Calendar No. 1168

92d Congress
2d Session

SENATE

Report
No. 92-1224

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

September 25, 1972.—Ordered to be printed

Mr. Long, from the Committee on Finance, submitted the following

REPORT

(Together with supplemental and additional views.)

[To accompany S. 3598]

The Committee on Finance, to which was referred the bill (S. 3598) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans having considered the same, reports thereon with amendments but without recommendation as to whether the bill as amended do pass.

I. SUMMARY

S. 3598 as reported by the Committee on Labor and Public Welfare has been amended by the Committee on Finance to delete the tax-related provisions; namely, the provisions relating to coverage, vesting, and funding of pension and profit-sharing plans (and the related provisions concerned with insurance and portability). No substantive change, however, has been made in the amendments in this bill to the Welfare and Pension Plans Disclosure Act providing more comprehensive and simpler reporting of information regarding pension plans.

As is indicated further in the next section of this report, the Finance Committee notes that the provisions deleted by the Finance Committee amendments have historically been handled through the tax laws. Moreover, the bill is able to provide for these provisions only through numerous specific references in the bill to provisions in the tax laws.

The Administration has made a series of recommendations in the areas of the tax-related provisions which have been referred to the tax-writing committees and on which the House Committee on Ways and Means has already held hearings. Both the Department of Labor and the Treasury Department, as indicated in the section of the Labor and Public Welfare Committee's report on agency comments, objected quite strongly to the provisions in S. 3598, and, instead, recommended the enactment of the bill containing the tax-related provisions referred to the tax-writing committees.

Substantial problems would occur in the separate administration of part of the provisions relating to pension and profit-sharing plans by the Internal Revenue Service (as at present) and another part of the requirements by an agency in the Department of Labor. In addition, the provisions in the bill as reported by the Committee on Labor and Public Welfare for enforcement depend upon petitioning the Federal courts to compel compliance. This is a less effective and more difficult remedy than that available in the case of pension and profit-sharing provisions associated with the tax laws where tax deduction may be denied for noncompliance, which provides a significant measure of self-enforcement for the provisions.

The Finance Committee, in deleting the tax provisions, is not attempting to pass on the desirability of the changes proposed. The House Committee on Ways and Means has held hearings on this subject and can be expected to report legislation next year. The Finance Committee will consider, at that time, both the House action and the recommendations of the Senate Committee on Labor and Public Welfare.

II. GENERAL STATEMENT

S. 3598, as reported out by the Committee on Labor and Public Welfare, deals with the following aspects of pension and profit-sharing plans:

(1) The employees who must be covered by any such plan;

(2) The period after which, and the extent to which, an employee covered by the plan must be given a vested, nonforfeitable right to the benefits he will receive upon retirement;

(3) The extent to which anticipated costs of a plan must be funded;

(4) Provision for insurance designed to cover unfunded liabilities where benefit losses arise at the time of plan terminations;

(5) A voluntary program for the portability of vested rights to pension benefits; and

(6) Amendments to the Welfare and Pension Plans Disclosure Act to provide more comprehensive and simpler reporting of information regarding pension plans.

A brief comparison of the pension and profit-sharing provisions of this bill with present tax law is shown in the next section of this report.

The coverage, vesting, and funding of pension and profit-sharing plans and related provisions, all but one of the topics listed above with which S. 3598 deals, have been dealt with almost exclusively by the tax laws since 1942—a period of 30 years. The bill as reported by the Senate Labor and Public Welfare Committee would establish new and generally more rigorous requirements in the case of coverage, vesting, and funding (and also add completely new provisions dealing with insurance and portability) outside of the tax laws, the traditional way of providing standards in the case of pension and profit-sharing plans.

While not directly amending the Internal Revenue laws, the bill, as reported by the Senate Labor and Public Welfare Committee, achieves much the same effect by some eight references in the bill to various provisions in the tax laws. The coverage provisions indicate that the standards set are generally to apply to pension and profit-sharing plans of employers engaged in interstate commerce or employers engaged in commerce affecting interstate commerce. However, various exceptions are provided, including an exception for religious organizations "described under section 501(c) of the Internal Revenue Code of 1954" and unfunded plans established to provide deferred compensation for management employees and declared by the employer as "not intended to meet the requirements of section 401(a) of the Internal Revenue Code." By exceptions such as these, which make reference to the Internal Revenue Code, the coverage apparently is designed to cover essentially the same plans as the tax provisions of the Internal Revenue Code (except that S. 3598 would not apply to plans covering no more than 25 participants).

In the case of funding requirements the bill specifies that generally an experience deficiency must be made up in a 5-year period except where this exceeds "the allowable limits for a tax deduction under the Internal Revenue Code of 1954." Again, in the case of the funding provisions where there is a surplus, the bill indicates that future payments may be reduced or benefits increased by the amount of the surplus "subject to the provisions of the Internal Revenue Code of 1954 and regulations promulgated thereunder." The bill also provides rules in the case of the discontinuance of plans again "subject to the provisions of the Internal Revenue Code and regulations promulgated thereunder." Still another reference made in the discontinuance-of-a-plan provision provides a specific priority in the case of payments to beneficiaries under the plan "pursuant to the requirements of section 401(a)(7) of the Internal Revenue Code of 1954." Two other specific references to the Internal Revenue Code also are made in the bill.

The frequent references to the Internal Revenue Code in the bill indicate the impossibility of developing a bill without reference to the tax laws. The difficulty, of course, arises from the fact that these provisions have over a long period of time been developed through the use of the tax provisions. It is for reasons such as these that the committee believes that the coverage, vesting, funding, and related provisions should continue to be dealt with by the tax committees of Congress.

It should be noted that the Administration has reported to Congress on coverage and vesting requirements of pension and profit-sharing plans and has also promised, within the year, to supply its recommendations with respect to the funding of pension plans. A bill prepared by the Administration relating to coverage and vesting and also the indication that a report on funding is to be delivered in the future were included in the Administration's report referred to the House Committee on Ways and Means and the Senate Committee on Finance. On the other hand, the Administration's suggested improvements in reporting requirements were referred to the House and Senate Committees on Labor and Public Welfare.

The Department of Labor and the Treasury Department, as is indicated in the section on agency comments in the report of the Labor and Public Welfare Committee, both object quite strongly to the tax-related provisions in the bill, S. 3598, and instead, recommended the enactment of the bill containing the tax-related provisions referred to the tax-writing committees.

The committee believes that an important reason for not splitting the requirements for pension and profit-sharing plans into two parts is the difficulty in the enforcement where part of the enforcement is under the jurisdiction of the Internal Revenue Service in the Treasury Department and the enforcement of an additional layer of requirements is administered by an agency in the Department of Labor. This division would create difficulites not only because of the dual administration and the problems which would arise as a result of conflicting interpretations of various provisions but also, and perhaps more importantly, because of the substantially different enforcement techniques which would be used. Use of the tax laws as a means of achieving conformity with a set of pension and profit-sharing requirements can be achieved with a limited number of enforcement personnel. In large part, the provisions under the tax laws are self-policing since no employer desires to lose tax deductions for amounts set aside under pension or profit-sharing plans. Moreover, in practice, most changes in pension and profit-sharing plans are cleared quite carefully through the Internal Revenue Service before they are made.

On the other hand, the additional vesting, funding, and similar requirements added by this bill as reported by the Senate Labor and Public Welfare Committee are to be enforced by empowering the Secretary of Labor to petition the Federal courts to compel a pension or profit-sharing plan to comply with the provisions of the Act or to effect recoveries of funds due under the Act. As a result, under this enforcement technique, the Department of Labor must constantly examine and seek out changes in the plans or methods of operation to determine when violations of the new provisions occur and then to seek remedies in the courts. These enforcement techniques are less effective than associating compliance with the Internal Revenue Code relating to tax deductible status. The new enforcement provisions would be both far more costly to enforce and far less effective in obtaining compliance generally.

The Finance Committee, in amending S. 3598 to delete the tax-law-related provisions, is not attempting to pass on the desirability of the changes proposed. It certainly agrees that the pension and profit-sharing requirements of existing law deserve changing and strengthening. The House Committee on Ways and Means recently has completed hearings on the Administration proposals with respect to the tax-related provisions for pension and profit-sharing plans. It appears likely that the House proposals for changes in this regard will be before the Finance Committee in the next session of Congress. At that time, the Committee on Finance will not only consider the proposals sent to it from the House but will also consider the tax-related provisions in S. 3598 which by its amendments are deleted from this bill.

It is also important to recognize that as desirable as strengthening requirements for pension and profit-sharing plans may be, these plans are essentially voluntary insofar as employers are concerned with the result that stronger requirements tend to discourage the widening of the use of private pension and profit-sharing plans. Therefore, a careful balancing of these two conflicting considerations is needed in considering recommendations to strengthen provisions relating to private pension and profit-sharing plans. The proposals made in this bill make substantial changes in these provisions over a relatively short period of time. The committee does not see any significant evidence of this balancing of considerations in the bill as reported by the Committee on Labor and Public Welfare.

For the reasons set forth above, the committee has reported back to the Senate the bill as reported by the Senate Labor and Public Welfare Committee deleting the provisions relating to coverage, vesting, and funding of pension and profit-sharing plans together with the two related provisions dealing with insurance and portability of vested rights. Other conforming changes are also made. In the bill reported by the committee, however, no substantive change is made in the provisions of the bill amending the Welfare and Pension Plans Disclosure Act to provide more comprehensive and simpler reporting of information regarding pension plans.

III. COMPARISON OF PENSION PROVISIONS OF S. 3598 WITH PRESENT TAX LAW

The principal changes made in the treatment of pension and profit-sharing plans under S. 3598 which presently are dealt with by the tax laws are described below and are compared with the present tax provisions.

1. AGE AND SERVICE REQUIREMENTS

S. 3598.—A pension or profit-sharing retirement plan could not require as a condition of eligibility to participate a period of service longer than one year or an age greater than 25, whichever occurs later. However, any plan which provides 100 percent immediate vesting upon entry into the plan could restrict participation to those who have attained age 30, or 3 years of service, whichever occurs later.

Present law.—In general, pension and profit-sharing plans are not now required to comply with any specific eligibility conditions relating to age or service in order to qualify under the Internal Revenue Code. Current law allows plans to be limited to employees who have (1) attained a designated age, or (2) have been employed for a designated number of years (three years maximum in the case of self-employed plans), so long as the effect is not discriminatory in favor of officers, shareholders, executives and highly-compensated employees. Also, under administrative practice, a plan may exclude employees who are within a certain number of years of retirement (for example, five or less) when they would otherwise become eligible, provided the effect is not discriminatory.

2. VESTING

S. 3598.—Pension plans would generally be required to give covered employees vested rights to 30 percent of their pension benefits after 8 years of service. Thereafter, each year the covered employees would be given vested rights to an additional 10 percent of their accrued pension benefits so that at the end of 15 years of service, they would be entitled to 100 percent vested rights to benefits. However, vesting of accrued benefits for service rendered prior to the Act would be required only for plan participants who have attained age 45 on the effective date of the vesting provision, which would be 3 years after the date of enactment of the bill. In addition, the Secretary of Labor would be given the authority to postpone the applicability of the vesting requirements for a period not to exceed 5 years from the effective date of such requirements where there is a showing that the vesting requirements would increase the employer's costs or contributions under a plan to an extent that "substantial economic injury" would result to the employer and to the interests of the participants.

Present law.—A qualified pension or profit-sharing plan must now provide that an employee's rights are to become nonforfeitable if it terminates or the employer discontinues his contributions. With this exception, there is no requirement that an employee under an employer plan must be given nonforfeitable rights to his accrued benefits before retirement, although the absence of such pre-retirement vesting is taken into account in determining whether the plan meets the nondiscrimination tests of the Internal Revenue Code. Under a self-employed plan, the rights of employee-participants must vest immediately.

3. FUNDING

S. 3598.—Employers would have to fund all current service costs annually and to fund initial unfunded liabilities at least ratably within 30 years. Any amendment which results in a substantial increase in the plan's unfunded liabilities would be funded separately as if it were a new plan. Experience deficiencies would generally be funded within 5 years. Plans would be required to be reviewed every 5 years by certified actuaries who would report the funding obligations which must be met and any surplus or experience deficiencies. The funding requirements become effective 3 years after the date of enactment of the bill. However, where an employer can make a showing that he cannot make the required annual contribution, the Secretary of Labor may waive contributions otherwise required and authorize that the deficiency be funded over a period of not more than 5 years. Before granting such a waiver, the Secretary of Labor must be satisfied that it will not have an adverse effect on the interests of employees.

Present law.—The present minimum funding rules require an employer to make contributions to a qualified pension plan equal to the pension liabilities being created currently plus the interest due on unfunded accrued liabilities. In addition, section 404 of the Internal Revenue Code sets forth limitations on deductions for contributions to qualified pension plans. In general, an employer may deduct contributions to a qualified pension plan for amounts required to meet the actuarial costs of pension benefits. However, to prevent abuse, there are certain restrictions as to how quickly these deductions can be taken.

4. PLAN TERMINATION INSURANCE

S. 3598.—Pension plans would be required to participate in an insurance program administered by the Secretary of Labor which is designed to protect participants against the loss of vested benefits arising from plan terminations. The amount of benefits payable under such insurance is limited to the lesser of 50 percent of the highest monthly wage earned over a 5-year period or $500 a month. This insurance program would be financed by premiums ranging from 0.2 percent to 0.4 percent of the plan's unfunded vested liabilities. In addition, where a plan is terminated, the employer may be liable for reimbursement of a portion of the insurance benefits paid under the new program, based on the ratio of the plan's unfunded vested liabilities to his net worth.

Present law.—There is no comparable provision for insuring pension benefits under present law.

5. ENFORCEMENT

S. 3598.—An office of pension and welfare administration would be established within the Department of Labor to implement the specified standards of vesting, funding, reinsurance as well as disclosure and fiduciary standards. The Secretary of Labor would be empowered to petition the Federal courts to compel a pension or profit-sharing retirement plan to comply with the provisions of the Act or to affect recoveries of sums of money due under the Act. When the Secretary has reason to believe that a plan is violating the act, he would also be given the right to seek relief in the Federal courts, to compel the return of assets to the fund, to require payments to be made, to require the removal of a fiduciary, and to obtain other appropriate relief.

Present law.—Plans which qualify under the Internal Revenue Code as nondiscriminatory in regard to coverage or benefits receive special tax treatment to foster their growth. The earnings on the assets, for example, are exempt from tax. In addition, employers receive deductions for contributions to such plans within certain limits and employees are permitted to defer payment of tax on employer contributions until they receive them in the form of benefits. The Internal Revenue Service administers the tax provisions of the Internal Revenue Code relating to the qualification of pension and profit-sharing plans. If a plan does not comply with the requirements of the Internal Revenue Code, these special benefits are lost. Thus, to a considerable extent, the provisions of the Code in this area are self-enforcing.

In addition, the Department of Labor administers the Welfare and Pension Plans Disclosure Act of 1958 (Public Law 85–836 as amended by Public Law 87–420).

IV. EFFECT ON THE REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the effect on revenues of this bill. Your committee estimates that this bill as amended by the committee will not affect revenues in the next three calendar years. The Treasury Department agrees with this statement.

In compliance with section 133 of the Legislative Reorganization Act of 1946 as amended, the following statement is made relative to the vote by the committee on reporting the bill: S. 3598 was ordered favorably reported by the committee by voice vote. No roll call vote was taken.

V. CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).

ADDITIONAL VIEWS OF SENATOR GRIFFIN TO S. 3598

It is very regrettable that the Committee has acted to delete the vesting, funding and insurance provisions of S. 3598 after only cursory consideration.

Unfortunately, the Committee chose this course of action without the benefit of any hearing on S. 3598 or other pension reform bills previously referred to the Committee.

For over a year, the Committee has had before it a bill (S. 2485) which I introduced to establish minimum vesting standards and a Federal insurance program.

In many respects, my bill would provide greater vesting and insurance protection than the bill reported by the Labor and Public Welfare Committee. For instance, my bill would require—

All plans with 15 or more employees to meet Federal Standards;

100% vesting after only 10 years of service;

That both a worker's service and benefits accrued before the date of enactment be covered by the Federal vesting standard;

That all service under a pension plan be counted whether it is continuous or not;

A Federal insurance program covering all losses of vested benefits.

The need for Federal vesting and insurance requirements is underscored by the fact that only one out of five social security recipients actually receives private pension benefits. Even where benefits are being paid, the Labor Subcommittee study found that in 1969 and 1970 median benefits being received by beneficiaries from pension plans were less than $100 per month.

Widespread support for effective pension reform legislation is reflected in the Labor Subcommittee hearings and from several Presidential task forces including a 1965 Cabinet Committee, the President's 1970 Task Force on the Aging, and the 1971 White House Conference on Aging.

In view of this, it is extremely disappointing to have the Committee place a barrier in the way of this critically needed legislation. Furthermore, it is ironic that on the same day the Committee acted on S. 3598, it also approved a welfare bill emphasing work over welfare.

Most Americans believe in the work ethic, and they would rather work than be on welfare. However, the Committee dealt the work ethic a severe blow by gutting the key provisions of S. 3598.

The passage of a strong pension reform bill is as important to rank-and-file workers as was the passage of the 1959 Landrum-Griffin Act, which serves as a "bill of rights" for American workers in terms of their relationship with their unions.

It is my hope that strong pension reform legislation will still be enacted during this session of Congress.

ROBERT P. GRIFFIN.

SUPPLEMENTAL VIEWS

We wish to be recorded in opposition to the Committee action on S. 3598. The Committee stripped the bill of its provisions relating to vesting, funding, portability and plan termination insurance.

On September 15, 1972, the full Senate Labor and Public Welfare Committee unanimously approved the first extensive private pension reform bill in the nation's history, S. 3598. This action culminated a two and one-half year exhaustive study by the Senate Labor Subcommitte into the inequities of the private pension system.

In the course of that study, the Labor Subcommittee made a comprehensive statistical survey of over 1300 representative private pension plans, conducted investigatory hearings in Washington during 1971, in which 14 employer organizations and more than 25 individual plan participants were heard, conducted field hearings on plan terminations adversely affecting workers in five major cities of the United States during 1972, and held six days of legislative hearings in June of 1972, at which time the Subcommittee heard testimony from representatives of virtually every organization and interest group affected, as well as from individual experts in the field.

On September 19, S. 3598 was referred to the Senate Finance Committee. On September 22, this Committee reported out S. 3598 with only its Federal fiduciary and added disclosure requirements intact.

The Labor and Public Welfare committee's inquiries, have established a compelling case for sweeping pension reform. The committee found manifold examples of unnecessary and cruel hardships to workers as a result of:

(*a*) Inadequate or nonexistent vesting provisions which result in the denial of retirement benefits to employees upon termination of services, voluntary or otherwise, despite long years of employment;

(*b*) Inadequate accumulation of assets in funds to meet obligations and payments to workers who are entitled to benefits;

(*c*) Forfeiture of earned retirement benefits by employees resulting from a voluntary or involuntary move from within an industry or geographical area, which restricts the mobility of the labor force;

(*d*) Instances where employers have not achieved full funding status, but through circumstances often beyond their control, must terminate the plan without adequate resources for payment of benefits due;

(*e*) The lack of uniform requirements of conduct by fiduciaries and employers in the administration and operation of their pension funds which results in abuses and unsound practices which jeopardize the security of the assets and threaten the availability of funds for employees;

(*f*) Employee participants not having full comprehension of their rights and obligations under their participating pension plans because of inadequate communication to them in booklets or other format of details of plans. They are not adequately informed with respect to acts or omissions by them which result in disqualification from or qualification for plan benefits.

In reporting S. 3598, the Committee on Labor and Public Welfare has provided the Senate and the Congress with an opportunity to enact much needed legislation which will provide strong protection to the interests of our Nation's work force and older Americans by:

(*a*) Establishing a general minimum vesting standard of 30 percent after 8 years of work with an additional yearly accumulation after that to full 100 percent vesting after 15 years. Once a person has become "vested", his right to his pension is assured. In addition, all employees currently enrolled in private pension plans who are 45 years old when the bill becomes effective will be credited for their service prior to the effective date.

(*b*) Requiring full funding of pension liabilities over a 30-year period, with a federal reinsurance program to guarantee the vested rights of employees against termination of the plan.

(*c*) Establishing a voluntary system of portability of pension credits as an employee moves from one job to another, and uniform fiduciary standards with greater disclosure to plan participants.

One of the arguments the Finance Committee makes for stripping the bill is the belief that S. 3598 would result in dual regulation over tax qualified plans. However, careful examination of S. 3598 fails to disclose such a conflict. The bill does not amend the Internal Revenue Code expressly or otherwise. Relying on the constitutional power to regulate interstate commerce, the bill establishes minimum standards for private pension plans, regardless of whether they are tax-qualified.

In brief, the bill seeks to regulate what the Internal Revenue Code fails to regulate in the interest of protecting American labor.

S. 3598 sets minimum vesting standards; the Internal Revenue Code does not.

S. 3598 requires funding the principal of past service liabilities over a 30-year period; the Internal Revenue Code merely requires the funding of current service liabilities plus interest on the past service. S. 3598 continues unimpaired these IRS requirements.

S. 3598 establishes a voluntary portabiliy program and a compulsory plan termination insurance program; there are no such programs under the Internal Revenue Code and, given the purposes of the tax laws, no compelling reason why there should be.

S. 3598 establishes uniform federal standards of fiduciary conduct. There are requirements somewhat similar to these in the so-called "prohibited transactions" provisions in section 503(a) and (c) of the Internal Revenue Code of 1954.

Finally, it should be observed that section 101(e) of S. 3598, as reported by the Committee on Labor and Public Welfare, specifically authorizes the Secretary of Labor to make cooperative or mutual assistance arrangements with other federal agencies to avoid unnecessary expense or duplication in the administration of the Act. The Internal Revenue Service is such an agency.

In a report to delegates attending the 1971 White House Conference on Aging called by President Nixon, the Employment and Retirement Section of that Conference emphasized that: "Legislation must be enacted as soon as possible requiring early vesting, adequate funding and portability of pension and to provide for Federal insurance of pensions." We agree completely with this conclusion.

We believe that S. 3598 as reported by the Labor and Public Welfare Committee presents a good solution to the inadequacies and inequities of private pension plans and that the bill reported by the Senate Finance Committee is inadequate.

Vance Hartke.
Abraham Ribicoff.
Fred R. Harris.
Gaylord Nelson.

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