ten in priority, but it just certainly is not the most important consideration in the design of a pension plan. That is the rationale used to state that the attorney must design the plan and write the plan. But, they did change, compared to the 1961 opinion, to make provision to allow plan drafts to be prepared by persons other than attorneys, provided the attorney takes the ultimate responsibility for the documents.

The Academy testified, as did several other organizations including ASPA, and tried to point out some of the flaws in both the 1961 and 1975 New York opinions. I think the committee was very receptive, and it acknowledges that it knows very little about employee benefits. The committee is drafting opinions on the unauthorized practice of law in a number of areas, and they are very receptive to working with members of the actuarial profession through the Academy or other organization to try to come up with a more realistic draft. I have seen a copy of another draft which has been submitted to them and is far more flexible; it would allow for greater cooperation between the actuarial and legal professions in the design and drafting of plans.

Another area dealing with the other professions that many of us have been concerned about is the relationship with the accounting profession. There is some confusion and difference of opinion as to what their liabilities or responsibilities are under ERISA. This in turn adds to the confusion in the preparation of the basic financial statements and actuarial statements that go into the annual statement prepared by the administrator. We have had a continuing dialogue between the professions through a liaison committee between the American Institute of Certified Public Accountants (AICPA) and the Academy. The job of setting accounting principles has now been turned over to the Financial Accounting Standards Board (FASB). ERISA gives the accountants great flexibility by simply stating that the financial statements ought to be prepared in accordance with generally accepted accounting principles. The FASB has wide discretion as to how they define those accounting principles. The AICPA has responded to the FASB question and has made many comments which involve actuarial areas. For example, they suggested that the FASB should require the presentation

of actuarial liability figures in the financial statement prepared pursuant to GAAP for pension funds, should select the single cost method for calculating actuarial liabilities appearing on the financial statement of pension funds, establish guidelines for selection of appropriate interest rates, and specify adoption of certain standard tables and assumptions for this purpose. It appears we are headed for some discussions with our accounting friends. I hope that things will work out to the mutual satisfaction of both professions.

MR. PINCZKOWSKI: Our auditors have, in effect, taken the AICPA position as the only existing guideline in the absence of an FASB ruling. They are insisting on auditing everything in sight, and we are at the point of deciding corporately whether we will tolerate the extra expense of their re-auditing the actuarial work which is now audited twice to satisfy the unions and the corporate trustees of which we have five trustees and four insurance companies. They insist that, until the FASB says otherwise, they are charged to audit everything. I am anxious to know what your expectations are as to when the FASB will render a decision, and what that decision might be.

MR. BOYNTON: I do not have any personal contact with the FASB, but I have written a few letters to them, and I am in the process of writing another one. I understand that it will be several months before the FASB issues an exposure draft. There is concern among some actuaries about what might appear in the regulations to be issued by the Labor Department which I understand are coming out reasonably soon. I prepared a background statement on this issue, when it was sent to the FASB as a supplement to the original Academy position, describing some of these problems and suggesting some solutions. It is also going to be presented to the Labor Department and IRS for their consideration with respect to trying to clarify the roles of actuaries and accountants in the preparation of the actuarial and financial statements and what is to be included in the financial statements.

MR. PINCZKOWSKI: I came across SAS 11. In effect, it is a guide or recommendation to the accountants on the use of work of specialists, e.g., work which the actuary qualifies and is mentioned therein. Do you feel that a company in my position can use that as ammunition against the auditors? I am unsure as to what effect SAS 11 has on the accountants as a profession. Is it mandatory on their part, or is it just a suggestion, or what?

MR. BOYNTON: I believe SAS 11 is a guide to relying upon the opinions of an expert, but the accounting profession generally does not believe in giving any kind of qualified opinion or stating any reliance upon experts. They make the evaluation of the expert's views, and then assume them as their own in giving their opinion. Someone told me recently about a questionnaire they had received from one of the accounting firms which was for their interpretation of SAS 11, and it made many inquiries about their background to evaluate them as experts for this purpose.