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PENSION REQUIREMENTS SIMPLIFICATION ACT

DECEMBER 15, 1977.—Ordered to be printed

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

REPORT

[To accompany S. 2352]

The Committee on Finance, to which was referred the bill (S.) to amend the Internal Revenue Code of 1954 and the Employee Retirement Income Security Act of 1974 to make compliance with Federal employee benefit plan requirements easier by eliminating dual Treasury Department and Labor Department jurisdiction over certain requirements and reducing the number of reports and other paperwork required, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

I. Summary

The bill is designed to allocate between the Department of the Treasury and the Department of Labor jurisdiction over most administrative functions presently shared by them under the Employee Retirement Income Security Act of 1974 (ERISA) so as to consolidate within one of the agencies complete jurisdiction over each function. Under the bill, cases involving prohibited self-dealing or fiduciary misconduct will be resolved by the Department of Labor, without coordination with the Treasury Department, and cases involving other ERISA standards will be resolved by the Treasury Department, without coordination with the Department of Labor. In addition, the bill simplifies the reporting requirements established under ERISA.

29-010

II. Present Law

A. In General

Responsibility for administering the provisions of ERISA is generally assigned to the Department of the Treasury and the Department of Labor.[1]

Generally, under pre-ERISA law, the Internal Revenue Service was responsible for administering provisions of the tax law providing favorable tax treatment for pension plans, profit-sharing plans, stock bonus plans, trusts under those plans, plan participants (or their beneficiaries), and employers who maintain plans.

Generally, the pension, etc., plan rules administered by the Internal Revenue Service originated in the Revenue Act of 1942.[2] The prohibited transaction rules, which were applied to tax-exempt charitable foundations in 1950, were extended to pension, etc., trusts in 1954.

If a pension, etc., plan qualifies under the tax law then, under ERISA and prior law, (1) a trust under the plan is generally exempt from income tax, (2) employers are generally allowed deductions (within limits) for plan contributions for the year the contributions are made, even though participants are generally not taxed on plan benefits derived from employer contributions until the benefits are distributed or made available, (3) benefits distributed as a lump sum distribution are accorded special income averaging treatment (and, under ERISA, may generally be "rolled over" tax-free to an individual retirement account or another qualified plan), and (4) certain estate and gift tax exclusions are provided.

Under ERISA and prior law, a trust qualifies if (1) employer contributions to the trust are made for the purpose of distributing the corpus and income of the trust to employees and their beneficiaries, (2) under the trust instrument, it is impossible for any part of the trust corpus or income to be used for, or diverted to, purposes other than *the exclusive benefit* of employees at any time before its liabilities to employees and their beneficiaries are satisfied, and (3) the trust is part of a plan which qualifies under the tax law.

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[1] Responsibility for administering the pension plan termination insurance provisions of ERISA is assigned to the Pension Benefit Guaranty Corporation, a corporation within the Department of Labor (ERISA sec. 4002). The Social Security Administration informs employees (or their beneficiaries) of their vested rights under plans when application is made for social security benefits by (or with respect to) an employee (ERISA sec. 1032). The Joint Board for the enrollment of actuaries establishes standards and qualifications for enrolled actuaries (ERISA sec. 3042).

[2] Before the 1942 Act, a pension trust could qualify for a tax exemption as a charitable organization.

Under ERISA and prior law, tax-qualified pension, etc., plans are required to satisfy tests designed to assure that they cover employees in general, rather than merely those employees who are officers, shareholders, or highly compensated—"the prohibited group." [3]

Under pre-ERISA standards, a pension, etc., trust lost its income tax exemption (and the plan of which it was a part generally lost qualification under the "exclusive benefit" rule) if it engaged in certain types of self-dealing transactions with anyone who was a creator of the trust or a substantial contributor to the trust, or with certain related persons, unless the transaction met an "arm's-length" test. ERISA provides a list of specific prohibitions, violations of which result in sanctions against the self-dealers rather than against the trusts or plans.

Under ERISA and prior law, trusts under qualified pension, etc., plans are subject to the tax imposed on unrelated business taxable income (sec. 512).

Under the tax provisions of ERISA and prior law, a plan covering an owner-employee [4] (an H.R. 10, or Keogh, plan) is required to meet special standards relating, for example, to the group of employees covered by the plan, pre-retirement vesting, plan fiduciaries,[5] and the time benefits are distributed. Contributions on behalf of any self-employed individual are limited in terms of the individual's net earnings from self-employment, as defined for purposes of the tax on self-employment income (sec. 1402),[6] with certain modifications.

Under pre-ERISA law, an employee covered by a pension, etc., plan which did not qualify under the tax law could not compel compliance with the qualification standards of the tax law—the employee's rights under the plan were determined under local law on the basis of plan provisions. Noncompliance with the tax standards resulted in loss or denial of the plan's tax qualification (and a loss or denial of the tax exemption for a trust forming a part of the plan).[7]

Under pre-ERISA law, the Welfare and Pension Plans Disclosure Act (WPPDA) required reporting and disclosure by administrators

[3] A fourth category, supervisory employees, was deleted from the prohibited group by ERISA.

[4] An owner-employee is one who owns a trade or business as a sole proprietor or is a partner who owns more than a 10-percent interest in a partnership which operates a trade or business.

[5] Only a bank could serve as trustee of a trust under a pre-ERISA H.R. 10 plan.

[6] Pre-ERISA limits were the lesser of $2,500 or 10 percent of such earnings; ERISA limits are the lesser of $7,500 or 15 percent of such earnings. ERISA also provides for defined benefit H.R. 10 plans under which benefits, rather than contributions, are subject to special limits. Benefits and contributions under H.R. 10 plans are also subject to overall limits applicable to other qualified plans (sec. 415).

[7] Generally, under a funded nonqualified plan, the value of an employee's benefits is taxed when the benefits are transferable or are not subject to a substantial risk of forfeiture, so that, if the plan provides for pre-retirement vesting, an employee could be taxed currently on plan benefits even though those benefits are not distributed (sec. 83). No special tax treatment is accorded to lump sum distributions from nonqualified plans and no special estate or gift tax exclusions or tax-free rollovers are provided. Additionally, employer contributions to a nonqualified plan are deductible only when the plan benefits are includible in the gross income of employees (sec. 404(a)(5)), but then only if employees have separate accounts under the plan. The income of a trust under a nonqualified plan is subject to tax under the usual trust rules.

of both welfare and pension, etc., plans. However, the WPPDA exempted any plan covering fewer than 26 participants and plans administered by tax-exempt fraternal benefit societies or tax-exempt charitable, educational, religious, or civic organizations.

In addition to filing with the Department of Labor, under the WPPDA plan administrators had to make copies of filings available for inspection by any participant or beneficiary at the plan's principal office and, upon written request by a participant or beneficiary, furnish a copy of the plan description and an adequate summary of the latest annual report.

B. Pension, Etc., Trusts Under ERISA

(1) In General

Generally, ERISA preserved the plan and trust qualification standards[8] prescribed by prior law, established additional qualification standards, and provided minimum standards for pension, etc., plans which, if violated, could result in tax sanctions as well as nontax civil and criminal sanctions and injunctive relief to compel compliance. Also, ERISA preempted the regulation of most private pension, etc., and welfare plans by the States. The United States Tax Court was given jurisdiction to issue declaratory judgments in some cases with respect to the qualified status of pension, etc., plans.

(2) Minimum Age and Service Standards

Under the minimum age and service standards of ERISA (sec. 410 (a) and ERISA sec. 202), a pension, etc., plan generally cannot exclude an employee from plan participation on the basis of age or length of service if the employee has attained age 25 and completed one year of service.[9] Generally, a year of service consists of 1,000 hours of service within a designated 12-month period.

Although the authority to prescribe regulations under the minimum age and service standards is generally assigned to the Treasury Department, authority to prescribe regulations defining an hour of service is assigned exclusively to the Labor Department.[10] The minimum age and service standards are tax-qualification standards for plans; ac-

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[8] Under pre-ERISA law, if contributions to a plan were completely discontinued, the plan was disqualified if it did not provide participants with fully vested rights to their benefits (to the extent the benefits were funded). This qualification standard was deleted by ERISA for plans subject to the funding standards of the Act so that failure to fund such a plan would subject the employer to an excise tax but would not result in plan disqualification because of a failure by the plan to provide added vesting. Similarly, under ERISA, because an excise tax was imposed on self-dealing and civil sanctions were established for self-dealing and certain fiduciary violations, the pre-ERISA prohibited transaction rules of the Code were deleted for plans subject to the new rules. Also, the "exclusive benefit rule" for plan qualification was modified for these plans. In addition, new rules were provided dealing with the extent to which vesting could be required by the Service in order to prevent discrimination, and supervisors were deleted from the "prohibited group".

[9] Special rules permit a requirement of 3 years of service and age 25 by a plan providing full, immediate vesting. Alternatively, plans of certain educational institutions (defined in sec. 170(b)(1)(A)(ii) and tax-exempt under sec. 501(a)) may require that an employee attain age 30 and complete 1 year of service before plan participation, if the plans provide full, immediate vesting.

[10] The Labor Department also has exclusive authority to prescribe regulations defining a year of service in seasonal industries. In maritime industries, ERISA provides that 125 days of service are treated as 1,000 hours of service, subject to Labor Department regulations.

cordingly, they are administered by the Internal Revenue Service. The nontax provisions of ERISA also require compliance with these standards by qualified and most nonqualified pension, etc., plans; accordingly, the minimum age and service standards are also enforced by the Labor Department.

(3) Coverage Standards

Since 1942, the tax law [11] has explicitly required that qualified plans cover employees in general rather than merely an employer's key employees. A plan satisfies the coverage rule if (1) it benefits a classification of employees that does not discriminate in favor of employees who are officers, shareholders, or highly compensated, or (2) the plan benefits a prescribed percentage of the employees.

In applying the percentage rule under ERISA, however, only those employees who have satisfied the plan's minimum age and service requirements are taken into account. In addition, in applying either the classification or percentage tests under ERISA, employees covered by an agreement which the Labor Department finds to be a collective bargaining agreement may be excluded from consideration if the Internal Revenue Service finds that retirement benefits were the subject of good faith bargaining.[12]

Neither the minimum age and service standard nor the coverage standard applies to a governmental plan, a church plan,[13] a plan established by a tax-exempt society, order, or association (described in sec. 501(c)(8) or (9)) or certain plans not providing for employer contributions. In addition, the nontax minimum age and service standards do not apply to certain tax-exempt pension trusts under plans funded solely by employee contributions (sec. 501(c)(18)).[14] Plans exempted from the ERISA minimum age and service standards and coverage standards are required to meet the pre-ERISA coverage standards of the tax law in order to be tax-qualified.

(4) Vesting Standards—Percentage Schedules

ERISA established three alternate vesting schedules under which the nonforfeitable percentage of an employee's benefit derived from employer contributions [15] depends upon the number of years of service the employee has completed.[16] As under the minimum service standard, a year of service generally consists of at least 1,000 hours of service within a designated 12-month period. In addition, the Internal Revenue Service may require more rapid vesting, in certain circumstances, in order to prevent discrimination by a qualified plan

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[11] Revenue Act of 1942, sec. 165, and sec. 410(b) of the 1954 Code.

[12] Other exclusions are provided (1) in the case of plans established or maintained pursuant to collective bargaining agreements (determined by the Labor Department) between air pilots and employers, and (2) for nonresident alien employees who receive no earned income (defined by sec. 911(b)) from the employer which is income from sources within the United States (defined by sec. 861(a)(3)).

[13] The standards do not apply to the plan of a church (or convention or association of churches) exempt from tax under sec. 501(a) unless the plan elects to have ERISA standards and requirements apply (sec. 410(d)). However, the standards apply to a plan covering employees of a church's (a convention's or an association's) unrelated trade or business (within the meaning of sec. 513).

[14] The tax exemption applies only to trusts created before June 25, 1959.

[15] All benefits derived from employee contributions are required to be nonforfeitable. (Sec. 411(a) and ERISA sec. 203.)

[16] Under one of the vesting schedules, the nonforfeitable percentage may also depend upon the employee's age.

in favor of employees who are officers, shareholders, or highly compensated.

Generally, administration under the vesting standards follows the same pattern as that under the minimum age and service standards. Accordingly, the authority to prescribe regulations under the vesting standards is generally assigned to the Treasury Department, and the authority to define an hour of service by regulation is assigned to the Labor Department.[17] In addition, the Labor Department has exclusive authority to prescribe regulations under rules permitting a suspension of benefit payments where a former employee is reemployed. Also, the Department of Labor has exclusive authority to prescribe regulations which may prohibit the use of a particular 12-month period for measuring service under the vesting standards.

The vesting standards are administered by the Internal Revenue Service in connection with the qualification of a plan or trust under the tax laws. The vesting standards (other than the rules relating to prohibited discrimination) are also a part of the nontax law enforced by the Labor Department. Under the nontax law, the vesting standards apply to qualified and most nonqualified plans.

(5) Vesting Standards—Accrued Benefit Standards

In addition to providing minimum standards for the nonforfeitable percentage of an employee's benefit accrued under a plan, ERISA provides minimum standards for the accrued benefit to which that percentage is applied (sec. 411(b) and ERISA sec. 204). The rate at which an employee accrues benefits under a defined benefit plan [18] is tested, under the accrued benefit standards of ERISA, on the basis of the number of years the employee has been a plan participant.

Generally, authority to prescribe regulations under the accrued benefit standards is assigned to the Treasury Department. However, the Department of Labor has exclusive authority to prescribe regulations (1) for calculating an employee's period of plan participation on a reasonable and consistent basis, (2) for calculating the period of plan participation for a part-time employee, and (3) for seasonal or maritime industries. Enforcement authority is assigned in the same manner as under the vesting standards (the rules enforced by the Labor Department generally apply to qualified and to most nonqualified plans).

(6) Funding Standards

Under ERISA, pension plans are required to satisfy minimum funding standards.[19]

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[17] See footnote 10 above. Special regulatory authority with respect to seasonal or maritime industries is also assigned to the Labor Department.

[18] Generally, a defined benefit plan provides a specified benefit level (e.g., as under the Federal civil service pension plan). Defined contribution plans, in contrast, are plans under which separate accounts are maintained for plan contributions allocated to each employee, and an employee's accrued benefit depends solely upon the balance of his or her separate account (e.g., as in a profit-sharing plan).

[19] The standards apply to defined benefit pension plans because those plans promise a specified benefit (for which funding is required), and to pension plans which promise a fixed or determinable contribution rate. The Internal Revenue Service may waive the standard for up to 5 out of 15 years, but the waived contributions must be made up in subsequent years. The Labor Department may approve retroactive plan amendments which reduce funding requirements and may extend the period over which funding liabilities are amortized. (Sec. 412 and ERISA secs. 301 through 306.)

Amounts required to be contributed to a qualified plan under the funding standards are generally deductible. Although authority to prescribe regulations under the funding standards is generally assigned to the Treasury Department, the Labor Department prescribes the rules under which retroactive amendments may be approved or amortization periods may be extended.

Under the Internal Revenue Code, the funding standards are enforced by application of an excise tax on funding deficiencies. Generally, failure to satisfy the funding standards does not result in the disqualification of a pension plan.[20] The funding standards are also a part of the nontax law enforced by the Department of Labor (the nontax rules apply to qualified and most nonqualified plans).

The funding standards do not apply to profit-sharing plans, stock bonus plans, or certain plans funded exclusively by insurance contracts.

(7) Limits on Benefits and Contributions

In order to limit the extent to which individuals can use tax-favored arrangements to provide for retirement, the Code provides overall limits on benefits and contributions under qualified pension, etc., plans, tax-sheltered annuities, individual retirement accounts, annuities, or bonds, or any combination of these arrangements (sec. 415). The limitation for an individual under a tax-favored retirement arrangement is based, in part, upon the individual's compensation. In the case of a self-employed individual, the limitations are generally based upon income subject to the tax on self-employment income (sec. 1402(a)). Special limitations apply to employee stock ownership plans (ESOPs) which satisfy the standards of the investment tax credit rules. In part, the investment tax credit rules require these ESOPs to satisfy ERISA standards relating to participation and coverage as well as the limitations on benefits and contributions.

Under the limitation rules, benefits and contributions for an individual under plans of related employers (sec. 1563(a), with modifications) are aggregated.

No equivalent rules are provided under the nontax provisions of ERISA.

(8) Plans for Self-Employed Individuals and Shareholder-Employees

The Code permits a self-employed individual who operates a trade or business (within the meaning of sec. 162) to enjoy the benefits of a tax-qualified plan if the plan meets special additional standards. In addition, contributions to a defined contribution plan on behalf of a self-employed individual are limited to the lesser of $7,500 or 15 percent of the individual's earned income from a trade or business in which the individual's services are a material income-producing factor. Generally, for this purpose, earned income is income subject to the tax imposed on income from self-employment (defined in sec. 1402(a)). Under rules applicable to electing small business corporations (subchapter S corporations), if contributions on behalf

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[20] Church plans which have not elected to be covered by ERISA and governmental plans are not subject to the ERISA funding standard. Accordingly, they remain subject to prior law under which a plan does not qualify unless it provides full vesting of benefits (to the extent the benefits are funded) in the event of a complete discontinuance of contributions.

of a shareholder-employee [21] exceed the $7,500/15-percent limit under a defined contribution plan, the excess is taxed to the shareholder-employee. The Code also provides for defined benefit H.R. 10 plans and subchapter S plans. In addition, H.R. 10 plans and plans of subchapter S corporations are subject to the overall limits on benefits and contributions applicable to other qualified plans (sec. 415).

No equivalent rules are provided under the nontax provisions of ERISA.

(9) Individual Retirement Accounts

Within limitations, the Code allows a deduction for an individual's contributions to an individual retirement account (IRA).[22] The deduction is not to exceed the lesser of (1) 15 percent of the individual's compensation includible in gross income (including self-employment income), or (2) $1,500 ($1,750 in the case of certain IRAs covering an individual and spouse). Deductions are not generally allowed to an individual who is covered by a qualified pension, etc., plan, a tax-sheltered annuity, or a governmental plan (whether or not qualified).[23]

A lump sum distribution (defined in sec. 402(e)) from a qualified plan can be "rolled over" tax-free to an IRA. If an individual engages in prohibited self-dealing with an IRA, the account is disqualified and amounts held in the account are taxed to the individual.

No equivalent rules are provided under the nontax provisions of ERISA.

(10) Life Insurance Companies

The tax law provides special rules under which qualified pension, etc., plan assets (and related income, expense, gain, and loss) invested in annuity contracts issued by a life insurance company (or in the separate asset account of a life insurance company) are accorded similar tax treatment to that provided for assets held in a tax-exempt trust under a qualified plan (subchapter L).

(11) General Fiduciary Standards; Exclusive Benefit of Employees

The general fiduciary standards contained in the nontax provisions of ERISA and the exclusive benefit rule of the Code regulate the activities of fiduciaries and other persons involved in the administration of employee benefit plans (sec. 401(a) of the Code and secs. 401 through 405 of ERISA). Under the nontax standards of ERISA, each fiduciary [24] of an employee benefit plan must act solely in the interests of the plan's participants and beneficiaries, and must act exclusively to provide benefits to the participants and beneficiaries or to pay reason-

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[21] A shareholder-employee is an officer or employee who owns (or is considered to own under sec. 318(a)(1)) more than 5 percent of the stock of a subchapter S corporation.

[22] Secs. 219, 220, 408, and 409.

[23] Special rules permit deductible IRA contributions by certain members of the Armed Forces reserves and firefighters who are covered by governmental plans.

[24] For purposes of ERISA, a fiduciary with respect to a plan is a person who (1) exercises discretionary authority or control over management of the plan or any authority over management or disposition of its assets, (2) renders investment advice for a fee with respect to money or property of the plan or has authority or responsibility to do so, or (3) has discretionary authority or responsibility in the administration of the plan.

able plan administrative costs. Under the nontax standards, a fiduciary must exercise the care, skill, prudence, and diligence under the prevailing circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting a similar enterprise. This "prudent man rule" applies (1) specifically to the investment of plan assets, and (2) to all other aspects of plan administration. The Act also prescribes the manner in which fiduciary responsibilities may be allocated and delegated among those persons involved in a plan's administration and the extent to which those responsibilities may be allocated and delegated.

Under the tax standards of ERISA, a qualified pension, etc., plan must be for the exclusive benefit of the employees or their beneficiaries (sec. 401(a)). Accordingly, plan assets generally may not inure to the benefit of the employer before the plan's liabilities to employees and their beneficiaries are satisfied. However, the provisions of ERISA allow an employer's contribution to be returned in certain limited situations.[25] To the extent that a fiduciary complies with the prudent man rule of the nontax standards under ERISA, the fiduciary will be deemed to have complied with the prudent man aspects of the exclusive benefit rule of the tax standards of ERISA.

Under the nontax standards of ERISA, the transfer or distribution of the assets of an employee welfare benefit plan upon termination of the plan is to be in accordance with the terms of the plan except as otherwise prescribed by regulations of the Secretary of Labor. Normally, the terms of the plan govern such a distribution or transfer of assets, except to the extent that implementation of the terms of the plan would unduly impair the accrued benefits of the plan participants or would not be in their best interests.

Also, under the nontax standards of ERISA, on termination of a defined benefit pension plan to which the plan termination insurance provisions do not apply, the assets of the plan are to be allocated in accordance with the plan termination insurance provisions of ERISA governing allocation of assets except as otherwise provided in regulations prescribed by the Secretary of Labor.

The nontax fiduciary responsibility standards of ERISA generally apply to all pensions, etc., plans and welfare plans of employers or organizations in, or affecting, interstate commerce.[26] They do not apply to unfunded plans designed to provide deferral of compensation primarily for a select group of management or highly compensated employees, or to unfunded excess benefit plans.[27]

(12) Self-Dealing Standards

Self-dealing standards are provided both in the tax and nontax provisions of ERISA (Code sec. 4975 and ERISA sec. 406). The tax provisions regulate self-dealing transactions involving "disqualified persons", while the nontax provisions regulate self-dealing transactions

[25] For example, an employer's contributions can be returned within one year after they are made to the plan, if made because of a mistake of fact.

[26] There are exceptions for governmental plans, certain church plans, workmen's compensation plans, and nonresident alien plans.

[27] An "excess benefit plan" is one maintained to provide benefits in excess of the overall limitations on benefits and contributions, described above (see (7) *Limits on Benefits and Contributions*).

involving "parties-in-interest". These two terms have substantially similar definitions.

The self-dealing standards under the tax provisions apply to all pension, etc., plans which are (or have been) tax-qualified and to individual retirement accounts and annuities. The self-dealing standards under the nontax provisions of ERISA apply to all plans to which the general nontax fiduciary rules apply.

The self-dealing rules under both the tax and nontax provisions of ERISA prohibit certain transactions between a plan and a disqualified person (or party-in-interest). Also, they prohibit use of plan assets or income for the benefit of a disqualified person (or party-in-interest).

Under the tax provisions of ERISA, a disqualified person who engages in prohibited self-dealing is subject to a two-level excise tax sanction. Initially, the disqualified person is subjected to a tax of 5 percent per year (or part thereof) of the amount involved in the act of self-dealing. A second tax of 100 percent of the amount involved is imposed if the act of self-dealing is not corrected by a specified date. These taxes are to be imposed automatically, that is, whether or not the self-dealer realizes that a violation has occurred and whether or not it can be shown that the particular violation harms the plan.

Under the nontax provisions of ERISA, a fiduciary who knowingly engages in prohibited self-dealing or otherwise breaches any of the responsibilities imposed upon him or her by ERISA is personally liable to the plan for any losses it may suffer, and for any profits that the fiduciary may realize through the use of plan assets as a result of the misconduct. Also the fiduciary is subject to other appropriate sanctions as ordered by a court, including the fiduciary's removal. In addition, civil penalties (similar to the excise tax sanctions) may be imposed.

The tax and nontax provisions of ERISA contain similar exceptions from the specifically enumerated self-dealing prohibitions. In addition to specifically enumerated exceptions to the prohibited self-dealing rules, ERISA provides for the granting of exemptions (variances) by the administering agencies (Code sec. 4975(c)(2) and ERISA sec. 408(a)). The granting of a variance for a qualified pension, etc., plan requires the concurrent action of the Secretary of Labor and the Secretary of the Treasury and may require a full-scale hearing procedure, including notice in the Federal Register. A variance will be granted only when each Secretary separately determines that the act of self-dealing in question is an appropriate case for a variance.[28] Further, a variance may not be granted unless each Secretary finds that the act of self-dealing is in the interests of the plan and its participants and beneficiaries, that it does not present administrative problems, and that adequate safeguards are provided for participants and beneficiaries.

Both the Treasury Department and the Department of Labor are authorized to prescribe regulations under, and enforce, the self-dealing standards.

[28] In this regard, the Secretary of the Treasury may accept the record of a hearing in the Labor Department, and make a determination based on the material in that record.

(13) Reporting and Disclosure Requirements

The Internal Revenue Code (sec. 6058) requires every employer who maintains a pension, etc., or other funded plan of deferred compensation (whether or not qualified) to file an annual return stating such information as is required under Treasury regulations with respect to the plan's (1) qualification, (2) financial condition, and (3) operations. The Treasury may relieve an employer of the requirement of reporting information contained in other returns.

The nontax rules of ERISA require the filing of an annual report with respect to most employee benefit plans (including welfare plans.)[29] A copy of the report must be available for inspection by participants and beneficiaries and, upon request, must be furnished to them (ERISA secs. 103 and 104). The nontax provisions of ERISA list specific information generally required to be included in the annual report and give the Secretary of Labor authority to increase or to decrease the amount of information so required.

ERISA also requires the filing of a registration statement detailing the vested plan benefits of separated employees (sec. 6057 of the Code and ERISA sec. 105). The reports are filed with the Internal Revenue Service and forwarded by the Service to the Social Security Administration so that retirees (or their beneficiaries) can be advised of private pension rights when application is made for social security benefits.

The nontax provisions also require that each employee benefit plan file a plan description and summary plan description (and any material modifications or changes therein) with the Labor Department (ERISA sec. 102). A summary annual report and a summary plan description (and any material modifications or changes therein) are required to be furnished to plan participants and beneficiaries.

The Labor Department and the Internal Revenue Service have announced a procedure under which, beginning with 1977 annual reports and registration statements filed in 1978, a single report will be filed only with the Service for each year of a plan. Under this procedure, the Service will process the reports and furnish data to the Labor Department. The new procedure applies to pension, etc., plans and welfare plans.

(14) Other Standards

ERISA provides several standards which are administered by both the Treasury Department and the Labor Department. The law does not assign regulation writing authority exclusively to either agency. These standards apply with respect to—

(a) joint and survivor benefits.

(b) mergers and consolidations of plans,[30]

(c) assignment and alienation of plan benefits,

(d) the time that benefits commence.

(e) plan benefit reductions due to increases in social security benefits, and

(f) forfeiture of benefits upon withdrawal of employee contributions.

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[29] Under the nontax rules of ERISA, an annual report is not required to be filed with respect to a governmental plan, a church plan which does not elect to be covered by the general provisions of ERISA, a workmen's compensation plan, a nonresident alien plan, or an unfunded excess benefit plan.

[30] The standard applies to multiemployer plans only to the extent determined by the Pension Benefit Guaranty Corporation.

(15) Civil and Criminal Sanctions

The Internal Revenue Code provides sanctions in the event that a pension, etc.. plan is disqualified for failure to meet the standards prescribed for tax qualification (e.g., participation, antidiscrimination, and vesting). Penalty excise taxes are imposed on self-dealers and those who exceed the contribution limits for IRAs and H.R. 10 plans. Penalty excise taxes are also imposed on employers who fail to meet the minimum funding standards. In addition, penalties are imposed for failure to file reports on time.

On the Labor side, fiduciaries who violate standards may be forced to make up plan losses or disgorge profits and may be removed from office. ERISA also provides criminal sanctions (up to a $5,000 fine and one year imprisonment for individuals and up to a $100,000 fine for others) for willful violations of the reporting and disclosure requirements.

ERISA also authorizes suits by participants or beneficiaries to enforce their rights under the plan or under the statute, or to enjoin violations of the plan or the statute. Suits also may be brought, under specified circumstances, by fiduciaries, the Labor Department, and the Treasury Department.

ERISA makes it unlawful to retaliate against anyone for exercising rights under an employee benefit plan or the Act, or for giving information in any inquiry or proceeding under the Act. Coercive interference with the exercise of any right under an employee benefit plan or the Act may be punished by a fine of up to $10,000 and imprisonment for up to one year.

(16) Termination Insurance

ERISA provides for insurance of vested employee benefits, up to specified limits, under defined benefit pension plans, under a program administered by the Pension Benefit Guaranty Corporation (PBGC), a corporation within the Labor Department.[31] Generally, only private, tax-qualified defined benefit pension plans are covered by the insurance.[32]

The guarantee of benefits is limited, in part, by a plan participant's average compensation (includible in gross income) from the employer. For this purpose, gross income generally means earned income within the meaning of section 911(b) of the Code. The guarantee is limited in the case of owner-employees or individuals who own more than 10 percent of the stock of a corporation (the constructive ownership rules of Code sec. 1563(e) apply for this purpose, with modifications).

To permit the PBGC to have advance notice of situations which may lead to plan termination, ERISA requires that certain events be reported to the PBGC within 30 days. Among these events are—

(a) notice by the Internal Revenue Service that a plan has ceased to qualify,

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[31] The board of directors of the PBGC consists of the Secretaries of Labor (Chairman), Treasury, and Commerce. The PBGC has a seven-member advisory committee, appointed by the President, consisting of (1) two members representing employee organizations, (2) two members representing employers who maintain pension plans, and (3) three members representing the interests of the general public.

[32] Generally, plans do not qualify for termination insurance unless they are subject to the funding, fiduciary, and self-dealing standards of ERISA.

(b) a determination by the Internal Revenue Service that a plan has terminated or partially terminated, and

(c) failure of a plan to meet the minimum funding standard. In addition, if the Internal Revenue Service finds a plan in which an event has occurred which it believes indicates the plan is unsound, the Service is required to notify the PBGC of the event.

In the event of plan termination, plan assets are allocated to plan participants in accordance with a schedule contained in ERISA, and the PBGC insures a participant's benefits (up to the limits of the insurance) to the extent the assets allocated to the participant are insufficient. In some cases, the amount of assets allocated to a participant is increased or decreased in order to prevent discrimination (prohibited by Code sec. 401(a)(4)) in favor of employees who are officers, shareholders, or highly compensated.

(17) Tax Treatment of Pension, etc., Plan Distributions

Under the tax provisions of ERISA, the favorable income tax treatment of a lump sum distribution from a qualified pension, etc., plan is continued with modifications. In order to permit portability of benefits under a qualified pension, etc., plan, ERISA generally provides for the tax-free rollover of a lump sum distribution from one qualified plan to another (and between qualified plans and individual retirement account, annuity, or bond). Under the Code, as amended by P.L. 94-267, the tax-free rollover of an amount which does not qualify as a lump sum distribution also is permitted in some cases from a terminated qualified pension, etc., plan to another qualified pension, etc., plan or to an individual retirement account, annuity or bond. Under ERISA, as under prior law, a distribution from a qualified pension, etc., plan in a form other than a lump sum is taxed under the annuity rules (sec. 72).

The Code, as amended by ERISA, continues the estate tax exclusion provided by prior law for benefits under a qualified pension, etc., plan. The exclusion, however, was limited by the Tax Reform Act of 1976 to cases where the benefits are not provided in the form of a lump sum distribution. Additionally, the Tax Reform Act of 1976 extended the 50-percent maximum income tax limitation (sec. 1348) to pension and annuity income.

III. Reasons for The Bill

The operation of ERISA over a period of three years has made manifest two basic types of problems caused by the dual jurisdiction of the Department of the Treasury and the Department of Labor in administering the Act. On the one hand, there are difficulties where both agencies must deal with the same specific issue or problem at the same time. On the other hand, there are difficulties where a plan or plan sponsor must deal with both agencies regarding a particular problem.

It is expected that eliminating dual agency jurisdiction over particular areas of ERISA (1) will reduce the cost and difficulty of compliance with ERISA by plans and plan sponsors, and (2) will enable the agency assigned to administer a particular area to concentrate more fully on problems in that area. While most regulations under ERISA have been issued, despite delays caused by the need for coordination between the Department of the Treasury and the Department of Labor, it is expected that additional administrative guidance will be required in the future. If a particular area of ERISA is being monitored by only one agency, that agency will be able to provide the necessary guidance in a shorter period of time.

A. Dual Agency Action

The promulgation of regulations and other guidelines for the implementation of the law is a process carried on by the agencies without direct interaction with plans or plan sponsors. ERISA contains many parallel provisions under its tax and nontax portions. In some instances, regulations implementing a particular aspect of the law are issued by only one agency and are binding upon both. In general, regulations regarding minimum standards for participation, vesting, and funding of plans are issued by the Treasury Department and are, in effect, the regulations interpreting the corresponding nontax standards of ERISA. However, the Department of Labor issues regulations on various subsidiary aspects of the participation, etc., provisions. These nontax regulations are binding upon both the Department of Labor and the Department of the Treasury in carrying out their functions. In order to resolve their differences, the Department of Labor and the Treasury Department engage in extensive consultations with each other in the development of regulations and guidelines issued under these provisions.

In other instances, there is no mandate under ERISA for unified regulations under parallel tax and nontax provisions of the Act. In these cases, both agencies may promulgate regulations. The agencies have consulted about these regulations in order to achieve uniformity in the interpretation of similar statutory provisions.

The consultations undertaken by the agencies have necessarily delayed the issuance of regulations and other guidelines. (On the other

hand, less consultation would have markedly increased the chance of conflicting regulations and other guidelines.) The intensity of this problem has diminished as the regulations and other guidelines have begun to be issued.

Jurisdictional problems have arisen in connection with applications for exemption from the prohibited self-dealing provisions. Both the labor law and tax law titles of ERISA prohibit certain acts of self-dealing with plans. Both titles also provide for administrative exemptions by the agencies. If a prohibited act of self-dealing with a qualified plan is contemplated, the practical effect is that an exemption must be considered by each agency. This has created the largest number of problems in connection with dual agency jurisdiction because each agency independently examines cases to determine whether it is satisfied that an exemption should be issued. The result has been duplication of effort and extensive delays in the issuance or denial of exemptions, particularly where the agencies have had difficulty agreeing upon the result in a particular case.

B. Plans Reporting to Both Agencies

Plans and plan sponsors have encountered duplication of expense and effort in connection with the annual reporting requirements for plans under ERISA. The agencies were able to alleviate this problem somewhat by the development of a joint form. However, they experienced difficulty in arriving at a uniform filing date for the annual report. Thus, plans and plan sponsors were faced for a time with the requirement of filing duplicate information with the two agencies and with different filing dates for the duplicate information.

The agencies ultimately resolved their differences and announced a uniform filing date for annual reports for 1977. (Internal Revenue Service News Release, IR-1819, May 24, 1977.) More important, the same announcement stated that the agencies have agreed that the annual reports for 1977 and subsequent years need be filed only with the Internal Revenue Service. The information filed with the Internal Revenue Service will be shared by the Service with the Department of Labor and the Pension Benefit Guaranty Corporation. Because this arrangement for a single form, a single filing date, and a single agency to receive the filing is not required by statute, plans do not have the assurance that it will be continued in the future.

It has been estimated by the Commission on Federal Paperwork that the elimination of the requirement to file a summary plan description with the Department of Labor could save the government $1 million in storage costs over a 5-year period and could save business approximately $7.2 million over a 5-year period. In addition, because of time and budget restraints, the Department of Labor is not generally expected to review and compare the summary plan description to the plan description which must be filed every 5 years.

The repeal of the requirement that plan amendments be reported to the Department of Labor within 60 days after they are adopted was recommended in the December 3, 1976 *Report of the Commission on Federal Paperwork on ERISA* which stated that "[i]n view of the fact that employees are notified of changes in their plans, that an annual report containing the same information also must be filed with

DOL and IRS, and that there is no specific use for the data in the amended EBS-1, it is believed that a notice of amendment filed with the annual report should replace filing of an EBS-1 sixty days after each amendment. This would not change the requirement to notify participants of plan changes, nor would it have any effect on the employer's decision to seek a determination of tax status from the IRS. The estimated savings to business would be approximately $12 million, annually." (Pp. 21 and 22).

In some cases the agencies have issued class exemptions which dispose of numerous individual exemption requests. The agencies have also entered into an administrative agreement in an attempt to streamline the process. However, significant delays in the processing of exemption applications have persisted.

IV. General Explanation

A. Transfer of Labor Department's Jurisdiction Over Participation, Vesting, and Funding to Treasury Department

(Sec. 2 of the Bill, Secs. 404, 410, 411, 412, 413, 414, 4971, and 7476 of the Code, and Secs. 211, 306, and 1017 of ERISA)

The bill terminates the jurisdiction of the Secretary of Labor to administer the standards of ERISA relating to (1) participation; (2) vesting; (3) accrued benefits; (4) funding; (5) joint and survivor benefits; (6) assignment and alienation of benefits; (7) the time that benefits commence; (8) plan benefit reductions due to increases in social security benefits; (9) forfeiture of benefits upon withdrawal of employee contributions; and (10) mergers and consolidations of plans. Under the bill, the participation, etc., rules for qualified and nonqualified plans would be administered solely by the Secretary of the Treasury. In addition, the authority of the Secretary of Labor under present law to prescribe regulations and make determinations under the provisions of the participation, etc., rules of the Code, and to disapprove amendments, extend amortization periods, or make determinations under the funding standards of the Code, is assigned to the Secretary of the Treasury under the bill. The bill does not change the substantive rules applicable to qualified or nonqualified pension, etc., plans or to welfare plans.

The committee's bill gives the Secretary of the Treasury the same authority to bring a civil action to enforce the participation, etc., standards as the Secretary of Labor has under present law. The bill does not affect any right of a private litigant to bring a civil action under ERISA. Service of process, United States district court jurisdiction, capacity of a plan to be sued, and venue, etc., will be governed by the rules which applied to suits by the Secretary of Labor to enforce the participation, etc., standards.

The bill, in reassigning jurisdiction under ERISA, makes conforming changes to the rules relating to the exchange of information between the Treasury Department and the Labor Department where the Secretary of the Treasury issues a notice of deficiency with respect to the excise tax imposed on employers responsible for contributing to underfunded plans by providing that the Secretary of the Treasury is to notify the Secretary of Labor upon issuing such a notice. The bill deletes the present law requirement that the Secretary of the Treasury afford the Secretary of Labor an opportunity to comment on the imposition of the tax on underfunding. In addition, under the bill, the Secretary of the Treasury, rather than the Secretary of Labor, has jurisdiction to bring a civil action to compel an employer to eliminate any accumulated funding deficiency.

Under the bill, the Secretary of the Treasury is given the authority currently held by the Secretary of Labor to waive compliance with certain vesting and funding standards under the Code during a special

temporary waiver period for a collectively bargained plan maintained on January 1, 1974. In connection with the granting of a waiver (or variation) of the vesting standards with respect to a particular plan, the Secretary of the Treasury rather than the Secretary of Labor is to make a determination as to whether the participation and vesting rules of the plan on the date ERISA was enacted are in the aggregate as favorable to covered employees as the participation and vesting standards of ERISA. The bill has no effect on the validity of any waiver (or variation) granted by the Secretary of Labor under provisions of present law.

B. Termination of Treasury Department's General Jurisdiction Over Prohibited Self-Dealing Transactions

(Sec. 3 of the Bill, Sec. 4975 of the Code, and Secs. 407, 408, 414, and 502 of ERISA

Under the bill, the Secretary of the Treasury will administer the prohibited self-dealing rules and the fiduciary responsibility rules only with respect to ESOPS.[33] The bill continues the authority of the Secretary of Labor to administer the fiduciary responsibility standards of ERISA (part 4 of title I of ERISA), except that in the case of an ESOP these standards will be administered by the Secretary of the Treasury. Accordingly, questions concerning fiduciary responsibilities and prohibited self-dealing with respect to a plan other than an ESOP will be resolved solely by the Secretary of Labor.

Under the bill, if a plan is an ESOP for a portion of a plan year and a conventional plan for the remainder of the year, the Secretary of the Treasury will administer the fiduciary responsibility and prohibited self-dealing standards with respect to the plan for the portion of the year for which the plan is an ESOP, and the Secretary of Labor will administer these standards for the remainder of the year. If a single trust forms a part of an ESOP and a part of a conventional employee pension benefit plan, the fiduciary responsibility and prohibited self-dealing standards will be administered by the Secretary of the Treasury with respect to the portion of the trust forming a part of an ESOP, and by the Secretary of Labor with respect to the remainder of the trust.

The authority of the Secretary of Labor to intervene in an action under the fiduciary responsibility or prohibited self-dealing rules of ERISA is continued by the bill, except that under the bill the right to intervene in a case involving the application of those rules to an ESOP is reserved to the Secretary of the Treasury. The committee expects that if the Secretary of the Treasury and the Secretary of Labor bring concurrent civil actions[34] under the fiduciary responsibility or prohibited self-dealing standards, with respect to a plan, then the actions will be joined and considered by a single court.

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[33] Under hte bill, the term "employee stock ownership plan" means (1) a defined contribution plan (A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under sec. 401(a), and which is designed to invest primarily in qualifying employer securities, and (B) which is otherwise defined in regulations prescribed by the Secretary of the Treasury: or (2) an investment credit ESOP.

[34] Two actions will be considered concurrent for this purpose if they each relate to the same arrangement or self-dealing.

C. Authority to Require Reports

(Sec. 4 of the Bill, and Secs. 102, 103 and 104 or ERISA)

The bill authorizes the Secretary of Labor to prescribe regulations requiring employee benefit plans (employee pension benefit plans and employee welfare benefit plans) to file such annual reports as are necessary to carry out the policy of ERISA and deletes the provisions of present law which detail specific information required to be included in the annual reports of employee benefit plans. The bill continues the authority of the Secretary of Labor (1) to waive the reporting requirements for particular categories of plans for which the Secretary believes such a waiver is appropriate, and (2) to prescribe different annual report forms for different kinds of plans.

The bill also provides that the Secretary of Labor may require employee benefit plans to furnish to, or to make available for inspection by, plan participants and beneficiaries copies or summaries of reports and other information required to be filed with the Secretary.

The committee expects that, in implementing these reporting and disclosure rules, the Secretary of Labor will consider carefully both the need of plan participants and beneficiaries for accurate and timely information and the adverse effect unduly burdensome requirements will have on sponsors and administrators of employee benefit plans.

The bill deletes the requirements of present law (1) that a copy of the summary plan description of a plan be filed with the Secretary of Labor at the time it is furnished to plan participants and beneficiaries, and (2) that any material modification or change either in a plan or in information required to be included in its summary plan description be filed with the Secretary of Labor within 60 days after the modification or change is adopted or occurs, as the case may be.

The bill does not affect the present law requirements that plan participants and beneficiaries be furnished with summary plan descriptions and with information respecting any material modification or change either in the terms of a plan or in the material included in its summary plan description.

D. Interdepartmental Cooperation

(Sec. 5 of the Bill, and Secs. 3001, 3002, and 3004 of ERISA)

Because the bill concentrates administration of the participation, etc., standards of ERISA (see IV. General Explanation, A. Transfer of Labor Department's Jurisdiction Over Participation, Vesting, and Funding to Treasury Department) in the Treasury Department and administration of the fiduciary responsibility and prohibited self-dealing standards in the Labor Department, many of the provisions of ERISA requiring coordination between the Secretary of the Treasury and the Secretary of Labor become unnecessary and are deleted. Under the bill, the Secretary of the Treasury no longer will be obligated to require an applicant for an advance determination with respect to the tax-qualified status of a plan or trust to furnish additional information as requested by the Secretary of Labor. Also, the Secretary of the Treasury no longer will be obligated to give the Pension Benefit Guaranty Corporation or the Secretary of Labor an opportunity to comment with respect to an application for determination that a plan or

trust qualifies. Additionally, the bill deletes the responsibility of the Secretary of Labor to comment on an application for a determination as to the tax-qualified status of a plan or trust at the request of interested parties.

The bill deletes the authority of the Pension Benefit Guaranty Corporation to intervene in the Tax Court in a declaratory judgment action relating to a determination by the Secretary of the Treasury regarding the tax-qualified status of a plan or trust. Also, under the bill, the Secretary of the Treasury no longer will be required to notify the Secretary of Labor when the Secretary of the Treasury issues a notice of intent to disqualify a plan or trust or commences a proceeding relating to the tax-qualified status of a plan or trust.

The right of an interested party to comment on an application for a determination by the Internal Revenue Service that a plan or trust is qualified under the tax law, or to bring an action in the Tax Court for a declaratory judgment as to the qualified status of a plan or trust, is not affected by the bill.

Under the bill, the Secretary of the Treasury no longer will be required to notify the Secretary of Labor before a notice of deficiency is issued with respect to the tax for failure to meet minimum funding standards or with respect to the tax on prohibited self-dealing. Also, the bill ends the authority of the Secretary of Labor and of the PBGC to request that the Secretary of the Treasury investigate whether the funding tax or the self-dealing tax should be imposed in particular instances. In addition, the provision of ERISA giving the Secretary of the Treasury the right to intervene and to review briefs of the Secretary of Labor and of the Pension Benefit Guaranty Corporation in suits relating to participation, vesting, and funding has been deleted as unnecessary in light of other changes made by the bill. Under the bill, the Secretary of Labor no longer will be required to transmit to the Secretary of the Treasury information obtained regarding the occurrence of prohibited self-dealing.

Under the bill, except in the case of an ESOP, the Secretary of the Treasury is to notify the Attorney General and the Secretary of Labor if the Secretary of the Treasury knows (or believes) that prohibited self-dealing has occurred.

The bill requires that, not later than 60 days after its enactment, the Secretary of the Treasury and the Secretary of Labor jointly prescribe a single form and a single annual filing date for each employee benefit plan that will satisfy the reporting requirements of ERISA.

The committee is concerned that frequent changes in the forms required to be filed with respect to employee benefit plans may increase the expense of complying with the reporting requirements. Where new categories of information are required, new accounting systems may be needed to provide that information. Also, frequent form changes can increase the cost of compliance by requiring the retraining of personnel and possibly the preparation of forms by professionals. Consequently, your committee expects that the Secretary of Labor and the Secretary of the Treasury will consider carefully the impact frequent form changes in the future would have upon the ability of employee benefit plans to comply with filing requirements.

E. Effective Date

(Sec. 6 of the Bill)

The amendments made by the bill take effect 90 days after the date of enactment of the bill.

V. Costs of Carrying Out the Bill and Vote of the Committee in Reporting S. [ ]

Budgetary Impact of the Bill

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974 and section 252 of the Legislative Reorganization Act of 1970, the following statement is made relative to the budgetary impact of the bill as reported by the Committee on Finance.

Inasmuch as the bill reassigns administrative jurisdiction over ERISA but does not make substantive changes, the committee believes the bill will have no material impact on the Federal budget. The committee's estimate of budgetary impact is based primarily on estimates submitted by the Congressional Budget Office, the Department of Labor, and the Internal Revenue Service indicating that the bill will have no material impact on the Federal budget.

Revenue Effect of the Bill

The committee expects the bill to have no revenue impact.

Tax Expenditures

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee makes the following statement.

Inasmuch as the bill reassigns jurisdiction over ERISA but does not make substantive changes, the committee believes the bill will not involve new or increased tax expenditures.

Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered favorably reported by voice vote.

VI. Regulatory Impact of the Bill

In compliance with paragraph (5) of rule XXIX of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of S. [ ].

Impact on personal privacy.—The provisions of this bill make no material changes in those provisions of Federal law affecting the personal privacy of taxpayers.

Determination of the amount of paperwork.—The committee believes that the bill will reduce the amount of paperwork from that presently required under ERISA. The Commission on Federal Paperwork has estimated that the changes made by the bill could save the Government $1 million over a 5-year period and could save business approximately $12 million annually as well as $7.2 million over a 5-year period.

VII. Changes in Existing Law Made by the Bill

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 committee amendment, as reported).