

Letter to DOL Secretary Alexis Herman regarding potential DOL regulations regarding small plan reporting requirements

December 8, 1998

Secretary Alexis Herman
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Madam Secretary:

The undersigned associations representing small businesses or plan specialists primarily representing small businesses, wish to express our concerns over proposed regulations being developed by the Department of Labor which we believe would significantly increase the administrative costs of small business retirement plans. We share your goal of ensuring that plan participants' assets are managed in a prudent manner. We have concerns that the increased administrative costs that would result from the proposed regulations would cause many small businesses to discontinue offering their employees a retirement plan, or to decline to begin offering one.

Small business has been the engine creating new jobs in this country as larger corporations downsize. According to the Small Business Administration, small business now employs over half of the nation's private workforce and produced three-quarters of the new jobs in recent years. The gap in small business retirement plan coverage is a major policy concern if we expect Americans to retire comfortably with sufficient income.

As you may recall from this year's National Summit on Retirement Savings, a survey of small businesses indicated that high administrative costs was one of the chief reasons small businesses did not adopt a retirement plan for their employees. In fact, just 20 percent of workers in small businesses have any type of retirement plan through work. This statistic takes on greater significance when considering the fact that most of our nation's job growth in the 1990s has been in the small business sector.

We understand that a major impetus behind these new regulations is a desire to provide small business retirement plan participants with added protection. However, your own data indicates that the vast majority of retirement plans are perfectly safe. Out of a review of approximately 175,000 retirement plans, the Department of Labor has identified just over 800 violations, less than one percent. Included in this one percent are many minor violations such as technical violations of the complex prohibited transaction rules where no participants are hurt in any way. In fact, we believe that the existing laws are working extremely well and that the burdens and cost imposed are in balance with the safeguards achieved. Any new regulations should reflect and recognize this extremely high rate of compliance.

The proposed regulations, as we understand them, would in effect require small business retirement plan assets to be maintained by a financial institution in a trustee or custodial relationship. In the current market, the majority of small businesses self-trustee their own plans, and invest in regulated financial products. Requiring an outside financial institution as trustee or custodian would add as much as thousands of dollars in administrative costs to the typical small business plan.

Given the high rate of retirement plan compliance, we urge you to address the extraordinary criminal activity of plan asset theft in a manner that does not burden the vast majority of small business retirement plans with higher administrative costs. Indeed, it is worth emphasizing that current law already provides many protection against abuse of worker funds such as personal fiduciary liability, prohibited transaction rules, and possible criminal sanctions. Driving more small businesses out of the retirement plan market only hurts workers, at a time when public awareness about the need to save for retirement has never been greater.

Attached to this letter is an [exhibit](#) setting forth a number of quotes given by financial institutions. The fees are significant. In many cases, the trustee/custodial fees would equal the amount of the company's match. Unfortunately, as we know, small businesses operate on small margins and if forced into picking up significant trustee/custodial fees, they will cut back on contributions for employees. Many will simply close down their plans.

Since there is so little abuse in the small plan area, this will be a very negative change for the employees of small business.

We applaud your efforts to educate small businesses and workers on the importance of saving for retirement. As you continue working on possible new regulations, we would like to be involved in your effort to protect plan participants while minimizing additional administrative costs to small business. Thank you.

Sincerely,

American Association of Life Underwriters

American Society of Pension Actuaries

National Association of Self-Employed

National Association of Life Underwriters

National Federation of Independent Businesses

National Small Business United

Profit Sharing/401(k) Council

Small Business Council of America

Small Business Legislative Council

U.S. Chamber of Commerce

cc: Leslie Kramerich, Consultant

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