

benefit fringe

happy 50th birthday, ERISA

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Nearly 50 years ago—on September 2, 1974—President Gerald Ford signed the Employee Retirement Income Security Act (ERISA) into law. The International Foundation has been providing education on this landmark legislation ever since.

That education includes *ERISA Insights: Voices From the Early Days*, a book edited by Steven E. Schanes, who was the first executive director of the Pension Benefit Guaranty Corporation (PBGC). The 2001 book features the perspectives of more than 50 people working in employee benefits and covers the origins of the law as well as its impact and predictions for the future.

Although the book was not intended to provide a history of ERISA, several contributors offered personal accounts of the law's journey to Ford's desk.

What Does ERISA Stand For?

Contributors joked that ERISA has been called many other less-than-complimentary names, including “Every Ridiculous Idea Since Adam” and the “Actuaries, Accountants and Attorneys Full Employment Act.”

Impact of Special Interests

“Drafting was mostly serious business. We worked hard and long to tighten up, or at least prevent too much loosening, on participation, vesting and funding rules. There were lots of lobbyists trying to pull us every which way. Often we were successful in resisting exceptions for special interests, but sometimes we were not,” wrote William Posner, who worked for the Internal Revenue Service in 1974. Posner later became PBGC deputy executive director and chief operating officer.

Facing a Deadline

ERISA passed and was signed into law in the summer that President Richard Nixon resigned. Steven J. Sacher, an attorney who worked for the Department of Labor (DOL) in 1974, wrote that intense pressure was put on the staff

writing the legislation to get the bill before the House before it was expected to take up impeachment proceedings. (It was assumed that Nixon would not resign.) “As the rest of the nation watched the Nixon administration lurch toward destruction, the ERISA drafting staff was sequestered in a basement room of the Cannon House Office Building,” Sacher remembered.

The Importance of Preemption

Although they were often at odds, “large corporations and multiemployer health and welfare plans both perceived the danger of state-by-state regulation of their plans. The House and Senate provisions were weak and the Conference Committee adopted a preemption provision that probably was the broadest ever enacted. I refer to it as the keystone to the enactment of ERISA,” wrote Rep. John N. Erlenborn, who is recognized as one of the “four fathers of ERISA.”

But . . . About That Language

William J. Kilberg, who was the DOL solicitor in 1974, recalled an interaction he had with Senator Jacob K. Javits, the principal author of ERISA, as he reviewed the draft language of the preemption provision stating that ERISA would preempt state laws that “relate to any employee benefit plan.”

Javits asked Kilberg for his opinion on the clause. “I’m not sure what it means,” Kilberg said he told Javits. “The senator stared at me over his reading glasses for a moment, then turned back to the table.”

About a quarter-century later, at the time of writing, Kilberg said he was preparing to argue an ERISA preemption case before the Supreme Court. “The Court has dealt with over 20 preemption cases since 1974, three in the 1996-1997 term alone. ERISA articulates many rules, but not always with clarity.”

A Sign of Unity

Russell J. Mueller, a former member of the House Pension Task Force, recalled that following Nixon's resignation on August 8, 1974, Ford appealed to Congress to “present him with legislation that would bring Congress and the new president together in an act of national unity. Congress complied by voting 402 to 2 in the House and 85 to 0 in the Senate to approve the ERISA conference report.”

