Why are church plans not covered by federal laws?

The Employee Retirement Income Security Act of 1974 (ERISA) provided federal protections for all private-sector pension plans with one exception, plans established and maintained by churches for their own employees. According to a Senate report, the exception was included because lawmakers were concerned that the review of a church’s books and records by the federal pension insurance agency created by the new law might be seen as “an unjustified invasion of the confidential relationship” between “churches and their religious activities.”

With the passage of an amendment to ERISA in 1980, Congress made two modifications to the law that greatly expanded the number of workers covered by church plans. The amendment:

- Broadened the definition of church plan to allow plans that churches established and maintained for their own employees to also include the employees of church-related tax-exempt organizations, such as hospitals and schools.

- Allowed certain other plans that were maintained by “church pension boards” to be treated as church plans. “Church pension boards” (now called “church benefit boards”) are financial organizations associated with churches that have as their principal purpose the administration or funding of pension plans.

Congress never intended that participants in retirement plans that were neither established and maintained by a church nor maintained by a church pension board be denied the protections of the ERISA.

Despite specific statutory language and clear legislative history, in 1983, the government agencies charged with interpreting the law began issuing rulings that allowed other pension plans to claim church plan status. According to these rulings, it did not matter that these plans were not established by a church and were not maintained by a church pension board. The only requirement was that the plans be administered by an administrative committee that included at least one member with a religious affiliation.

These rulings, which were issued to employers without the knowledge of their employees, made it possible for the employers to avoid all of the requirements of federal law – without having to inform employees. In many cases, the employees had been fully protected by the federal law for their entire careers before their plans applied for church plan status.

In at least 85 cases, the plans sought and received refunds of the pension insurance premiums that had been paid to provide lifetime guarantees for retirees’ pensions.
In 2007, in response to a lawsuit, the Internal Revenue Service temporarily stopped issuing church plan rulings in order to review its policies. The IRS lifted this moratorium in September 2011, but required employers seeking church plan rulings to send a notice to employees and retirees about the filing of the request that informs them about the loss of federal protections that would result if the ruling were to be issued, and tells them that they can send written comments to the IRS about the ruling request and ask for an opportunity to make an oral presentation.