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CHURCH ORGANIZATIONS UNDER THE PENSION REFORM ACT

**Alvin D. Lurie, Assistant Commissioner
for Employees Plans and Exempt Organizations
Internal Revenue Service, Washington, D.C.**

Mr. Krasicky:

Moving on, our next speaker is Assistant Commissioner for Employee Plans and Exempt Organizations of the Internal Revenue Service. In 1974, when Congress enacted the Pension Reform Act, it ordered that such an office be created and this man has been chosen to head it, and we are indeed privileged to have him with us today so I am honored to introduce to you Alvin D. Lurie, Assistant Commissioner of the Internal Revenue Service.

Mr. Lurie:

Good morning, ladies and gentlemen. I have risen to speak too many times for too many years, and I say in all humility that I have never been more reluctant to ascend the podium than this morning. To follow that absolutely brilliant and inspiring address by Bishop Gallagher is no mean feat. I regret on many counts that I must follow him in such close juxtaposition. My principal focus is in both the area of employee plans, which we will be discussing for the next hour, and exempt organizations, which the Bishop has illuminated so brilliantly in the preceding hour. He expressed his regret over the need to halt his address to conform to the schedule of the day, so as to make room for me. I regret it even more. His remarks were most interesting and informative.

The Filer Study, and the area of exempt organizations which was the focus of the Filer Study, is obviously a key concern of mine at all times. And while I'll be talking to you this morning on my prescribed subject of ERISA and the impact of the EMPLOYEE RETIREMENT INCOME SECURITY ACT on employee pension plans, I can nevertheless not long keep in the back of my mind the problems of the exempt organization, for example, the problems of this great institution and many others that are impacted by our exempt organizations rules, which, I assure you, are developed with great concern, great sensitivity and great awareness. We do not move in this area blindly; it only sometimes may seem that way. I myself am — perhaps I say this by way of defense in view of the Bishop's references to governmental intervention — I am only recently an intruder in government, having spent my entire professional life in the private sector; and indeed, I accepted this unlikely assignment at this stage of my life so that during the evolution, this new revolution, in pensions I might be able to bring some of the experiences of my private life into the role of administrator of this quite impossible statute.

Turning now to the subject, ERISA, the acronym for the Employee Retirement Income Security Act, makes it sound too gentle and beautiful. As we all know who have dealt with it, it is anything but a gentle lady. It is quite a hurricane, quite a storm that has been imposed upon the American business community. While I am

sure that pension reform was long overdue, the abuses that were rampant in, fortunately, only a few but very visible sectors of the pension community ultimately led to the enactment of this statute. Nevertheless, the statute provided welcome cures for many ills; and yet, I would suppose, if the issue were to be placed before American business today and if, on an unscientific basis, one were to ask the oversimplified question, do you want ERISA or don't you? I wouldn't be surprised if the businessmen voted to turn ERISA out. Not because it obviously doesn't reach into areas that were clearly in need of remedy, the abuse of the pension promise. What, after all to the workingman is more important than his ultimate security, his assurance of some form of pension or retirement protection? That is obviously what ERISA is all about, and enlightened employers want that for their employees; but such enormous complexity, such ambiguity, such frightening burdens could well induce many employers, I suppose to say "let me out."

I am sure that somebody up there must like *you*, because church plans are in that precise posture under this statute, that is, being allowed to say, "leave me out." Now, that might not be the correct response, to opt out of ERISA. I am not suggesting that is necessarily the proper course, but this, after all, is the year in which essentially all American companies, hundreds of thousands of corporations and partnerships literally over a million, which have adopted one form or another of qualified pension plan, assuming they adopted it prior to January 1, 1974, are obliged to retrofit their plans. Thus, they are faced now with the enormous task of fixing up their plans to conform to the new minimum requirements and new standards of ERISA, I would suppose many would wish that they were churches. And, indeed, I wouldn't be surprised to see a spreading of the current contagion of everyone-his-own-church, a problem we do not have with the Catholic Church, I am happy to say. We might see a rash of new churches just for the opportunity of opting out of ERISA.

Now, what is it I am talking about. I am assuming that most of you are basically familiar with the fact that ERISA says to church plans that if you choose, you are not obliged to assume the new minimum requirements, not obliged to invest your plans with the new minimum requirements that the statute imposes on every other form of activity, exempt or nonexempt. Now, it is that choice that obviously creates the problem for the churches. Decisions, decisions, decisions! At least with a company that doesn't have any choice, there isn't very much to think about. It doesn't have to go through the agony of deciding, if I had my druthers this way or that, what would I do? But a church does have that choice. It has an opportunity to determine whether it wants to impose upon itself these new, very stringent requirements, with all the complications they impose. I don't think that most people are reluctant to confer the benefits of ERISA on their employees; it is the difficulties that they face in doing so that have created the problems. This massive statute that I am engaged in, almost every minute of my working hours, and waking hours these days are unbelievably long. I never dreamed waking hours could extend as long as mine have—because we in the Service are spending all our time, I can assure you, in this task of making this statute work, bringing in the explications, the rules, the regulations, by all manner of means. We have improvised like never before in the Internal Revenue Service this year in developing shorthand answers and spot answers to this mammoth set of unanswered questions that are facing people who have to retrofit their plans this year.

Now, church plans don't have to do that. Church plans were given the privilege of staying where they were under the pre-ERISA existing code rules, that did define, of course, certain requirements, bearing on many of the same subjects. For example, vesting provisions were obliquely dealt with, coverage was dealt with, but more in general terms, under the nondiscrimination rules that were the general leitmotif of the statute ever since it came in 1942. At various times, the Service expanded upon that nondiscrimination rule, and introduced various rules that dealt, one way or another, with the question. But what Congress did in 1974 is impose, through the length and breadth of the pension field, minimum standards; and it is these new minimums that have created the problem, and by and large it is these new minimums the church plan is free not to adopt unless it elects. And we will talk about the election in a moment. As I indicated, they do have the choice, the church plans, of saying what is their druthers, do they opt in or opt out?

But apart from this election that we talk about, the church plan is not subject to a host of these new provisions that are applicable otherwise to pension plans. Take for example the minimum participation standard, Section 410 of the Code. (I promised not to use code numbers. This is the last time I will use it. If you catch me doing it, just wave. I know that it is a distracting thing. I know there are too many numbers we have to deal with in this life. I will try to keep them out of this talk.) The minimum participation standard is one of those things that a church plan is free not to adopt. The minimum vesting standard is an area of tremendous difficulties. We will go into some of these things during the course of my discussion this morning. Minimum funding standards, participation, vesting, and funding, those are the main areas where the new statute has created problems in imposing minimums. Other things are the form of benefits, the requirement that a joint and survivor benefit be made available where an annuity is otherwise elected. The benefits in case of merger. Now, while normally we don't think of churches as merging, I suppose there are obviously cases where parishes will merge for one reason or another. The merging of plans, under those circumstances, would be no less a problem for a church than for a business organization.

Now mergers happen to be a difficult area under the statute. The protection of benefits of the plan that is being merged, so that its assets are not invaded, if you will, by the acquiring corporation, has been a very difficult problem. We have been developing regulations, not fast enough, I am sure, to suit the needs of many, but as fast as we have been able to act on the difficult problems that we have been working on.

The nonassignment of plan benefits and nonalienability. There was a general rule about nonalienability of benefits prior to ERISA, so I don't know if the new statutory rule has a major impact; but it is a new requirement now specifically in the statute that creates its own problems, because whenever Congress states that something cannot be done, you then are obliged to develop a host of regulations and a host of new understandings of even an old, familiar concept. That is another one that the church plan is free of.

The time of the commencement of benefits on the occasion of retirement or early retirement. The fact that the plan benefits do not decrease upon the occasion of an increase in the Social Security limits is another new requirement of the statute not applicable to the church plan that chooses not to be covered by the new requirements.

Limitations on forfeiture on the withdrawal of employee contributions. One other thing that I might mention — and I am not sure that I have mentioned them all here in this kind of capsule presentation — of what these provisions are that you can choose not to have, because in order to make an intelligent decision you must obviously know what you are choosing out of.

Another one that you would be choosing out of in the church plan by not electing to adopt the new minimum requirements would be one that I would hope would not operate in typical church plans, and that is, of course, the excise taxes that are imposed on the occasions of various prohibited transactions when the trustee of the plan would be dealing improperly, as by self-dealing in one way or another, or by dealing with a group that in some way has control over the plan, obviously to the disadvantage of the employees, the persons covered by the plan. ERISA has new, very elaborate provisions providing excise taxes that can be applied instantly, starting at a 5% level, and then, absent correction, at a 100% level, to remedy these acts of self-dealing and overreaching that have been noted to have occurred in many, all too many, pension plans in the past.

Now, I suppose, in this general introduction of what we are talking about, let me state, if I haven't, that in respect of all of this a church plan is given the opportunity to decide whether or not it will take ERISA on by a specific election, and the regulations will define the manner in which that election is made. But if the election is made, one must take on the whole package. It is not a pick and choose, I would like this rule, but I won't take that rule. The church that buys ERISA buys intact across-the-board all of the provisions that are applicable to commercial enterprises generally. And, that decision, whether you should take it or not take it, will not be easy. I would say that by and large—and this is just a visceral thing, it is in no way based on any statistics on my part — the kinds of minimum provisions that the law imposes would be provisions that typically church institutions of the kind you represent would want to bestow on their employees. Obviously, the object is not to deny suitable pension benefits, and that is all that ERISA is about. Certainly, I am in no way suggesting that the church plan would choose to deny these benefits of the new statute to employees; but the problem obviously is adjusting to it, bringing them in. If the church plan is to adopt these provisions, I merely want to emphasize that it buys the whole package.

There will be occasions, apart from the mere desire to extend as much benefit to the participants as possible — there are reasons why ERISA might be adopted. One might be, for example, to take on the benefits of the insurance provisions of the Pension Benefit Guaranty Corporation, which now insures the benefits of persons participating in defined benefit plans, typically pension plans as distinguished from profit-sharing plans. PBGC now insures these benefits, and that insurance is one of the things that would not be available to the participants of the church plan, unless the church plan were to adopt the provisions of ERISA that we have been talking about.

Now, what is a church plan? I suppose you are aware that at this moment we are in the process of writing regulations which will define what is a church plan and what is an agency associated with a church plan under the rule that permits churches, in conjunction with agencies of churches, to continue a joint multi-employer, if you will, plan for a period of time. I will come back to that in a moment or two. But what we must define obviously is a church plan, and what is an agency

of a church that can be associated for a limited period of time, until 1983, with a church plan; and such regulations are in the process of being developed.

The one thing that you will not find in our regulations is: "What is a Church," that problem, which plagues us, is rampant throughout the field of exempt organizations. You will be dealing today, in the afternoon session, with the subject of "integrated auxiliaries of churches." To know what an integrated auxiliary is, presumably you must also know what a church is. The problem of what is a church is not normally one that this group is concerned with, and, happily, I do not have to address that. You know, I am sure, what a church is, as far as your institutions are concerned. We think you know what that is, in the case of the Catholic Church, so our definition of what is a church plan is more designed not to tell you what is a church but what is the plan that falls within the area of the church.

The term "church plan" is defined by ERISA as a plan established and maintained by a church or by a convention or association of churches which is exempt from tax under Code Section 501. That is a familiar, if uninformative, definition to you. You have seen it in the definition that operates for purposes of Section 511 of our Code, the unrelated business income tax section, exemption from which has been available to "churches" until this current year, as you know. That definition is the same definition. The term, however specific, in terms of ERISA, does not include a plan, even though for the benefit of employees of a church, if it is primarily for those employees of the church who are employed in connection with one or more unrelated trades or businesses. So that if the church is involved in what would be recognized as an unrelated trade or business, and if the plan was primarily designed to cover those of its employees in that activity, rather than the members of the church staff that are engaged in religious activities as such, that employee plan would not fall within the terms of the definition of a "church plan" under the terms of the statute. And our regulation will deal with that.

Nor will a church plan cover a multi-employer plan for more than one church unless all the participating employers are churches or a convention or association of churches, rather than merely church-related agencies. Now, that is the agency point that I alluded to briefly a moment ago. Congress has provided temporary relief in the case of a church that maintains a plan in conjunction with an agency. That plan can continue to qualify as a church plan and, therefore, not be subject to the new minimum requirements of ERISA, absent an election to make the statute apply. That multi-employer group can maintain its present plan without change until 1983, when the requirements of ERISA for a church plan of that nature are phased in.

This special phase-in rule, as I think I have already mentioned, applies only to plan years beginning on or after January 1, 1983. This phase-in rule, and the Conference Report which is the guidance document until the regulations come out in this area, because of the way this legislation was put together — as many of you who followed it know, it was a most unbelievable interplay of the four committees of Congress, each coming up with their own piece of legislation, the two Labor and Tax Committees of each House, making four committees, all of them essentially vying for the legislative lead in this area, and ultimately what came out was a blending and a meshing of these four separate legislative approaches by what we know as the Conference Committee, the typical committee that resolves Congressional House and Senate legislative differences. In this case, however, it was more

than just resolving the differences between the House and Senate versions. This committee had to compose the differences between the House Labor version and the House Tax or Ways and Means version, and similarly on the other side of the Congress, so what finally became ERISA was really the Conference Bill. The Conference Committee Report therefore, that explains that bill, becomes a basic research tool, for it provides many clues for us in our development of the regulations.

This Conference Report indicates that for purposes of this special rule that I have talked about, this phase-in rule, the term "agency" is to include schools and hospitals. Regulations are being developed which will contain guidelines for determining which types of organizations fit within the term church agency. Of course, I am not free to discuss our regulations, as you know, while they are in process. Hopefully, we will be able to announce proposed regulations in this area shortly. The drafting process is well along. But I would like to, at least, allude to some of the things that we are considering in the development of the regulations. We are considering, for example, whether the regulations should define an agency simply as an organization which is affiliated with a church. An organization might be considered affiliated with a church, for example, if it were controlled by or associated with a church. A further question might be whether this definition is coextensive with the term "integrated auxiliaries," which are defined in our proposed regulation under Section 6033 in a separate area of the Code, on exempt organizations. And then the question might well be whether the term "integrated auxiliary" is a narrower term than the term "agency." That, which, for example, might not be regarded as an integrated auxiliary might nevertheless be regarded as an agency; and our regulations will obviously address that problem. One thing that I think that you can reasonably count on, because of the Conference Committee Report, is that the term "agency" does include schools and hospitals. And as you know, under our proposed "integrated auxiliary" regulations, that might not be the conclusion.

Now, in addition, such regulations will clarify when a plan is to be considered established or maintained primarily for persons employed in an unrelated trade or business. One approach we might take in such regulations would be for such determination to be made by taking into account the number of employees engaged in the unrelated trade or business as compared with the total number of employees of the church. The amount of accrued or vested benefits might be another criterion we would use, comparing the accrued or vested benefits for those employees in the unrelated trade or business, as distinguished from those engaged in the more traditional programs of the church itself. A person could be considered employed in connection with one or more unrelated trades and businesses if a significant portion of such person's duties and responsibilities to the employer, or the church, is directly or indirectly related to the carrying on of such trade or business.

These are ideas that we are exploring, because we obviously want to provide a regulation that is workable, that is understandable, and that is reasonable. A church plan which is exempt from the new participation, the new vesting and funding, and the host of other requirements that I have mentioned that are now newly imposed by ERISA, still has to comply with the law as it was in effect before ERISA in order to remain qualified. In other words, the exemption for church plans is not an exemption from all the rules that affect the qualification of a pension plan.

It is exempt only from those added minimum requirements in the new statute which shall not apply to a church plan unless it elects. I think I have mentioned most of them, but there may be a few lurking there that I haven't discovered yet.

Now, also, provision has been made in the statute to allow the administrator of a church plan to make the irrevocable election to have the provisions of ERISA apply as if such plan were not a church plan. Temporary regulations are now in effect which provide that such election is to be made by the plan administrator by selecting the first plan year in which a plan is to be treated as a non-church plan, and by furnishing IRS with a statement which will indicate that the election is made under 410(d) of the Code, 410(d) being the provision that deals with the election of opting in or opting out. The statement indicates election is made under that section, and will indicate the first plan year for which it is to be effective.

Thus, this is a situation in which only an affirmative action by the church will bring upon it the provisions of ERISA. It isn't that ERISA will apply unless you choose not to have it. It will not apply unless you choose to have it. So in order to change the current status of church plans, an affirmative election is to be made indicating that the church chooses to take on the provisions of ERISA which I have alluded to. This statement, which is covered by our temporary regulations, is to be attached to either the annual return filed with respect to the first plan year the election is effective, or in a written request for a determination letter.

The annual return that I speak of is new Form 5500, which replaces the old Form 4848. IRS and DOL have produced, as many of you know, a joint form, actually several, a family of joint forms, the 5500 series. The basic form in the series is Form 5500. It applies generally to those employers whose plans cover 100 or more participants. There is a separate Form 5500C which would be applicable to that employer unit that has less than 100 employees in the plan, and there is also another form, 5500K, that obviously would not apply to church plans, having to do with the Keoghs, or self-employed plans.

The election, let me point out, is irrevocable. This election can be attached to Form 5500 or it can be attached to an application for advance determination in those cases where the church, for one reason or another, may choose to have the Service issue an advance determination letter as to compliance, or qualification of the plan under the new provisions. Indeed, I would expect that in those cases where a plan does choose to adopt the new ERISA provisions, the better part of prudence would be to come in to us and ask for our advance determination. This application for an advance determination letter is another place that the form for the election can be attached. I have already said that, once that election is made, it is irrevocable. However, it is subject to this one thing. If the election is made in conjunction with a request for a determination letter, then the election can be conditioned upon the issuance of a favorable letter. But apart from that, once the favorable letter is issued, that condition lapses, and the election is deemed from that point forth irrevocable, and the church plan may not then choose out a few years down the road, or in and out intermittently.

It must be remembered that while church plans are exempt from complying with most of the provisions of ERISA, there is one major area added which has an impact on the tax qualification of all plans, including church plans. That is the limitation on contributions. Prior to the enactment of ERISA, there was no statutory limitation on the amount an employer could contribute to a defined contribu-

tion plan. There were limitations on the amount that could be deducted, but that was, of course, a matter of little concern to a church group. But there were no limits on the amount that could be contributed! The only limitation on benefits under a defined benefit plan, as distinguished from a defined contribution plan — incidentally, for those of you who are not that familiar with these terms, they have now become a way of dividing the world of pensions between defined benefit plans and defined contribution plans. The defined benefit plan is the typical pension plan, typical in the sense that it provides actuarially determined benefits upon the occasion of retirement. There are variations, there are unit benefit, and career average and fixed benefit, and all kinds of different animals in this zoo of defined benefit plans. They all have the common feature that they define the benefit. They provide what the benefit at retirement will be. As distinguished from that, there is what is known as the defined contribution plan. Defined contribution plans are typically profit-sharing plans. Also, there is a creature that developed over the years, the so-called money purchase plan which looks like a pension plan but really acts like a profit-sharing plan, except that it is not geared to profits as such, in terms of the variability of contributions. It can be predicated on arbitrary factors, say, a percentage of the employee's pay, that has nothing to do with establishing a fixed retirement benefit. So you have, on the one hand, the defined benefit plan and, on the other hand, the defined contribution plan. Then you have something known as a target benefit plan, that is both on the one hand and on the other hand, and thus so difficult to define that we haven't yet been able to tell you what a target benefit plan is. So I won't say anything more on that one, other than that we haven't forgotten about it for those of you who are also representing clients who are interested in the target benefit plan. It hasn't been a big item in the church plans so I don't think that, in the context of this talk, you will be missing my failure to make reference to it this morning.

Getting back, now, to the limitation on benefits in the defined benefit area, the only limitation before ERISA was a revenue ruling. In 1972, we put out a revenue ruling which provided that the benefit could not exceed 100% of the annual pay of the participant at retirement. That was a Service-imposed rule; but now we have the statute, which we will see goes into that subject of limitations on contributions, limitations on pensions. Congress felt that in order to achieve some parity in the tax treatment of corporate plans and partnership plans, the H.R. 10 plan, that it was necessary to impose overall limitations on contributions and pensions allowable under qualified plans. These new rules are not expressed in terms of limitations on deductions as I have indicated, but, rather, the new limitations are treated as matters of qualification. Therefore, a plan which provides benefits or contributions in excess of allowable limitations will not qualify for favorable tax treatment. With respect to a defined contribution plan, these limitations are expressed in terms of what are called the "annual additions" in the statute, the annual additions to the individual employee's account. And, thus, under ERISA these annual additions cannot exceed the lesser of \$25,000, that is, a sum in gross, or 25% of the individual compensation from the employer during the year. An annual addition, therefore, is defined as the sum of employer contributions, and employee contributions (there is a curlicue there in which you exclude a certain portion of the employee contributions, and anything over that is part of the annual addition), and forfeitures. Forfeitures are the third element of the annual addition.

So, it is employer contribution, a top layer of employee contribution and forfeitures that make up the annual addition. The \$25,000 limitation is to be adjusted annually to take into account increases in the cost of living. Congress finally became aware in 1974 that you can't just put numbers up there in a statute, and expect them to be good for all time. So they built into the statute the necessity of cost of living adjustments; and we have already been obliged to make a fairly substantial increase in the \$25,000 limitation, simply as a function of the cost of living adjustment, and that is now being raised to \$26,825. This is a number that is annually subject to readjustment, if needed, to take into account cost of living increases.

In regard to a defined benefit plan, these limitations are expressed in terms of an annual benefit, because the whole scope or focus of a defined benefit plan is pointing toward a particular retirement benefit. Therefore, the highest annual benefit allowed to a participant is now equal to the lesser of \$75,000 (again, this fixed sum in gross) or 100% of the participant's compensation from the employer during the high three years of earnings; so that you have what amounts to an absolute top ceiling figure of \$75,000, or, if it happens that the employee's average compensation figures were less than that \$75,000, that lesser figure, obviously. But the \$150,000 compensated employee will not be able to get a \$150,000 benefit until such time, if it ever comes, when those cost of living adjustments have driven the \$75,000 figure up to \$150,000. It's already driven the figure up to \$80,475. The same cost of living adjustment that I mentioned that operated on the \$25,000 contribution limit has also operated in the benefit area. The \$80,475 is the same percentage increment, some 6% over the previous figure.

There are several exceptions to these maximum benefit rules, and these rules I am speaking about apply to church plans generally, and that is why I mention them. First, there is a *de minimis* provision, that allows for the annual payment of \$10,000, irrespective of the 100% of compensation limit, so that the employee who earns \$8,000 can nevertheless get a \$10,000 annual retirement benefit under that rule. However, this minimum benefit can be paid only if a participant never participated in a defined contribution plan which was maintained by the employer. Here again, it is unlikely, though not inconceivable, that a church plan would develop something like a profit-sharing plan. Those of you familiar with this area know that the Service has been concerned about whether an exempt organization of any kind, not merely a church, is capable of establishing a profit-sharing plan. How do you find the profits of a church or any other exempt organization? It's been a problem that we have been wrestling with, I think, about 15 years. I think we are about to solve it. I hope so. We're working on that one. But anyway, I mention it only because of its bearing on this rule that an employee may not have been a participant of a defined contribution plan. It could operate in those cases where the church has either some kind of a profit measurement plan, or an incentive measurement plan, or a money purchase plan, which are all defined contribution plans.

Also, where an employee has less than ten years of service, all of these limits, that is, the \$75,000 limit, the 100%-of-compensation limit, the \$10,000 minimum benefit provisions, all must be scaled down. This is done by multiplying these respective limitations by a fraction, the numerator of which is the number of years of service with the employer, the denominator of which is 10.

In addition, there is the grandfather clause, the benefit ceiling rule for individuals who were active participants in defined benefit plans before October

3, 1973. Briefly, an individual's annual benefit will be treated as meeting these limitations if the following conditions are met: (1) the annual benefit payable does not exceed 100% of the individual's compensation in October, 1973 or the date of termination of employment, if it was earlier; (2) the annual benefit is no greater than the annual benefit which would have been payable on retirement if all the terms of the plan had remained unchanged until retirement; and (3) there is no change in the individual's compensation base under the plan after October, 1973. That's the grandfather rule that was designed to recognize that there were employees at levels well above these limits, and the object was not to cut them down, provided that the benefits could not become any greater.

There is also a provision in the case of a participant who separated from service prior to October, 1973. The annual benefit can be no greater than the vested accrued benefit as of the separation date.

There are special rules which apply where an employer has, in effect, both a defined benefit and a defined contribution plan. These are overall limitations. Basically, an overall limitation is provided on the maximum benefit the participant can receive from this combination of plans. Otherwise, if the statute operated with blinders on, it would allow one set of benefits to be provided under the defined benefit plan within the limits applicable to it, and another set of limits applicable to the defined contribution plan within limits applicable to it; and by that process of multiplication of plans, each one meticulously observing the limit, in the aggregate you could have two or threefold the benefit that Congress deemed appropriate as part of the publicly supported retirement system, publicly supported in the sense of the tax deferrals, and the tax deductions, and the tax exemptions that are a feature of qualified pension plans generally.

In this combination situation, if the sum of the fractions exceeds 1.4 or 140%, then one of the plans will be disqualified. The numerator of the defined—well, I'm not going to get into this. These rules, the section 415 rules, are complicated, they're mathematical, they're hard to hear from a platform. I don't propose to impose them on you. I just want to call your attention to the fact that they are there. It is a very difficult area. Congress could very easily, or relatively easily, write Section 415 of the Code, to provide for these limitations. The task of actually making it work has been left to us. It's a difficult regulation process. Whenever you have a complex piece of legislation that has multiple applications, the regulatory process is difficult. I say this by way of asking for your understanding and, perhaps, for your prayers, since I think I've come to the right place. We are attempting to provide answers in all of the difficult areas that obtain. The regulation process is obviously not an easy one, it will take us years. But we have done many things; in fact, perhaps I might, in the ten minutes or so remaining, take you through some of these very difficult provisions, basically an explanation of some of the key rules in ERISA. Yet, I don't know that that's profitable. Maybe what you would rather hear me talk about, briefly, is some of the things that we have done and are doing, how we are addressing our problems.

There is just so much material, I could continue to overload you with it; but I don't know that you would feel anymore enlightened at the end of it. Let me, then, turn to just some general discussion about what we have been doing, what my office is all about, and how we're attempting to deal with this problem; since, while you are here as Diocesan Attorneys, I am sure that, as attorneys, you are also represent-

ing many other clients who will also have the problem of fixing up their pension plans under the new law; and perhaps you would be interested in some general observations that I could make at this time.

For one thing, I was amused with your introduction of me, as holding the position that Congress "ordered." Congress mandated the position, it is true. The ring that I caught in that remark was that nobody would have done it unless Congress made us do it. And perhaps that's true. Obviously, what Congress was doing in creating my job, which is Assistant Commissioner of Internal Revenue—there are seven of us. We are like the vice presidents of a corporation. We each operate in a separate area. My area happens to be the area where we do *not* collect tax. This is essentially the one area of the IRS that's concerned with not taxing, the exempt organizations, be they the employee plans or the exempt organizations generally. Congress created my assistant commissionship by statute—the others are not statutory—primarily to be sure that the emphasis is placed on this area that Congress expects of the Service. The sensitive concern to do more than collect revenues, to not ignore this area just because it's not a revenue producer as such, just because it's not congruent with the main function of the IRS. I can assure you, it is an extremely important function in our schemes. We take Congress' mandate very seriously. The Commissioner himself, who is a skilled practitioner, both in the areas of employee plans and exempt organizations, is very much concerned with the area. He continues to give me support on a constant basis, so the programs, both the exempt organizations program and the employee plans program, receive an enormous amount of attention. If we only had money, we'd be in great shape. We're under constraints, as all federal institutions are. Your fund raising problems are perhaps a little different from ours, but we are very sympathetic to your problems. We have them ourselves. Our principal donor, of course, is the Congress, and there are various pressures upon that contributor that we obviously have to continually deal with. So budget has been a problem. But we have recognized that it is necessary for us to do what we can to make this statute work, and also to make exempt organizations work.

While I'm going to address myself in my remaining minutes principally to employee plans, do not think for one moment that in any way suggests a priority. ERISA has many subtleties, there are many ambiguities, and there's the sheer enormity of it. There are 200-odd pages of complicated closely reasoned, closely worded statute. Our job is to make it explainable, and we've done that, or at least, we are in the process of doing it. It's a process that will go on for a long, long time; but we've done it by putting out questions and answers, we've put out announcements, we've put out revenue rulings, we've put out temporary regulations, and we've put out proposed regulations. There's a whole series of things that we have put out, all in the way of explaining the law and providing the rules. Explaining it and providing the rules by which we will fly.

We recognize that we must make it possible for people to design their plans, to understand what they must do to design plans, to make it possible for the design and then the drafting of plans and the qualification of plans to flow reasonably easily; and so we did several things. We took our temporary rules, we recognized you can't design plans if the rules keep changing, if they are in a process of evolution, and you want to sit down today, and the rule next week may come out which changes what you do this week. Recognizing that, we froze the rules. We froze our

temporary rules, if you will, under what we call the Special Reliance Procedure, under which we said, "these temporary rules can be used, can be relied upon, they won't change on you, they'll stay in one place and you can develop your plans based upon them."

We also have developed means to facilitate the design of the plans. We have announced recently a practitioner pattern program, much in the manner of financial institutions who submit sponsored plans to the Service by getting an opinion letter, which they can then apply to tens of thousands of customers who will use the same master or prototype plan. We have done that, and we have now extended that to practitioners. Each law firm develops its own format, its own particular specialties, that it finds to its liking. The law firm can get the pattern approved by the Service, can get several patterns approved by the Service, and then apply them to its clients as a means of facilitating the drafting of plans. We will be putting out language, model language that will help people to write a plan, to write certain provisions of a plan in a fashion that we would conclude is one way of satisfying the statute. Anything we put out by way of model language, model plans will only be that, it will by no means be the format, it will by no means be the way in which a certain concept must be expressed. It will only be suggestive, you may use it or not. But we think that will be helpful.

We have greatly streamlined the qualification process, the process by which plans may apply for consideration. This practitioner pattern program, for example, will do just that, because once a practitioner has gotten one plan, one pattern, approved by the Service, well then, when that pattern is submitted in connection with another employer, we will take that pattern and will apply it readily, with a minimum review, perhaps an hour of review to be sure that the people who are covered, appropriate coverage formulas, are in the plans, but without the necessity of going through the infinite number of difficult provisions that a plan typically must contain. So, these are things that we have done to make it possible for plans to be redesigned, bearing in mind, that there are over 500,000 corporate plans, in our estimate, an untold number of plans that perhaps we are not even aware of, church plans, for example, that in many cases never came in to us for an advance determination. We have no basis of knowing, in fact, under the records that we have kept to the present time, where there are such plans; but our numbers tell us there are over 500,000 corporate plans that have actually been qualified, and there are at least that number of H.R. 10 plans, so over a million plans, over 35 million participants. All of these old law plans, apart from the new crop of plans that keep coming every year, all of these old law plans must be redesigned under the rules that are applicable to companies generally, and will be applicable to church plans if they choose to make them so, and when they choose to make them so.

This process obviously must work, and I can assure you we, in the Service, are very conscious of our responsibility here. We spend unbelievable hours at all times. I was concerned I wouldn't be able to get here this morning. A problem came up. We intended to put out a press release. The special reliance procedure that I had spoken of, which was due to expire on May 30—I announced last week that we are extending that May 30 date to September 30; but we are in the process today of trying to put out a press release on that subject, describing some of those extension dates. Just this morning this created some problem for me that, thankfully, I was able to resolve, at least long enough to get here and make this talk.

How are we set up? You might be interested to know that. Because it's fine to have a process, it's fine to have a procedure, but if it doesn't work, it's useless. What we have done is organized throughout the country in three stratas, starting in the field offices, where the point of contact will be, obviously, for most persons, where plans must be submitted. We set up what are known as key districts. The IRS has, I believe, 58 district directors throughout the country, including Alaska, Hawaii and throughout the various states. But, obviously these district offices range in size, from New York, which has a giant office, to Cheyenne, which is a very small office. So obviously we cannot have the balanced expertise throughout the country that we would have in certain central focus points. Recognizing that this thing can only work if administered by a group of competent, experienced professionals, the specialists who deal with you, which you call the revenue agents, we focused our program in 19 key districts. Those 19 key districts are applicable both to employee plans and to exempt organizations, and they are applicable to nothing else in the IRS. They coincide with existing district offices. You will have a Baltimore key district. You will have a Newark key district. You will have a New York key district, which is part of the District Director's Office. At those key districts we have our employee plans groups. We have a division chief of Employee Plans and Exempt Organizations. We have staffs who specialize in employee plans and exempt organizations matters—usually separate staffs, the two are not meshed in the field, although there are some mixed groups. Now, by this concentration of expertise in 19 key districts, under the management of a chief who is responsible for the program in the district, we obviously have taken the first step toward achieving uniformity, efficiency and proficiency.

Above that level, we have established what are known as the assistant regional commissioners. The IRS, as you may know, is divided into seven regions throughout the country, which roughly follow the familiar divisions into which the nation falls generally, the Northeast, the Mid-Atlantic, Central, the Southeast, the Midwest, the Southwest and the West. I think I've mentioned seven here. If I haven't, you'll probably know yourself which is the one I didn't mention. Seven regions, with each region governed by a regional commissioner who is the field marshal of the Service in the region. He runs the program. That regional commissioner has assistant regional commissioners, ARC's as we call them, and there is now an ARC of EPEO, Employee Plans and Exempt Organizations. Each assistant regional commissioner is responsible usually for three key districts that fall within his region, and for maintaining uniformity and also for doing another important thing. There are now appeal processes, well-defined regulations, procedural rules that govern what happens to the disenchanted plan that is turned down by that benighted agent in the field office who doesn't understand the finer points of a pension plan, and what you really want to do is talk to somebody who really knows his business. Now, I hope that is not the case. I know it's not the case. We have gone through an extensive training program. I have visited many of my offices, and I am enormously impressed by the level of awareness that this very difficult statute has received. Our object is service. Not only is the service Internal Revenue Service, it's public service; and if we're not serving the public we're not doing our job, and that includes me. I welcome you to call me, my phone number is 964-3171, unless they've changed it since I left the office Saturday at 4:30. You let me know if you are having any problems. In any event, there are more organized ways you can let

me know, also. Because once you go through the assistant regional commissioner, if he too, through this conference process, has not adequately understood your problem, according to your rights, you have the opportunity of coming to the National Office.

In the National Office we have actually three separate divisions in my office. We have the Employee Plans Division, we have the Exempt Organizations Division, and the Actuarial Division. The Employee Plans Division itself has a technical group, a technical branch, that technical branch is there to hear the appeals from the regions if the case still has not been determined to the satisfaction of the interested parties. We are now operating very conscious of another procedure that's been laid on top of us as a result of ERISA, and that is so-called a declaratory judgment procedure. No longer are you obliged, in the employee plans area, to accept the verdict of the Service spokesman, whether he be the tax law specialist down in the field office or the exalted expert up in the National Office who finally deals with the question. If you don't like the result, you have recourse to the Tax Court. I have just recently become aware, in the last couple of days, of three petitions filed in the Tax Court for declaratory judgments, so that process is the beginning. The Tax Court is standing there in the position of being able to provide, after the administrative process has been exhausted, a second guessing, or redetermining, of the determination that the Service has made, and that is the declaratory judgment procedure. I will say that that is an idea whose time has come, and it's about to come to the exempt organizations area as well. Those of you who follow this area know very well that one of the pieces of legislation that's almost assured of passage this year would be the application of this declaratory judgment procedure in the exempt organizations area as well, providing the exempt organization that has felt the hard, cold, steely gaze of the tax auditor, who would deny it the opportunity to discharge the various good works that it was bound to perform with the chance to go to the Tax Court—can go indeed, under the present bill—I am not sure whether that'll be maintained—not only to the Tax Court, but to the District Courts as well, the Federal District Courts which are given concurrent jurisdiction with the Tax Court in the exempt organizations area, although not in the employee plans area.

So, this basically is the structure. Is it working? It's very difficult, from my perspective, to know. We are trying, I can assure you, to make it work. When we have learned that something is not working as we have intended, usually you let us know. When we hear about it, I hope you will see that we have been responsive. We are not unconcerned with the burdens of this statute, we are most concerned with them. It is obviously our task to balance the considerations of improving the employee's benefits while sparing the employer community undue burdens. That delicate balance, I hope you will see, we have been maintaining.