

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

THOMAS E. PEREZ, et al.,

Defendants.

Civil Action No. 3:16-cv-1476-M

Consolidated with:

3:16-cv-1530-C

3:16-cv-1537-N

**DEFENDANTS' APPENDIX**

Pursuant to the Court's July 7, 2016 Order, Defendants file this appendix consisting of materials not in the administrative record cited in Defendants' Combined Cross-Motions for Summary Judgment and Opposition to Plaintiffs' Motions for Summary Judgment.

#	Document Title	Defs.' App'x
1	DOL Advisory Opinion 83-60A (Nov. 21, 1983)	1-4
2	Morningstar, Ibbotson SBBI, 2015 Classic Yearbook: Market Results for Stocks, Bonds, Bills, and Inflation 1926-2014 (2015) (excerpt)	5-11
3	SCM Network, <i>Int'l Standard Cost Model</i>	12-74
5	Linda Koco, FIA Complaints Rise Unexpectedly, <a href="http://www.insurancenewsnet.com">www.insurancenewsnet.com</a> (Mar. 11, 2015)	75-77
6	NAIC Aggregate Consumer Complaint Reports	78-83
7	91 BNA Pension Reporter A-4 (June 21, 1976)	84-90
4	<i>Modernizing ERISA to Promote Retirement Security: Hearing Before the H. Subcomm. on Employer-Employee Relations of the H. Comm. on Educ. and the Workforce</i> , 106th Cong. 42 (2000)	91-126

Dated: August 19, 2016

Respectfully submitted:

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CERTIFICATE OF SERVICE

On August 19, 2016, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties to the three actions.

/s/ Galen N. Thorp  
GALEN N. THORP



NOV 21 1983

Reply to the Attention of

OPINION NO. 83-60A

Sec. 3(21)(A)(ii)

Mr. J. Hamilton Crawford  
Securities Industry Association  
20 Broad Street  
New York, New York 10005

Re: Identification Number F-2553

Dear Mr. Crawford:

This is in reply to your letter of November 22, 1982, requesting an advisory opinion on behalf of the Securities Industry Association (SIA) under the Employee Retirement Income Security Act of 1974 (ERISA).

You represent that members of the SIA engage in diverse facets of the securities business, including the provision of brokerage and investment advisory services. Most members of the SIA execute or effect securities transactions as agents for employee benefit plans. In the process of executing such orders for plans, broker-dealers are frequently asked for and frequently volunteer recommendations about securities. The recommendations are often given by broker-dealers without the receipt of any distinct compensation other than the "normal" negotiated commission for executing a securities transaction. You further state that such recommendations raise questions about the status of broker-dealers as plan fiduciaries under section 3(21)(A)(ii) of ERISA.

In an effort to clarify the status of broker-dealers under ERISA, you request that the Department issue an advisory opinion that a broker-dealer will not be deemed a fiduciary under section 3(21)(A)(ii) of ERISA unless the broker-dealer provides investment advice for distinct, non-transactional compensation.

Section 3(21)(A)(ii) of ERISA provides, in pertinent part, that a person is a fiduciary with respect to a plan to the extent he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so.

Regulation 29 CFR §2510.3-21(c) defines what constitutes "investment advice" for purposes of such 3(21)(A)(ii) of ERISA. That regulation provides, in pertinent part, that a person renders "investment advice" only if:

(i) Such person renders advice to the plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property; and

(ii) Such person either directly or indirectly (e.g., through or together with any affiliate) - -

(A) has discretionary authority or control, whether or not pursuant to agreement, arrangement or understanding, with respect to purchasing or selling securities or other property for the plan; or

(B) renders any advice described in paragraph (c) (1) (i) of this section on a regular basis to the plan pursuant to a mutual agreement, arrangement or understanding, written or otherwise, between such person and the plan or a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets, and that such person will render individualized investment advice to the plan based on the particular needs of the plan regarding such matters as, among other things, investment policies or strategy, overall portfolio composition, or diversification of plan investments.

The Department has previously recognized that broker-dealers regularly provide research, information and advice concerning securities in the ordinary course of their business as broker-dealers. The provision of such research and/or recommendations to a plan would not in and of itself constitute the rendering of "investment advice" under the regulation unless rendered pursuant to a mutual agreement, written or otherwise, to provide individualized advice to a plan on a regular basis which will serve as the primary basis for plan investment decisions. Thus, for example, the provision of general research materials to a broker-dealer's customers including employee benefit plans would not fall into that category. In other instances, a determination whether the provision of research and/or recommendations by a broker-dealer constitutes the rendering of "investment advice" within the meaning of section 3(21)(A)(ii) of ERISA will depend on the particular facts and circumstances.

The definition of fiduciary under section 3(21)(A)(ii) is a two-part test requiring both the provision of "investment advice" and the receipt of a "fee or other compensation" for such advice. The preamble to the regulation, in outlining what constitutes "a fee or other compensation, direct or indirect," states that:

Although this matter is still under consideration by the Department and the Service, as a general guideline until a more definitive statement is issued, a fee or other compensation, direct or indirect, for the rendering of investment advice to a plan by a fiduciary, within the meaning of section 3(21)(A)(ii) of the Act, should be deemed to include all fees or other compensation incident to the transaction in which the investment advice to the plan has been rendered or will be rendered. This may include, for example, brokerage commissions, mutual fund sales commissions, and <sup>1/</sup> insurance sales commissions. (emphasis added) 1/

Similarly, the preamble to the proposed class exemption for insurance agents or brokers and pension consultants<sup>2/</sup> restated the position quoted above with respect to insurance and mutual fund sales commissions.

While the receipt of commissions by a broker-dealer which performs services in addition to that of effecting or executing securities transactions for a plan is not necessarily dispositive of whether the broker-dealer received a portion of such compensation for the rendering of "investment advice", if, under the particular facts and circumstances, the services provided by the broker-dealer include the provision of "investment advice", as defined in regulation 2510.3-21(c), it may be reasonably expected that, even in the absence of a distinct and identifiable fee for such advice, a portion of the commissions paid to the broker-dealer would represent compensation for the provision of such investment advice.

Accordingly, the Department cannot concur with your position that the phrase "fee or other compensation, direct or indirect", as used in section 3(21)(A)(ii) of ERISA, excludes from the definition of "fiduciary" persons who do not receive distinct, non-transactional compensation in connection with

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<sup>1/</sup> 40 FR 50842 (October 31, 1975)

<sup>2/</sup> 41 FR 56760, 56762 (December 29, 1976). The preamble further stated that "[t]he Department... [has] not modified or revised this position, notwithstanding the contrary views expressed in several of the applications for class exemption."

the provision of brokerage and investment advisory services.

This letter is an advisory opinion under ERISA Proc. 76-1. Section 10 of the procedure explains the effect of advisory opinions.

Sincerely,



Alan D. Lebowitz  
Assistant Administrator  
for Fiduciary Standards  
Pension and Welfare Benefit Programs

**Ibbotson® SBBI®**  
2015 Classic Yearbook

Market Results for  
Stocks, Bonds, Bills, and Inflation  
1926–2014

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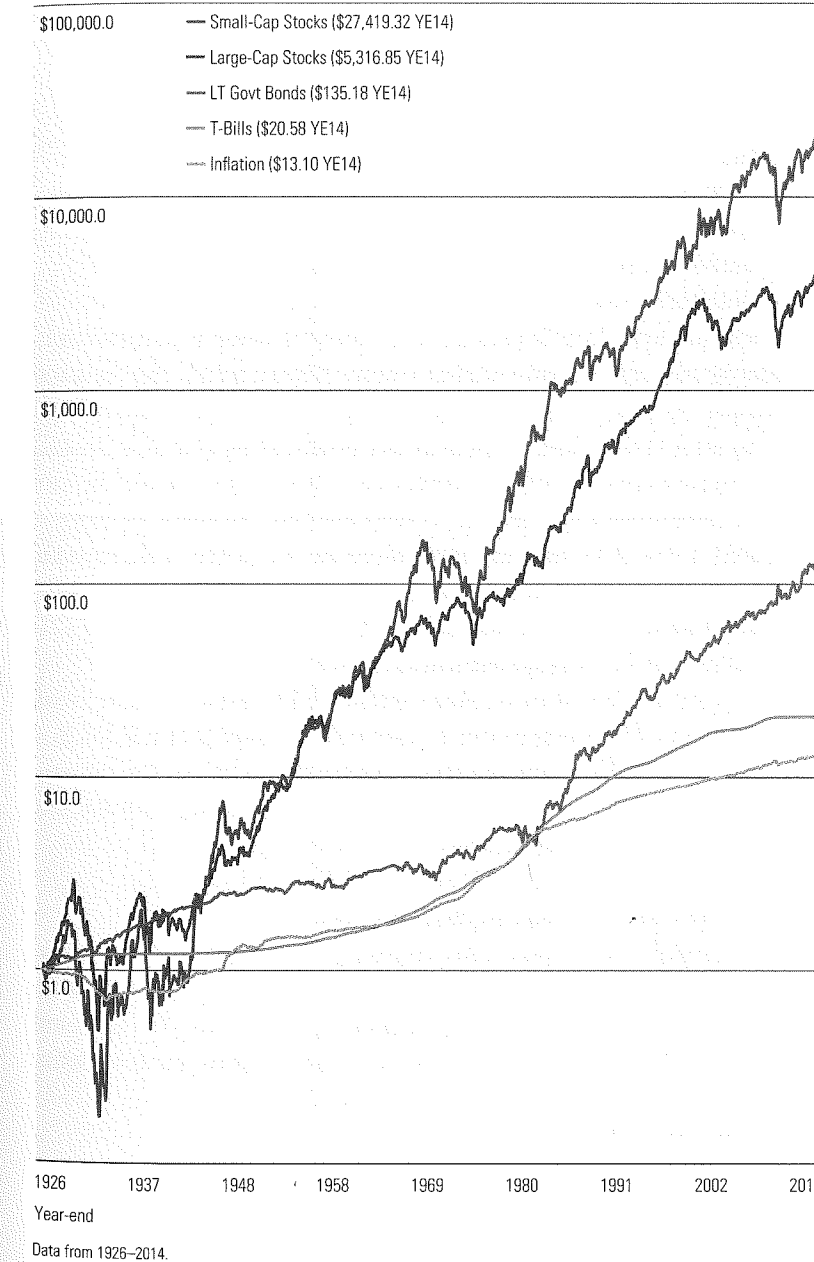
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## Chapter 2 The Long-Run Perspective

**Graph 2-1: Wealth Indexes of Investments in the U.S. Capital Markets**  
Index (Year-End 1925 = \$1.00)



A long view of capital market history, exemplified by the 89-year period (1926–2014) examined here, uncovers the basic relationships between risk and return among the different asset classes, including alternative investments, and between nominal and real (inflation-adjusted) returns. The goal of this study of asset returns is to provide a period long enough to include most or all of the major types of events that investors have experienced and may experience in the future. Such events include war and peace, growth and decline, bull and bear markets, inflation and deflation, and other less dramatic events that affect asset returns.

By studying the past, one can make inferences about the future. While the actual events that occurred during 1926–2014 will not be repeated, the event-types of that period can be expected to recur. It is sometimes said that only a few periods had unusual events, such as the stock market crash of 1929–1932 and World War II. This logic is suspicious because events that are deemed unusual happen with a certain regularity.<sup>1</sup> Some of the most unusual events of the century—the market crash of 1987, the equally remarkable inflation of the 1970s and early 1980s, the more recent events of Sept. 11, 2001, and most recently, the 2008–2009 global financial crisis—took place over the last three decades or so. From the perspective that historical event-types tend to repeat themselves, an 89-year examination of past capital market returns reveals a great deal about what may be expected in the future.

### Stocks, Bonds, Bills, and Inflation: Historical Returns

Graph 2-1 depicts the growth of \$1.00 invested in large-cap stocks, small-cap stocks, long-term government bonds, Treasury bills, and a hypothetical asset returning the inflation rate over the period from the end of 1925 to the end of 2014. All results assume reinvestment of dividends on stocks, or coupons on bonds, and no taxes. Transaction costs are not included, except in the small-stock index starting in 1982. Definitions of fixed-income terms are found on Page 3.

Each of the cumulative index values is initialized at \$1.00 at year-end 1925. The graph vividly illustrates that small-cap stocks and large-cap stocks were the big winners over the entire 89-year period: Investments of \$1.00 in these assets would have grown to \$27,419.32 and \$5,316.85, respectively, by year-end 2014. This phenomenal

growth was earned by taking substantial risk. In contrast, long-term government bonds (with an approximate 20-year maturity), which exposed the holder to much less risk, grew to only \$135.18.

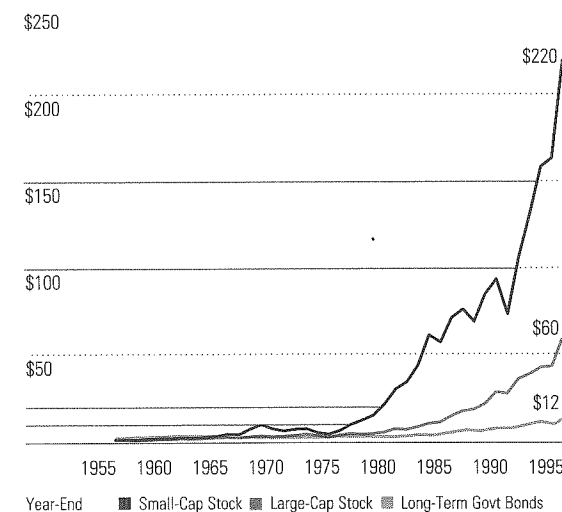
The lowest-risk strategy over the past 89 years (for those with short-term time horizons) was to buy U.S. Treasury bills. Because Treasury bills tended to track inflation, the resulting real (inflation-adjusted) returns were just above zero for the entire 1926–2014 period.

#### Logarithmic Scale on the Index Graphs

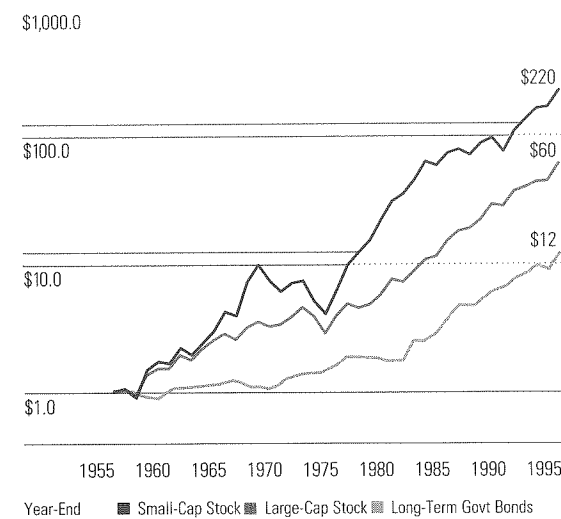
A logarithmic scale is used on the vertical axis of our index graphs. The date appears on the horizontal axis.

A logarithmic scale allows for the direct comparison of the series' behavior at different points in time. Specifically, the use of a logarithmic scale allows the following interpretation of the data: the same vertical distance, no matter where it is measured on the graph, represents the same percentage change in the series. On the log scale shown below, a 50% gain from \$10 to \$15 occupies the same vertical distance as a 50% gain from \$100 to \$150. On the linear scale, the same percentage gains look different.

#### Linear Scale



#### Logarithmic Scale



A logarithmic scale allows the viewer to compare investment performance across different periods; thus the viewer can concentrate on rates of return, without worrying about the number of dollars invested at any given time. An additional benefit of the logarithmic scale is the way the scale spreads the action out over time. This allows the viewer to more carefully examine the fluctuations of the individual time series in different periods.

#### Large-Cap Stocks

As noted above, an index of S&P 500 total returns, initialized on Dec. 31, 1925, at \$1.00, closed 2014 at \$5,316.85, a compound annual growth rate of 10.1%. The inflation-adjusted S&P 500 total return index closed 2014 at a level of \$405.90.

#### Small-Cap Stocks

Over the long run, small-capitalization stock returns surpassed the S&P 500, with the small-cap stock total return index ending 2014 at a level of \$27,419.32. This represents a CAGR of 12.2%, the highest rate among the asset classes studied here.

#### Long-Term Corporate Bonds

Long-term corporate bonds outperformed both types of government bonds over the 1926–2014 period with a CAGR of 6.1%. One dollar invested in the long-term corporate bond index at year-end 1925 was worth \$189.76 by the end of 2014. This higher return reflected the risk premium that investors require for investing in corporate bonds, which are subject to the risk of default.

#### Long-Term Government Bonds

The long-term government bond total return index, constructed with an approximate 20-year maturity, closed 2014 at a level of \$135.18 (based on year-end 1925 equaling \$1.00). Looking at capital appreciation component alone, the \$1.00 index closed at \$1.44, a 0.4% capital gain over the 89-year period. This indicates that the majority of the positive historical returns on long-term government bonds was due to income returns. The compound annual total return for long-term government bonds was 5.7%.

#### Intermediate-Term Government Bonds

One dollar invested in intermediate-term bonds at the end of 1925, with coupons reinvested, rose to \$95.88 by year-end 2014, compared with \$92.98 at year-end 2013. The compound annual total return for intermediate-term government bonds was 5.3%. Capital appreciation caused \$1.00 to increase to \$1.74 over the 89-year period, representing a CAGR of 0.6%.

#### Treasury Bills

One dollar invested in Treasury bills at the end of 1925 was worth \$20.58 by year-end 2014, with a CAGR of 3.5%. Treasury bill returns followed distinct patterns, described in the next subsection. Moreover, Treasury bills tended to track inflation; therefore, the average annual inflation-adjusted return on Treasury bills (or real riskless rate of return) was only 0.5% over the 89-year period. This real return also followed distinct patterns.

#### Patterns in Treasury Bill Returns

During the late 1920s and early 1930s, Treasury bill returns were just above zero. (These returns were observed during a largely deflationary period.) Beginning in late 1941, the government kept Treasury bill yields low despite high inflation rates.

Treasury bills closely tracked inflation after March 1951, when Treasury bill yields were deregulated in the U.S. Treasury-Federal Reserve Accord. (Treasury bill returns after that date reflect free-market rates.) This tracking relationship has weakened since 1973. From about 1974 to 1980, Treasury bill returns were consistently lower than

inflation rates. From 1981 to 2008, real returns on Treasury bills have been positive, with the exception of 2002–2005. Real treasury bill returns were also negative from 2009 to 2014.

#### Federal Reserve Operating Procedure Changes

The disparity between performance and volatility for the periods prior to and after October 1979 can be attributed to the Federal Reserve's new operating procedures. Prior to this date, the Fed used the federal funds rate as an operating target. Subsequently, the Fed de-emphasized this rate as an operating target and, instead, began to focus on the manipulation of the money supply (through nonborrowed reserves). As a result, the federal funds rate underwent much greater volatility, thereby bringing about greater volatility in Treasury returns.

In the fall of 1982, however, the Federal Reserve again changed the policy procedures regarding its monetary policy. The Fed abandoned its new monetary controls and returned to a strategy of preventing excessive volatility in interest rates. Volatility in Treasury bill returns from the fall of 1979 through the fall of 1982 was significantly greater than that which has occurred since.

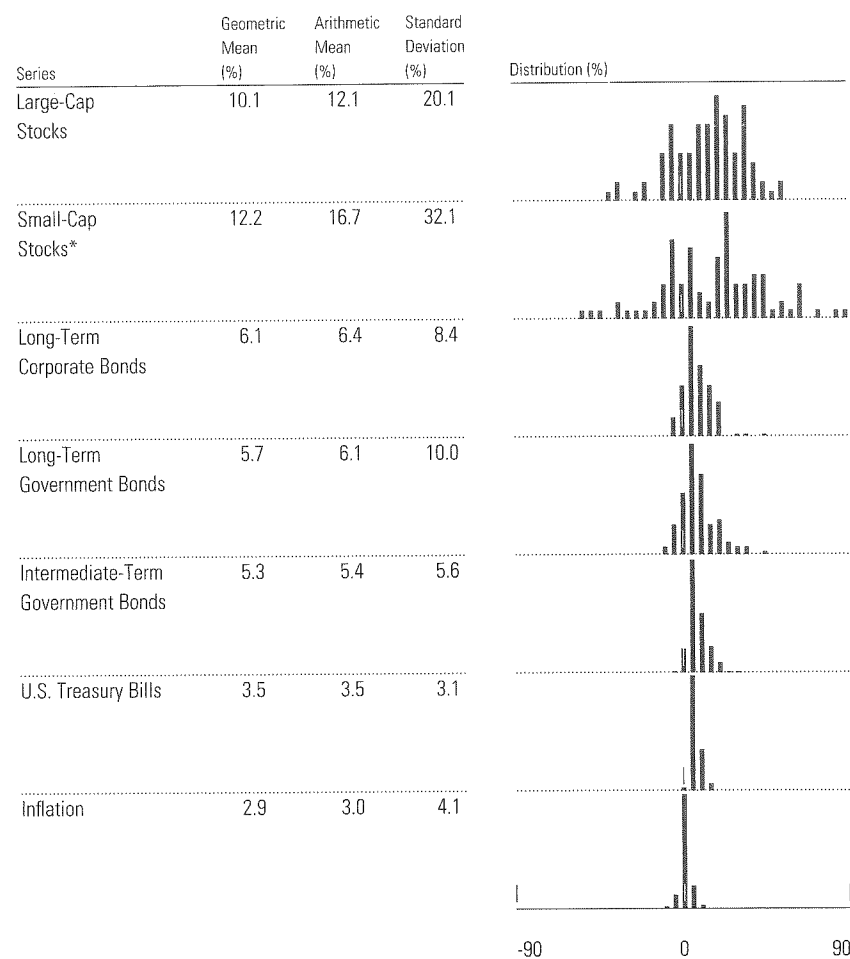
#### Inflation

The compound annual inflation rate over 1926–2014 was 2.9%. The inflation index, initiated at \$1.00 at year-end 1925, grew to \$13.10 by year-end 2014. The entire increase occurred during the postwar period. The years 1926–1933 were marked by deflation; inflation then raised consumer prices to their 1926 levels by the middle of 1945. After a brief postwar spurt of inflation, prices rose slowly over most of the 1950s and 1960s. Then, in the 1970s, inflation reached a pace unprecedented in peacetime, peaking at 13.3% in 1979. The 1980s saw a reversion to more moderate, though still substantial, inflation rates averaging about 5%. Inflation rates continued to decline in the 1990s with a compound annual rate of 2.9%.

#### Summary Statistics of Total Returns

Table 2-1 presents summary statistics of the annual total returns on each asset class over the entire 89-year period of 1926–2014. The data presented in these exhibits are described in detail in Chapters 3 and 6.

Table 2-1: Basic Series: Summary Statistics of Annual Total Returns



Data from 1926–2014. \* The 1933 small-cap stocks total return was 142.9%.

Note that in Table 2-1, the arithmetic mean returns are always higher than the geometric mean returns. The difference between these two means is related to the standard deviation, or variability, of the series. [See Chapter 6.]

The “skylines,” or histograms, in Table 2-1 show the frequency distribution of returns in each asset class. The height of the large-cap stock skyline in the range between 10% to 20%, for example, shows the number of years in the 1926–2014 period that large-cap stocks had a return in that range. The histograms are shown in 5% increments to fully display the spectrum of returns as seen over the last 89 years, especially in stocks.

Riskier assets, such as large- and small-cap stocks, have low, spread-out skylines, reflecting the broad distribution of returns from very poor to very good. Less-risky assets, such as bonds, have narrow skylines that resemble a single tall building, indicating the tightness of the distribution around the mean of the series. The histogram for Treasury bills is one-sided, lying almost entirely to the right of the vertical line representing a zero return; that is, Treasury bills rarely experienced negative returns on a yearly basis over the 1926–2014 period (the only negative year was 1938). The inflation skyline shows both positive and negative annual rates. Although a few deflationary months and quarters have occurred recently, the last negative annual inflation rate occurred in 1954.

### Appreciation, Income, and Reinvestment Returns

Table 2-2 provides further detail on the returns of large-cap stocks, long-term government bonds, and intermediate-term government bonds. Total annual returns are shown as the sum of three components: capital appreciation returns, income returns, and reinvestment returns. The capital appreciation and income components are explained in Chapter 3. The third component, reinvestment return, reflects monthly income reinvested in the total return index in subsequent months in the year. Thus, for a single month the reinvestment return is zero, but over a longer period of time it is nonzero. Because the returns in Table 2-2 are annual, reinvestment return is relevant.

The annual total return formed by compounding the monthly total returns does not equal the sum of the annual capital appreciation and income components; the difference is reinvestment return. A simple example illustrates this point. In 1995, an “up” year on a total return basis, the total annual return on large-cap stocks was 37.58%. The annual capital appreciation was 34.11% and the annual income return was 3.04%, totaling 37.15%. The remaining 0.43% (37.58% minus 37.15%) of the 1995 total return came from the reinvestment of dividends in the market. For more information on calculating annual total and income returns, see Chapter 5.

Monthly income and capital appreciation returns for large-cap stocks are presented in Appendix A: Tables A-2 and A-3, respectively. Monthly income and capital appreciation returns are presented for long-term government bonds in Appendix A: Tables A-7 and A-8; and for intermediate-term government bonds in Tables A-11 and A-12.

Table 2-2: Large-Cap Stocks, Long-Term Government Bonds, and Intermediate-Term Government Bonds Annual Total, Income, Capital Appreciation, and Reinvestment Returns (%)

Year	Large-Cap Stocks				Long-Term Government Bonds					Intermediate-Term Government Bonds				
	Capital Apprec. Return	Income Return	Reinvest-ment Return	Total Return	Capital Apprec. Return	Income Return	Reinvest-ment Return	Total Return	Year-end Yield	Capital Apprec. Return	Income Return	Reinvest-ment Return	Total Return	Year-end Yield
1926	5.72	5.41	0.50	11.62	3.91	3.73	0.13	7.77	3.54	1.51	3.78	0.10	5.38	3.61
1927	30.91	5.71	0.87	37.49	5.40	3.41	0.12	8.93	3.17	0.96	3.49	0.07	4.52	3.40
1928	37.88	4.81	0.91	43.61	-3.12	3.22	0.01	0.10	3.40	-2.73	3.64	0.01	0.92	4.01
1929	-11.91	3.98	-0.49	-8.42	-0.20	3.47	0.15	3.42	3.40	1.77	4.07	0.18	6.01	3.62
1930	-28.48	4.57	-0.98	-24.90	1.28	3.32	0.05	4.66	3.30	3.30	3.30	0.11	6.72	2.91
1931	-47.07	5.35	-1.62	-43.34	-8.46	3.33	-0.17	-5.31	4.07	-5.40	3.16	-0.08	-2.32	4.12
1932	-15.15	6.16	0.80	-8.19	12.94	3.69	0.22	16.84	3.15	5.02	3.63	0.16	8.81	3.04
1933	46.59	6.39	1.01	53.99	-3.14	3.12	-0.05	-0.07	3.36	-0.99	2.83	-0.02	1.83	3.25
1934	-5.94	4.46	0.04	-1.44	6.76	3.18	0.09	10.03	2.93	5.97	2.93	0.09	9.00	2.49
1935	41.37	4.95	1.35	47.67	2.14	2.81	0.03	4.98	2.76	4.94	2.02	0.05	7.01	1.63
1936	27.92	5.36	0.64	33.92	4.64	2.77	0.10	7.52	2.55	1.60	1.44	0.02	3.06	1.29
1937	-38.59	4.66	-1.09	-35.03	-2.48	2.66	0.05	0.23	2.73	0.05	1.48	0.03	1.56	1.14
1938	25.21	4.83	1.07	31.12	2.83	2.64	0.06	5.53	2.52	4.37	1.82	0.04	6.23	1.52
1939	-5.45	4.69	0.35	-0.41	3.48	2.40	0.06	5.94	2.26	3.18	1.31	0.03	4.52	0.98
1940	-15.29	5.36	0.14	-9.78	3.77	2.23	0.09	6.09	1.94	2.04	0.90	0.02	2.96	0.57
1941	-17.86	6.71	-0.44	-11.59	-1.01	1.94	0.00	0.93	2.04	-0.17	0.67	0.00	0.50	0.82
1942	12.43	6.79	1.12	20.34	0.74	2.46	0.02	3.22	2.46	1.17	0.76	0.00	1.94	0.72
1943	19.45	6.24	0.21	25.90	-0.37	2.44	0.02	2.08	2.48	1.23	1.56	0.02	2.81	1.45
1944	13.80	5.48	0.47	19.75	0.32	2.46	0.03	2.81	2.46	0.35	1.44	0.01	1.80	1.40
1945	30.72	4.97	0.74	36.44	8.27	2.34	0.12	10.73	1.99	1.02	1.19	0.01	2.22	1.03
1946	-11.87	4.09	-0.29	-8.07	-2.15	2.04	0.01	-0.10	2.12	-0.08	1.08	0.00	1.00	1.12
1947	0.00	5.49	0.22	5.71	-4.70	2.13	-0.06	-2.62	2.43	-0.30	1.21	0.00	0.91	1.34
1948	-0.65	6.08	0.08	5.50	0.96	2.40	0.04	3.40	2.37	0.27	1.56	0.01	1.85	1.51
1949	10.26	7.50	1.03	18.79	4.15	2.25	0.06	6.45	2.09	0.95	1.36	0.01	2.32	1.23
1950	21.78	8.77	1.16	31.71	-2.06	2.12	0.00	0.06	2.24	-0.69	1.39	0.00	0.70	1.62
1951	16.46	6.91	0.65	24.02	-6.27	2.38	-0.04	-3.93	2.69	-1.63	1.98	0.01	0.36	2.17
1952	11.78	5.93	0.66	18.37	-1.48	2.66	-0.02	1.16	2.79	-0.57	2.19	0.01	1.63	2.35
1953	-6.62	5.46	0.18	-0.99	0.67	2.84	0.12	3.64	2.74	0.61	2.55	0.07	3.23	2.18
1954	45.02	6.21	1.39	52.62	4.35	2.79	0.05	7.19	2.72	1.08	1.60	0.01	2.68	1.72
1955	26.40	4.56	0.60	31.56	-4.07	2.75	0.03	-1.29	2.95	-3.10	2.45	0.00	-0.65	2.80
1956	2.62	3.83	0.11	6.56	-8.46	2.99	-0.12	-5.59	3.45	-3.45	3.05	-0.02	-0.42	3.63
1957	-14.31	3.84	-0.30	-10.78	3.82	3.44	0.20	7.46	3.23	4.05	3.59	0.20	7.84	2.84
1958	38.06	4.38	0.93	43.36	-9.23	3.27	-0.14	-6.09	3.82	-4.17	2.93	-0.05	-1.29	3.81
1959	8.48	3.31	0.16	11.96	-6.20	4.01	-0.07	-2.26	4.47	-4.56	4.18	-0.01	-0.39	4.98
1960	-2.97	3.26	0.19	0.47	9.29	4.26	0.23	13.78	3.80	7.42	4.15	0.19	11.76	3.31
1961	23.13	3.48	0.28	26.89	-2.86	3.83	0.00	0.97	4.15	-1.72	3.54	0.03	1.85	3.84
1962	-11.81	2.98	0.10	-8.73	2.78	4.00	0.11	6.89	3.95	1.73	3.73	0.10	5.56	3.50
1963	18.89	3.61	0.30	22.80	-2.70	3.89	0.02	1.21	4.17	-2.10	3.71	0.03	1.64	4.04
1964	12.97	3.33	0.18	16.48	-0.72	4.15	0.07	3.51	4.23	-0.03	4.00	0.07	4.04	4.03
1965	9.06	3.21	0.18	12.45	-3.45	4.19	-0.04	0.71	4.50	-3.10	4.15	-0.03	1.02	4.90
1966	-13.09	3.11	-0.08	-10.06	-1.06	4.49	0.22	3.65	4.55	-0.41	4.93	0.17	4.69	4.79
1967	20.09	3.64	0.25	23.98	-13.55	4.59	-0.23	-9.18	5.56	-3.85	4.88	-0.02	1.01	5.77
1968	7.66	3.18	0.22	11.06	-5.51	5.50	-0.25	-0.26	5.98	-0.99	5.49	0.03	4.54	5.96
1969	-11.36	2.98	-0.13	-8.50	-10.83	5.95	-0.19	-5.07	6.87	-7.27	6.65	-0.11	-0.74	8.29
1970	0.10	3.33	0.43	3.86	4.84	6.74	0.52	12.11	6.48	8.71	7.49	0.66	16.86	5.90

**Table 2-2: Large-Cap Stocks, Long-Term Government Bonds, and Intermediate-Term Government Bonds (Continued)**  
Annual Total, Income, Capital Appreciation, and Reinvestment Returns (%)

Year	Large-Cap Stocks				Long-Term Government Bonds					Intermediate-Term Government Bonds				
	Capital Apprec. Return	Income Return	Reinvest-ment Return	Total Return	Capital Apprec. Return	Income Return	Reinvest-ment Return	Total Return	Year-end Yield	Capital Apprec. Return	Income Return	Reinvest-ment Return	Total Return	Year-end Yield
1971	10.63	3.49	0.18	14.30	6.61	6.32	0.31	13.23	5.97	2.72	5.75	0.25	8.72	5.25
1972	15.79	2.95	0.25	18.99	-0.35	5.87	0.17	5.69	5.99	-0.75	5.75	0.16	5.16	5.85
1973	-17.37	2.86	-0.19	-14.69	-7.70	6.51	0.08	-1.11	7.26	-2.19	6.58	0.22	4.61	6.79
1974	-29.72	3.69	-0.44	-26.47	-3.45	7.27	0.54	4.35	7.60	-1.99	7.24	0.44	5.69	7.12
1975	31.55	5.37	0.31	37.23	0.73	7.99	0.47	9.20	8.05	0.12	7.35	0.36	7.83	7.19
1976	19.15	4.49	0.29	23.93	8.07	7.89	0.80	16.75	7.21	5.25	7.10	0.51	12.87	6.00
1977	-11.50	4.35	0.00	-7.16	-7.86	7.14	0.04	-0.69	8.03	-5.15	6.49	0.06	1.41	7.51
1978	1.06	5.33	0.18	6.57	-9.05	7.90	-0.03	-1.18	8.98	-4.49	7.83	0.14	3.49	8.83
1979	12.31	5.89	0.41	18.61	-9.84	8.86	-0.25	-1.23	10.12	-5.07	9.04	0.12	4.09	10.33
1980	25.77	5.74	0.99	32.50	-14.00	9.97	0.08	-3.95	11.99	-6.81	10.55	0.17	3.91	12.45
1981	-9.73	4.88	-0.08	-4.92	-10.33	11.55	0.64	1.86	13.34	-4.55	12.97	1.03	9.45	13.96
1982	14.76	5.61	1.18	21.55	23.95	13.50	2.91	40.36	10.95	14.23	12.81	2.06	29.10	9.90
1983	17.27	5.04	0.24	22.56	-9.82	10.38	0.09	0.65	11.97	-3.30	10.35	0.35	7.41	11.41
1984	1.40	4.57	0.31	6.27	2.32	11.74	1.42	15.48	11.70	1.22	11.68	1.12	14.02	11.04
1985	26.33	4.72	0.67	31.73	17.84	11.25	1.88	30.97	9.56	9.01	10.29	1.04	20.33	8.55
1986	14.62	3.92	0.13	18.67	14.99	8.98	0.56	24.53	7.89	6.99	7.72	0.43	15.14	6.85
1987	2.03	3.64	-0.41	5.25	-10.69	7.92	0.06	-2.71	9.20	-4.75	7.47	0.19	2.90	8.32
1988	12.40	3.99	0.22	16.61	0.36	8.97	0.34	9.67	9.19	-2.26	8.24	0.13	6.10	9.17
1989	27.25	4.03	0.40	31.69	8.62	8.81	0.68	18.11	8.16	4.34	8.46	0.49	13.29	7.94
1990	-6.56	3.43	0.03	-3.10	-2.61	8.19	0.61	6.18	8.44	1.02	8.15	0.56	9.73	7.70
1991	26.31	3.76	0.40	30.47	10.10	8.22	0.98	19.30	7.30	7.36	7.43	0.67	15.46	5.97
1992	4.46	2.98	0.17	7.62	0.34	7.26	0.45	8.05	7.26	0.64	6.27	0.28	7.19	6.11
1993	7.06	2.91	0.12	10.08	10.71	7.17	0.35	18.24	6.54	5.56	5.53	0.15	11.24	5.22
1994	-1.54	2.83	0.03	1.32	-14.29	6.59	-0.08	-7.77	7.99	-11.14	6.07	-0.08	-5.14	7.80
1995	34.11	3.04	0.43	37.58	23.04	7.60	1.03	31.67	6.03	9.66	6.69	0.45	16.80	5.38
1996	20.26	2.43	0.26	22.96	-7.37	6.18	0.26	-0.93	6.73	-3.90	5.82	0.18	2.10	6.16
1997	31.01	2.10	0.25	33.36	8.51	6.64	0.71	15.85	6.02	1.95	6.14	0.30	8.38	5.73
1998	26.67	1.67	0.24	28.58	6.89	5.83	0.34	13.06	5.42	4.66	5.29	0.25	10.21	4.68
1999	19.53	1.36	0.15	21.04	-14.35	5.57	-0.19	-8.96	6.82	-7.06	5.30	-0.01	-1.77	6.45
2000	-10.14	1.11	-0.07	-9.10	14.36	6.50	0.62	21.48	5.58	5.94	6.19	0.46	12.59	5.07
2001	-13.04	1.18	-0.03	-11.89	-1.89	5.53	0.06	3.70	5.75	3.23	4.27	0.12	7.62	4.42
2002	-23.37	1.39	-0.13	-22.10	11.69	5.59	0.56	17.84	4.84	8.65	3.98	0.30	12.93	2.61
2003	26.38	1.99	0.31	28.68	-3.36	4.80	0.01	1.45	5.11	-0.48	2.85	0.03	2.40	2.97
2004	8.99	1.76	0.13	10.88	3.26	5.02	0.23	8.51	4.84	-1.07	3.28	0.04	2.25	3.47
2005	3.00	1.84	0.07	4.91	3.02	4.69	0.10	7.81	4.61	-2.58	3.92	0.03	1.36	4.34
2006	13.62	2.01	0.17	15.79	-3.64	4.68	0.15	1.19	4.91	-1.51	4.54	0.11	3.14	4.65
2007	3.53	1.96	0.00	5.49	4.69	4.86	0.33	9.88	4.50	5.33	4.44	0.28	10.05	3.28
2008	-38.49	1.92	-0.43	-37.00	20.50	4.45	0.93	25.87	3.03	9.92	2.96	0.23	13.11	1.26
2009	23.45	2.48	0.53	26.46	-18.25	3.47	-0.12	-14.90	4.58	-4.42	2.01	0.00	-2.40	2.42
2010	12.78	2.02	0.26	15.06	5.89	4.25	0.00	10.14	4.14	5.16	1.92	0.04	7.12	1.70
2011	0.00	2.13	-0.01	2.11	23.74	3.81	0.68	28.23	2.48	7.79	1.58	0.09	9.46	0.59
2012	13.41	2.50	0.10	16.00	0.88	2.40	0.02	3.31	2.41	1.48	0.58	0.01	2.07	0.46
2013	29.60	2.48	0.32	32.39	-14.83	2.86	0.61	-11.36	3.67	-1.91	0.85	0.00	-1.07	1.13
2014	11.39	2.16	0.14	13.69	20.17	3.33	0.36	23.87	2.40	1.72	1.38	0.01	3.12	1.24

**Annual Total Returns**

Table 2-3 shows annual total returns for the six basic asset classes and inflation for the full 89-year period. This table can be used to compare the performance of each asset class for the same year. Monthly total returns for large -cap stocks, small-cap stocks, long-term corporate bonds, long-term government bonds, intermediate-term government bonds, Treasury bills, and inflation rates are presented in Appendix A: Tables A-1, A-4, A-5, A-6, A-10, A-14, and A-15, respectively.

**Rolling-Period Returns**

Tables 2-4, 2-5, and 2-6 show the compound annual total returns of the six basic classes and inflation for five-, 10-, and 20-year holding periods. Often, these calculations are referred to as rolling period returns because they are obtained by rolling a data window of fixed length along each time series. They are useful for examining the behavior of returns for holding periods similar to those actually experienced by investors and show the effects of time diversification. Holding assets for long periods of time has the effect of lowering the risk of experiencing a loss in asset value.

The highest and lowest returns on the SBBI basic series, expressed as annual rates, are shown for one-, five-, 10-, and 20-year holding periods in Table 2-7. This exhibit also shows the number of times that an asset had a positive return, and the number of times that an asset's return was the highest among all those studied. The number of times positive (or times highest) is compared to the total number of observations—that is, 89 annual, 85 overlapping five-year, 80 overlapping 10-year, and 70 overlapping 20-year holding periods.

**Portfolio Performance**

A portfolio is a group of assets, such as stocks and bonds, that are held by an investor. Because stocks, bonds, and cash generally do not react identically to the same economic or market stimulus, combining these assets can often produce a better risk-adjusted return. There were plenty of years in which stock returns were up at times when bond returns were down, and vice versa, according to the data in Table 2-2. These offsetting movements can assist in reducing portfolio volatility. Some recent examples include the years 2000 through 2002: Large-cap stocks posted returns of -9.10%, -11.89%, and -22.10%, respectively, while long-

term government bonds posted positive returns of 21.48%, 3.70%, and 17.84%, respectively. This illustrates the low correlation of stocks and bonds; that is, they tend to move independently of each other. (See Chapter 6 for a more detailed discussion of correlation.)

While bond prices tend to fluctuate less than stock prices, they are still subject to price movement. Investing in a mix of asset classes, such as stocks, bonds, and Treasury bills (cash), may protect a portfolio from major downswings in a single asset class. One of the main advantages of diversification is that it makes investors less dependent on the performance of any single asset class.

**Rolling-Period Portfolio Returns**

While Table 2-7 displays the performance of single asset classes over various rolling periods, Tables 2-8 through 2-11 show the performance of different portfolio allocations over various periods. Once again, the table outlines the number of times that each portfolio has a positive return, and the number of times that each portfolio's return was the highest among all those studied. Maximum and minimum returns are also shown. The portfolios presented throughout the analysis are rebalanced so that the allocations remain the same. The exception is Table 2-10, which contains portfolios that never rebalance; this is for comparison purposes. The data assumes reinvestment of all income and does not account for taxes or transaction costs.

The one-year holding period results in Table 2-8 make it clear that 1933 was a great year for large-cap stocks, while long-term government bonds shined in 1982. The 30% stock and 70% bond portfolio was the only one that posted positive returns during all five-year holding periods, while the 70% stock and 30% bond portfolio was never the highest returning portfolio during the five-year holding periods. The 10-year holding period analysis shows that the 100% stock, the 90% stock/10% bond, and the 100% bond portfolios were the only ones that posted negative 10-year holding period returns. For the 20-year period, there were no negative holding period returns. The effects of time diversification are clearly evident. When portfolios, as well as individual asset classes, are held for longer periods of time, the possibility of losing portfolio value is lowered.

Table 2-3: Basic Series  
Annual Total Returns (%)

Year	Large-Cap Stocks	Small-Cap Stocks	Long-Term Corp Bonds	Long-Term Govt Bonds	Inter-Term Govt Bonds	U.S. Treasury Bills	Inflation
1926	11.62	0.28	7.37	7.77	5.38	3.27	-1.49
1927	37.49	22.10	7.44	8.93	4.52	3.12	-2.08
1928	43.61	39.69	2.84	0.10	0.92	3.56	-0.97
1929	-8.42	-51.36	3.27	3.42	6.01	4.75	0.20
1930	-24.90	-38.15	7.98	4.66	6.72	2.41	-6.03
1931	-43.34	-49.75	-1.85	-5.31	-2.32	1.07	-9.52
1932	-8.19	-5.39	10.82	16.84	8.81	0.96	-10.30
1933	53.99	142.87	10.38	-0.07	1.83	0.30	0.51
1934	-1.44	24.22	13.84	10.03	9.00	0.16	2.03
1935	47.67	40.19	9.61	4.98	7.01	0.17	2.99
1936	33.92	64.80	6.74	7.52	3.06	0.18	1.21
1937	-35.03	-58.01	2.75	0.23	1.56	0.31	3.10
1938	31.12	32.80	6.13	5.53	6.23	-0.02	-2.78
1939	-0.41	0.35	3.97	5.94	4.52	0.02	-0.48
1940	-9.78	-5.16	3.39	6.09	2.96	0.00	0.96
1941	-11.59	-9.00	2.73	0.93	0.50	0.06	9.72
1942	20.34	44.51	2.60	3.22	1.94	0.27	9.29
1943	25.90	88.37	2.83	2.08	2.81	0.35	3.16
1944	19.75	53.72	4.73	2.81	1.80	0.33	2.11
1945	36.44	73.61	4.08	10.73	2.22	0.33	2.25
1946	-8.07	-11.63	1.72	-0.10	1.00	0.35	18.16
1947	5.71	0.92	-2.34	-2.62	0.91	0.50	9.01
1948	5.50	-2.11	4.14	3.40	1.85	0.81	2.71
1949	18.79	19.75	3.31	6.45	2.32	1.10	-1.80
1950	31.71	38.75	2.12	0.06	0.70	1.20	5.79
1951	24.02	7.80	-2.69	-3.93	0.36	1.49	5.87
1952	18.37	3.03	3.52	1.16	1.63	1.66	0.88
1953	-0.99	-6.49	3.41	3.64	3.23	1.82	0.62
1954	52.62	60.58	5.39	7.19	2.68	0.86	-0.50
1955	31.56	20.44	0.48	-1.29	-0.65	1.57	0.37
1956	6.56	4.28	-6.81	-5.59	-0.42	2.46	2.86
1957	-10.78	-14.57	8.71	7.46	7.84	3.14	3.02
1958	43.36	64.89	-2.22	-6.09	-1.29	1.54	1.76
1959	11.96	16.40	-0.97	-2.26	-0.39	2.95	1.50
1960	0.47	-3.29	9.07	13.78	11.76	2.66	1.48
1961	26.89	32.09	4.82	0.97	1.85	2.13	0.67
1962	-8.73	-11.90	7.95	6.89	5.56	2.73	1.22
1963	22.80	23.57	2.19	1.21	1.64	3.12	1.65
1964	16.48	23.52	4.77	3.51	4.04	3.54	1.19
1965	12.45	41.75	-0.46	0.71	1.02	3.93	1.92
1966	-10.06	-7.01	0.20	3.65	4.69	4.76	3.35
1967	23.98	83.57	-4.95	-9.18	1.01	4.21	3.04
1968	11.06	35.97	2.57	-0.26	4.54	5.21	4.72
1969	-8.50	-25.05	-8.09	-5.07	-0.74	6.58	6.11
1970	3.86	-17.43	18.37	12.11	16.86	6.52	5.49

Table 2-4: Basic Series  
Compound Annual Returns for 5-Year Holding Periods (% per annum)

Year	Large-Cap Stocks	Small-Cap Stocks	Long-Term Corp Bonds	Long-Term Govt Bonds	Inter-Term Govt Bonds	U.S. Treasury Bills	Inflation
1926-30	8.68	-12.44	5.76	4.93	4.69	3.42	-2.10
1927-31	-5.10	-23.74	3.87	2.25	3.11	2.98	-3.75
1928-32	-12.47	-27.54	4.52	3.69	3.95	2.54	-5.42
1929-33	-11.24	-0.06	6.01	3.66	4.13	1.89	-5.14
1930-34	-9.93	-2.37	8.09	4.95	4.71	0.98	-4.80
1931-35	3.12	14.99	8.42	5.01	4.77	0.53	-3.04
1932-36	22.47	45.83	10.26	7.71	5.90	0.35	-0.84
1933-37	14.29	23.96	8.60	4.46	4.45	0.22	1.96
1934-38	10.67	9.86	7.75	5.61	5.33	0.16	1.29
1935-39	10.91	5.27	5.81	4.81	4.46	0.13	0.78
1936-40	0.50	-2.64	4.59	5.03	3.65	0.10	0.38
1937-41	-7.51	-13.55	3.79	3.71	3.13	0.08	2.02
1938-42	4.62	10.70	3.76	4.32	3.21	0.07	3.21
1939-43	3.77	18.71	3.10	3.63	2.54	0.14	4.44
1940-44	7.67	29.28	3.25	3.01	2.00	0.20	4.98
1941-45	16.96	45.90	3.39	3.90	1.85	0.27	5.25
1942-46	17.87	45.05	3.19	3.69	1.95	0.33	6.82
1943-47	14.86	35.00	2.17	2.49	1.75	0.37	6.77
1944-48	10.87	18.43	2.43	2.75	1.55	0.47	6.67
1945-49	10.69	12.66	2.15	3.46	1.66	0.62	5.84
1946-50	9.91	7.72	1.76	1.39	1.36	0.79	6.57
1947-51	16.70	12.09	0.87	0.60	1.23	1.02	4.25
1948-52	19.37	12.55	2.05	1.37	1.37	1.25	2.65
1949-53	17.86	11.53	1.91	1.41	1.64	1.45	2.23
1950-54	23.92	18.27	2.31	1.55	1.72	1.41	2.50
1951-55	23.89	14.97	1.98	1.28	1.44	1.48	1.43
1952-56	20.18	14.21	1.10	0.93	1.28	1.67	0.84
1953-57	13.58	10.01	2.10	2.15	2.49	1.97	1.27
1954-58	22.31	23.22	0.96	0.16	1.58	1.91	1.49
1955-59	14.96	15.54	-0.29	-1.67	0.96	2.33	1.90
1956-60	8.92	10.58	1.36	1.16	3.37	2.55	2.12
1957-61	12.79	15.93	3.77	2.53	3.83	2.48	1.68
1958-62	13.31	16.65	3.63	2.42	3.39	2.40	1.33
1959-63	9.85	10.11	4.55	3.97	4.00	2.72	1.30
1960-64	10.73	11.43	5.73	5.17	4.91	2.83	1.24
1961-65	13.25	20.28	3.82	2.63	2.81	3.09	1.33
1962-66	5.72	12.13	2.88	3.17	3.38	3.61	1.86
1963-67	12.39	29.86	0.30	-0.14	2.47	3.91	2.23
1964-68	10.16	32.37	0.37	-0.43	3.04	4.33	2.84
1965-69	4.96	19.78	-2.22	-2.14	2.08	4.93	3.82
1966-70	3.31	7.51	1.23	-0.02	5.10	5.45	4.54
1967-71	8.38	12.47	3.32	1.77	5.90	5.38	4.54
1968-72	7.50	0.47	5.85	4.90	6.75	5.30	4.61
1969-73	1.97	-12.25	5.55	4.72	6.77	5.65	5.41
1970-74	-2.39	-11.09	6.68	6.72	8.11	5.93	6.60



# **International Standard Cost Model Manual**

*Measuring and reducing  
administrative burdens for  
businesses*



## Preface

Better regulation is crucial in order to achieve growth and improve the competitive position of businesses. A central aspect of better regulation is minimising the administrative burdens for businesses. However before you can make a systematic effort to reduce the administrative burdens you need to know where the burdens come from and how you can reduce them. Therefore before you can make a serious effort to reduce the administrative burdens you need to measure them. Measuring administrative burdens is the key to reducing them. In other words “what gets measured gets done”.

This manual is written by the Standard Cost Model (SCM) Network – a network which primary aim is to reduce the administrative burdens for businesses. The SCM Network was founded in 2003 and the number of member countries has since then been continuously growing.

The Standard Cost Model (SCM) is a method for determining the administrative burdens for businesses imposed by regulation. It is a quantitative methodology that can be applied in all countries and at different levels. The method can be used to measure a single law, selected areas of legislation or to perform a baseline measurement of all legislation in a country. Furthermore the SCM is also suitable for measuring simplification proposals as well as the administrative consequences of a new legislative proposal.

In August 2004 a booklet – “The Standard Cost Model – a framework for defining and quantifying administrative burdens for businesses” was published. This manual contained a detailed description of the Standard Cost Model method and how to apply it.

This new manual contains, besides the description of the method, a practical guide on how to perform SCM measurements, practical experiences from Denmark, the Netherlands, Norway, Sweden and the United Kingdom and a chapter on how to make cross country benchmarks/comparisons.

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Further information on administrative burdens is also available at the SCM Networks website: [www.administrative-burdens.com](http://www.administrative-burdens.com).



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## 1 Introduction

Business and industry are subject to a range of different requirements and obligations imposed by regulation. This is done in order to regulate the businesses conduct so that overall societal considerations are observed. But if the businesses are subjected to expenses through regulation, that could have been avoided, then it is a matter of a societal waste. It is thus important to regulate the businesses' conduct in a more optimal – and, for the businesses, a less resource intensive – manner, without the overall societal objectives with the regulation being set aside.

In the Netherlands the administrative burdens for businesses amounts to 16.4 billion euros on a yearly basis, corresponding to 3.6 per cent of Dutch GDP. In Denmark the total amount of administrative burdens amount to approximately 4.5 billion euros, equivalent to 2.4 per cent of Danish GDP.

It is therefore important to constantly make an effort to ensure that both existing regulation and new regulation does not impose unnecessary administrative burdens to businesses. Various national governments have placed reducing administrative burdens on business as a high priority and have set up reduction targets. Amongst others Denmark, the Netherlands and Norway have set a reduction target on 25% of the overall administrative burdens for businesses. Other countries have or are expected to set similar reduction targets.

The Standard Cost Model (SCM) is today the most widely applied methodology for measuring administrative costs. The SCM methodology is an activity-based measurement of the businesses' administrative burdens making it possible to follow the development of administrative burdens. At the same time the results from the SCM measurements are directly applicable to governments' simplification work, in that the results show the specific regulation and its details which are especially burdensome for businesses.

### 1.1 Reading instructions

This manual contains the following chapters:

In **chapter two** the costs related to administrative burdens are described and explained.

**Chapter three** contains an outline of the Standard Cost Model, including the definition of central SCM concepts.

In **chapter 4** some essential choices that have to be made before starting a SCM measurement are sketched. In each section the choices made in Denmark, the Netherlands, Norway, Sweden and the United Kingdom are outlined.

**Chapter five** contains a detailed “step by step guide” on how to carry out a SCM measurement. The chapter is divided into three phases.

**Chapter six** describes how to record changes to a Standard Cost Model baseline measurement.

**Chapter seven** gives a short presentation on how SCM measurements can be applied in the simplification process.

Finally **chapter eight** contains a description of important issues in order to perform cross country SCM benchmarking or comparison studies.

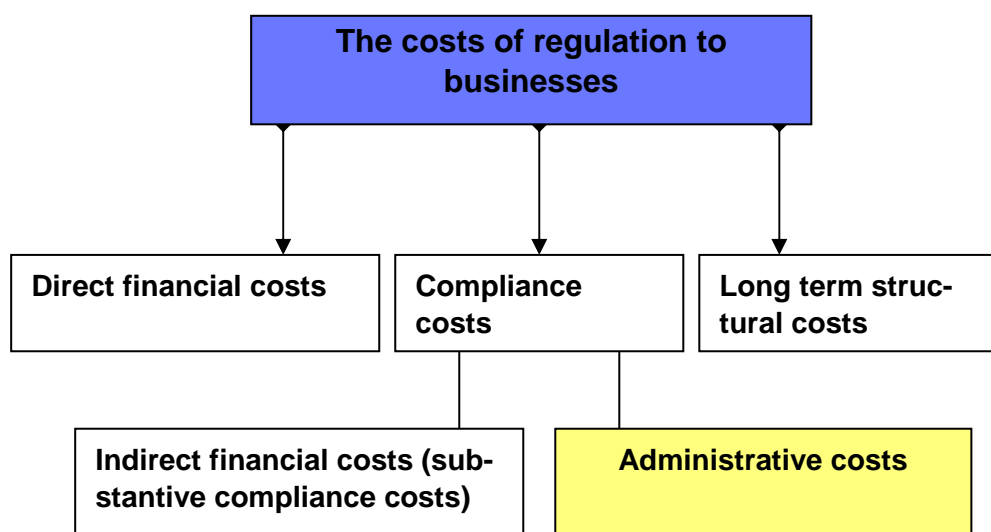
## 2 Which cost does the Standard Cost Model measure

Before describing the method – the Standard Cost Model - it is important to clarify what is meant by administrative costs.

### 2.1 The costs of regulation – financial and administrative.

Regulation has a number of consequences for businesses. Administrative costs are only one type of costs that regulation can entail. The figure below illustrates the different types of costs that regulation can impose on businesses.

**Figure 1: The different costs of regulation to businesses**



**Direct financial costs** are the result of a concrete and direct obligation to transfer a sum of money to the Government or the competent authority. These costs are therefore not related to a need for information on the part of the Government. Such costs include administrative charges, taxes, etc. For example, the fees for applying for a permit would be a financial cost of regulation.

**Compliance costs** are all the costs of complying with regulation, with the exception of direct financial costs and long term structural consequences. In the context of the Standard Cost Model, these can be divided into '**substantive compliance costs**' and '**administrative costs**'.

Examples of substantive compliance costs include:

- filters in accordance with environmental requirements
- physical facilities in compliance with working conditions regulations

Examples of administrative costs include:

- documentation of the installation of a filter

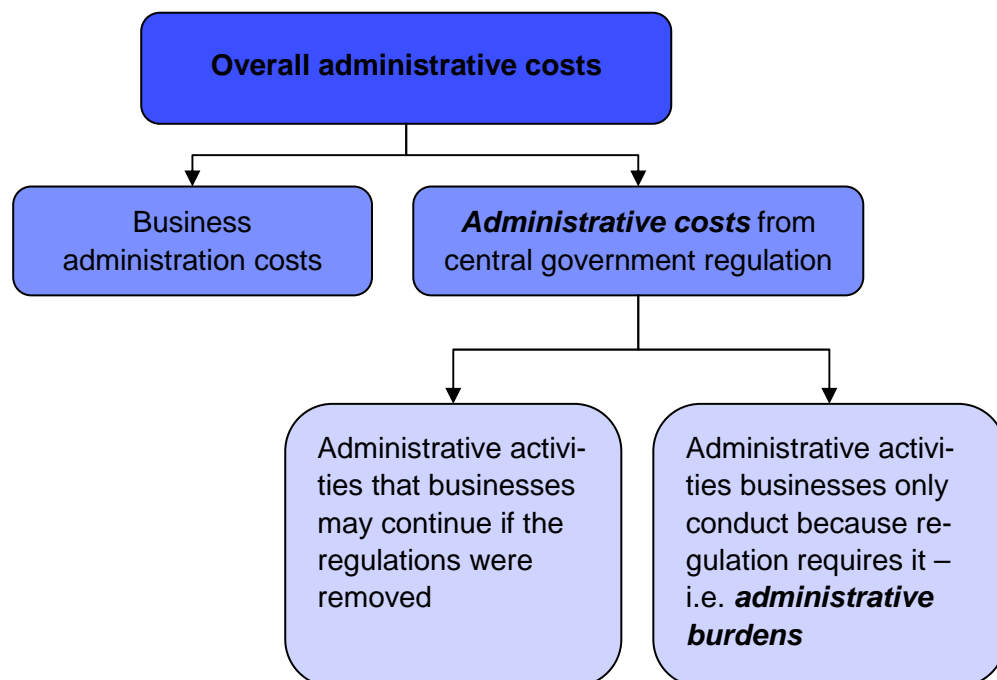
- an annual report on working conditions

## 2.2 Administrative costs versus administrative burdens

**Administrative burdens** are the part of administrative costs that businesses sustain simply because it is a regulatory requirement.

The administrative burdens are thus a subset of the administrative costs in that the **administrative costs** also encompass the administrative activities that the businesses will continue to conduct if the regulations were removed.

FIGURE 2: ADMINISTRATIVE BURDENS VERSUS ADMINISTRATIVE COST



The SCM measures administrative costs from central government regulation. As such some activities that businesses may continue in the absence of regulation will be included. However, administrative activities that have no relation to regulation are naturally not included, i.e. administrative tasks that the business carries out in connection with running the business and that are not necessary to comply with regulatory requirements.

It might be *helpful to understand* whether businesses would continue an administrative activity if an information obligation was to be discontinued. Thus it will give an idea of the immediate “actual” effect of a simplification. However it is very resource-intensive to assess a so-called burden percentage and it is therefore more realistic to assess it qualitatively.

### 3 Outline of the Standard Cost Model

The Standard Cost Model (SCM) is designed to measure the administrative consequences for businesses and is today the most widely employed method to do so.

The SCM has been developed to provide a simplified, consistent method for estimating the administrative costs imposed on business by central government. It takes a pragmatic approach to measurement and provides estimates that are consistent across policy areas.

The SCM method is a way of breaking down regulation into a range of manageable components that can be measured. The SCM does not focus on the policy objectives of each regulation. As such, the measurement focuses only on the administrative activities that must be undertaken in order to comply with regulation and not whether the regulation itself is reasonable or not.

The SCM was initially developed in the Netherlands, but is today extensively applied in a wide number of countries.

A key strength of the Standard Cost Model is that it uses a high degree of detail in the measurement of the administrative costs, in particular going down to the level of individual activities.

This chapter provides an overview of the SCM approach.

#### 3.1 Information obligations and their components (data requirements and administrative activities)

##### ***Information obligations:***

Information obligations (IO) are the obligations arising from regulation to provide information and data to the public sector or third parties<sup>1</sup>. An IO does not necessarily mean that information has to be transferred to the public authority or private persons, but may include a duty to have information available for inspection or supply on request. A regulation may contain many information obligations.

##### ***Data requirements:***

Each information obligation consists of one or more data requirements. A data requirement is each element of information that must be provided in complying with an IO.

##### ***Administrative activities:***

To provide the information for each data requirement a number of specific administrative activities must be undertaken. The SCM estimates the costs of completing each activity. Activities may be done internally or be outsourced (i.e. done externally). It may be necessary to make acquisitions to complete a specific activity and where these are only used in complying with the requirement they are included in the estimate.

##### ***Cost parameters:***

For each administrative activity a number of cost parameters need to be collected.

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<sup>1</sup> See section 2.3.4 for a discussion of the possibility of measuring only information obligations to the public sector or measuring both information obligations to the public sector and third parties.

*Price:* Price consists of a *tariff*, wage costs plus *overhead* for administrative activities done internally or hourly cost for external service providers.

*Time,* the amount of time required to complete the administrative activity.

*Quantity:* Quantity comprises of the size of the *population* of businesses affected and the *frequency* that the activity must be completed each year.

**Combining these elements give the basic SCM formula:**

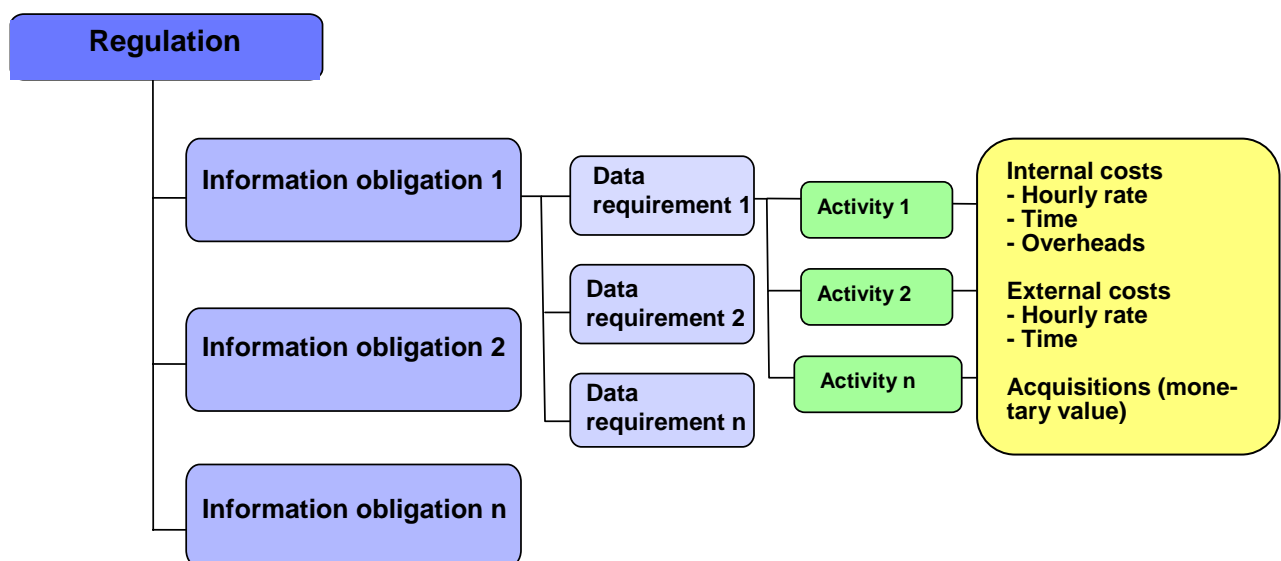
Cost per administrative activity (or per data requirement) = Price x Time x Quantity (population x frequency).

In addition certain acquisitions may be included as an average cost per year that the purchase is expected to last for. The acquisition must be incurred solely to enable the business to comply with a specific information obligation/data requirement. This price is then multiplied by the size of the affected population as this is already an annual cost.

However a business may well need an Internet connection in order to comply with a digital reporting duty, but because the connection is also used for many other purposes, the costs of the connection are not included directly in the measurement. They are included indirectly through the overhead.

For example, an administrative activity takes 3 hours to complete (*time*) and the hourly cost of the member of staff in the business completing it is 10 Euros (*tariff*). The *price* is therefore 3 x 10 = 30 Euros. If this requirement applied to 100,000 businesses (*population*) who each had to comply 2 times per year (*frequency*), the *quantity* would be 200,000. Hence the total cost of the activity would be 200,000 x 30 = 6,000,000 Euros.

**Figure 3: Structure of the Standard Cost Model:**



### 3.2 Different types of Standard Cost Model measurements – ex-ante and ex-post

The Standard Cost Model can be used to measure the baseline of administrative burdens – a so called **ex-post** measurement, which is a measurement of the *factual* administrative consequences for the businesses in respect of an implemented law, statutory instrument or other initiative. A baseline measurement is a statement of the overall administrative costs that businesses have in following a *current* set of regulations at a given point in time. A baseline measurement may be made of selected areas of regulation or of all regulation that affects business.

A core element of the SCM is that once the baseline has been measured it needs to be updated to reflect progress on simplification and new regulations that have come into effect. It is important that estimates of administrative costs for new regulation are of a similar quality to the baseline measurement.

A SCM measurement may therefore also consist of a measurement of the *anticipated* administrative consequences of a draft law, draft executive order or other initiative. Such a measurement is designated an **ex-ante** measurement of the administrative consequences insofar as it is a matter of measuring the administrative consequences of a rule or initiative before it is implemented. The results from an ex-ante measurement may form part of the overall impact assessment of a bill's economic and administrative effects on the public sector, businesses, citizens, environment etc.

Ex-post measurements are also conducted in order to keep the baseline measurement **updated** with the consequences of new or amended rules. By regularly keeping the baseline measurement updated it becomes possible to follow the development of the overall administrative costs within a country/sector/department.

The carrying out of a Standard Cost Model measurement – whether it is a question of an ex-ante or an ex-post measurement – is dealt with in greater detail in chapter 4.

### 3.3 The normally efficient business

The fundamental concept – and unit of measurement – of a Standard Cost Model analysis is the **normally efficient business**. This is taken to mean businesses within the target group that handle their administrative tasks in a normal manner. In other words the businesses handle their administrative tasks neither better nor worse than may be reasonably expected. The intention with the Standard Cost Model is thus to identify general contexts that can be traced directly back to regulation. The Standard Cost Model measurement does not, therefore, include businesses that, for various reasons, are either particularly efficient or inefficient<sup>2</sup>.

The normally efficient business is found by conducting interviews with a number of typical businesses in the target group, with possible external advisors that deal with outsourced tasks for the businesses, and possibly with other experts. The objective of the interviews is to find out how much time the businesses use on the individual activity that is associated with a data requirement. A check is made to see that there is consistency in the businesses' answers. If this is *not* the case, more business in-

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<sup>2</sup> In the process of determining what is normally efficient, some very efficient or inefficient businesses may be observed. While these businesses are excluded from the baseline measurement they may provide insight to departments about good practice to encourage and bad practice that should be discouraged.



interviews are conducted until it is possible to ascertain standardised time consumption associated with the administrative activities for the normally efficient business.

### 3.4 One-off and recurring costs

In carrying out a Standard Cost Model analysis a distinction is made between one-off and recurring costs from regulation.

**One-off costs** are the costs that are only sustained once in connection with the businesses adapting to a new or amended legislation/regulation. This does not include the costs that a business may have in relation to complying with existing regulations for the first time, e.g. as a consequence of increased turnover or expansion with new areas of activity in the business. As such only the introduction of a new or amended regulation can give rise to one-off costs.

The one-off costs are *not* included in the baseline measurement. However they do form part of ex-ante measurements for inclusion in a regulatory impact assessment. An example is the requirement for firms to read guidance as a result of a one-time change in a regulation.

**Recurring costs** are the administrative costs that the businesses constantly have in complying with the information obligations from regulation. They may be costs that arise at regular intervals, e.g. with VAT returns. They can also be costs that arise at irregular intervals for the individual business, e.g. if they are to apply for an export subsidy or submit a planning application. They can similarly be an administrative task that the individual business only experiences on one occasion, e.g. in connection with business registration where one applies for a VAT number or upon application for authorisation. Common to these two types of costs is that they arise in connection with a given situation for the business, hence the term situation-determined costs. Such costs include those associated with starting and expanding a business.

The recurring costs elements means that costs recur at the level of the whole economy. An individual business may only experience a particular administrative cost once a year, or even less frequently. However at the whole economy level such costs do recur.

Recurring administrative costs are measured at both the ex-ante and ex-post stages.

### 3.5 Measurement of digital solutions

For a growing number of information obligations digital solutions are made available to the businesses whereby they are able to report the required information, apply for subsidy or permits etc via the internet. A digital solution is understood to mean that the businesses are able to send in the required information via digital communication. A form that the businesses can download from a homepage, and which subsequently has to be printed out and submitted by letter or fax, is thus not a digital solution.

The effect of these digital solutions shall also be measured and, in the cases where digital solutions are made available to the businesses, it will be relevant to segment the businesses accordingly, cf. further details on this under step 5.

The actual measurement of a digital solution is carried out in the same way as the measurement of the corresponding manual solution, i.e. how much time do the businesses employ on the administrative activities that are involved in being able to com-

ply with the information obligation. The effect of a digital initiative may thus be shown by comparing the time consumption of the manual solution with that of the digital solution.

### 3.6 Origin of regulation

In order to provide an overview of where the administrative costs of businesses originate from, each data requirement has to be classified in three main categories – depending on their origin:

**A-regulation:** Data requirements that are exclusively and completely a consequence of EU rules and other international obligations. It is described in the international rules which information businesses have to produce.

The classification process distinguishes between three different categories of data requirements for **type-A regulation**:

- **Category A-EU-Directive**
- **Category A-EU-Regulation**
- **Category A-International**

For all three type-A categories the data requirement and its implementation must be *laid down* by the EU (A-EU-Directive or A-EU-Regulation) or in other international rules (A-International). This means that the rules stipulate which information must be provided by businesses and how this should be done.

In this situation a department has limited or no influence<sup>3</sup> on the administrative burdens in the short term.

**B-regulation:** Data requirements that are a consequence of EU rules and other international obligations. The purpose will be formulated in the international rules, while implementation (including formulation of the specific data requirements) will be left to the member states. The international rules do not describe which information businesses have to produce.

The classification process also distinguishes between three different categories in the case of data requirements of **type-B**:

- **Category B-EU-Directive**
- **Category B-EU-Regulation**
- **Category B-International**

For all three type-B categories, the data requirement must be a *consequence of EU rules* (B-EU-Directive or B-EU-Regulation) or other international obligations (B-International). In this case the interna-

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<sup>3</sup> Limited influence should be understood in relation to the immediate sphere of influence. An international context does offer opportunities for reducing the administrative burdens, of course, but it has to be done in consultation with the international community.

tional obligation will only formulate a purpose, which the states have to implement in their own regulation. The international rules do not describe which information businesses have to produce. It is therefore up to the states themselves to formulate any data requirements to be provided by businesses.

**C-regulation:** Data requirements that are exclusively a consequence of rules formulated at national level.

**Type-C regulation** only covers one type of regulation, i.e. data requirements that are exclusively a consequence of national regulations. Both the information obligation and its implementation are laid down at national level.

Classification in the seven A, B and C categories forms the basis for investigating whether and to what extent administrative burdens fall within the sphere of influence. Once a category A regulation is in place, this category does not in principle fall within a country's immediate sphere of influence, while the administrative burdens in category C fall exclusively within the nation states sphere of influence. Category B comes between these two categories, with implementation falling more or less within the sphere of influence.

Classification serves two purposes. First of all it provides a balanced picture of the composition of a department's business-related rules and the potential for rule simplification in the short term. A department with a lot of national legislation (type-C regulation) will find it easier to reduce the administrative costs of businesses in the short term than a department that is mainly responsible for regulation formulated under the auspices of the EU, for example (i.e. type-A regulation).

Classification also serves another, longer-term purpose. If substantial, inexpedient costs are identified in connection with an EU-Directive where the information obligations are laid down in the directive, the analysis can form an important element in support of simplification of the directive by the EU.

### 3.7 Involved parties in a Standard Cost Model measurement

A Standard Cost Model measurement is based on a high degree of involvement by a range of different people who, in different ways, have detailed knowledge of the rules to which the businesses are subjected and how compliance with these rules is effected in the businesses. In this way it is ensured that the measurement's quantitative and qualitative results are constantly assessed and validated.

The following persons would be relevant to involve.

**Practitioners in the businesses:** The practitioners in the various businesses who, in the capacity of their daily work, have developed expert competence in relation to how their business deals with the various administrative duties. They are therefore able to contribute with crucial information regarding the extent of the administrative costs in the businesses. It is these persons who constitute the target group for the business interviews that are conducted in connection with phase 2.

**Professional bodies/industrial organisations:** In addition to involving the businesses it is important to involve their professional organisations in the work, as they also possess wide knowledge of how their member businesses deal with the administrative activities.

**Professional experts:** Professional experts with considerable insight into the sector in question that is the subject of a Standard Cost Model measurement would be relevant to involve. In the case of a measurement of the Annual Accounts Act it was, for example, it would be relevant to involve accountants. These experts can also help to ensure that the defined cost parameters are as true and fair as possible.

**Government departments:** The relevant government departments are an important resource in the Standard Cost Model measurement, as it is the departments that possess the detailed knowledge of the structure of the rules. It is therefore important to involve the relevant government departments in the different phases of the measurement, e.g. in connection with validation of the legislation, the breakdown of it, the bringing to light of populations and frequencies, as well as in connection with the identification of relevant segmentation variables.

The work of implementing a SCM measurement is usually undertaken by **consultants** with experts in the field at its disposal. The measurements cannot, however, be carried out without extensive involvement by the relevant government departments, which possess the professional expertise in the regulatory areas. The departments also have to classify the regulation according to whether it is of national or international origin.

Finally it is necessary to have a **central coordinating unit** that are responsible for the timetable, for ensuring that the method is consistently applied by the consultants and that the cooperation between the consultants and the departments are running as planned etc. Furthermore the central coordinating unit is often also responsible for answering questions regarding methodological issues, for the day-to-day cooperation with the consultants and departments and for the budget.

### Box 1: Central coordinating units in different countries

In **Denmark** the central co-ordinating unit is the Danish Commerce and Companies Agency – the division for Better Business Regulation.

In **Norway** it is the Ministry of Trade and Industry who co-ordinates the SCM measurements.

In **the Netherlands** the Ministry of Finance has the responsibility for co-ordinating the measurements.

In **Sweden** it is Nutek, the Swedish Agency for Economic and Regional Growth who co-ordinates the measurements.

In **the United Kingdom** the Better Regulation Executive, in the Cabinet Office, has the responsibility for co-ordinating the SCM measurements.

It is recommended that a **monitoring group** is established consisting of representatives from the relevant department, from business organisations and businesses, the consultancy firm and the central coordinating unit. The monitoring group has to follow and continuously validate the results of the measurement.

## 4 Choices to be made before starting to measure

Although the SCM method is quite detailed with fixed definitions, there are still a number of options. Before starting a SCM measurement it is important to make some decisions on a number of central matters. These central decisions are discussed in the following sections which also include descriptions of what different countries have adopted in their measurement exercises.

### 4.1 Private businesses, charities, the voluntary sector etc.

The SCM is designed to measure the administrative burdens on private businesses. Before beginning a SCM measurement it is essential to have a clear and unambiguous definition of what is meant by private businesses. Thus it is important to decide whether you only wish to measure **private businesses defined narrowly as:**

*Units that produce and/or supply goods and/or services under market conditions with the objective of generating profit for the owners.*

Or if you wish to broaden the definition and also include “semi-private” businesses like charities, the voluntary sector and public or partly public owned businesses that cover its own costs.

The definition is also important when setting a figure on the size of the population to be affected by a given rule.

#### Box 2. Examples of ‘private businesses’ definitions

**Denmark and Sweden** have all employed the narrow definition of private businesses.

**Norway** has applied an extended definition of private businesses including public and partly public owned businesses that cover its own costs.

**The United Kingdom** has applied an extended definition of private businesses including charities and the voluntary sector.

**The Netherlands** has besides the voluntary sector and charities also measured public owned businesses which cover its own costs.

### 4.2 Whether or not to measure rules that are not implemented in national legislation

Another important decision to be made before starting to measure is what types of regulation you are going to measure. Normally a baseline measurement consists of:

- 1) measurement of all regulation with information obligations and data requirements for businesses
- 2) EU rules as well as international conventions to the extent that they are implemented domestically
- 3) EU-Directives since they have to be implemented in national legislation.

It is in this respect important to determine whether you also wish to include for example EU-Regulations which formally are directly applicable without domestic implementation. However EU-regulations in many cases require some domestic implementation and it is therefore important to decide whether you will measure the EU-

Regulations that have been implemented in national legislation or whether you wish to completely exclude all EU-Regulations. If you choose not to measure the EU-Regulations that have been implemented in national legislation you might also exclude possible gold plating. The same regards for other types of international regulation/conventions which in general are not implemented in national legislation.

### Box 3 Examples of whether to measure EU-Regulations

**Denmark, the Netherlands, Norway and Sweden** measure EU-Regulations to the extent that they are implemented in Danish respective Norwegian, Swedish or Dutch legislation. The advantage of this distinction is that it is easy to apply in the measurements and that it is less resource demanding than if you were to measure all EU Regulations. The disadvantage is that it is not necessarily the most rational delimitation since it implies that some EU-Regulations will be measured while others will not.

**The United Kingdom** has chosen the same approach as the above-mentioned countries. However in cases where no domestic implementation is required they have listed and flagged the EU-regulations but not measured them.

### 4.3 Whether to measure voluntary regulation or not

For regulations to be measured, it is important to distinguish between two types of regulations: *compulsory regulations* that businesses have to follow, and *voluntary regulations* that businesses may choose to follow.

All costs that the businesses incur in complying with information obligations in compulsory regulations should be measured in a Standard Cost Model measurement.

It is however different with the rules that the businesses may *choose* to observe. Voluntary rules include applying for support schemes or grant schemes or certain types of statistical information that the businesses may choose whether they wish to provide or not.

It is possible to distinguish between voluntary rules that are considered as necessary in relation to being on the market and, and on the other hand, rules that the businesses follow without it being regarded as necessary. A voluntary rule is regarded as being *necessary* to follow when the majority of the businesses for which the rule is relevant, choose to observe the rule, e.g. requirements regarding applications for agricultural subsidies.

Before beginning a SCM measurement it is very important to decide whether you wish to measure the voluntary rules or not or if you wish to measure some of the voluntary rules e.g. the voluntary rules that are considered to be necessary to follow.

#### Box 4. Examples of whether to measure voluntary rules

**Denmark and Norway** measures the voluntary rules considered to be necessary (where the majority of the businesses for which the rule is relevant, choose to observe the rule).

**The Netherlands** did not measure support or grant schemes etc. when they carried out their baseline measurement. Since then the Netherlands has however decided to measure all voluntary rules.

**Sweden** does not distinguish between voluntary and compulsory rules and measure all voluntary rules. **The United Kingdom** also measures all voluntary rules. Furthermore the UK operates with a 100 percent take-up of the target groups in order to focus on the potential burden where high burdens could be a barrier to full take-up. Where there is known to be a very different level of take-up this should be noted during the listing of regulations and/or measurement process.

#### 4.4 Information obligations to the public sector and third parties

Another decision to be made before beginning the measurement is whether you want to measure businesses' information obligations to the public sector solely or whether you also wish to include businesses information obligations to third parties. Both types of information obligations are obligations arising from regulation and causes administrative burdens for businesses. Examples of information obligations to third parties are: labelling products, e.g. energy labelling of domestic appliances and financial prospectus to customers to accompany investment products.

#### Box 5. Examples of whether to measure information obligations to third parties

**Denmark, Norway, the Netherlands and Sweden** have measured information obligations to the public sector as well as information obligations to third parties.

**The United Kingdom** measures information obligations to the public sector but not those to third parties.

#### 4.5 Full or actual compliance

To measure businesses' administrative costs by following a set of regulations, it is important to make clear assumptions about compliance. The costs of complying fully or partial compliance with a regulation may be measured. There can be many different reasons why a regulation is not implemented fully by all the businesses that are covered by it. One possibility is that the legislation is misunderstood by the businesses, while another is that the businesses consciously fail to follow parts of the provisions of the set of rules.

Full compliance: A measurement of the costs that all the businesses concerned have in following the rules *completely*. It is thus not the *actual* number of businesses that observe a rule that is measured. The factor being captured is how many businesses are to follow the rule and what costs these businesses typically have (would

have) in following those parts of the set of rules that they are required to.

**Actual compliance:** A measurement of the actual costs that the businesses concerned have in following the rules. Thus the population that is calculated with is only the number of businesses who in reality comply with the rule (even though a larger number of businesses are required to observe the rule).

#### Box 6. Examples of whether to measure full or actual compliance

**Denmark, the Netherlands, Norway, Sweden and the United Kingdom** measure full compliance.

#### 4.6 Reimbursement of administrative costs

In some cases businesses are subjected to information obligations where they receive some form of reimbursement to cover their administrative costs of complying. If you choose to measure the administrative burdens in these cases you can also choose to record the reimbursement in order to include such regulations on a net basis.

#### Box 7. Examples of whether to measure information obligations with cost determined reimbursement

**Denmark, the Netherlands, Norway and Sweden** doesn't measure information obligations with cost-determined reimbursement.

**The United Kingdom** measure information obligations with cost-determined reimbursement, but they also record the level of reimbursement in order to include such regulations on a net-basis.

#### 4.7 Lower threshold limit

Before beginning a baseline measurement you have to decide whether you want to measure all regulation or if you want to set a lower threshold limit. The reason for setting up a lower threshold limit is the fact that the costs involved in carrying out a measurement of the law in question, will often not be able to compare favourably with the simplification potential. Thus it is possible to set up a lower threshold limit and for example not measure laws implying *less than x hours administrative work per year* for all the businesses concerned. The threshold (number of hours) should depend on the size of the country.

#### Box 8. Examples of lower threshold limits

**Denmark** has set a lower threshold limit implying that laws which involves less than 100 hours administrative work per year for all businesses concerned are not measured.

**The Netherlands, the United Kingdom and Sweden** have not set a formal threshold limit.

**Norway** has not set a formal threshold limit, but do not measure regulations that only concern very few businesses due to assessment by experts.



#### 4.8 Overhead percentage

The overhead covers a number of costs related to the individual employee and represents costs in addition to direct pay costs. The overhead covers costs in connection with fixed administration costs, such as expenses for premises (rent or building depreciation), telephone, heating, electricity, IT equipment, etc. The overhead also includes absence owing to illness, since the hourly pay used to calculate administrative costs should, as far as possible, be the hourly pay per effective hour.

The overhead percentage is calculated in each country and the calculation is often based on detailed information. As there is no central statistical source that can throw light on overheads for all industries and sizes of business, it is however difficult to specify an overhead percentage that is both generally applicable and accurate.

Though the components of the overhead are essentially the same in each country the overhead percentage varies primarily due to different costs in the countries concerned.

#### Box 9. Examples of different overhead percentages

**Denmark, Norway and Sweden** has calculated the overhead percentage to be 25 %.

**The Netherlands** generally applies an overhead percentage of 25 % but an overhead percentage of 50 % has been applied in the measurement of the regulation of the financial sector.

**The United Kingdom** has an initial overhead percentage of 30 %, which is subject to review during the measurement process.

## 5 Step-by-step implementation of a standard cost analysis

Implementation of a standard cost analysis for a given area of regulation requires a detailed knowledge of the standard cost method and the circumstances prevailing in the ministerial sphere to which the area of regulation belongs.

The work of implementing a standard cost analysis is usually undertaken by a firm of consultants with experts in the field at its disposal. The responsible ministry is involved in validation during the various steps. The responsible ministry also contributes with expert knowledge of the area, including background data relating to the population of affected businesses, the proportion (i.e. rate) of businesses affected by a given requirement and the frequency with which they have to report. Furthermore it is usually preferable to let the ministry carry out the classification of the regulation according to whether it is of national or international origin.

As described in section 3.6. a way of structuring the measurements and ensuring that the SCM is applied consistently is to let a central coordinating unit take care of day-to-day cooperation with the firm of consultants and coordination with the responsible ministry.

### Database

It is important that the data collected is entered in a database that is able to handle the relatively large amounts of complex data that form the basis for the results of a standard cost analysis. The data collected must be stored in the manner indicated in the *data structure*.

Before starting a measurement the responsible coordinating unit should specify the data structure. In other words it is important to clarify what you would like to use the data for and thereby which data you have to collect. The responsible coordinating unit should work out a detailed data structure, which the consultants should be provided with. Data collected in a measurement should be stored in a database either directly by the consultants or in a preliminary datasheet, which the consultants when the measurement is completed can transfer to the coordinating unit using the specified data structure.

### The step by step guide

This section sets out the process involved in carrying out a measurement using the Standard Cost Model. The process can be split into four phases and 15 steps. These are summarised in table 1 below and then described step by step.

The analysis itself can be divided into four main phases with a number of subsidiary steps. These are summarised in the table below and then described step by step.

**Table 1: Phases and steps in the measurement**

<b>Phase 0: Start-up</b>
The business-related regulation to be included in the analysis is identified before the preparatory analysis is started. In the case of large analyses, especially baseline measurements, but also certain ex-ante analyses and updates, initial meetings of the depart-

ment, the central coordinating unit, consultants and other key stakeholders are held.		
<b>Phase 1: Preparatory analysis</b>		
	Step 1:	Identification of information obligations, data requirements and administrative activities and classification by origin
	Step 2:	Identification and demarcation of related regulations
	Step 3:	Classification of Information obligations by type (optional step)
	Step 4	Identification of relevant business segments
	Step 5	Identification of population, rate and frequency.
	Step 6	Business interviews versus expert assessment
	Step 7	Identification of relevant cost parameters
	Step 8	Preparation of interview guide
	Step 9	Expert review of steps 1-8
<b>Phase 2: Time and cost data capture and standardisation</b>		
	Step 10	Selection of typical businesses for interview
	Step 11	Businesses interviews
	Step 12	Completion and standardisation of time and resource estimates for each segment by activity
	Step 13	Expert review of steps 10-12
<b>Phase 3: Calculation, data submission and reports</b>		
	Step 14	Extrapolation of validated data to national level
	Step 15	Reporting and transfer to database

### 5.1 Phase 0 – Start-up

Before the analysis can be started, it is necessary to clarify what is to be analysed. This includes clarification of whether all the parts of the selected regulation fall within the scope of the standard cost analysis, cf. the definitions in section 2.3. That includes amongst other things to clarify whether the regulation relates to business, whether compliance is compulsory/necessary, whether it can be expected overall to entail more hours of administrative work than the lower threshold limit for the busi-

nesses affected (if you have set a limit), and whether a cost-determined reimbursement is involved etc.

There will often be a number of borderline cases where it may be difficult to decide whether a rule falls within the scope of the standard cost analysis or not, cf. the examples in box 10 below. It is important to ensure that such borderline cases are discussed and evaluated in the light of decisions taken in other similar areas so as to ensure consistency with regard to which rules are included in the analysis.

### **Box 10: Examples of borderline cases in relation to the scope of standard cost analyses**

#### **Example 1: Treatment of complaints in the standard cost analysis**

The right of businesses to complain about decisions is not an administrative burden and so is not measured in a standard cost analysis. It is not classified as an administrative burden because generally it will not be normally efficient to complain and no compulsory information obligations are imposed on businesses in connection with complaints. In some cases, however, it may be relevant to ask about a business's experience of the complaints system. This applies in particular to areas where it is common for businesses to complain. This may be an indication of the rules generally being difficult for businesses to understand. As part of the standard cost analysis it is, for example, possible to ask businesses about which parts of legislation they have particular trouble understanding. This would only involve qualitative reporting, with no extrapolation of burdens to a national level. This means that it would not be possible to produce a standardisation of how long a normally efficient business spends on a complaint.

The results from the qualitative survey can be used to make the rules easier for businesses to understand, which may help to reduce the amount of time spent by businesses on familiarising themselves with the rules. The number of complaints can also be reduced, thereby relieving pressure on the public complaints process.

#### **Example 2: Differentiation between households and businesses**

When the self-employed apply for schemes as an employee, it often results in relatively extensive administrative activities for them. Among other things, they have to document their employment and income situation. This form of administrative work is not included in the standard cost analysis because the self-employed are regarded in such situations as acting as employees and not as businesses.

#### **Example 3: Measuring the administrative costs of inspections**

Businesses are subject to a range of different inspections. However, administrative costs as defined by the SCM are only incurred where the inspection relates entirely to an information obligation. Inspections with a broader focus are not included.

Initial screening leaves the set of rules to be included in the analysis. It is important, however, to document which rules have been eliminated by screening and why, including how borderline cases have been handled.

The results are submitted to the responsible department for validation.

## Start-up meetings

Before commencing a standard cost analysis it is recommended to set up one or more start-up meetings between key stakeholders including departments, consultants and the coordinating unit. This provides an opportunity for important matters to be clarified, including what precisely is to be analysed, how the analysis is to be carried out, a timetable for the measurement and the delivery of results, when the responsible ministry is to contribute to the analysis etc.

## Completion of phase 0

The consultants prepare a data set **of the business-related regulation** to be included in the analysis. More and more information will gradually be added to the data set as the subsequent steps of the analysis are completed. A precise account of all the information that should be contained in the data set on completion of the analysis can be found in the data structure prepared by the central coordinating unit.

The consultants also draw up a list of the business-related rules that are not to be included in the analysis, including the reasons for their omission.

The data set must be **submitted to the responsible department**. This is so that the department can validate that all the business-related regulation have been included in the analysis. The time allowed for this process is to be agreed in detail with the responsible department.

## 5.2 Phase 1 – Preparatory analysis

A large part of the work involved in carrying out a standard cost analysis is linked to the preparatory analysis, which precedes the actual collection of data. The purpose of the preparatory analysis is to identify the business-related information obligations and resulting data requirements in the relevant legislation. Then the administrative activities to be performed by businesses in order to supply the required information should be identified based on 16 standard administrative activities (cf. box 13). The next step is to identify the relevant background variables. Finally, the business segments covered by the regulation are identified.

This process is divided into nine steps. The process is continuous, however, with considerations and choices in the various steps having mutual relevance. It is therefore essential to think of the process as a whole.

It is also important to validate the information produced by the preliminary analysis on an ongoing basis. This means that:

- the central coordinating unit has to be involved on an ongoing basis with a view to making methodological and technical choices
- the responsible department has to be involved on an ongoing basis with a view to ensuring technical quality
- relevant experts are involved with a view to evaluating and validating the classifications and specifications generated in steps 1-8

### 5.2.1 Step 1: Identification of information obligations, data requirements and administrative activities and classification by origin

The tasks in step 1 are:

#### **a) Break down list of regulations from phase 0 into information obligations:**

Based on the list of business-related laws and executive orders produced in phase 0, the consultants (alternatively the responsible departments) break the rules down into a number of **information obligations**. This work is based on detailed perusal of the actual text of the individual rule, its explanatory notes, relevant circulars and any guidelines relating to the regulated area. The information obligations (one or more) that give rise to administration on the part of businesses are identified in the course of this perusal.

Box 11 gives examples of a number of different information obligations.

#### **Box 11: Examples of information obligations**

- **Returns and reports:** This relates to returning and reporting information, e.g. tax deducted from income at source.
- **Applications for permission for or exemption from...:** This relates to all types of application for permission for or exemption from various activities, e.g. application for a licence to sell spirits.
- **Applications for authorisation:** This relates to applications for authorisation to carry out certain activities, e.g. authorisation as a sewer contractor.
- **Notification of activities:** This relates to businesses having to notify the authorities of specific activities, e.g. notification of the transportation of dangerous cargo.
- **Entry in a register:** This relates to businesses having to be entered in a register or on a list, e.g. entry in the business register.
- **Applications for subsidies or grants for...:** This means the business applying for a subsidy or the like, e.g. a subsidy for job training.
- **Keeping commercial emergency plans and programmes updated, etc....:** This relates to the business keeping those documents required by the authorities up to date. It would include manuals and emergency plans, for example.
- **Cooperating with audits/inspections of...:** This relates to informing and assisting inspectors who carry out inspections of and auditing work for a business, or who visit a business in connection with enforcement of a regulation.
- **Statutory labelling for the sake of third parties:** This means, among other things, labelling products or installations with consumer information, e.g. energy labelling of domestic appliances.
- **Providing statutory information for third parties:** This relates to providing third parties with information (as distinct from labelling), e.g. a financial prospectus to accompany investment products.
- **Framing complaints and appeals:** This relates to submitting complaints about and (possibly later) appealing against a decision made by the authorities. This information obligation should only be analysed if it is characteristic of a normally efficient business to complain in the area in question.

## **b) Split information obligations into data requirements**

Once a regulation has been broken down into one or more information obligations, the information obligations are broken down into **data requirements**. In practice the consultants will usually identify the data requirements in the same process that they identify the information obligations in a law. All the data requirements in the regulation that go to make up the individual information obligation have to be identified. There are many different data requirements – some will be very specific with regard to the concrete information obligation, while others will recur in different information obligations in various regulations across the departments.

Box 12 illustrates a number of data requirements that occur in connection with various information obligations.

### **Box 12: Examples of typical data requirements**

An information obligation may lay down requirements with regard to the following information:

- Identity of business – name and business registry number, etc.
- Business's turnover/statement of turnover
- Statement of business's equity

## **c) Identify administrative activities**

Once the data requirements have been pinpointed, the next task is to identify the **administrative activities** that businesses have to go through in order to comply with the individual data requirement. These will be finally validated during interviews with businesses at step 11. The identification of administrative activities is based on 16 standard administrative activities, which are described in box 13 below.

The identification of the relevant administrative activities is intended to help give an idea of the process that businesses have to go through in connection with each rule. In the interview situation itself it is also easier for businesses to relate to specific administrative activities when they have to specify the resources they use.

As regards the first administrative activity, the resources used by businesses to *familiarise themselves with the information obligation*, it is linked to the actual information obligation, while the rest of the administrative activities are linked to the individual data requirement.

### **Box 13: Standard administrative activities**

1. **Familiarisation with the information obligation.** The resource consumption of businesses in connection with familiarising themselves with the rules for a given information obligation.
2. **Information retrieval.** Retrieving the relevant figures and information needed to comply with a given information obligation.
3. **Assessment.** Assessing which figures and information are necessary for the public authorities to accept the report.
4. **Calculation.** Performing the relevant calculations needed for the public authorities to accept the report.
5. **Presentation of figures.** Presenting the calculated figures in tables or the like.

6. **Checking.** Checking the calculated figures, e.g. by reconciliation with other data.
7. **Correction.** If the business's own checks reveal errors in the calculations, corrections are made afterwards.
8. **Description.** Preparation of description, e.g. the directors' report in the Danish Financial Statements Act.
9. **Settlement/payment.** Payment of tax, charges or the like.
10. **Internal meetings.** Meeting held internally between the various personnel groups involved in complying with the information obligation.
11. **External meetings.** Meetings held in cases where compliance with the information obligation requires meetings with an auditor, lawyer or the like.
12. **Inspection by public authorities.** Businesses must assist external inspectors when they carry out their inspection at the business.
13. **Correction result from inspection by public authorities.** If the external inspection identifies faults/defects, corrections are made afterwards.
14. **Training, updating on statutory requirements.** Relevant employees must be kept up to date with rules that change frequently (at least once a year).
15. **Copying, distribution, filing, etc.** In some cases the report is copied, distributed and/or filed in order to comply with the information obligation. It may also be necessary to store the information obligation with a view to subsequent production in connection with an inspection.
16. **Reporting/submitting information.** In cases where compliance with an information obligation requires the submission of information on the business, the information must be sent to the relevant authority.

It is possible that further standard activities may be required. Proposals for new standard activities must be very well founded, however, and require the approval of the central coordinating unit.

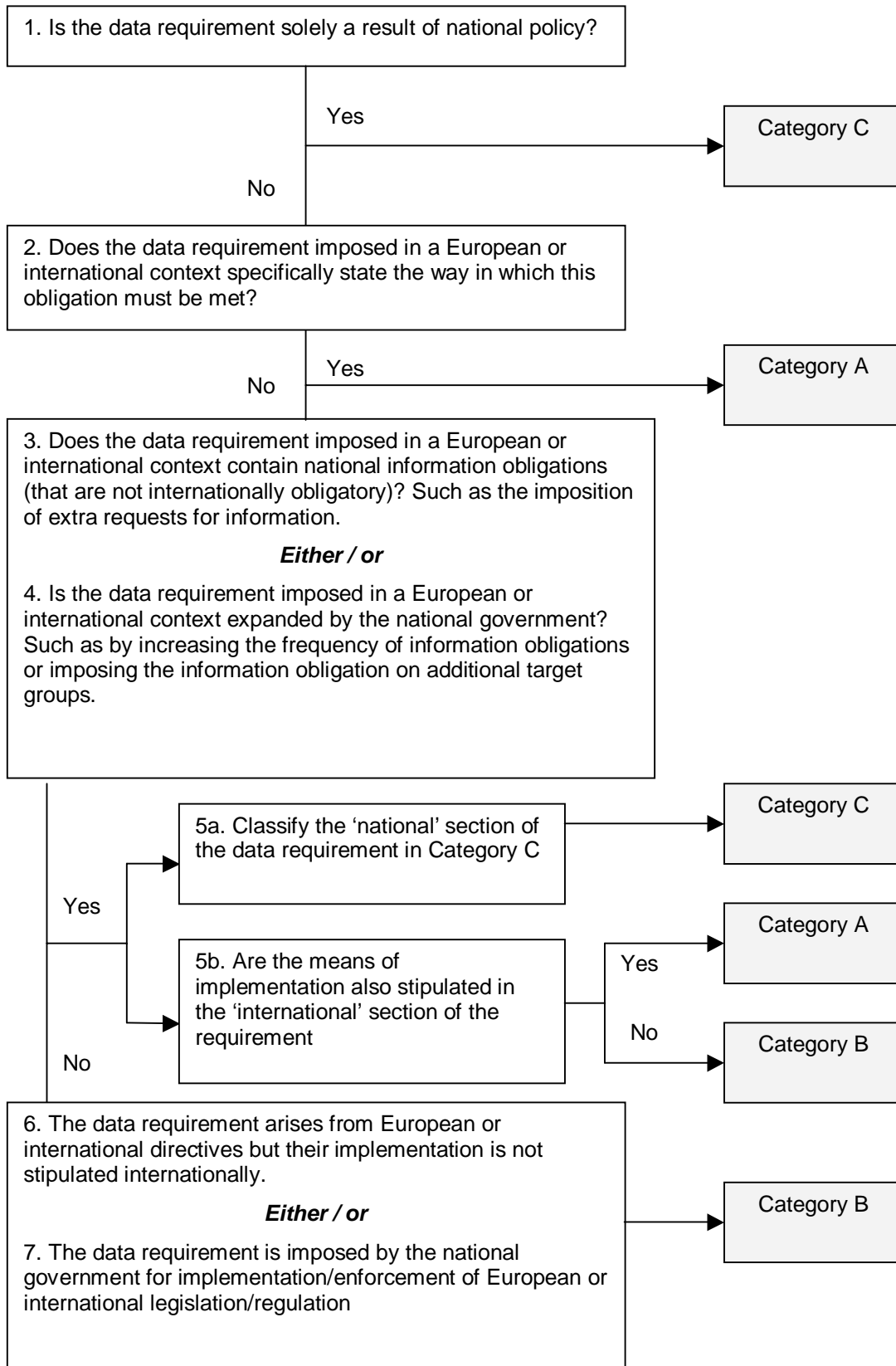
#### **d) Start classification of regulation by origin – ABC-classification**

In order to provide an overview of where the administrative costs of businesses originate from, data requirements have to be classified in three main categories depending on their origin (see section 3.6). Usually the departments are the most competent for carrying out the classification, since they have the most profound knowledge of the origin of their regulation. However due to different circumstances some countries has chosen to let the consultancy firms carry out the classification.

The classification can take place when the breakdown of the legislative material has been finalised and has to be completed when the reporting phase (phase 3) begins. Figure 4 below provides a decision tree for determining which top-level origin classification applies, i.e. A, B or C.



**Figure 4: Decision tree for classification of origin**



## Completion of step 1

The consultants (or the department) **break down each individual business-related regulation** into information obligations and data requirements plus try to identify associated administrative activities for each data requirement. It must be possible to identify links between regulations, e.g. which primary legislation gives rise to which secondary legislation. A section and subsection reference must also be given for the data requirements so that they can be found quickly in the rule in question. In connection with step 1 it is also important that the department assists the consultants with identifying any digital reporting solutions that may be linked to the information obligations (see section 3.5).

The data set containing the breakdown of legislation into information obligations, data requirements and administrative activities must be **submitted to the responsible department**. This is so that the department can validate that all the relevant information obligations and data requirements have been identified. The deadline for completion of this process is to be agreed in detail with the responsible department.

### 5.2.2 Step 2: Identification and demarcation of related regulations

It is important in any standard cost analysis to clarify whether the administrative costs of an information obligation or data requirement are attributable to one or more rules. If the administrative costs are attributable to two or more rules, it is also vital to ensure they are only counted once. This problem is illustrated in the two examples below.

#### Box 14: Examples of demarcation with regard to related regulation

**Example 1:** The Financial Statements Act contains a requirement to the effect that annual accounts have to contain information on the company's turnover. This information must also be included in businesses' tax statements, a duty that follows from the fiscal requirements for accounts laid down in the Tax Act. The same cost should not be measured twice.

**Example 2:** *The Bookkeeping Act* regulates the duty of commercial enterprises to record their financial transactions. The Act does not, however, require the information recorded to be submitted or the like, it just has to be possible to document that the transactions have been recorded. The recording of transactions does not therefore serve a direct purpose in relation to the Bookkeeping Act, but the information recorded is needed in all sorts of other contexts. The financial transactions recorded are, for example, used in processed form to prepare annual accounts, VAT returns, tax accounts, etc. Although these laws do not explicitly state that businesses must record their financial transactions, compliance with such rules is dependent on compliance with the requirements of the Bookkeeping Act.

As the two examples show, it is possible for the requirements of regulations to overlap. This may occur within a department or between two or more departments. In cases where two regulations require the same information, the cost of producing the information must either be assigned to one of the rules or be divided equally between the rules.

If agreement cannot be reached the central coordinating unit should be involved in the decision making.

## Completion of step 2

The consultants produce a clear demarcation and definition of the area of regulation where administrative costs are to be measured. Demarcation in relation to legislation that falls within other departments' spheres must be coordinated with the relevant departments. Related regulation is identified and the "owner"/"owners" of the costs is clear so that identical information obligations are not counted more than once. The consultants integrate the information on related regulation in the data set for the business-related regulations from step 1. As part of the report that has to be produced at the conclusion of phase 1, the consultants also have to describe which regulations connect with other regulation, including whether the information obligations and data requirements identified are identical to information obligations and data requirements in other rules and/or to what extent there are interfaces between regulations. Final demarcation must be approved by the central coordinating unit.

### 5.2.3 Step 3: Classification of information obligations by type (optional step)

In order to obtain a better overview of the origin of costs, information obligations can be classified according to whether they constitute a duty that businesses must comply with – compulsory information obligations – or schemes that businesses can opt to make use of – voluntary information obligations.

The classification of identified information obligations according to whether they are compulsory or voluntary is optional (the United Kingdom does not use the classification) and is carried out by the firms of consultants in collaboration with the department.

The information obligations must be classified according to whether they are:

- Information obligations relating to subsidies
- Information obligations relating to certificates
- Information obligations relating to regulation requirements, which in this context cover information obligations that are neither of the above (the majority of information obligations fall into this category).

This classification can, among other things, be used to analyse which types of information obligation characterise the legislation of the individual departments.

## Completion of step 3

The consultants have to integrate the information on which category each information obligation belongs to in the data set of business-related regulations. The central coordinating unit and the responsible department approves the classification.

### 5.2.4 Step 4: Identification of segments

In step 4 the consultants have to classify businesses in relevant segments. In other words, businesses have to be segmented according to the criteria that affect the scope of resources used to comply with information obligations and data requirements.

The relevance of criteria depends to a large extent on the rule involved. If the rule affects all types of business, it may be relevant to segment according to industry or size if these criteria are judged to be significant variables. A lot of legislation is industry specific, however, in which case the segment is specified in advance. In other legislation a business's turnover or number of employees, for example, determines whether the business is covered or not and which of the rules it has to comply with.

If a digital solution has been made available for reporting an information obligation, it will always be relevant to segment according to whether the business reports digitally or manually.

Similarly, it will be relevant to distinguish between businesses that have opted to out-source the task, i.e. use external assistance to perform the task to a large extent, and businesses that do the work themselves.

If the size of business (number of employees) is not judged to be a significant variable, segmenting does not have to be done by size. However e.g. the United Kingdom has chosen always to segment by size to allow results to be presented by firm size to reflect domestic policy focus on small and medium sized enterprises. Even if segmenting is not done according to the size of businesses, the consultants should make sure as far as possible when selecting businesses for interviews that businesses of different sizes are included in the analysis.

It may be "tempting" to segment on the basis of a number of different variables. Any attempt to capture the complexity in full will, however, soon result in the method breaking down because it is case based. Because complexity increases as more and more factors are included in the analysis, such an attempt would very quickly lead to measurements having to be carried out in far too many business segments. It is therefore essential to achieve a sensible balance between the degree of segmentation, optimisation of benefits and resource consumption in the project. It is necessary to focus on those factors that are judged to be most important when it comes to identifying differences in the administrative costs of businesses. The number of segments will vary from time to time, and will depend on a concrete assessment in relation to the specific information obligation. The decisions made on what to include and what not to include in the measurement must be well founded and should also be documented so that it will be possible to reproduce the results of the analysis at a later stage.

#### **Completion of step 4**

Segmentation is approved by the coordinating unit and the information is integrated in the data set of business-related regulations from step 1.

The status report that has to be produced at the conclusion of phase 1 should also include a description of how segmentation was completed.

#### **5.2.5 Step 5: Identification of population, rate and frequency.**

Tasks in step 5 are:

- Identify **population** for each information obligation
- Establish **rate** for each data requirement

- Determine **frequency** for each data requirement/information obligation

## Population

Each regulation/information obligation has a **population**. The population indicates how many businesses are affected by the regulation in question.

As a regulation can affect several different business segments – as identified in step 4 – populations have to be identified for each segment. Note that different regulations impact at different levels within a firm. Some affect individual sites, some affect particular reporting units (such as for statistical surveys and tax), some are based on company registrations, etc.

A population is generally the number of businesses affected by a given regulation. It is important to be aware, however, that a population can also be an event: e.g. the number of annual applications or reports. An appropriate population level must be found for each information obligation.

If an information obligation can be reported both manually and digitally, the population for each of the two options also has to be specified.

Because the figures from the population specifications are used at step 14 to extrapolate the standardised resource consumption per business when complying with a rule, it is important for the population to be as accurate as possible. However it can sometimes be very difficult to determine a population. In such cases it may be necessary estimate the population by using experts.

Specifically when calculating **the population for subsidy schemes**, it is possible to differentiate between two types. First, those schemes where the subsidy is granted if a number of objective criteria are satisfied. This applies to hectare subsidies, for example. In this case the population is only those businesses that receive the subsidy, while those businesses that do not satisfy the criteria and do not receive the subsidy have to be left out of the population. Second, there are schemes where the subsidy is granted on the basis of an assessment of all the applications received. The applicant cannot therefore be sure of receiving the subsidy in advance. An example of this would be innovation grant schemes, where businesses submit project proposals, after which a selection committee decides which proposals will receive a grant. In this case the population is the number of project proposals submitted.

## Rate

Each information obligation contains a number of data requirements. The data requirements may not have a population specification, but a **rate**. The rate indicates the proportion of businesses complying with the information obligation that comply with the given data requirement. However it is not required to use a “rate” instead of using a rate the data requirements can have a population.

## Frequency

The frequency indicates how many times a year a data requirement/information obligation has to be complied with. In some cases the frequency can be derived directly from the regulation. In certain instances there may be an information obligation/data requirement that all businesses have to report, but to a varying extent. This applies to

a number of statistics such as Intrastat and commodity sales statistics, for example. It is also important to be aware that some information obligations are not required every year – this applies to a range of statistical information, for example. The frequency for such obligations will therefore be 0.5 if the statistic has to be reported every other year and 0.33 if it has to be reported every three years, etc.

### Sources for population, rate and frequency

There are several different **sources** that can be used to determine population, rate and frequency:

- Departments have information on how many inspections have been carried out, how many applications have been received, how many businesses have been registered for a certain circumstance, etc. Beside these cases departments will often have an understanding of the number of businesses they regulate.
- Information can be taken from statistical material. It is, for example, only possible to calculate the administrative costs of maternity leave on the basis of statistics regarding the number of instances of leave in the private sector. Standard population totals will be made available based on statistical sources broken down by industry and size band. These will be at the enterprise level.
- In some cases it may be necessary to carry out a survey in order to identify the number of business affected by a certain regulation, or the ratio of businesses that employ a certain option in the regulation. If it is a matter of certain businesses dealing with an information obligation themselves while others outsource it, it may also be necessary to carry out a survey in order to establish what proportion of businesses outsource, and what proportion of businesses handle the task themselves.
- If it is not possible to obtain the necessary information, the solution may be to make a qualified estimate of the information in question.

Whatever the method used, it is important to document the source of the information so that the information can be reproduced in the same way at a later date. Specifically in situations where an estimate has been made, it is essential to document the criteria for the estimate.

### Completion of step 5

Through the abovementioned sources consultants obtain as much information as possible about populations, rates and frequencies, and incorporate it in the data set. This information is validated by the responsible department, who again try to help identify any information that might still be missing. The central coordinating unit is involved with a view to pinpointing the information that neither the consultants nor the responsible department could identify.

The process of identifying population, rate and frequency can take a long time. Therefore, it does not have to be completed during phase 1, since the information will not actually be used until extrapolation is carried out in phase 3. It is essential, however, to identify which information obligations affect the most businesses so that this information can be included in considerations regarding what the business interviews

should focus on, as considered in step 6 regarding clarification of what should be calculated by means of business interviews and expert assessment respectively.

### 5.2.6 Step 6: Business interviews versus expert assessment

Tasks in step 6:

- Criteria for deciding to interview or use expert assessment must be specified
- Identify which information obligations will be assessed using business interviews and which will not and note this in database
- List information obligations to be estimated by expert assessment with reasons for decision

The basic assumption in a standard cost analysis is that all relevant regulation that implies administrative burdens for businesses has to be evaluated<sup>4</sup>. This also applies to information obligations that might only be relevant for a small number of businesses or that only involve minor administrative activities for the individual businesses.

However, not all information obligations must necessarily be evaluated by means of business interviews. Information obligations that only cover a very small number of businesses and minimal administrative costs can, for example, be quantified using other methods. This includes expert assessment, in which specialists with considerable knowledge of the field in question are involved in quantification of the administrative costs for a normally efficient business. An alternative would be to make use of the extensive data gathered in already conducted business interviews. Based on data from other interviews, it will often be possible to quantify less burdensome information obligations by comparing them with similar information obligations analysed by means of business interviews. This is done in step 12 of phase 2.

It is difficult to produce unambiguous criteria for when a less burdensome information obligation can be evaluated using expert assessment or existing data. A concrete appraisal has to be performed in each case, but it is important to emphasize that it must be made clear which information obligations and data requirements are being selected for later evaluation. The data structure should stipulate that the consultants must make a note in the database to show which information obligations have been analysed not by means of interviews, but on the basis of similar existing data or expert assessment.

#### Completion of step 6

The consultants incorporate the information on which information obligations will be measured by business interview and which will be evaluated later in the data set of business-related regulations from step 1. The criteria on which the division between interviews and expert assessment is based must be made as clear as possible in order to facilitate validation by the responsible department. These criteria must also be included in the status report to be prepared at the conclusion of phase 1. The material is sent to the coordinating unit and the responsible department for approval.

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<sup>4</sup> However with respect to a possible lower threshold limit.

### 5.2.7 Step 7: Identification of cost parameters

The relevant cost parameters of businesses for the work involved in complying with individual data requirements must be identified. This applies to both cost parameters within the business and cost parameters relating to work done by external advisers, etc. The work involved in this step mainly consists of making sure that the relevant cost parameters of businesses are identified before the interviews are conducted in step 11. It is these interviews that finally establish which occupation groups perform a given administrative activity.

The cost parameters used are set out in table 2 below.

**Table 2: Cost parameters for administrative activities**

Cost areas	Cost parameters in the calculation
Internal	<ul style="list-style-type: none"> <li>➤ Number of hours / minutes spent on administrative activity</li> <li>➤ Hourly pay for various occupation groups that perform administrative activities</li> <li>➤ Overhead</li> </ul>
External	<ul style="list-style-type: none"> <li>➤ Number of hours/minutes spent on administrative activity</li> <li>➤ Hourly rate for various external service providers that perform administrative activities</li> </ul>
Acquisitions	<ul style="list-style-type: none"> <li>➤ Expenditure on necessary acquisitions to comply with specific information obligations and/or data requirements</li> </ul>

#### Internal occupation groups

The internal occupation groups are the employee groups within the businesses that perform the administrative activities. The hourly pay of these groups is based on pay statistics from the National Statistic Offices. Hourly pay should be specified in a given years prices and should represent median rates for the entire country irrespective of gender.

The coordinating unit should make a list of the most common occupation groups and their hourly pay and provide it to the consultancy firms. The consultants are obligated to use the occupation groups with their hourly pay from the list when identifying the occupation groups who carry out the administrative activities. If the consultants are unable to find an occupation group on the list that corresponds to the occupation group that performs the administrative activity/activities they are charting, they must suggest a new occupation category with hourly pay. This occupation category must be approved by the coordinating unit.

#### Overhead

The central coordinating unit must set an overhead percentage. In order to minimise the complexity of the measurement it is recommended that only one overhead percentage is applied unless specific circumstances suggest otherwise. As described in



section 4.8. an overhead percentage of 25% has been applied in most measurements so far. The overhead for the individual employee represents costs in addition to direct pay costs. The overhead covers costs in connection with fixed administration costs, such as expenses for premises (rent or building depreciation), telephone, heating, electricity, IT equipment, etc. The overhead also includes absence owing to illness, since the hourly pay used to calculate administrative costs should, as far as possible, be the hourly pay per effective hour.

As there is no central statistical source that can throw light on overheads for all industries and sizes of business, it is difficult to specify an overhead percentage that is both generally applicable and accurate. In cases where the consultants suggest that the guide overhead of is nowhere near the overhead costs that they encounter for the personnel groups performing the administrative activities, they must calculate the overhead percentage themselves. The consultants must state why the overhead percentage differs from the guide overhead percentage and the coordinating unit must approve the percentage.

### **External service providers**

In some cases businesses outsource administrative activities to service providers outside the business. These providers groups are called external service providers.

The central coordinating unit should make a list that specifies the most common external service providers with their hourly pay. The consultants must use the service providers with their hourly pay from the list when identifying the personnel groups who carry out the administrative activities. If the consultants are unable to find an external service provider on the list that corresponds to the personnel group that performs the administrative activity they are charting, they must suggest a new personnel category with hourly pay. This personnel category must be approved by the coordinating unit.

An overhead should not be added to the hourly rate for external service providers.

### **Acquisitions**

Acquisitions are defined as acquisitions that are necessary in order to comply with an information obligation or data requirement and are used solely for that purpose. The costs of such an acquisition are included as a cost parameter in administrative burdens alongside internal and external pay costs.

Examples of an acquisition might be the postage for letters sent in order to comply with an information obligation or data requirement, e.g. the costs involved in sending in annual accounts. Another example might be the cost of purchasing and installing a meter to enable the business to take a reading for subsequent reporting. A third example might be the cost of purchasing external administrative services that cannot be converted directly into hours. Examples of this include costs connected with external payroll administration for which a fixed annual charge is payable. This cost cannot be broken down into a specific number of hours spent by the external supplier.

The costs are calculated per year. Where an acquisition has a service life of several years – e.g. a meter – a fixed annual cost equivalent to the total cost divided by expected service life is specified for the acquisition. After a certain number of years it is assumed that a new meter will be purchased – if this is the type of acquisition in-

volved – on the same terms. Often the Office for National Statistics can provide information on asset lives as used in the National Accounts.

As the examples illustrate, the costs must be incurred solely to enable the business to comply with a specific information obligation/data requirement. A business may well need an Internet connection in order to comply with a digital reporting duty, but because the connection is also used for many other purposes, the costs of the connection are not included directly in the measurement. They are, however, included indirectly through the overhead.

As far as postage is concerned, the relevant postal rate is used plus X Euros per letter to cover paper, printing and insertion costs. Any indirect production costs such as relevant machinery, computer equipment, etc., are already included in the overhead and so do not count. As far as the example of the meters is concerned, it will be possible to obtain information on the costs of purchasing and installing a “normal” meter. This will be compared to costs cited by businesses to ensure it is an appropriate estimate. Then the same cost will be applied to all businesses.

### **Completion of step 7**

The administrative activities are split into a number of cost parameters that can be evaluated at interview.

#### **5.2.8 Step 8: Preparation of interview guide**

Tasks at step 8:

- Produce and test interview guide
- Demonstrate interview guide will ensure uniform, consistent and accurate data collection

The purpose of an interview guide is to ensure uniform, accurate data collection which ensures that all the information to be used for calculations in the database is gathered with the greatest possible precision. The guide should be tested, for example through pilot interviews to ensure suitable results are obtained.

It is also important for the interview guide to be structured in such a way that the interviewees can answer the questions as precisely as possible, allowing the interview to be conducted efficiently.

In addition to the collection of quantitative data at activity level, it is important that the interview sheds light on qualitative aspects as well so that such information can be included in subsequent reporting. It is, for example, important to gather knowledge concerning:

- Proposals for rule simplification
- Irritation burdens
- Best practice in businesses
- Whether businesses use the information in other contexts (cf. demarcation in relation to other legislation)
- Whether businesses just prepare information for the government or whether they also use it themselves

It is important for the interview guide to give businesses the opportunity to make suggestions with regard to rule simplification and digitalisation initiatives within the information obligations in question. It is also important to note how businesses perceive given regulation, particularly if an information obligation is regarded as especially irritating/onerous.

An important element of the interviews also consists of acquiring knowledge of efficient ways of handling the administrative work, i.e. best practice. Such knowledge can subsequently be used to advise other businesses on what they can do themselves to reduce the costs of the administrative work.

In connection with the interviews it is also important to ascertain whether the information to be provided by businesses is only used to comply with the information obligation in question or whether it is also used in other contexts. This would include reporting to other departments. The information obtained in this way will have to be coordinated with the demarcation of legislation carried out in step 2.

In addition, it is interesting to clarify in the course of the interview whether the business would continue to produce the information in full or in part even if the information obligation were to be discontinued. The basic assumption is that the business complies with the information obligation in question and related data requirements purely because of a statutory requirement. If there is anything to suggest that the business would continue to comply with all or part of the information obligation if there were no statutory requirement this should be stated for each information obligation. On this basis it is possible to take account of areas where the administrative burden may be only a small proportion of the total cost measured (see figure 2 in section 2.2.).

Most businesses would, for example, keep books even if there were no government requirement for them to do so. Bookkeeping helps give businesses an adequate information basis concerning their own financial activities. However, they may not keep such detailed records of their financial transactions if there were no specific statutory requirements to do so.

### Completion of step 8

The firm of consultants prepares an interview guide, which is approved by the coordinating unit.

#### 5.2.9 Step 9: Expert review of steps 1-8

Tasks at step 9:

- Produce end-of-phase report summarising all work undertaken in phase 1, including specific information outlined in steps 1 to 8, for review by the relevant **monitoring group** (consisting of representatives from the relevant department(s), the coordinating unit, business organisations and businesses and other experts/key stakeholders)
- The monitoring group quality assure work undertaken in phase 1 and approve commencement of phase 2

## Completion of step 9 and end of phase 1

Based on the material that is produced continuously in connection with phase 1, the consultants have to draw up an end-of-phase report for the work in phase 1 that describes the implementation of steps 1-8, including how the work of identifying the components of business-related regulations was done, which information obligations and data requirements are important, what demarcation has been done in relation to other legislative areas and integrated processes, which administrative activities are relevant, the segmentation of businesses, etc.

The report must be submitted to the responsible department and presented to the monitoring group for approval. The consultants decide in consultation with the coordinating unit and the responsible department whether the monitoring group's comments give rise to changes. Once any such changes have been implemented, phase 1 is completed.

## 5.3 Phase 2 - Time and cost data capture and standardisation

Based on the preparatory analysis in phase 1, the task in phase 2 is to gather empirical data from interviews with a selection of typical businesses affected by a given piece of legislation. The overall task is thus to fill in all the "cells" in the data structure for the individual segments with standardised figures for each information obligation, data requirement, administrative activities and cost parameters. In most cases, this is done on the basis of at least three in-depth interviews with typical businesses in each of the identified segments.

### 5.3.1 Step 10: Selection of typical businesses for interview

Tasks in step 10 are:

- Draw up plan of how to identify businesses to interview including an estimate of total number of interviews
- Selection of businesses for interview to cover all segments and information obligations to be estimated using interviews
- Packaging of interviews to ensure the most effective use is made of business time and that full coverage is achieved
- Information to provide to businesses produced in co-operation with the responsible department and the coordinating unit.
- Selection of further businesses/repackaging of interviews based on progress with interviews in step 11

Businesses can be selected for interview in several ways. In the case of an information obligation where the target group is easy to define and where a large proportion of the target group is judged in advance to be affected, one option is to take a random sample and start to contact the businesses to arrange an interview. When it comes to screening the businesses for interview, the businesses can be asked a few questions with a view to gaining an indication as to whether it is typical of the target group. It is also possible to use this initial contact as an actual survey, with the businesses being asked about outsourcing, IT use or other matters that are judged sig-

nificant with regard to the business's resource consumption in complying with an information obligation.

In some cases it will be difficult to find sufficient affected businesses using the above method. Here it may be advantageous to make use of the often very concrete information held by the responsible department on the individual businesses covered by the given information obligation. In such situations it will be possible for the responsible department, working in cooperation with the coordinating unit, to write to some of the affected businesses and offer them the opportunity to take part.

The selection of businesses should result in it being possible to implement interviews with at least three typical businesses in each business segment. This will provide an insight into the resource consumption of a normally efficient business with regard to the information obligation in question.

While one business can logically only cover one segment with regard to a given information obligation, the same business can be interviewed about other information obligations within the legislative area by which it is affected.

Consideration should also be given to whether external experts can be involved in connection with assessing the administrative costs for a normally efficient business. With an external expert it is possible to cover several business segments at once with regard to a given information obligation. An accountant, for example, will often be able to assess the administrative costs for a number of business segments. The assessments made by external experts must never be used in isolation, however.

### **Completion of step 10**

The consultants draw up a plan of how to identify businesses to interview and the total number of planned interviews. Both parts of the plan should be approved by the coordinating unit. The procedure must also be described in the status report to be produced at the conclusion of phase 2.

Information about the process, why administrative costs are being measured, etc will be produced to give to the businesses. Businesses are contacted ahead of being interviewed. It is normally the firm of consultants that contacts the businesses. In rare cases however it will be more appropriate for the responsible department or the coordinating unit to make initial contact with the businesses.

### **5.3.2 Step 11: Business interviews**

Tasks at step 11:

- Conduct interviews with businesses as determined in step 10 using the interview guide produced at step 8
- Assess responses to determine if a stable result for the normally efficient business has been identified
- Conduct further interviews if necessary to identify the normally efficient response

Using interviews with businesses that are affected by the legislation, it is possible to identify which of the 16 standard administrative activities a business has to carry out in order to comply with a data requirement and how much time is spent on each ac-

tivity. This makes it possible to evaluate the individual data requirements that make up an information obligation. In some cases it will not be possible for the business to say how long it spends on each administrative activity. In such cases it may be necessary to ask how much time is spent on complying with the actual data requirement and how that time is divided between the administrative activities that are carried out in order to comply.

The interviews will also make it possible to validate the information obtained with regard to time, wages, outsourcing, etc.

Implementing the interviews with businesses is a task that requires experienced interviewers with fundamental knowledge of the method and area of regulation. The interviewers must use the interview guide, prepared under step 8, and the interview itself should take the form of a qualified dialogue between the business and the interviewer.

There are three ways of interviewing businesses:

- **Personal interviews** with businesses are the preferred method for identifying the administrative costs of regulation. The interviews typically last 1-2 hours for each business, but this can vary depending on the complexity of the area of legislation in question. In the case of complex areas of legislation it may also be an advantage to have two interviewers.
- **Telephone interviews** with businesses can be used in cases where only the costs of isolated information obligations have to be identified and where the interview may be expected to last less than half an hour.
- **Focus group interviews** with a small number of businesses and relevant experts may be an option in the case of highly complex legislation. The discussions of the focus group can, for example, help to analyse complex information obligations correctly, including the administrative activities that a normally efficient business has to carry out and how long they take.

Specifically with regard to personal interviews and telephone interviews, it is important for the interviewers to be sure both during and after the interview that the business interviewed can still be described as typical as far as resource consumption is concerned. It is difficult to set out clear criteria for when a business is not normally efficient, but resource consumption that is substantially different from that specified by other businesses *without* there being a good explanation for the discrepancy must be regarded as not meeting the criteria for a normally efficient business (see figure 5). If a business is excluded from the data material, it must be replaced with a new business, which will have to be interviewed.

## Completion of step 11

The consultants must describe the procedure for implementing the interviews for use in the status report to be produced at the conclusion of phase 2.

### 5.3.3 Step 12: Completion and standardisation of time and resource estimates for each segment by activity

Tasks at step 12:

- Standardise results for each segment to provide a single estimate for a normally efficient business to complete each administrative activity
- Use experts to estimate results where there are gaps in the interview results or where determined at step 6

#### Identifying the normally efficient business

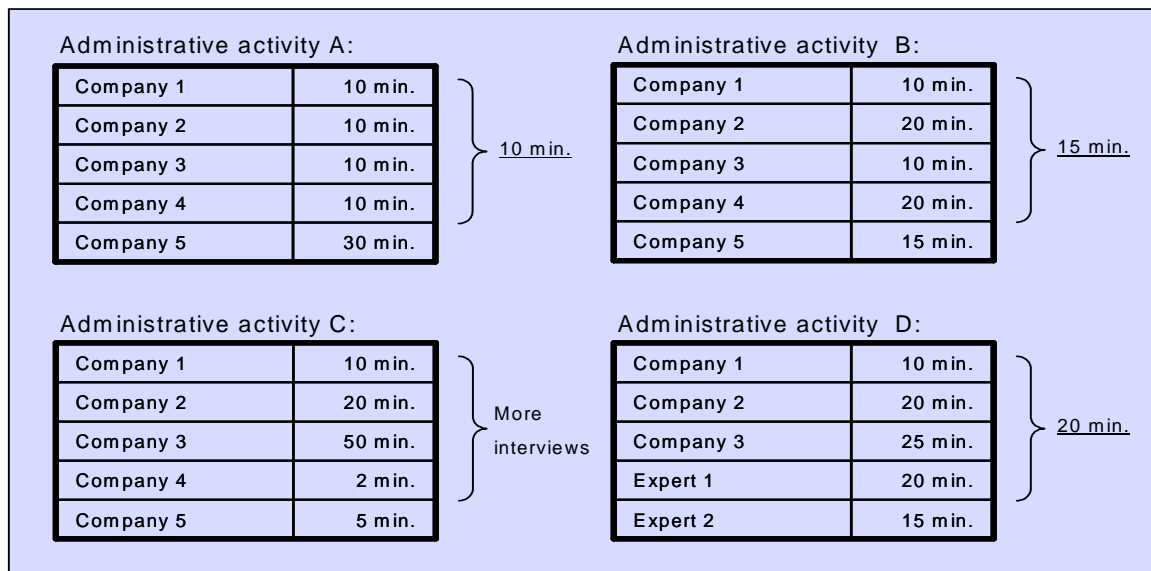
When all the interviews have been carried out, the results have to be summarised for the individual business segments. Based on the interview material, an assessment must be made of how long it takes a normally efficient business to carry out the various administrative activities required to comply with a data requirement for a given information obligation. Then the business’s internal costs and costs for external assistance are calculated.

In other words, based on the information provided by the businesses in the interviews, the consultants have to make a qualitative assessment of how long businesses spend on each individual administrative activity connected with compliance with a data requirement. This should make it possible to insert a standardised figure in the data template. It is important in this context to make a critical assessment of the individual results and decide which results are most reliable. It goes without saying that this is a time-consuming process in which it is important to document the individual considerations on which each choice is based.

The approach does not entail calculating a mean average uncritically on the basis of the data collected. Instead a standardised figure has to be set on the basis of the data collected and any expert assessments.

Figure 5 shows how the time consumption for a normally efficient business can be calculated and illustrates where a business can be described as normally efficient or not.

**Figure 5: Identifying the normally efficient business**



As far as activity A is concerned, business 5 is clearly different from the others and therefore should not be counted as a normally efficient business. There is no need to carry out further interviews though. In the case of activity B, the consultants have assessed what the level for a normally efficient business should be. Further interviews will have to be conducted with regard to activity C because the answers given by the businesses vary too much for it to be possible to assess the level for a normally efficient business. In this case consideration should also be given to whether the businesses selected are not typical or whether it is simply because specific circumstances mean that the businesses have different resource consumption. In this case the segmentation carried out as part of the preparatory analysis should be reconsidered and, if necessary, further segmentation carried out, resulting in more business interviews. In the case of activity D an expert assessment should be made of what the level is for a normally efficient business.

Before aggregate results can be calculated, it is necessary to ensure that each data requirement/activity/segment cell has an estimate for the normally efficient business for all relevant parameters.

Having identified such estimates using the results of business interviews, any gaps must now be filled in using estimates. Such gaps may arise because of issues arising in the interview process or they may be areas left for expert assessment.

Estimates can be derived using expert groups, including representatives from departments and business. Measurements for other similar cells can provide a useful source of information (as described in step 6).

## **Completion of step 12**

All the cells in the data structure are filled in with the relevant standardised entries.

### **5.3.4 Step 13: Expert review of steps 10-12**

Tasks at step 13:

- Produce end-of-phase report summarising all work undertaken in phase 2, including specific information outlined in steps 10 to 12, for review by the relevant monitoring group (consisting of departments, business representatives, the coordinating unit and other experts/key stakeholders)
- Monitoring group quality assure work undertaken in phase 2 and approve commencement of phase 3

## **Completion of step 13 and end of phase 2**

Based on the material that is produced continuously in connection with phase 2, the consultants have to draw up an end of phase report for the work in phase 2 that describes the implementation of steps 10-12, including an account of the choices and estimates made.

The end of phase report must be approved by the coordinating unit and responsible department and presented to the monitoring group for approval. The consultants decide in consultation with the coordinating unit and the responsible department



whether the monitoring group's comments give rise to additional work. Once any such work has been implemented, phase 2 is complete.

## **5.4 Phase 3 – Calculation, data submission and reports**

### **5.4.1 Step 14: Extrapolation of validated data to national level**

Tasks at step 14:

- Scaling up of approved, standardised data from phase 2 to the national level for each administrative activity and segment
- Produce totals required for reports at step 15, including total costs by segment and information obligation, by information obligation only, by regulation, by departmental organisational unit and by department

Once the standardised data from phase 2 have been approved, the validated data material has to be scaled up to national level for each individual segment in the analysis. This is generally done by multiplying the standardised time and resource consumption (time x pay costs (inc. overhead)) for a normally efficient business in a segment by the population of the segment and by the frequency. The results are then combined.

### **Completion of step 14**

The consultants make the relevant calculations, which then form the basis for writing the report in step 15.

### **5.4.2 Step 15: Reporting and transfer to database**

In addition to giving the administrative costs for the area of regulation analysed, the report communicating the results from a standard cost analysis must also explain how the analysis was carried out, what problems were encountered in the course of the analysis and how these problems were handled. The detailed requirements for reporting an ex-ante and an ex-post standard cost analysis respectively should be specified by the coordinating unit in a standard reporting template.

The main features of the reporting template for each part of the measurements (e.g. department) could be:

- Focus on the regulations that are the most burdensome and explaining why they are burdensome, including what part of the regulation (information obligation/data requirement) that especially causes administrative burdens for businesses.
- Analyse the source of the department's regulation (EU, domestic, etc) and the burden from each source
- Document proper application of the methodology and any issues for the department. This should include a summary of the measurement process including its timing, the number of interviews conducted, problems encountered, demonstrating agreement where departments have overlapping regulations – i.e. who is taking responsibility, etc. This may refer back to earlier reports but should be presented in such a way as to summarise the main issues without the need to refer back.

- Include chapters that describe the businesses suggestions with regard to rule simplification and digitalisation initiatives. A description of the regulations/information obligations that is regarded as especially irritating/onerous. And cases of best practice.
- Include annexes with complete listings of obligations, burdens, etc.

Before the consultants write the final report, the report contents and the level of detail must have been agreed with both the department and the coordinating unit. This is important to ensure that the recipients of the report get what they expect.

### **Completion of step 15 and end of phase 3**

The consultants write a report in which the main results are presented and which gives a detailed account of the method used and considerations involved.

The coordinating unit and the responsible department approve the report, before being sent to the monitoring group for consideration.

Once the report has been finally approved, the consultants deliver a data set to the coordinating unit based on the data structure.

## 6 Recording changes to a Standard Cost Model baseline measurement

A core element of the SCM is that once the baseline has been measured it needs to be updated to reflect progress on simplification and new regulations that have come into effect. It is important that estimates of administrative costs for new regulation are of a similar quality to the baseline measurement. As described in chapter 3.2. the updating of the baseline measurement essentially is a question of analysing the consequences of new/amended rules in the same way as the baseline measurement (step 1-15). However there are different ways of updating the database since changes in administrative burdens can be the result of new information obligations in existing or amended regulation or a result of the removal of information obligations. Also new intelligent ICT-solutions or a growth in the use of existing solutions can result in changes of the administrative burdens and should therefore be measured. These changes should on a regularly basis (e.g. annually) be recorded in the database.

### Ex-ante or ex-post

Updating the baseline measurement with new regulations/initiatives can be done via ex-ante measurements. Ex-ante measurements are often an important part of the regulatory impact assessment of new regulatory proposals and are measurements of the *anticipated* administrative burdens. An ex-ante measurement is conducted in the same way as an ex-post measurement (step 1-15) the only difference is that businesses don't have any experiences with complying with the regulation and therefore the responses from the businesses must be regarded as somewhat more an approximation than an ex-post measurement. However, due to the SCM's high degree of detail the results of an ex-ante measurement are very reliable. Using ex-ante measurements to update the database it is important that costs will only be added to the stock of regulation when they are finalised. For example, legislation must have been passed and any amendments properly taken into account

In order to get a more accurate picture of the actual administrative burdens in a new regulation/initiative the up-dating of the baseline measurement should be based on ex-post measurements – implying that a new regulation/initiative are measured when businesses have experience with complying with the regulation and therefore can give a more accurate estimate of the time spend on complying with the obligation.

### Different updating methods

The approach for updating changes in the administrative burdens in the database depends on the character of the amendment of the regulation/digital initiative. However it is always important to map the new or amended regulation into information obligations and data requirements.

- **When an existing information obligation/data requirement is removed or changed:**

In such cases it can be quite simple to update the database. If an information obligation/data requirement is fully removed the obligation can also be removed from the database. If the frequency or the population of an information obligation/data requirement is changed, it is also simply a question of changing the frequency/population in the database. However when the amendment

is more complex it might be necessary to conduct new interviews with businesses and follow the step by step guide in order to get a valid estimate of the change.

- **When a new law/information obligation/data requirement is added:**  
In these cases there are generally two possibilities. If the new information obligation etc. is similar to an information obligation that has been measured it might be possible to use the data from the already measured information obligation. In these cases it is of course important to be aware of differences in rates, frequencies and populations. However if the new information obligation does not resemble an already measured information obligation it is necessary to go carry out a new measurement and go through step 1-15.

### **Structural changes**

In order to make sure that the level of administrative burdens in the database only varies because of changes in policies it is recommended to keep a number of structural indicators constant. Thus economic indicators like inflation and wage level as well as business structure indicators like the population of businesses in different industry sectors and the number of employees should be frozen.

## 7 Using the Standard Cost Model measurement in the simplification process

SCM measurements highlight where areas of regulation ripe for administrative burden reductions exist. Due to the action-orientated nature of its results, the natural extension for SCM measurements is simplification.

The key advantage of using the SCM measurements for simplification is that ‘what gets measured gets done’. The SCM provides a crucial baseline and source of ideas for simplification opportunities.

### 7.1 Simplification process

Simplification work should involve a number of key stages:

- 0) Focussing, planning, organising and anchoring work;
- 1) Working with inputs from SCM measurements, enterprises, and authorities (potentially mixed committees); it is useful to gain stakeholders suggestions for simplification to discover the regulatory areas they find most burdensome and irritating;
- 2) Assessing all potential proposals that could reduce administrative burdens and their impact (including how they will be delivered and who could be affected);
- 3) Analyse the consequences of the implementation of the identified simplification proposals
- 4) Summarising initiatives and recommending solutions to reduce burdens;
- 5) Implementing simplification projects

Denmark has developed a Digital Toolbox to systematically review legislation for simplification that contains the above-mentioned stages (6 phases in total). A digital toolbox is a detailed guide for people working with simplification in the ministries. It can be used systematically in the simplification work or as “a place to go” when needing guidance and inspiration for legislative simplification.

### 7.2 Advantages of SCM for simplification

The advantages of adopting the SCM in the simplification process are numerous:

- By using the method it is possible to point out some specific parts of the legislation that are particularly burdensome for the businesses to comply with;
- A baseline measurement reveals where in business processes administrative costs occur, and thus where simplification can be accomplished to greatest effect;
- The ABC classification of the origin of the administrative burdens shows where the simplification effort should be focused;
- The collected data may be employed in analysing how amendments to an information obligation will affect the administrative costs: using a database it is

possible to simulate changes in the regulation in order to examine the consequences for stakeholders;

- The SCM may provide inspiration for new digital initiatives, or greater data sharing between government agencies;
- The SCM assists in the identification of which department/ministry is responsible for burdensome regulation;
- The SCM assists departments/ministries in identifying the total costs of administrative burdens;
- Furthermore the qualitative results from the baseline measurement are highly relevant. They can help identify which burdens provide the largest 'irritation' factor for business or areas which businesses find inappropriate or difficult to comply with.

### 7.3 What does simplification include?

Simplification work includes:

- Deregulation – removing regulations from the statute book, leading to greater liberalisation of previously regulated regimes;
- Consolidation – bringing together different regulations into a more manageable form and restating the law more clearly;
- Rationalisation – using “horizontal” legislation to replace a variety of sector specific “vertical” regulations and resolving overlapping or inconsistent regulations;
- Administrative burdens reductions (simplification) – reducing the length of forms, increasing the intervals between information requests, sharing data etc.

To assist departments in identifying potential administrative burden reductions for simplification plans the UK have developed a checklist for departments to use.

#### Example of an administrative burden simplification checklist:

You should look for burden reduction potential by considering whether:

- an information obligation can be removed altogether or, if not, whether the number of enterprises affected by a regulation can be reduced by targeting businesses of a certain size or in a particular sector. This may be achieved by removing the need for a form, or reducing it in size (you should look at the form-filling requirements you currently impose by calculating the total number of forms and looking to rationalise requirements);
- the intervals between information requests can be increased, or whether information can be provided on an exceptional rather than a regular basis;
- all of the information requested is necessary, or whether it can be obtained from another department or regulator as part of a data-sharing initiative;
- there are better ways information from business can be delivered, eg by improving form design, making them simpler to complete and easier to understand, pre-populating forms,

and making forms more user friendly, for instance, by allowing information to be delivered in the way businesses would compile it for their own purposes;

- more resources could be directed to provision of advice and guidance in order to reduce the time taken to understand regulations, and any associated data requirements;
- reducing the need for senior staff or specialist consultant involvement with information obligation requirements. The greatest benefits of this type of administrative burdens reduction would be felt where a business is no longer forced to bring in a specialist contractor or consultant (such as a legal-expert or accountant) to comply with the information obligation.

Whilst SCM measurements are key to simplification work, simplification also encompasses a bigger picture, for example encouraging culture change.

This document does not comprehensively cover all elements of simplification, however work is currently ongoing within the SCM network to address this.

## 8 Cross country benchmark and comparison studies

### 8.1 Introduction

The SCM provides transparent measurements, which are ideal when trying to simplify legislation and lower administrative burdens. The SCM also makes it possible to make comparisons between countries. Such comparisons/benchmarks can provide countries with fresh ideas for reducing burdens. They can also be used as a tool to highlight the impact of international legislation, especially EU regulation. Generally two types of benchmarks can be carried out:

- 1) Benchmark/comparison identical areas of regulation (e.g. the VAT or specific sectors – the transport sector, the financial sector etc.)
- 2) Benchmark the implementation of EU-Directives/Regulations in member states

In this chapter we will describe a framework for benchmarking the implementation of EU or other international regulation (**option 2** in the above-mentioned).

Conducting a benchmark presents a number of specific challenges. It is important that any differences in measurements in each country are understood and as far as possible minimised.

In the next sections the process of benchmarking the implementation of common rules with the SCM method is described. First some important preconditions for a good benchmark are outlined. In section 8.3 a step-by-step guide is provided.

### 8.2 Choices to be made before starting a benchmark

Benchmarking between countries is complex. There are a number of preconditions for a good benchmark:

#### Preconditions

1. A clear goal must be defined
2. Countries must be comparable
3. Objects of comparison need to be comparable or identical
4. A consistent methodology including a clear set of indicators

#### 1. A clear goal must be defined

When starting a benchmark it is very important to have a clear goal (what should the results of the benchmark be, what do we want to use the benchmark for etc.). The goal affects the selection of the countries that can be benchmarked, and the set of regulations, which can be compared.

For example, if countries want to learn how international regulation has been implemented in different countries, and are interested in efficiency gains to be reached without considering policy changes, it can be argued that a benchmark with a country that has made completely different policy choices when implementing (such as having 1 rather than 3 VAT rates) may be less helpful than a comparison with a more similar country. As such it is important to keep the goal in mind when selecting the



set of regulations and the countries for benchmarking. It is best to analyse and describe the complete context before starting a benchmark.

## 2. A comparable context

Countries differ socially, historically and economically with each other. This affects the way a country implements regulation, including international regulations, which may be of interest for benchmarking. To ensure the lessons learned from benchmarking are maximised, the basic differences between the countries involved should be understood.

Countries do not have to be identical to conduct a benchmark but they must be reasonably comparable. For example comparing two EU member states will provide useful information due to the large amount of basic common regulation. A comparison between an EU member state and a developing economy in Africa may be less useful as the difference are likely to be large and reflect very different economic circumstances.

To ensure that a useful benchmark can be undertaken, the social, historical and economic differences between the countries should be understood. This should focus on those differences likely impact on the regulation being compared. Documentation of the known differences is a key element in the reporting of benchmarks.

## 3. Objects of comparison need to be comparable or identical

For a good benchmark it is important that the objects being compared are comparable or identical. This naturally is the case if you choose to benchmark common rules (e.g. EU-legislation).

## 4. A consistent methodology

The most important precondition for a benchmark of administrative burdens is that the measurements are carried out in exactly the same way. This is critical to ensure that differences observed are due to differences in the regulations and not simply different approaches to measurement. The methodology for measuring administrative burdens is described in this manual. However because it is a framework it allows choices that are important to be aware of if you wish to benchmark. To conduct a benchmark the following points need to be agreed:

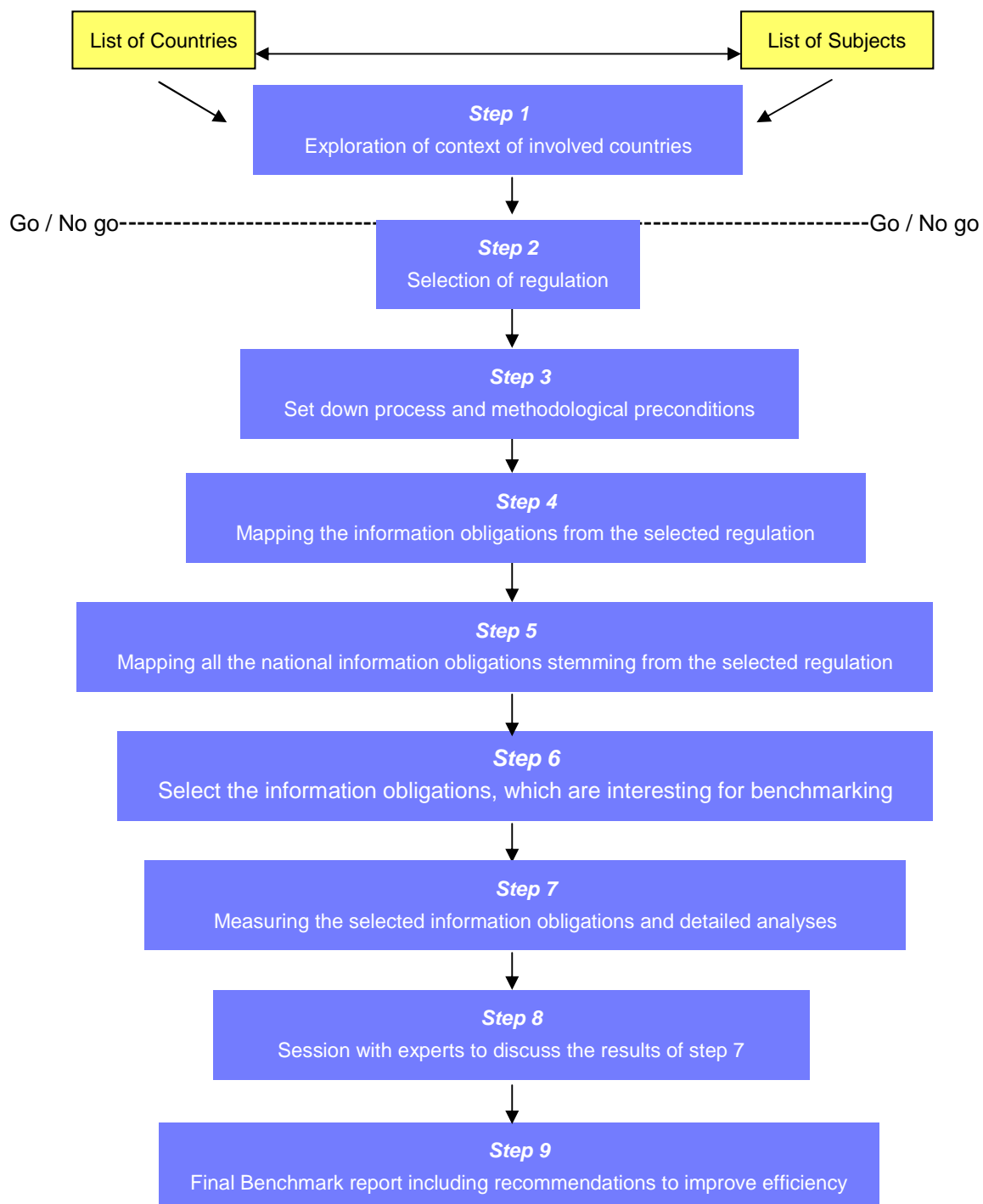
- Definitions; same definition of information obligation, government regulation, businesses etc.
- The level of detail in the measurement.
- Collected data; agree on which data will be collected and how they will be reported. For example; are the businesses segmented by size (small, medium and large firms) or not?
- How is the overhead calculated?
- What is the approach to activities that a business may choose to continue in the absence of regulation (normal business costs)?
- How are one-off costs dealt with?

These preconditions need to be considered and agreed on before starting the actual benchmark. As many countries have already measured a wide range of national as well as international originating rules it is naturally possible to make use of these measurements. In that case the definitions etc. applied in the measurement should be clarified.

### 8.3 The process of benchmarking the implementation of (EU) regulation step by step

The benchmarking process consists of nine steps. These are shown in figure 1.

**Figure 1: The benchmarking process**



### Step 1; Exploration of context of involved countries

As outlined in section 8.2, countries differ socially, historically and economically with each other. This affects the way a country implements regulation. If countries want to learn from each other about how regulations are implemented, they need to be (within reason) comparable. Before starting a benchmark it is important to examine the comparability of the different selected countries.

### Step 2; Selection of regulation

For a good benchmark it is important that the objects of comparison are comparable or even identical. Therefore benchmarking common international rules is rational.

In this step the participating countries should to draw up a list of international legislation that they would like to benchmark. The list needs to be agreed upon by all participating countries before proceeding to step 3.

### Example of rules for benchmarking

List of rules for benchmark:

1. EU Directive 98/76 (amending Directive 96/26)
2. EU Directive 76/914
3. EU Directive 2003/59 (amending Regulation 3820/85 and Directive 91/439/EEC and repealing Directive 76/914)
4. EU Directive 96/35
5. EU Directive 2000/30
6. Etc.

### Step 3; Set down process, indicators and methodological preconditions

After the countries have agreed on the list they need to agree on a timetable and set the methodological preconditions. It is especially important to discuss and agree on the definitions that will be used, the level of detail in the analyses, how the overhead is calculated and how normal business costs<sup>5</sup> and one-off costs will be dealt with.

### Step 4; Mapping the information obligations stemming from the selected legislation

Before the actual measurement can be started it is necessary to map all information obligations stemming from the selected regulation. A list has to be drawn up with:

- a) all the obligations from the selected regulations that lead to information obligations when implemented (for example an obligation like; “arrange good inspection”) and
- b) Information obligations directly prescribed in the selected regulation

Figure 2 shows an example of how such a list may look.

<sup>5</sup> Normal business costs are costs that businesses may choose to incur regardless of the presence of regulation.

It's important that all participating countries agree on the list, because the selected (information) obligations are the objects of comparison for the benchmark.

Figure 2: Reporting sheet on information obligations stemming from EU legislation (the examples are from a Dutch-Polish benchmark of the transport sector)

Law	Directive on admission to the occupation of road / passenger transport			
EU information obligations				
EU nr	Law and article	Obligation	Description obligation	Remarks
1	3.1	Presenting, reporting and showing information/reports	Conditions of road transporters. Companies that want to execute this profession have to be reliable, have to own sufficient financial resources and have to meet the conditions of professional skills	
2	3.2	Presenting, reporting and showing information/reports	MS set conditions, that are in force on their territory, that companies in the MS have to meet to be able to meet the demand of reliability.	

#### Step 5: Mapping all the national info obligations

When all countries have agreed on the list of information obligations stemming from the selected regulation the next step can be taken.

All countries have to map the implemented information obligations that are stemming from the selected international legislation. Countries need to fill in a format, which contains the following information:

- The international (information) obligation
- The national information obligations stemming from the international legislation
- A description of the national information obligation

Below an example is given of how the format could look like. This format is linked to the format of Step 4 (figure 2).

Figure 3; Reporting sheet on national information obligations stemming from the selected EU legislation

		National obligations			
EU nr	Nat nr	Law and article	Obligation	Description	Remarks
	Netherlands				
1	1	Law on Passenger Transport	Application for a license/permit...	Only a company that meets the conditions of reliability, creditworthiness and professional skills are granted a license.	Exemptions exist conform AMvB.
2	2	Decision on Passenger Transport 2000, art 22	Presenting, reporting and showing information/reports...	Collective passenger transport or taxi transport. The transporters here meets the conditions of reliability, if he submits the statement of good behaviour (which cannot be older than 2 months).	

### Step 6; Select the information obligations, which are interesting for benchmarking

For the actual benchmark the information obligations need to be measured and analysed in more detail. This takes a lot of time so it may be useful to select a sample (10 for example) information obligations, which are of particular interest to benchmark. Field experts and experts in the field of administrative burdens select the most interesting information obligations together.

At the end of this step all countries need to agree on the list of information obligations that are selected for the actual benchmark.

### Step 7; Elaboration of the selected information obligations into more detailed level

When all countries have agreed on the list of information obligations that are selected for the benchmark, these information obligations need to be measured and analysed in more detail<sup>6</sup>. The following information is needed to benchmark the information obligations:

- Number of international legislation
- Short description of the international information obligation
- Detailed mapping of the data requirements and the administrative activities of the international information obligation under review
- Detailed mapping of the data requirements and the administrative activities and visualization of the national implementation of the international information obligation
- Measuring the administrative burdens of the information obligations:
  - Description & size target group
  - Thresholds & exemptions for target groups
  - Frequency
  - Administrative costs of information obligation (P)
  - Time to fulfil the information obligation (T)

A lot of information is already known from steps 1 to 6. All this information has to be put in a format, which is identical for all participating countries. In annex 3 an example is given of how such a format could look.

### Step 8; Session with experts to discuss the results of step 7

In this step the actual benchmark takes place. A group of experts of the involved countries discuss the outcomes of step 7 and see which lessons may be learned from the other participating countries.

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<sup>6</sup> The information obligations may previously have been measured. In that case it is of course possible to use the already completed SCM measurements.

It is very important that the experts responsible for the regulations are involved in steps 7 and 8. They have to make sure all information is correct and they are the ones who are responsible for simplifying legislation (if needed).

### *Step 9; Final benchmark*

After the session a final benchmark report has to be drawn up. This should include recommendations for each country to simplify and/or improve the efficiency of their regulation.

## **Annex 1: Frequently asked questions regarding the ‘decision tree’ for determining the origin of the administrative burdens.**

In section 3.6 and 5.2.1 it is described how the origin of the administrative burdens can be determined. Below follows a couple of frequently asked questions regarding the classification in the seven A, B and C categories.

**Are category B information obligations always included in European Directives? And are category A information obligations always included in European regulations?**

No. The allocation in categories is separate to a direct (or otherwise) operation of EU legislation. Administrative burdens in category A result from information obligations that are stipulated directly by European law. This means that the information obligation and the way in which it should be implemented, is described. Such stipulations are found both in regulations and directives and other international legislation. This similarly applies to information obligations in category B. As far as regulations are concerned, the member states may have a degree of freedom in their implementation.

**The law offers the possibility of meeting information obligations with a national or international seal of approval. In which category should these information obligations be categorised?**

Meeting the requirements for an international seal of approval is often only relevant for companies operating internationally. The seal of approval stipulated in an international context is ranked in category A or B. The national seal of approval is stipulated by law and applies to all companies operating in the National government. The administrative burdens of these information obligations are then classified in category C.

**Certain information obligations have been harmonised between member states in separate treaties and no general EU legislation. In which category should these information obligations be classified?**

Classification into categories is directed at all international legislation which means that, besides EU legislation, other international agreements are also taken into account. Examples of these are the Rijnvaart Convention, the Montreal Protocol, the Aarhus Treaty and the IATA Convention, the IMO Convention, etc. Depending on the way in which these treaties impose information obligations and their implementation, these are categorised into category A or B.

**An information obligation falls partly under A or B and partly under C. However, the exact proportion divided across the categories is unknown. How can this be classified?**

In some cases, it is difficult for policy officers and jurists to indicate the exact proportion divided across the categories. For instance, there are European directives for the approval of certain measuring instruments, but not others and the relation between these two groups of instruments is unknown. In these cases, the distribution is determined in consultation with the executive bodies involved. Here, for instance, the number of instruments that conforms to international requirements is approved and the number of instruments that conforms to national requirements is approved as a means of distribution for administrative burdens.

**Certain information obligations have been implemented on the basis of planned EU legislation. Are these information obligations then categorised in categories A or B?**

No. Classification in categories is intended to provide insights into the ranking in categories of current legislation and regulations. This means that anticipating expected international obligations is seen as national policy. These information obligations are therefore ranked in category C. Because ranking in categories must be maintained on a yearly basis, however, this can mean that over time, these information obligations shift from category C to category B or A, once the EU legislation has entered into force.



## Annex 2: Report sheet

Before starting to measure it is important to have a clear and specified data structure/report sheet. Below is shown a simplified report sheet illustrating the basic data required for a measurement.

### Example of a report sheet:

No. Art.	Law/Information obligation/data requirement	Population	Rate		Tariff per hour		Time (hour)		Price	Frequency	Nbr of entities	Quantity	$\Sigma(P_i+P_e)*Q$ (total AB)	Regulatory Origin			
			I	E	I	E	A	B						C			
	<b>LAW X</b>																
	<b>Description information obligation A</b>																
1	Data requirement A1																
2	Data requirement A2																
3	Data requirement A3																
	<b>Description information obligation B</b>																
4	Data requirement B1																
5	Data requirement B2																
6	Data requirement B3																
7	Data requirement B4																

## Annex 3: Example of Benchmarking format

(source; the Netherlands)

<b>Subject:</b>	Community license for passenger transport
<b>EU information obligation:</b>	License application for international transport with touring cars and buses
<b>EU legislation:</b>	98/76 & 96/26 & 11/98 & 684/92
<b>1. Explanation European information obligation in activities</b>	
<i>Below a detailed description <u>in activities</u> of the European information obligation under survey here.</i>	
<p>For exercising international road passenger transport a Community license is needed. For the application of a Community license the applicant must:</p> <ul style="list-style-type: none"> <li>▪ Fill out the tender requirements (application form).</li> <li>▪ Show that he/she possesses a entrepreneur license for collective passenger transport or coach services. For this, the entrepreneur shall: <ul style="list-style-type: none"> <li>▪ Be of good repute.</li> <li>▪ Be of appropriate financial standing.</li> <li>▪ Satisfy the condition as to professional competence.</li> </ul> </li> </ul> <p>To keep a Community license, the good-repute requirement, the requirement of appropriate financial standing and the requirement of professional competence should be proofed at least once every 5 years.</p>	
<b>2. National implementation</b>	
<i>Below a detailed description <u>in activities</u> and visualization of the national implementation of the EU information obligation.</i>	
<p>For exercising international road passenger transport a Community license is needed. To obtain a community license, one must obtain a National license (only valid for national transportation) for which applies the same application requirements as described above. Both licenses (National and Community) can be applied for at the same time and on the same application form.</p> <p>A detailed description of each step in the process is given below, followed by a visualization of the process in a graph.</p> <p><u>Ad 1. Fill out the tender requirements (application form)</u></p> <p>The application form can be asked for at the Transport and Water Management Inspectorate. To obtain a license one has to fill out the application form and one has to meet requirements that will be described in the next paragraphs. The tender requirements are based on EU-legislation. One requirement however is added: the applicant must produce a list with the license plate registrations of all company buses.</p>	

When transporting passengers by bus on a regular basis on a regular route within Europe, an additional license must be applied for. The tender requirements to produce, are:

- A time table of services.
- Tariffs.
- An official stamped copy of the Community license.
- Any specialties.
- A map with official route, drop off/pick-up places.
- A travelling schedule, which will give the opportunity to check the drive and rest times.

Ad 2a. Obtain proof of good repute

To obtain proof of being of good dispute a declaration of good dispute must be shown. To obtain this declaration, an application for the declaration must be sent to the municipality where the company is residing together with a letter from NIWO stating that the declaration is really needed. The municipality will then send the application to Central Organization Declaration Concerning Repute (COVOG), which will then judge the application and give (or refuses) the declaration. When applying for a Community license the declaration may not be older than 3 months.

Ad 2b. Obtain proof of good financial standing

To obtain a proof of appropriate financial standing, the company must produce (1) a financial statement with a detailed balance sheet signed by an accountant or (2) a detailed report in a format that is given by the accountants organization National Institute For Register Accountants (NIVRA) and Dutch Order for Accountants-Administrationconsultants (NOvAA). The minimum risk caring company capital should be € 36.302 plus € 4.992<sup>7</sup> per vehicle, with a minimum of € 45.378 for a license for one vehicle.

Ad 2c. Professional competence

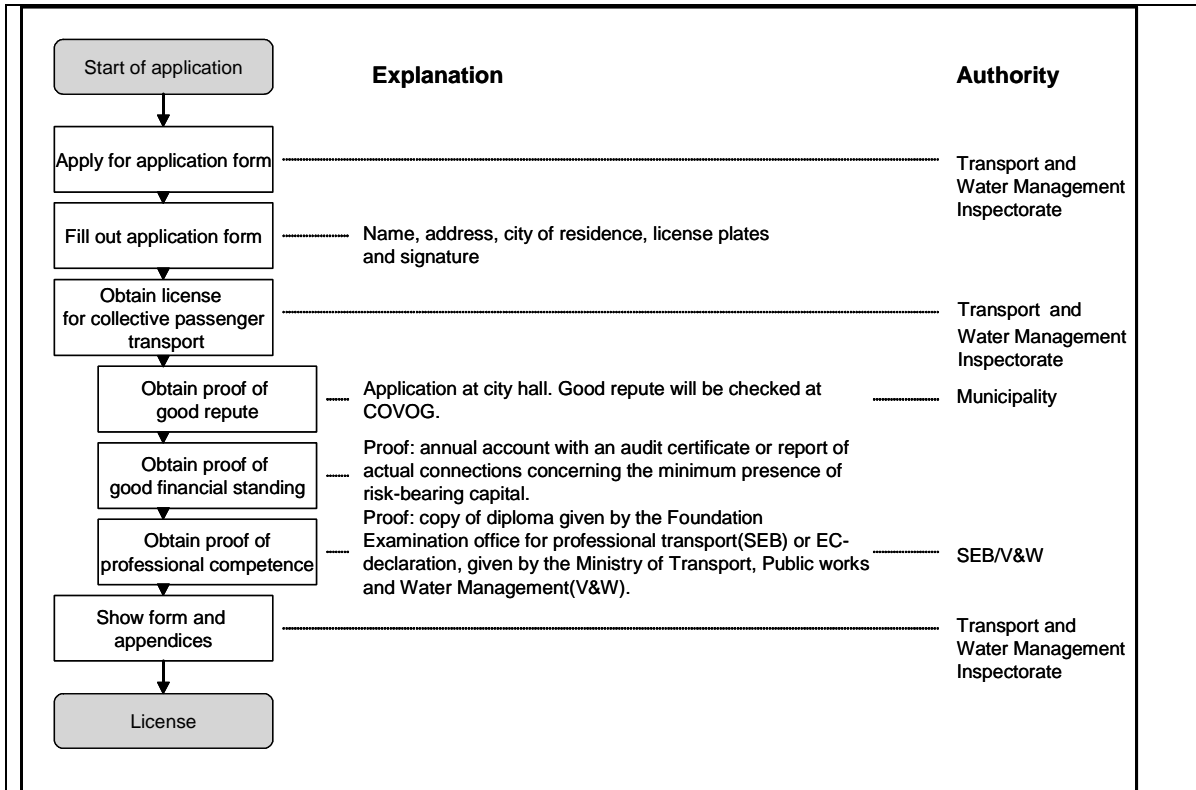
To satisfy the condition concerning professional competence, the entrepreneur needs to have a diploma given by the (Foundation Examination office for Professional Transport (SEB). The exam will consist of the following modules: Company management, Financial management, Truck management, Personnel management, Calculation and a specific course (Taxi, bus, road haulage or international road haulage).

The total cost of the exams are approximately € 300,-. Training for the exams will take 8 full days. The person that is in charge on a daily basis must satisfy the condition concerning professional competence. If more than one person is in charge, at least one must satisfy the condition. Other ways of proofing professional competence are:

- A declaration from an authorized institution that the requirement from 96/26 has been met.
- Proof that the company had a license for transporting groups on 1 January 1982.

To keep a Community license, the good-repute requirement, the requirement of appropriate financial standing and the requirement of professional competence should be proofed at least once every 5 years.

<sup>7</sup> This amount applies for vehicles registered after 1 October 1999. For vehicles registered before 1 October 1999 applies the amount of € 4.537.



### 3. Administrative burdens and key characteristics (national)

Below a description of the relevant national administrative burdens and other key characteristics of the national implementation of the EU information obligation under survey here (eg frequency, thresholds & exemption of target groups).

Description & size target group:	International Bus transport companies; 220 in Holland
Thresholds & exemptions for target groups:	-
Frequency:	Once every 5 years
Administrative costs of information obligation (P):	Unscheduled transport € 59,- Scheduled transport € 272,- Shuttle transport € 545,-
Time to fulfil the information obligation (T):	Unscheduled transport: 1 hour and 18 minutes Scheduled transport: 4 hours Shuttle transport: 12 hours

### 4. Other relevant remarks

Costs

National license (CPV): € 663,-

Community license: € 322,-

Actualise license: € 17,- (also the price of every officially stamped copy of a licence).

March 11, 2015

Annuity News

No comments

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# FIA Complaints Rise Unexpectedly

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By [Linda Koco \(http://insurancenewsnet.com/author/linda-kocoinnfeedback-com\)](http://insurancenewsnet.com/author/linda-kocoinnfeedback-com)  
*InsuranceNewsNet*

By Linda Koco

Annuity News

The number of closed complaints involving fixed index annuities (FIAs) rose 68 percent in 2014 compared with the previous year, according to a report from Index Compendium. That's a decided departure from the past several years, when complaints had been falling, and the researcher who has been analyzing this sudden turn said he is mystified.

The percentage is substantial but it reflects a relatively small number of complaints over all, said Jack Marrion, president of the FIA research firm that released the findings.

His company evaluates FIA complaint activity that the National Association of Insurance Commissioners (NAIC) reports annually.

In 2014, there were 77 closed complaints involving FIAs, he said. That's up from 46 in 2013.

Closed complaints are grievances that state insurance regulators found to be valid and that they closed after resolution. States submit this data voluntarily, so the numbers may not be all-inclusive.

## **It's a puzzle**

Marrion told Annuity News that he is puzzled by the increase. In the past several years, the NAIC closed complaint numbers on FIAs have declined steadily, he said.

The high over the past 11 years occurred in 2007, when the closed complaint total was 230. The total has been less than that in all subsequent years. For instance, the number dropped to 206 in 2009, and then 151, 80, 50, 54, and 46, respectively, in the following years.

But then there was the surprising bump-up to 77 complaints last year.

“If there was a rising tide of complaints involving FIAs being reported by NAIC, you’d think this would have shown up in the complaints reported by the Financial Industry Regulatory Authority (FINRA), too,” Marrion said.

He checked the FINRA numbers but found no correlation.

In 2014, he said, FINRA reported only two FIA-related complaints for the entire year. Both complaints were related to a representative’s failure to disclose FIA sales activity to the broker/dealer. In broker/dealer firms, such sales are considered violations of rules prohibiting “undisclosed outside business activities.”&lt;/p>

The FINRA complaint number for the year is the same as in 2013, when the self-regulatory authority also reported two complaints involving FIAs, Marrion said.

In trying to discern what may have caused the spike in NAIC closed complaint data, Marrion said he considered shifts in product design, index strategy, suitability, distribution, misrepresentation, regulations and other possible triggering issues. But he said “nothing jumped out.”

Liquidity issues have been the top reason for complaints historically, he added, but there was no particular change he could see in that area.

“It could be that 2014 is an ‘outlier year,’” he said. In other words, the data may be something outside the norm. As such, it is something that decision-makers may want to know about but also may want to consider discounting, absent any significant reason to the contrary.

### **Big or not big?**

In terms of overall trends, “the increase is big,” he said. “Or is it?”

He raised the question because the 77 complaints for the year are far below the high of 230 complaints in 2007.

His analysis shows that the 2014 numbers represent one complaint for every \$633 million in FIA premium. “That’s almost identical to 2011, when complaints numbered 50,” he said.

By comparison, in 2013 when there were 46 complaints, the results were better. In that year, there was one complaint for every \$841 million in premium, he said.

Going back to 2008, when there were 206 closed complaints, the picture was worse — i.e., one complaint for every \$100 million.

“In 2007, when complaints numbered 230, there was one complaint for every \$109 million, so that was six times worse than in 2014.”

In doing the 2014 analysis, Marrion said he looked at NAIC Aggregate Complaints, which showed 89 closed complaints involving FIAs in 2014 (and 57 in 2013). He extracted from the aggregate the complaints that were “mis-coded” (for instance, complaints against a carrier that has never sold FIAs). The resulting data refers to closed customer complaints of carriers that either currently offer or previously offered FIAs in 2013. Those carriers are associated with the 77 complaints for 2014.

The Index Compendium ranks the carriers by number of closed complaints per carrier divided by that carrier’s annual sales. On this basis, five of the carriers in the top 10 for 2014 were ranked under 10<sup>th</sup> place last year. That is one more surprising twist to the 2014 complaint picture.

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## Closed Confirmed Consumer Complaints by Coverage Type As of July 25, 2016

Data reflected in this report is voluntarily submitted to the NAIC proprietary Complaints Database System (CDS) by state insurance departments. Not all states provide all of their complaint data to the NAIC. Aggregate report data retrieved is specific only to risk bearing entities within the database and does not include information on specific agents/brokers. Complaints retrieved are those states deemed confirmed. The NAIC does not guarantee the truth, accuracy, quality or completeness of the data and is not responsible for errors, omissions or for results of further use.

**Report Description:** The Closed Confirmed Consumer Complaints by Coverage Type report provides counts and percentages of the types of insurance coverages. The Summary of Coverage Counts section provides count summaries for the seven insurance coverage types and percentages of total counts. The Detail of Coverage Counts section provides counts for the first and second level coverage codes for each insurance coverage type from the NAIC's Complaint Database System. The data codes identified are based on the NAIC Standard Complaint Data Form.

A **Closed Complaint** is a complaint that has been investigated by the state insurance department, and given a resolution code.

A **Confirmed complaint** is a complaint in which the state department of insurance determines:

- a) The insurer, licensee, producer, or other regulated entity committed any violation of:
  - 1) an applicable state insurance law or regulation;
  - 2) a federal requirement that the state department of insurance has the authority to enforce; or
  - 3) the term/condition of an insurance policy or certificate; or
- b) The complaint and entity's response, considered together, indicate that the entity was in error.

### Summary of Coverage Counts

Type of Coverage	2016		2015		2014		2013	
	Count	% of Total	Count	% of Total	Count	% of Total	Count	% of Total
Auto	31,758	43.98%	49,832	39.19%	31,272	31.25%	24,765	36.91%
Accident & Health	25,974	35.97%	47,003	36.96%	39,627	39.60%	24,274	36.18%
Homeowners	7,523	10.42%	18,023	14.17%	17,785	17.77%	8,721	13.00%
Life & Annuity	4,870	6.74%	7,451	5.86%	7,059	7.05%	5,477	8.16%
Miscellaneous	1,138	1.58%	2,556	2.01%	2,026	2.02%	2,005	2.99%
Fire, Allied Lines & Commercial Multi-Peril	599	0.83%	1,423	1.12%	1,557	1.56%	1,317	1.96%
Liability	349	0.48%	875	0.69%	752	0.75%	534	0.80%
<b>Total</b>	<b>72,211</b>		<b>127,163</b>		<b>100,078</b>		<b>67,093</b>	

The percentages may not total 100% because each Type of Coverage % of Total is rounded to the 2nd decimal place.

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Report reflects data reported from the state insurance departments to the NAIC as of 7/25/2016.

**Closed Confirmed Consumer Complaints by Coverage Type  
As of July 25, 2016**

**Detail of Coverage Counts**

Code	Coverage Type		2016	2015	2014	2013
105	Auto	Private Passenger	15,831	24,812	15,744	12,853
107	Auto	Group Private Passenger	52	63	101	81
110	Auto	Commercial	503	897	825	604
115	Auto	Motorcycle	64	135	109	121
120	Auto	Motorhome	48	96	72	56
123	Auto	Motorsport	8	10	6	19
124	Auto	Rental	10	22	22	12
125	Auto	State Specific	52	41	139	50
130	Auto	Liability	10,505	15,417	7,372	6,037
135	Auto	Physical Damage	1,015	1,898	1,539	1,131
137	Auto	Collision	1,345	2,208	1,758	1,184
138	Auto	Comprehensive	574	1,014	975	689
140	Auto	Medical Payments	114	208	254	204
145	Auto	UM/UIM	139	264	229	192
150	Auto	No-Fault/PIP	324	512	391	299
151	Auto	Personal Effects Coverage	3	5	4	6
152	Auto	Policy Proof of Interest	1	11	6	6
153	Auto	Rental Reimbursement	166	259	219	141
154	Auto	Towing	34	55	40	43
155	Auto	JUA Related	2	4	5	4
156	Auto	Physical Damage Waiver	1	5	4	0
157	Auto	Collision Damage Waiver	5	10	12	6
158	Auto	Supplemental Liability	2	2	1	2
159	Auto	Personal Passenger	8	42	99	35
160	Auto	State Specific	949	1,837	1,344	986
185	Auto	Surplus Lines	3	5	2	4
205	Fire, Allied Lines & Commercial Multi-Peril	Fire, Allied Lines	33	71	144	66
207	Fire, Allied Lines & Commercial Multi-Peril	Crop/Hail	1	2	8	2
210	Fire, Allied Lines & Commercial Multi-Peril	Commercial Multi-Peril	252	529	578	576
215	Fire, Allied Lines & Commercial Multi-Peril	Credit Property	1	13	4	7
217	Fire, Allied Lines & Commercial Multi-Peril	Dwelling Fire	76	241	201	171
218	Fire, Allied Lines & Commercial Multi-Peril	Builder's Risk	2	6	5	4
220	Fire, Allied Lines & Commercial Multi-Peril	State Specific	5	14	14	26
225	Fire, Allied Lines & Commercial Multi-Peril	Liability	80	158	151	136
230	Fire, Allied Lines & Commercial Multi-Peril	Theft	9	26	32	22
233	Fire, Allied Lines & Commercial Multi-Peril	Windstorm	12	30	42	27
235	Fire, Allied Lines & Commercial Multi-Peril	Fire - Real Property	61	126	170	126
240	Fire, Allied Lines & Commercial Multi-Peril	Personal Property	19	33	37	30
243	Fire, Allied Lines & Commercial Multi-Peril	Residual Mkt./JUA Related	5	30	23	0
245	Fire, Allied Lines & Commercial Multi-Peril	State Specific	41	132	131	123
285	Fire, Allied Lines & Commercial Multi-Peril	Surplus Lines	2	12	17	1
305	Homeowners	Homeowners	3,860	9,038	9,157	5,007
307	Homeowners	Group Homeowners	12	30	39	43
310	Homeowners	Farmowner/Ranchowner	23	62	49	72
315	Homeowners	Mobile Homeowner	63	184	174	123
317	Homeowners	Condo/Town	125	346	261	171
318	Homeowners	Renters/Tenants	147	273	271	230
320	Homeowners	State Specific	24	54	65	30
325	Homeowners	Liability	109	233	213	184
330	Homeowners	Theft	54	139	128	123
333	Homeowners	Earthquake	10	6	9	10
334	Homeowners	Flood	25	51	77	62
335	Homeowners	Fire - Real Property	608	976	907	758
336	Homeowners	Single Interest	1	3	0	3
337	Homeowners	Medical Payments	3	12	14	4

**Closed Confirmed Consumer Complaints by Coverage Type  
As of July 25, 2016**

**Detail of Coverage Counts**

Code	Coverage Type		2016	2015	2014	2013
338	Homeowners	In-home/Incidental Business	1	4	4	1
340	Homeowners	Personal Property	202	406	388	259
341	Homeowners	Residual Mkt./JUA Related	278	820	1,036	2
342	Homeowners	Replacement Cost	31	96	105	129
343	Homeowners	Loss of Use	42	100	83	57
344	Homeowners	Windstorm	162	415	412	478
345	Homeowners	State Specific	1,739	4,759	4,375	969
385	Homeowners	Surplus Lines	4	16	18	6

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405	Life & Annuity	Individual Life	2,154	3,135	3,079	2,510
410	Life & Annuity	Group Life	241	414	390	320
415	Life & Annuity	Annuities	344	548	559	406
417	Life & Annuity	Group Annuities	27	29	24	20
420	Life & Annuity	Credit Life	12	31	30	33
425	Life & Annuity	Accelerated Benefits	1	3	1	1
430	Life & Annuity	State Specific	27	42	85	43
435	Life & Annuity	Accidental Death & Dismemberment	57	103	84	76
440	Life & Annuity	Association	1	2	4	4
445	Life & Annuity	Equity Indexed	85	105	103	61
450	Life & Annuity	Fixed	88	150	143	79
455	Life & Annuity	Premium Waiver	15	22	18	6
460	Life & Annuity	Single Premium	44	74	62	65
465	Life & Annuity	Term	298	572	528	444
470	Life & Annuity	Universal	554	580	484	298
475	Life & Annuity	Variable	87	171	104	85
480	Life & Annuity	Whole	657	1,181	1,131	871
495	Life & Annuity	State Specific	178	289	230	155
505	Accident & Health	Individual	8,290	13,657	11,283	4,675
510	Accident & Health	Group	4,040	8,224	7,820	7,386
515	Accident & Health	Credit	11	30	51	68
517	Accident & Health	State Specific	176	1,159	1,870	1,796
520	Accident & Health	Accident Only	70	192	172	162
521	Accident & Health	Grandfathered	67	163	73	0
522	Accident & Health	Exchange	1,422	2,284	1,098	0
523	Accident & Health	Pharmacy Benefits	131	218	82	0
524	Accident & Health	Catastrophic	5	20	13	0
525	Accident & Health	Disability Income	289	702	639	615
526	Accident & Health	Bronze	312	389	230	0
527	Accident & Health	Silver	1,059	1,144	562	0
528	Accident & Health	Gold	289	361	217	0
529	Accident & Health	Platinum	168	259	57	0
530	Accident & Health	Health Only	2,653	4,662	4,622	2,945

## Closed Confirmed Consumer Complaints by Coverage Type As of July 25, 2016

### Detail of Coverage Counts

Code	Coverage Type		2016	2015	2014	2013
531	Accident & Health	Small Group	280	481	144	0
532	Accident & Health	Large Group	329	586	167	0
533	Accident & Health	Child Only	1	7	2	0
534	Accident & Health	Multi State	25	39	39	0
537	Accident & Health	Stand Alone Dental	137	335	76	0
538	Accident & Health	Autism/PDD	34	48	23	2
539	Accident & Health	Student Health	21	26	16	0
540	Accident & Health	Long-Term Care	344	681	665	508
541	Accident & Health	Home Health Care	15	34	35	36
542	Accident & Health	Short Term Limited Duration Policy	85	106	45	1
543	Accident & Health	Mental Health	57	114	125	143
545	Accident & Health	Dental	516	1,072	1,195	872
546	Accident & Health	Occupational Accident	2	3	13	5
547	Accident & Health	Limited Benefits	117	155	213	156
548	Accident & Health	Chiropractic	12	16	19	24
550	Accident & Health	Hospital Indemnity	50	132	135	108
551	Accident & Health	Vision	26	69	48	40
552	Accident & Health	HIPAA	2	23	22	6
553	Accident & Health	Unemployment	2	1	0	3
554	Accident & Health	Pre-existing Condition	9	22	21	13
555	Accident & Health	Cancer/Dread Disease	126	225	217	196
556	Accident & Health	Self Funded/ERISA	243	557	444	428
557	Accident & Health	COBRA	20	51	50	41
558	Accident & Health	HMO	2,121	3,208	2,284	1,077
559	Accident & Health	PPO	1,343	3,431	2,856	1,179
560	Accident & Health	State Specific	352	846	937	665
575	Accident & Health	Medicare Advantage	150	261	167	190
576	Accident & Health	Medicare Prescription Drug/Part D	27	52	36	22
577	Accident & Health	Medicare Supplement	261	460	406	443
578	Accident & Health	Medicare Select	12	19	16	16
580	Accident & Health	Medicare Plan A	20	21	15	20
581	Accident & Health	Medicare Plan B	6	13	16	7
582	Accident & Health	Medicare Plan C	9	33	33	19
583	Accident & Health	Medicare Plan D	8	33	30	14
584	Accident & Health	Medicare Plan E	1	5	0	2
585	Accident & Health	Medicare Plan F	130	215	191	211
586	Accident & Health	Medicare Plan G	16	22	17	22
587	Accident & Health	Medicare Plan H	0	2	2	0
588	Accident & Health	Medicare Plan I	0	4	1	3
589	Accident & Health	Medicare Plan J	3	18	7	10
590	Accident & Health	Medicare Plan K	0	2	0	0
591	Accident & Health	Medicare Plan L	1	1	2	0
592	Accident & Health	Medicare Plan M	0	0	0	0
593	Accident & Health	Medicare Plan N	18	25	20	16
594	Accident & Health	Medicare Plans Other/Unknown	52	71	69	112
595	Accident & Health	Medicare Plans Pre Standardized	9	14	19	17
605	Liability	General	181	432	364	287



**Closed Confirmed Consumer Complaints by Coverage Type  
As of July 25, 2016**

**Detail of Coverage Counts**

Code	Coverage Type	2016	2015	2014	2013
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610	Liability	Products	3	10	5	6
615	Liability	Professional E & O	10	41	33	28
617	Liability	Umbrella	29	58	59	58
618	Liability	Directors & Officers	3	2	4	4
620	Liability	State Specific	22	49	61	20
625	Liability	Employment Policy	0	3	7	3
630	Liability	Excess Loss	3	10	5	3
635	Liability	Medical Professional Liability	1	11	7	5
640	Liability	Pollution	0	1	2	1
685	Liability	Surplus Lines	16	27	22	3
695	Liability	State Specific	81	231	183	116
<b>Subtotal</b>						
705	Miscellaneous	Workers Compensation	614	1,535	1,182	1,272
710	Miscellaneous	Fidelity & Surety	42	96	69	63
715	Miscellaneous	Ocean Marine	6	10	8	10
720	Miscellaneous	Inland Marine	56	113	125	72
725	Miscellaneous	Title	46	122	81	90
727	Miscellaneous	In Home/Incidental Business	1	2	2	3
730	Miscellaneous	Mortgage Guaranty	0	1	6	3
733	Miscellaneous	Boiler Machinery	0	2	0	1
734	Miscellaneous	PMI	1	2	2	2
736	Miscellaneous	Surplus Lines	21	45	29	16
737	Miscellaneous	Watercraft	21	61	46	53
738	Miscellaneous	Aircraft	1	2	2	1
739	Miscellaneous	Bail Bonds	21	42	54	58
740	Miscellaneous	Warranty Contract	53	79	87	70
741	Miscellaneous	Federal Programs	28	22	19	10
742	Miscellaneous	Federal Crop	2	3	4	3
743	Miscellaneous	Federal Flood	10	39	33	26
744	Miscellaneous	Travel	118	208	83	35
745	Miscellaneous	State Specific	97	172	194	217



## Closed Confirmed Consumer Complaints by Coverage Type As of July 25, 2016

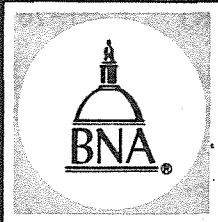
### Detail of Coverage Counts

Code	Coverage Type	2016	2015	2014	2013
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# BNA PENSION REPORTER

■ Retirement Plans ■ Employee Benefit Trusts

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Number 91

SUMMARY

June 21, 1976

IRS Suggests Modification Of Prohibited Transactions Provisions: A way must be found to solve the problems of dual jurisdiction between the Internal Revenue Service and the Labor Department with respect to the prohibited transactions and fiduciary responsibility provisions of the pension law, IRS Assistant Commissioner Alvin D. Lurie tells a meeting of the American Law Institute-American Bar Association. IRS Commissioner Donald C. Alexander sends a letter to Senator Lloyd Bentsen (D-Tex) suggesting modifications in the law to handle the problem. (A-21) . . . Text (R-1)

ALI-ABA Speakers Discuss Litigation, Claims In Fiduciary Area: The Labor Department has indicated to a court of appeals that if the court grants an interlocutory appeal of a district court decision in Daniel v. Teamsters, et al. involving the application of federal securities laws to employee benefit plans, the Department will file an amicus brief, Steven J. Sacher, associate solicitor of labor, tells an American Law Institute-American Bar Association meeting on fiduciary responsibility and prohibited transactions. (A-9) . . . Basic questions which should be addressed in applying for an administrative exemption from the prohibited transactions provisions of the pension reform law are listed by Sacher during an American Bar Association national institute on fiduciary responsibility in San Francisco. (A-4)

Court Approves Agreement Prohibiting Transfer Of Assets: The parties involved in the Usery v. Penn et al. litigation agree and consent to a district court order prohibiting one of the defendants, Ralph W. Penn, from disposing of the assets of Glen's, Inc., during the course of the litigation. Other cases deal with discrimination in benefits and fiduciaries. (A-13) . . . Decisions (D-1, D-5)

Labor Department Seeks Proposals For Study Of Collective Bargaining: A request for proposals to assist the Labor-Management Services Administration in investigating the effects of the Employee Retirement Income Security Act on the collective bargaining process is issued by the Labor Department. The 18-month contract will require an examination of recent trends in pre- and post-ERISA bargaining agreements. (A-3)

Conference Discusses Public Plan Withdrawal From Social Security: Opting out of social security has many labor-relations consequences and officials of a state or local government unit should study the question before notifying the Social Security Administration of its intention to withdraw from the program, a speaker tells a one-day symposium sponsored by the actuarial firm of Edward H. Friend & Company. (A-1)

Increase In Requests For Audits Of Bank Trust Departments Predicted: A substantial increase in requests for audits of employee benefit plans trustee'd by bank trust departments probably will be experienced within the next few months, an accountant tells a conference on financial reporting sponsored by Executive Enterprises, Inc. (A-16)

Tax Reform Proposal Includes Prepaid Legal Insurance Provision: The Senate Finance Committee attaches an amendment to the proposed tax reform act (HR T0612) which would exclude from an employee's income the value or cost of prepaid legal coverage provided by the employer and the value or cost of services performed under a prepaid legal insurance plan provided by the employer. (A-19)...Text (R-2)

- Whether ERISA has caused negotiators to be more cost sensitive in their pension, wage, and other benefit negotiations.
- Problems confronted by unions in informing their members of the requirements of ERISA during the course of the agreement and in preparation for and during negotiations and ratification.
- Whether ERISA forced any midstream adjustments in contracts and the nature of the adjustments.
- How management or labor calculated the relative benefits and costs of pensions vis-a-vis wages and other benefits.
- How the levels and forms of pension provisions in agreements differ from what would have been expected in the absence of ERISA.
- The impact of ERISA on the role of the union in administering pension plans and how the role of the union in pension administration has been altered.

Contractors must submit a technical proposal giving information as to their understanding of the study, experience and qualifications, technical approach, and individual staff experience and a business management proposal including administrative data, certifications, and cost and pricing data.

Proposals must be submitted by July 7 to the Division of Procurement, Office of Administrative Services, Room S1514, New Labor Department Building, 200 Constitution Ave., N.W., Washington, D.C. 20210. Requests for information concerning the contract should be directed to the Department's contract negotiator (202-523-6445).

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#### FIDUCIARY RESPONSIBILITY: SACHER TELLS ABA INSTITUTE KEY QUESTIONS TO ADDRESS IN APPLYING FOR EXEMPTIONS

SAN FRANCISCO -- (By a BPR staff correspondent) -- Five basic questions which applicants for administrative exemptions from prohibited transactions should address were listed by Steven J. Sacher, associate solicitor of labor, during a June 11-12 American Bar Association national institute on fiduciary responsibility under the Employee Retirement Income Security Act.

Sacher noted that the five principles interact and that when a particular exemption fails to meet Labor Department standards in one of the areas, special circumstances in another of the areas might suffice for purposes of granting the exemption. The five basic questions include:

- Is the exemption administratively feasible? This area involves a consideration of the resources of the Department and the Internal Revenue Service in relation to the amount of monitoring by the agencies that the exemption would require.
- Is the exemption in the interests of the plan, the plan participants, and the beneficiaries?
- What safeguards are included in the exemption to minimize or eliminate the risk to plan participants and beneficiaries?
- What type of plan and what type of transaction does the exemption involve? For example it may make a difference if the transaction is "ordinary, customary, and necessary for the on-going operation of the plan," Sacher noted.



● What is the nature of the party-in-interest involved in the transaction? A transaction may be more acceptable to the Department if the party-in-interest involved is remote with little or no actual influence over the plan, he explained.

Sacher noted that the exemption procedure is part of phase two of the three phases of activity at the Labor Department since the enactment of ERISA. The first phase he categorized as "firefighting, or if you prefer, administering combinations of aspirin and tranquilizer on a very selective basis to alleviate certain splitting headaches and badly jangled nerves."

This phase included the postponement of certain provisions of part 4 of Title I of ERISA. These provisions include the designation of named fiduciaries, the trust requirement, and rules on permissible relationships between trustees, investment advisers, and investment managers. The temporary exemption from certain prohibited transaction provisions for securities broker-dealers (BPR 21: R-1) is a good example of phase one activity, Sacher said.

Phase two was described by Sacher as "basic construction, erecting the building blocks in a sensible and solid structure of regulations, interpretations, and case law." The final broker-dealer exemption (BPR 59: R-10) and the final multiemployer plan class exemptions (BPR 79: R-5) are representative of activities in this phase, he stated. He added that this phase consists of procedural developments, for example, the administrative exemption procedure (BPR 32: R-36), as well as substantive actions.

The third phase of Department activity, which is yet to begin, will be the "process of refinement," Sacher said. He noted that while current projects reflect more advanced thinking and concepts on the part of the Department, the "filling-in of the final interstices is still largely in the future."

In response to a question, Sacher said the Labor Department regulations on multiple services should be issued "soon I hope, and I don't think soon is a euphemism." He predicted the issuance of the regulations in proposed form by midsummer.

Careful drafting to limit fiduciary liability is "at best a risky operation," according to Vance Anderson, counsel to the Pension Task Force of the House Labor Subcommittee on Labor Standards.

Anderson noted that under common law the terms of a trust instrument were allowed to influence the standard of care imposed on fiduciaries. Under ERISA it is unsettled as to whether skillful drafting can be used to avoid fiduciary obligations. He cited two arguments often made to support the theory that plan documents should be allowed to modify statutory requirements.

Some individuals are of the opinion that plan design matters are outside the scope of the fiduciary standards included in part 4 of Title I of ERISA, Anderson said. A second theory is that the prudence requirement of section 404(a)(1)(B) of ERISA is to be applied "in light of the character and aims of the plan."

Both of these theories have only "modest support" in the legislative history of ERISA, Anderson noted. He added that "at the risk of being overly critical," the two interpretations may represent "wishful thinking" on the part of those individuals who advocate them.

Anderson questioned to what extent a fiduciary could plead compliance with part 2 or part 3 of Title I of ERISA as a bar to a suit under the fiduciary responsibility provisions of part 4 of that title. He said he did not know how that question would be decided.

In response to a question, Anderson noted that there is nothing in ERISA which says that the Internal Revenue Code will be interpreted consistently with Title I of ERISA. He cited as an example the provision in Title I which permits the return of employer contributions if excess contributions were made due to a mistake. IRS takes the position that this provision contravenes the code and the plan may not provide for such a reversion, Anderson said.

John Welch, of the Los Angeles law firm of Latham & Watkins, served on a panel on fiduciary standards with Anderson and Joseph L. Seligman, Jr., of the San Francisco law firm of Cotton, Seligman, & Ray. Welch argued that careful draftsmanship could make a difference in court in the area of fiduciary responsibility.

In drafting a plan, Welch recommended clearly allocating all fiduciary duties, particularly the duty to appoint, monitor, remove, and replace fiduciaries. He suggested that plan documents provide that the trustee does not have a duty to advise or monitor the investment manager or his performance.

In appointing an investment manager, the trustee should require proof of the manager's qualifications and of proper appointment but proof should not be required of the competence or experience of the investment manager, Welch said.

It is taken for granted that a named fiduciary will not be responsible for the acts or omissions of an appointed investment manager, Welch said. He noted that ERISA does not specifically say that this is true but it was the intent of Congress.

Seligman agreed with Welch that under ERISA it is possible to limit the liability of trustees by drafting very specific responsibility provisions into the plan documents. He noted that in his opinion ERISA has not "materially increased" anyone's legal liability, it has increased only the likelihood of being sued.

Attorneys always have been fiduciaries, Seligman maintained. The question is who is the client. ERISA provides that the plan participants are the clients whereas attorneys traditionally have assumed that the client was whoever paid the fees, in most cases the employer.

In connection with exemptions from prohibited transaction provisions, Theodore Rhodes, with the Washington, D.C., law firm of Miller & Chevalier, listed several types of information that the Labor Department will look at in considering exemptions for loans to a participating employer from a plan.

The Department will want to know what percentage of plan assets the loan would represent, what guarantee the employer is making, the financial stability of the employer, what collateral the employer is offering, the percentage return on the loan, and the percentage return which would be required by a bank, Rhodes said.

Rhodes listed several areas which are being considered by the Labor Department. These include a mutual fund industry request for permission to have an in-house plan, provisions for a plan to sell life insurance to its participants, the insurance industry pooled separate account problem, and the multiple services problem.

If someone has engaged in a prohibited transaction in the past but the activity has since ceased and there was no harm for which someone might bring an action, there would seem to be no reason to seek a retroactive exemption, Rhodes said in response to a question. He added that even if there was harm to someone there still is no absolute requirement to seek an exemption.

Several theories for dealing with the multiple services problem were presented to the institute by Robert Blum, of the Washington, D.C., law firm of Groom & Nordberg.

The first theory is that there exists a total prohibition against any fiduciary providing more than one service to a plan, regardless of the type of service. A second theory provides that there is no prohibition against multiple services in the statute and that, in fact, section 408(b)(2) of ERISA, which allows arrangements between a plan and a party-interest for services "necessary for the establishment or operation of the plan," exempts those who provide multiple services.

In connection with the second theory Blum questioned why, if such an interpretation was correct, Congress provided the bank ancillary services exemption in section 408(b)(6). He noted, however, that it has been the position of the Supreme Court in securities law cases that the presence of a specific exemption will not be construed to mean that there could have been no general exemption intended by another provision.

A third theory relative to the multiple services problem is that the only services included in the prohibition are those services described in section 406(b) of ERISA which delineates specific transactions prohibited relative to fiduciaries, Blum said.

The fourth theory, which involves an interpretation of the section 408(b)(2) exemption in connection with the legislative history, is reconciled easily with section 408(b)(6), with the conference report, with statements made on the Senate floor, and with the exemption applications filed by the insurance, mutual fund, and plan administration industries, Blum said.

The fourth theory provides, in general, that the only multiple services prohibited are when a fiduciary uses plan assets in such a manner as to generate additional fees for himself or when a fiduciary is not subject to independent control so that he can, in effect, "hire himself," Blum stated.

Gerald M. Feder, a Washington, D.C., attorney, told the institute that it is advisable for attorneys to get malpractice insurance to cover themselves in the fiduciary responsibility area.

"In practical terms it is important to behave as if you are a fiduciary" even if you believe you are not because you may not know for sure until it is too late, Feder warned. He noted that the parameters of the term "fiduciary" will be determined in areas with which most pension attorneys are unfamiliar.

A named fiduciary is not a "super fiduciary" in a legal sense but as a practical matter that may not be much comfort because the named fiduciary is the most visible and therefore the most likely to be named and served in an action, according to Cameron Wolfe, Jr., of the San Francisco law firm of Orrick, Herrington, Rowley & Sutcliff.

Wolfe predicted that when law suits begin to develop in the pension area it will be the named fiduciaries who are named and served and he noted that people who serve in that capacity will have to be prepared for this.

Wolfe took the position that there is no way to insulate the board of directors from liability and recommended that the members of the board be listed in the plan documents as named fiduciaries and that their responsibilities be specifically delineated.

The board of directors, the plan administrator, the individual who handles benefit claims, and the trustee all should be named as fiduciaries in the plan documents, Frank Cummings, a Washington, D.C., attorney, told the institute.

He noted that the responsibilities of the fiduciaries should be allocated carefully in the plan documents and it should be stated that the responsibilities are several and not joint.

Both Cummings and Marshall Bartlett, of Sullivan & Cromwell, New York, disagreed with other panel members who advocated naming the company and therefore the board of directors as the plan administrator. Cummings and Bartlett noted that the plan administrator should be the individual who actually does the filing, reporting, and other administrative duties. The board does not meet often enough and does not have the time to devote to the details of the plan administrator's job, they said.

Bartlett recommended that the board establish an investment committee to insulate itself as much as possible. The board would be responsible for appointing the committee and would therefore be obligated to monitor that committee but liability would still be narrowed to monitoring the committee rather than liability for all the actions taken by the committee.

Named fiduciaries are better off than other fiduciaries because they have the authority to delegate some of their responsibilities, Bartlett said. He added that in this way named fiduciaries could limit the scope of their liability to a monitoring duty.

Cummings noted that appointive power is a fiduciary responsibility and as such there must be "prudent periodic performance evaluation." It is not permitted to delegate responsibility by appointing someone and then to forget him. He cautioned that the monitoring should be periodic and not continuous. Continuous supervision could result in liability for the acts of the appointed fiduciary.

An IRS determination letter indicates only that the plan is or is not qualified. It does not pass on the adequacy or the legality of the fiduciary provisions included in the documents, Cummings said. He added that most of what is allowed under Title I of ERISA for fiduciary purposes is not allowed unless it is specifically included in the plan documents.

The objective of a fiduciary should be to figure a way hopefully to be right but inevitably to be wrong occasionally and still not be liable, Cummings stated. He recommended limiting liability by naming the fiduciaries in the plan documents by function, leaving a proper "paper trail" to document prudence, seeking indemnification to the extent it is permissible, and investigating fiduciary insurance and bonding.

Bank trust departments should consider several internal safeguards for avoiding liability when acting as trustee for directed accounts, Stephen R. Gainer, associate counsel, Bank of America Legal Department, San Francisco, recommended.

Gainer listed a number of possible internal safeguards which should be considered by bank trust departments in this situation. He suggested establishing a training program for trustees dealing with prohibited transactions and the prudent man rule, encouraging trust administrators from blindly following instructions from named fiduciaries or investment managers, including in the trust agreement language to the effect that the trust department may refuse to follow directions which it considers contrary to ERISA or the plan, establishing an "anticipatory internal screening procedure" to review investment directions before the trustee follows them, or establishing a post-investment screening process.

The trustee of a directed trust may be insulated from liability by following the directions of a named fiduciary but this freedom from liability is subject to three limitations, Gainer said. The directions must be proper, in accordance with the provisions of the plan, and not contrary to ERISA. He added that the trustee probably cannot escape cofiduciary liability when the trustee knowingly participates in or conceals a breach of duty by another fiduciary.

Performance of investments presents a special problem for banks when they are bound by specific investment guidelines, Stephen M. Piga, of the New York law firm of White & Case, said. He noted that there is a "catch-22" for banks operating as asset managers because investment performance will be measured by comparison with leading stock or fixed income indices rather than by the success or failure in achieving specified investment guidelines.

A bank managing assets under investment guidelines still better beat the indices by 5 or 10 percent, Piga advised, or the plan sponsor is likely to seek out a new asset manager.

Piga noted that banks which are listed as fiduciaries on a plan's EBS-1 form should anticipate being named in law suits even when the bank serves only in an investment monitoring capacity. He attributed this probability to the fact that banks have "deep pockets" and anyone filing an action will be anxious to get at that money.

Henry C. Blackiston III, an attorney with Shearman & Sterling, New York, cautioned bank trustees against investing in index funds. Investment in such funds, which generally are designed to provide the same return on investments as the general equity market, may be considered imprudent because such an investment ignores the merits of particular securities, he said.

Insurance companies clearly are fiduciaries if they have the authority to decide how much of a plan's assets will be invested in the insurance company's general account and how much will be invested in a special account, according to Gerard J. Talbot, vice president and tax counsel, Metropolitan Life Insurance Company, New York.

However, once plan assets are placed in an insurance company's general account the assets are considered to have lost their character as plan assets, according to the Labor Department's ERISA IB 75-2 (BPR 21: R-7), and therefore transactions involving that general account with a party-in-interest will not be subject to the prohibited transactions provisions of ERISA, Talbot said.

There is a split in the insurance industry regarding the claims procedure, Talbot noted. Some people claim that the insurance company is not a fiduciary and that if the benefits are denied the employer has a right to review the denial and to pay the benefits out of its own pocket if it so decides.

Others in the insurance industry, including Talbot, insist on the designation of the insurance company as the named fiduciary for claims review because it has the power to overturn denials and grant benefits while the employer cannot overturn an original denial by the insurance company and demand that the company pay the benefits.

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FIDUCIARY RESPONSIBILITY: ALI-ABA SPEAKERS  
DISCUSS LITIGATION, CLAIMS PROCEDURE, DRAFTING

The Labor Department has indicated to the U.S. Court of Appeals for the Seventh Circuit that if the court grants an interlocutory appeal of a U.S. district court decision in Daniel v. Teamsters, et al. (BPR 76: D-5), the Department will file an amicus curiae brief, according to Steven J. Sacher, associate solicitor of labor.

The Department is considering the ramifications of the decision in the fields of labor law and labor relations, Sacher told an American Law Institute-American Bar Association course of study on fiduciary responsibility and prohibited transactions, held June 10-12.