EMPLOYEE BENEFIT PLANS

Federal Welfare and Pension Plans Disclosure Act

What problems are insurance companies and consulting actuaries facing? What special procedures have been adopted? What position is being taken with respect to the major question arising from this law?

New York Regional Meeting

MR. STANLEY W. GINGERY opened the discussion with a brief review of the underlying purposes of the Act. The Act makes available to welfare and pension plan participants information pertaining to details of their plans as well as a complete financial accounting. It is the belief of the framers of the Act that access to such information by plan participants will enable them to protect their interests intelligently. The method of enforcing the Act's provisions is unique in that it relies on employee-initiated court action. No authority to interpret or enforce its provisions is given to the Secretary of Labor. This was designed to avoid adding to federal expenditures the sizable sums which would be required to fully regulate and police the thousands of plans in force today. For the common variety of unilateral plans not involving a trust fund, responsibility for compliance with the Act was placed on the employers.

The Prudential has advised its larger policyholders to report multiple plans on a combined basis to decrease the filing burden and possibility of employee misunderstanding arising out of segmented plan experience. In filing a description of the plan, Prudential has recommended generally that copies of the employee certificates and announcement booklets be used. Prudential has indicated to policyholders the inadvisability of filing copies of the master contracts. Legislative history makes it clear that summary documents should suffice.

Mr. Gingery went on to say that the Prudential was now working out the problems connected with filing the annual report forms. One of the most difficult will be that of getting the information in the hands of policyholders for filing within 120 days after the close of policy years. In the interest of conserving manpower they plan to extend the system now in effect under many of their policies of calculating renewal premium rates with dividends. They also expect to be able to do much of this combined year-end operation including the preparation of the A-1 Exhibit by the 705 electronic computer.

Another important aspect of the annual report form remains to be considered by the insurance industry, namely, to what extent it is desirable

and practicable to make available for voluntary distribution to employees a simplified summary of the annual report.

MR. PHILIP D. ANDERSON stated that the John Hancock has been in close touch with the federal disclosure legislation during its development. As a result, the John Hancock staff has largely determined the course it intends to follow with regard to the various problems created by the Act. In guiding employers, the John Hancock is making the following recommendations:

1. To rely where possible on the employee announcement booklets and copies of the group certificates in order to describe the plan. These forms can be furnished more readily and inexpensively than the insurance contracts. In cases involving several plans covering different classes of employees of the same employer where there is a possibility of a large-scale demand for descriptive forms, summaries of schedules and plan provisions can be prepared on letter-size sheets and inexpensively reproduced.
2. To report two basic plans, one a consolidation of pension plan benefits and the other covering all other welfare benefits. In cases where employers wish to report finer subdivisions separately, it is important to determine in advance whether financial data for such separations are available.
3. To use calendar year in reporting financial information for group annuity pension plans and policy year for pension trust and other welfare plans. Different annual report years were chosen to conform to the John Hancock's statistical and financial accounting procedures. The John Hancock will furnish the financial data on its group plans within 90 days after the close of the policy or calendar year. This will allow policyholders at least 30 days thereafter for filing annual reports.
4. Under the heading "Premium Rate of Subscription Charge" to describe the actuarial basis for such charge rather than to insert an elaborate set of tables which might be required to express the premiums, except in the case of some welfare coverages where a simple rate or a limited number of rates may be used.

In January, the John Hancock advised their policyholders as to the filing procedure with respect to Form D-1 and suggested that they delay actual filing until the official release of Form D-2. The purpose of this was to avoid conflicts which might arise between the plan as reported on D-1 and the statistical information later reported on D-2. Subsequently policyholders and field men were given all available information on Form D-2. Key personnel in the home office were assigned the task of distributing this information and answering policyholders' questions. In the pension trust area contact is through the general agents. The John Hancock's legal department has drawn up a rather complete statement to support the argument that the employer rather than the insurance carrier was intended as the administrator under the Act.

The John Hancock has taken a firm stand in refusing to provide copies of contracts for the filing of the description of the plan and so far has had considerable success after pointing out to employers that such documents would be costly to reproduce. In general, policyholders have been very cooperative and it is expected that in the future the effort required by the Disclosure Act can be kept to a minimum.

MR. ALBERT PIKE, JR. reminded the meeting that there is no doubt that the Disclosure Act will be substantially amended and that it will be amended to impose more direct responsibility on insurance carriers instead of leaving it to the employer to put pressure on the insurance carrier. Mr. Pike went on to say that the degree of severity of the new expected restrictions and requirements on insurance carriers depends in large measure on the degree of responsibility that is now assumed voluntarily. He warned against taking refuge in what are technically legal "outs," namely, that the employer is the administrator, not the insurance carrier. Mr. Pike recommended that insurance companies do what they can to see to it that their policyholders comply with the Act in its entirety, especially as regards the disclosure of insurance commissions.

MR. JOHN K. DYER, JR. discussed the problem previously mentioned by Mr. Anderson in regard to filing reports on multiple plans. He noted that if many plans are combined for D-1 reporting purposes, an employee requesting a copy of a plan would receive many different booklets even though only one of them applied to him. On the other hand, the employer may prefer to file the plans separately but the financial experience of the various plans is available only on the combined basis. In effect the Act seems to say that a separate Form D-2 must be filed for each Form D-1 filed. Mr. Dyer went on to suggest that it might be possible to file separate D-1's and to indicate on each corresponding D-2 that the financial data shown are the combined experience for the various plans.

Omaha Regional Meeting

MR. CHARLES D. WILLIAMS commented on the background of the law, a few problems still of some concern, and the possibilities of further legislation.

For the past five years Congressional committees have been looking into the operation of pension and welfare funds. Out of these investigations came an act which has been called an experiment in self-policing. It is based on the philosophy that employees informed on the financial operations of their plans will be able to correct any abuses without further help from government. The law calls for disclosure to employees. The

information disclosed is also filed with the Secretary of Labor, who has, however, no authority to investigate, enforce, or interpret the law.

Four problems are: (1) Who is the administrator? (2) What documents should be filed? (3) To what extent should an employer's different employee benefit arrangements be consolidated for filing purposes? (4) Does a company have to file a plan covering agents who are independent contractors? Mr. Williams discussed each of these briefly, and referred to the studies distributed to member companies of ALC and LIAA.

Mr. Williams stated that the present situation is a temporary one, and that the fact that Congress did not impose any direct obligations on insurance companies may be a result of legislative accident. One of the key purposes of the trade association activity in this field has been to encourage insurance companies to recognize a social or moral responsibility, even though they may not have any legal obligations under the current law. "Buck passing" and nondisclosure of commissions are the two things most likely to hurt when, as is bound to happen, the law is amended to put some direct obligations on insurance companies. How severe these obligations are to be will depend on how insurance companies operate under the present law.

MR. RICHARD W. ERDENBERGER touched on several of the same problems raised by Mr. Williams. He also raised the question of reporting periods of other than twelve months when policy anniversaries have for some reason been changed. He pointed out the practical problem of determining how a policyholder filed D-1, in order to best help him with D-2.

Mr. Erdenberger stated that items called for by Exhibit A-1 would pose the most problems for Mutual of Omaha and United Benefit. One troublesome item is in determining what constitutes "claims paid." Are changes in reserve, creditability charges, assessments, or conversion charges logically within claims paid? Another is in connection with acquisition expenses, if the dividend formula amortizes these expenses. A third question is in regard to the reporting of general agents' overwriting as compared with companies on a branch manager basis. A fourth has to do with the amortization of the excess initial commissions over renewal commissions for dividend purposes.

All of these problems arise partly because of item 12, Remainder of Premium, which is the portion of the premium not shown in previous lines. Item 12 may well be considered retention, and if so his company becomes concerned about including reserves, assessments, conversions, and creditabilities among claims paid.

Mr. Erdenberger stated that his company is preparing a form which when completed will contain all the information required by D-2, unless the D-1 filing has combined the program insured with his company with some other benefit program.

MR. WALTER L. CHAPIN reported on the procedure Minnesota Mutual has followed in helping its policyholders with the D-1 filing. A letter was mailed in November to policyholders to whom the Act might apply, enclosing a copy of the Act. Another letter was sent to policyholders believed to be exempt. A second letter in February to those who should probably report included D-1 forms and instructions, copies of employees' certificates, a claim statement from the ALC-LIAA notes, and information with respect to the first annual report. It was made clear that the insurance company could supply figures and help, but that decisions must lie with the policyholder.

The requirement to revise the descriptive report after each amendment looks troublesome. There is also a problem with respect to Exhibit A-1, according to Mr. Chapin, since claims are on a cash basis not easily reconciled with the incurred claims which support the dividend payment.

Few can disagree with the motive behind the Disclosure Act, according to Mr. Chapin. However its administration may create evils of the type it seeks to cure. For example: Will those who browse in the document room of the Department of Labor be limited to timid employees who have come to Washington to consult these documents, or will they also include those whose motive is to exploit the information on file for their own profit?

MR. FENTON R. ISAACSON made brief comments on three points:

1. Haight, Davis and Haight, Inc. had sent letters to clients offering help with the D-1 filing; but since they received only one or two questions they assume their clients proceeded largely on their own.
2. One Omaha bank undertook responsibility for the D-1 filing for their pension trust clients.
3. There is now a bill in Congress to give the Secretary of Labor increased power, and to provide penalties for noncompliance.

MR. CHARLES L. TROWBRIDGE stated that the problems facing his company were the helping of policyholders with the D-1 filing, and getting geared to prepare A-1 and A-2 Exhibits for the D-2. Bankers Life Company procedure to date has been to supply each group policyholder with a summary of the law, a look at the D-1 form, and attachment material if it appears the law is applicable. It has found it important to maintain the position that the insurance company is not the adminis-

trator, and that it is usually preferable to file a certificate or booklet rather than the master contract. Experience to date has shown that the average policyholder is taking this new law pretty much in stride.

MR. JOHN E. BREWSTER reported that it was his understanding that the Labor Department plans to send copies of welfare and pension plan filings to those who ask for them. He expressed surprise that this is to be the procedure.

He also stated that a Chicago law firm active in pension matters was advising employers not to admit responsibility as administrator under the Act, possibly filing the forms required, but with an affadavit that the employer does not admit to being the administrator for all purposes.