A Reflection of My Personal Journey with ERISA on its 40th Birthday

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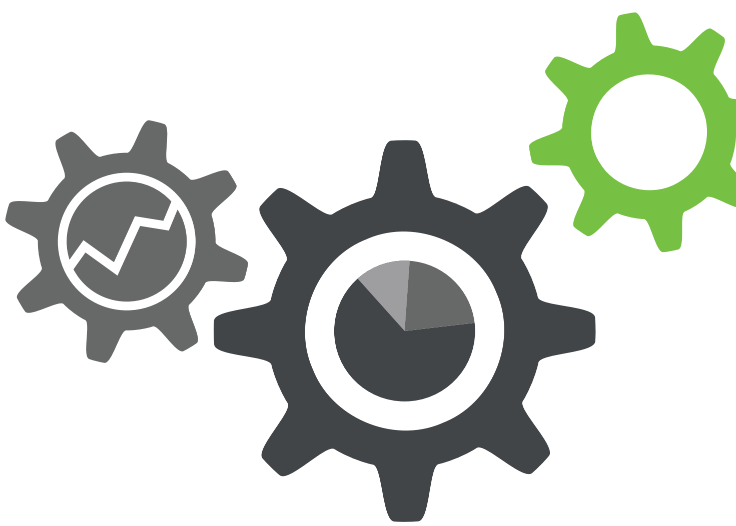
ERISA was signed into effect by President Gerald Ford on September 2, 1974, changing the way we manage Retirement Plans.

Prepared by:
David J Witz, AIF®, GFS®
CEO/Managing Director
FRA PlanTools
704-564-0482
dwitz@fraplantools.com



I originally released my tribute to ERISA 10 years ago on September 4, 2004. Since that time the only constant has been change, which is no different than the 30 years prior to my original publication date. I suspect the next 10 years will continue in the same vain as the last 40 years. However, one thing has not changed…ERISA is still a challenging and complex statute that a fraction of the public understands and appreciates.

President Gerald Ford signs ERISA into effect on Labor Day, September 2, 1974.

My personal journey with ERISA started at Penn State when I took a pension class taught by Dr. Arnold Shapiro in 1980. I was so consumed by the subject matter that I could not stop reading the assigned book. During the 10 week class I read it 3 times and almost rewrote the entire book in my notes. My efforts paid off as I was one of 2 people in the class to receive an "A". One third of my grade was based on a required paper. I asked Dr. Shapiro what was the most difficult topic to write on at that time. He told me, if I was up for the challenge, to write on Social Security Integration. It was the only "A-" I received from Dr. Shapiro. Ironically, my motivation was not the "A" it was mastering the subject matter. After finishing that semester, my mind was made up. I was going to secure a job as a pension consultant upon graduation.

About a month before I graduated, I was presented with an employment offer by The Bankers Life of Des Moines, Iowa (now the Principal Financial Group) in their Pittsburgh Office. I started June 1, 1981. At age 22 I was paid $14,500 and given a company car which was plenty for myself and by bride of one year. To my Manager's surprise, I was already a licensed insurance agent and had been since I was 18. It was one of the reasons I was the President of the Insurance Club at Penn State. My initial responsibility was to study and pass my Series 6. In between studying, I was learning the Group Health and Pension business. Bankers/Principal was and is an excellent company for training consultants and I will be forever in debt to them for giving me the opportunity to work for them.

Unfortunately, my family did not appreciate my choice of careers as much as I did. Being the first one in the family to graduate from college, there was high expectations placed on me by my aunts, uncles, and cousins besides my immediate family. When I told my uncle, who at the time was a sole proprietor of a Gas Station, that I was going into the Pension business, he cursed me out. His anger took me by surprise so I asked him why he was so angry. He responded, "Ask your Aunt Joan," so I did. My Aunt informed me that my Grandfather, who died in 1970, previously worked for Oswald Hess, a meat packing company in Pittsburgh. She told me the third generation owners were not good business men like their father or grandfather and that due to their incompetence, they ran the business into bankruptcy. Prior to closing their doors, the young owners approached my grandfather and another gentlemen both considered leaders in the labor group to negotiate a new work schedule to keep the doors open. My grandfather and his associate agreed to the owner's terms to work one week per month free. I do not know how good my grandfather's math skills were, but according to my Aunt, the week they worked for free was an 18 hour shift and the three weeks they worked for pay were 6 hour shifts so, in essence, they worked half the month for free. Even with this effort they could not save the company but the men were encouraged they at least had a pension, or so they thought. At that moment I realized before my Aunt finished the story that my Grandfather was a pre-ERISA victim of pension embezzlement, theft, and fraud.

My Grandfather not only lost his job, but he lost his pension and had no advocate to protect his rights or restore what he lost. He eventually landed a job with Kroger's but, again, this was a time before ERISA. To avoid giving my Grandfather any benefits including retirement, Kroger's would move him from store to store to prevent him from becoming a full-time employee.

John Grantz, my grandfather and a victim of pre-ERISA embezzlement, theft, and fraud.

My uncle later asked me my thoughts about my Aunt's story. I told him about ERISA and its provisions to protect employee pensions. He made it clear to me that he did not believe ERISA would stop greed or theft of pension assets and he suggested I find other employment. Several months after this discussion, my Uncle and I again discussed my employment and I shared with him the exciting new retirement plan called a Cash or Deferral Arrangement (CODA), otherwise known as 401(k). I informed him of all the benefits to participants but he was unconvinced and, to my dismay, I found his opinion was shared by many other people, especially in blue collar industries. In fact, the most common objection raised during enrollment meetings was in the form of the question, "Do you really expect me to take money from my pay check and place it in a retirement account that my employer controls?" The question itself validates the concerns my Uncle expressed to me over and over again…you cannot trust your employer. Of course, I asked him if his employees could trust him but his response is not something I could publish but let's just say he did not like the question.

Much has changed since the 1980s. Today, graduates ask if the company they are seeking to be employed by offers a 401(k). The fear from the sins of pre-ERISA are a distant memory. Granted, pension coverage is not universal, participation is not what it should be, and deferrals are not as high as they should be but that is not a fault you can place at the feet of ERISA. Instead, ERISA and the many modifications since have been an attempt to improve on the Policy of ERISA since its inception. For those practitioners old enough to remember pre-ERISA days, you may recall that many claim the passage of ERISA would persuade companies to abandon retirement plans as a fringe benefit. Of course, the statistics in terms of number of plans, participants covered, and assets under management all point to a different conclusion. In spite of continued tinkering over the past 40 years, ERISA lives on and the retirement industry thrives. It is not a perfect system or a perfect law and it is a rare practitioner that has not voiced a condemning comment against ERISA over the years but despite the negative comments, ERISA's future seems secure.

So on September 2, 2014, we celebrate ERISA's 40th birthday. I have personally been a part of this industry since 1981 and I have no regrets for my career choice. As a student of ERISA, I feel I am one of many that has played a part in supporting ERISA's policy to protect and preserve participant retirement benefits. If you are a student of ERISA and truly want to understand what lead to the passage of ERISA, I highly encourage you to read, "The Employee Retirement Income Security Act of 1974 – A Political History" by James A Wooten. It has never been on the N.Y. Times best seller list but buying and reading the book is one step towards legitimizing your status as a pension geek. In the absence of reading a true historical account of ERISA, I offer you my fictitious rendition of the Genesis of ERISA that I published in 2004. I hope you find it as humorous as it was intended to be.

In the beginning, Congress created ERISA. Now ERISA was formless and empty, darkness was over the surface of the deep, and Congress was hovering over boundless words of expression.

*And Congress said, "*__Let there be Title I__*" and Congress saw that Title I was good for it imposed minimum standards of eligibility, vesting, and funding to protect the common man - And statutory requirements were created to impose minimum standards for Reporting, Disclosure, Fiduciary Responsibility - And powers of Enforcement over these statutory requirements where delegated to the Department of Labor. And there was evening and there was morning - it was one of many days!*

*And Congress said, "*__Let there be Title II__*" and Congress created a great expanse between the waters of Title I and Title II. And it was so. Congress called the expanse the Department of the Treasury to monitor greed and gluttony (410(b) – 415 & 416). And there was Labor and there was Tax – the second of many more days!*

*And Congress said, "*__Let there be Title III__*" and Congress gathered the Department of Labor and separated them from the Department of the Treasury dividing enforcement between them over the great expanse. And it was so. Congress called the Department of Labor (DOL) - "Labor" and the Department of the Treasury (Internal Revenue Service - IRS) "Tax". And Congress saw that it was good.*

Then Congress let DOL issue rules, regulations, interpretive bulletins, prohibitive transaction exemptions, field assistant bulletins, and private letter rulings and gave the IRS similar authority so that they may produce - so that man may know the heart and mind of Congress. And it was done and Congress saw that it was good. And it was evening and it was morning – the third of many more days!

*And Congress said, "*__Let there be Title IV__*" to fill the expanse between the powers of the DOL and the IRS over the accrued benefits created by Defined Benefit plans. So Congress created the PBGC to govern this expanse and to guarantee minimum benefits for the common man. And Congress saw that it was good. And there was evening and there was morning – and Congress was exhausted and temporarily decided to create no more.*

Then Congress said, "Let us name these Titles in our own image, in our likeness, and let it rule over plans sponsors in all these United States." Congress thought long and hard over this great Act of creation and many more days passed. Finally, Congress named their Act of creation, ERISA, an acronym for "Every Ridiculous Idea Since Adam" for it truly reflected the image of its creator.

So Congress created ERISA in its own image, in the image of Congress they created ERISA; and with the powers of Labor and Tax, Congress created ERISA.

Congress blessed ERISA and said, "Be fruitful and increase the number of financially independent retirees and let them fill their retirement accounts." For the account of a retiree will be for food, shelter, and enjoyment during their golden years. And it was so.

Upon reflection, Congress saw that all it had created was very good in deed! And there was evening and there was morning - and it was the end of the 94th Congress 2nd session.

HAPPY BIRTHDAY ERISA!

David J Witz, AIF® GFS® is CEO/Managing Director of Fiduciary Risk Assessment LLC and PlanTools, LLC ("FRA PlanTools"). FRA PlanTools provides consulting, expert witness, and assessments of advisor expertise. PlanTools, a wholly owned subsidiary, provides retail and custom web-based retirement and investment technology solutions including expense analysis, benchmarking, 408(b)(2) reporting, revenue sharing database, standards-based risk management, and fiduciary governance solutions. For more information about FRA PlanTools contact David Witz, at 704-564-0482 or dwitz@fraplantools.com.