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INVESTMENT OF NEW YORK CITY AND STATE PENSION FUNDS IN NEW YORK CITY OBLIGATIONS

SEPTEMBER 13 (legislative day, AUGUST 16), 1978.—Ordered to be printed

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

REPORT

[To accompany H.R. 4007]

The Committee on Finance, to which was referred the bill (H.R. 4007), having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill as amended do pass.

I. SUMMARY

H.R. 4007, as passed by the House, provided that a State legislator's place of residence within his legislative district is to be the tax home for determining deductible, away-from-home expenses. The substance of the bill was enacted as part of other legislation. The committee struck the original provisions from the bill and added two amendments, one relating to the New York City and State pension plans and the other relating to Federal matching funds for certain child support payments.

A. New York City and State Pension Plans

This amendment basically extends for four years the provision in present law which permits five New York City employee pension plans to retain their tax-exempt status under the provisions of the Internal Revenue Code, even though they purchase debt obligations issued by or on behalf of the City of New York under the terms of an agreement with the City or an agency of New York State. The bill broadens the protection for the first time to three New York State employee pension plans should they purchase such obligations.

29-010—78——1

The initial agreement was reached in November 1975 between the pension plans, several city sinking funds, several commercial banks, and an agency of the State government (Municipal Assistance Corporation, or MAC) so that the City could borrow from them to meet its needs.

Public Law 94-236 was enacted in 1976 to permit the pension plans to carry out their obligations under the 1975 agreement by protecting them from loss of tax exemption under provisions of the Internal Revenue Code (1) which require that a tax-qualified pension plan be for the exclusive benefit of the employees or their beneficiaries, and (2) which prohibit specified acts of self-dealing between a plan and the employer.

Because Public Law 94-236 does not apply to agreements after December 31, 1978, Congressional action is necessary now to enable the pension plans to participate in new financial agreements that will extend over the next four years. Since the agreements have not yet been formulated, the committee has established standards to guide the participation of the pension plans.

Under the bill, if an agreement under which a pension plan would acquire City obligations is not disapproved by the Secretary under overall and specific standards, the plan may acquire the obligations pursuant to the agreement. At the time of each acquisition under an agreement, the plan must certify that the applicable standards are met.

The overall standard recognizes the two-fold requirements of (1) maintaining the ability of the City to make future contributions to the pension plans and to satisfy the City's future obligations to pay pension and retirement benefits to members and beneficiaries of the plan, and (2) protecting the sources of funds for paying retirement benefits in the future. The Secretary is required to take into account (among other factors) the terms of the obligations to be acquired. The Secretary must be assured of significant participation in acquiring City indebtedness by the State, by an agency of the State, or private sources, or through public credit markets.

The Secretary also must consider whether the specific standards are met in evaluating the acquisition of debt: the amount of City debt held by the plans; the progress made by the City toward a balanced budget in fiscal year 1982; and the projected cash flow of the pension plans. Under the bill, a City pension plan may not make additional purchases of City or MAC obligations if the contemplated purchases would increase their holdings above specified percentages of their combined assets or above 50 percent (10 percent in the case of each of the three State pension plans) of each pension plan's assets. The bill requires an annual audit of each of the city pension plans and of the city's financial statement by independent public accountants.

With respect to fiscal requirements for the City, the bill requires that the City adopt expense budgets which, in the judgment of the Secretary, indicate substantial progress to a balanced budget for fiscal year 1982. End-of-year financial statements audited by independent public accountants also must show substantial progress toward a balanced budget.

B. Federal Matching for Child Support Services to Nonwelfare Families

Present law requires each State to have a program of child support collection and paternity establishment services for both AFDC and non-AFDC families. The statute provides Federal matching of 75 percent for services to AFDC families on a permanent basis. Matching for services to non-AFDC families was originally provided for one year, but has been twice extended, the most recent extension being through September 30, 1978. The committee recognizes the need for rapid action in making Federal funding for nonwelfare child support services permanent to remove the doubt and uncertainty about such funding many counties and agencies have in making or renewing a yearly cooperative contract to perform certain functions for the State child support agency. The committee amendment would provide continued Federal matching for services to non-AFDC families on a permanent basis effective July 1, 1978.

II. GENERAL EXPLANATION

A. New York City Pension Plans

Present Law

General requirements for governmental pension plans

Present law provides substantial tax benefits to employees covered by tax-qualified pension plans.[1] The tax benefits provided for governmental employees under qualified plans are sufficient to encourage many governmental units to establish such plans.[2]

A qualified plan must be for the exclusive benefit of employees or their beneficiaries. A plan or trust which breaches the exclusive benefit rule of the Code, is disqualified. If a governmental plan is disqualified, the special tax treatment for employees under qualified plans is denied.

Certain sanctions also are applied where a trust engages in a self-dealing transaction. Under the rules applicable to governmental plans, a pension trust which engages in prohibited self-dealing loses its tax exemption. For this purpose, a trust violates the self-dealing rules if it engages in any transaction in which the trust lends any part of its income or corpus, without the receipt of adequate security and without receipt of a reasonable rate of interest, to the creator of the trust, to a person who has made a substantial contribution to the trust, or to certain other persons.

Generally, the Internal Revenue Service has treated a transaction which violates the self-dealing rules as a violation of the exclusive benefit rule. As indicated above, failure to meet the exclusive benefit rule also can cause the disqualification of the trust and the plan of which the trust is a part.

Description of Public Law 94-236

On November 26, 1975, five New York City pension funds, 11 commercial banks, and several other parties agreed to acquire and hold obligations of the City and of the Municipal Assistance Corporation for the City of New York (MAC). A bill then was enacted to enable the plans to participate. Under Public Law 94-236, a pension plan or trust which, on December 5, 1975, was a party to the agreement of November 26, 1975 (and any trust forming a part of such a

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[1] Covered employees defer payment of tax on employer contributions made on their behalf until they receive plan benefits, generally after retirement when their incomes, and as a result applicable tax rates, tend to be lower. Special 10-year income averaging is allowed for lump-sum distributions, and certain estate tax and gift tax exclusions are provided.

[2] Governmental employers are exempt from tax and do not benefit from tax deductions for contributions to plans or the special tax-exempt status accorded to trusts under qualified plans.

plan), is not considered in violation of the exclusive benefit rule or the self-dealing rules of the Code merely because it: (1) entered into the November 26, 1975, agreement or agrees to an amendment to the agreement, (2) forbears from any act prohibited by that agreement, (3) acquires or holds any obligation which is provided for by the agreement, (4) makes any election provided for by the agreement, (5) executes a waiver of any requirement of the agreement, or (6) performs any other act provided for by the agreement. In addition, these plans or trusts can continue to hold any obligation acquired or held under the agreement after the expiration of the agreement. As a result, the law ended uncertainty as to whether these acts (or forbearances) violated the exclusive benefit rule or the self-dealing rules.

The law provided special rules with respect to amendments of the agreement and waivers of requirements of the agreement. These amendments were not to be inconsistent with the policies of (1) maintaining the ability of the City to make future contributions to the plans and trusts and to satisfy the City's future obligations to pay pension and retirement benefits to members and beneficiaries of the plans and trusts, and (2) protecting the sources of funds to provide retirement benefits for members and beneficiaries of the plans and trusts. These are the same factors which the plans and trusts may consider in making investment decisions under a special New York State law.

Reasons for the Committee Amendment

The basic financial problem facing New York City is its present inability to enter private credit markets to finance its short-term financing needs and its long-term capital needs. Most municipalities need short-term credit because their pattern of tax receipts and other revenues does not coincide with their expenditure pattern. Lack of short-term credit can lead to default on payment of outstanding bonded indebtedness as well as failure to meet payroll or contract obligations.

Since 1975, New York City has made progress in reducing its operating deficit. Adherence to its four-year plan for 1978–82 and the fulfillment of the underlying expenditure and revenue assumptions are expected to result in a balance between operating expenditures and receipts in fiscal year 1982. However, without Federal assistance to encourage creditors to purchase City obligations, and without concurrent permission for New York pension funds to purchase New York City and MAC obligations, the City may be threatened with bankruptcy.

In order to continue to help the City through the next four years when it is adjusting its fiscal affairs to the point where it once again will have ready access to private credit markets, the committee concluded that a further exemption from the prohibitions in the Internal Revenue Code for the City pension plans and a similar exemption for the State pension plans is necessary. However, the exemption which is necessary at this time must be spelled out in detail because now, unlike when Publlc Law 94–236 was enacted in 1976, there does not exist a signed financial agreement that obligates the pension funds, commercial banks, and other parties to a schedule of future purchases of City and MAC obligations.

Explanation of Provisions in the Bill

In General

The bill provides that a participating city plan or state plan [3] will not be considered to be in violation of the exclusive benefit rule or the prohibited self-dealing rules of the Code merely because (1) during the four-year period beginning on July 1, 1978, and ending June 30, 1982, the plan, pursuant to an agreement, acquires city obligations or agency obligations (obligations of the Municipal Assistance Corporation or a similar New York State fiscal agent) if the agreement is not disapproved by the Secretary of the Treasury, or (2) the plan holds city or agency obligations acquired under the bill, under Public Law 94–236, or under prior law. If an acquisition of city or agency obligations by a plan does not meet the requirements of the bill, the status of the plan or trust is to be determined by applying the exclusive benefit rule and the self-dealing prohibitions without regard to the protection provided by the bill. If a plan acquires city or agency obligations during a year under an agreement which has not been disapproved, and the acquisition fails to meet a requirement of the bill, the tax status of the plan (or a trust forming a part of the plan) would not be adversely affected: however, the protection of the bill would not be available to the plan acquisitions in subsequent years until the requirements of the bill are satisfied.

Although the bill allows the participating pension plans to acquire city and agency obligations, it is not the intention of the committee that the participating plans be required to purchase such obligations. In addition, the committee does not intend that this bill be considered a precedent for other state or local pension plans to acquire obligations of their sponsoring employers.

A participating plan may acquire city or agency obligations pursuant to an agreement if (1) the agreement satisfies the requirements of the overall and specific standards provided by the bill and (2) the specific standards are satisfied at the time of the acquisition. The bill provides that an agreement meets the requirements of the overall standard if it is not disapproved by the Secretary within a 60 day, or shorter, period established by the Secretary, after it is submitted to him as a proposal. The bill also requires that each participating city plan certify to the Secretary of the Treasury that (1) each acquisition of city or agency obligations is made under an agreement which has not been disapproved by the Secretary, (2) after taking the acquisition into account, the plan does not have a projected negative cash flow for the plan year in which the acquisition takes place, (3) the 50-percent limit contained in the specific standards is satisfied at the time of any acquisition, and (4) the certification is accompanied by supporting documentation. Each state plan would be required to certify that the

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[3] The bill limits participating plans to (1) the New York City Employees' Retirement System (city employees), (2) the Teachers Retirement System for the City of New York (city teachers), (3) the New York City Police Pension Fund, article 2 (city policemen), (4) the New York City Fire Department Pension Fund, article 1–B (city firemen), (5) the Board of Education Retirement System for the City of New York (City Board of Education), (6) the New York State Employees' Retirement System, (7) the New York State Policemen's and Firemen's Retirement System, and (8) the New York State Teachers Retirement System.

10 percent limit contained in the specific standards is satisfied at the time of any acquisition.

A change in an agreement or in the rights of any party under an agreement is treated as a new agreement to which the submission, disapproval, and certification procedures apply. For example, an acquisition pursuant to an amendment of an agreement or a waiver of a requirement of an agreement would not be protected under the bill unless the agreement as amended, or the agreement to waive, is submitted to the Secretary and not disapproved by him.

The bill also treats an agreement to exchange city or agency obligations held by a participating plan for other city or agency obligations (a rollover) as an agreement to acquire city or agency obligations to which the submission, disapproval, and certification procedures apply. Similarly, except as provided under regulations prescribed by the Secretary, any modification of the terms of a city or agency obligation held by a participating plan, or the participating plan's rights under such an obligation, is to be treated as an agreement to which the submission, disapproval, and certification procedures apply.

The committee expects that an agreement by a participating plan to acquire city or agency obligations will be disapproved by the Secretary unless the performance of the pension plans under the agreement is conditioned upon the applicable standards being satisfied at the time of any such acquisition. Consequently, an agreement is not expected to require a plan to acquire obligations if the acquisition could adversely affect the participating plan's tax status.

Overall standard

In the case of a city plan, the overall standard for the Secretary's determination is the same standard as in P.L. 94–236 with respect to a determination by the Secretary whether to disapprove an amendment of the November 26, 1975, agreement or a waiver of the requirements of the agreement. That is, under the overall standard, an agreement by a city plan to acquire city obligations or agency obligations must not be inconsistent with a balanced policy of protecting the security of employee benefits and improving the financial condition of the City of New York.

In particular, the overall standard specifies that an acquisition must not be inconsistent with (1) the policy of maintaining the ability of the city to make future contributions to the city plans and trusts and to satisfy the city's future obligations to pay pension and retirement benefits to members and beneficiaries of the participating plans and trusts and (2) the policy of protecting the sources of funds to provide retirement benefits for members and beneficiaries of the plans and trusts.

In addition, in applying the overall standard to a proposed acquisition by a city plan, the bill provides that the Secretary is to take into account (among other factors) the terms of the obligations which are to be acquired under the agreement. For example, the committee expects that the Secretary will consider such factors as the level of the rate of interest and the adequacy of the security applicable to the obligations, the date of maturity of the obligations, and the time for payment of principal and interest on the obligations.

Also, as a part of the overall standard, the Secretary is to disapprove any agreement by a city or state plan to acquire obligations unless he has received assurances to his satisfaction that there will be significant participation in the acquisition of city or agency obligations by the State of New York, by an agency of the State, or private sources, or through public credit markets.[4]

The committee does not intend to require that the participation by the State, by an agency of the State, or private sources or through public credit markets be concurrent with the acquisition of city or agency obligations by the plans.

Specific standards

In addition to the overall standard, the bill provides specific standards which must be met for an acquisition to be covered by the bill. These standards relate to limitations on the portion of plan assets invested in city or agency obligations, the financial condition of the city plans, and the financial condition of the city.

(1) Limitations on plan investments

For a plan year ending in 1979, the bill prohibits any participating city plan from acquiring additional city or agency obligations if the total face value of such obligations then held by all participating city plans exceeds 40 percent of the value of the plans assets. For plan years ending in 1980, 1981, and 1982, the limits are 36 percent, 33 percent, and 30 percent, respectively. Generally, as explained below, whether a city plan has met those percentage tests for the plan year is to be determined at the close of the preceding plan year. Further, the bill prohibits any participating city plan from acquiring additional city or agency obligations at a time when the total face value of the city or agency obligations then held by that participating plan exceeds 50 percent of that plan's assets. A 10-percent limit is provided in lieu of the 50-percent limit in the case of any participating State plan.

The bill provides that in determining the value of plan assets, city and agency obligations are to be valued currently at face value, and other assets are to be valued semiannually under a valuation method which is consistent with the funding standard provided for private pension plans under the Code (sec. 412).[5]

If any of the percentage limits applicable to a plan is exceeded, for example, as a result of a decline in the value of corporate securities held by the plan or another plan, the plan is not required to reduce its holdings of city or agency obligations. Of course, the plan could not subsequently acquire additional city or agency obligations until the applicable percentage standard is satisfied.

To determine whether the 40 percent, 36 percent, 33 percent and 30 percent tests (aggregate percentage tests) are met for the fiscal years ending June 30, 1979, June 30, 1980, June 30, 1981, and June 30, 1982, respectively, the bill provides special rules with respect to how city and agency obligations are to be valued, how other plan assets are to be valued and how the test percentages are to be computed. As explained above, the value of city and agency obligations at any date is the face value of such obligations, and the value of all other

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[4] In 1975, 11 New York City commercial banks were involved in assisting the city to meet its financial needs and avoid bankruptcy. The committee expects that a number of New York City commercial banks and other financial institutions, including several insurance companies and mutual savings banks, will participate in assisting the city over the next four years (FY 1978–82) to meet its financial needs again.

[5] For requirement of audited financial statements of plans, see (3) *Financial condition of plans*, below.

plan assets at any date is the value of such assets determined under a method which is consistent with sec. 412 of the Code. Thus, the percentage of city and agency obligations held by the plans at any date is derived from the ratio of city obligations and agency obligations valued at face at that date to the sum of city and agency obligations valued at face plus other plan assets valued at that date.

Because city and agency obligations are always valued at face, the committee expects that there will be no difficulty in determining the value of these assets at the close of any plan year for purposes of applying the aggregate percentage test. However, the committee understands that with respect to plan assets other than city and agency obligations, asset valuations are not available except as of December 31 and June 30 of each year, and that there is a delay of several weeks before the figures become available for those dates. Because the bill relies on quarterly calculations and because the aggregate percentage test is to be applied at the close of each plan year (June 30) to determine the ability of the city plans to make acquisitions during the succeeding plan year, it is necessary to compute the percentage test on the basis of interpolated values. Accordingly, the bill provides that the Secretary will prescribe regulations which will promulgate special rules for purposes of determining the ratio of city and agency obligations to the sum of city and agency obligations plus other plan assets at the close of the plan year on the basis of interpolated values. The committee intends that in all cases the most recent semi-annual valuation will be used.

The committee expects that, under these regulations, the ratio at the close of any plan year of city and agency obligations to the sum of city and agency obligations plus other plan assets will be the arithmetic mean of four fractions representing similar ratios determined on a quarterly basis.

The first fraction is the ratio of city and agency obligations to the sum of city and agency obligations plus other plan assets determined at the close of the first quarter of the plan year (September 30). The numerator of this fraction is the value of city and agency obligations at the close of the first quarter of the plan year. The denominator of this fraction is the sum of the value of all plan assets at the close of the preceding plan year plus one-half of the difference between the value of all plan assets at the close of the second quarter of the plan year (December 31) and the value of all plan assets at the close of the preceding plan year (June 30).

The second fraction is the ratio of city and agency obligations to the sum of city and agency obligations plus other plan assets determined at the close of the second quarter of the plan year (December 31).

The third fraction is the ratio of city and agency obligations to the sum of city and agency obligations plus other plan assets determined at the close of the third quarter of the plan year (March 31). The numerator of this fraction is the value of the city and agency obligations at the close of the third quarter of the plan year. If it is necessary to determine the fraction before the value of city and agency obligations and other plan assets at the end of the plan year is known, the denominator of this fraction is the sum of the value of all plan assets determined at the close of the second quarter of the plan year (December 31) plus one-half of the difference between the value of all plan assets at the close of the second quarter of the plan year (December 31) and the value of all plan assets at the close of the preceding plan year (June 30). If the fraction is determined after the value of city and agency obligations and other plan assets at the end of the plan year is known, the denominator is the sum of the value of all plan assets determined at the end of the second quarter (December 31) plus one-half of the difference between that amount and the value of all plan assets at the end of the plan year (June 30).

The fourth fraction is the ratio of city and agency obligations to the sum of the city and agency obligations plus other plan assets determined at the close of the plan year. The numerator of this fraction is the value of city and agency obligations at the close of the plan year. If it is necessary to determine the fraction before the value of city and agency obligations and other plan assets at the end of the plan year is known, the denominator of this fraction is the sum of the value of all plan assets determined at the clse of the second quarter of the plan year (December 31) plus the difference between the value of all plan assets at the close of the second quarter of the plan year and the value of all plan assets at the close of the preceding plan year. If the fraction is determined after the value of city and agency obligations and other plan assets at the end of the plan year (June 30) is known, the denominator is that amount.

If the aggregate percentage test for a plan year is not met by the city plans at the close of the plan year, the city plans may not acquire city or agency obligations for the first quarter of the succeeding plan year. If the aggregate percentage test remains unsatisfied at the close of the first quarter of the succeeding plan year (September 30), the city plans may not acquire city or agency obligations for the first two quarters of the plan year. If the aggregate percentage test remains unsatisfied at the close of the second quarter of the succeeding plan year (December 31), the city plans may not acquire city or agency obligations for the first three quarters of the succeeding plan year. If the aggregate percentage test remains unsatisfied at the close of the third quarter of the succeeding plan year (March 31), the city plans may not acquire city or agency obligations for the entire succeeding plan year.

For example, if at the close of the plan year ending June 30, 1979, the city plans failed to meet the applicable 40-percent limit, they may not acquire city or agency obligations for the first quarter of the plan year beginning July 1, 1979. If the 40-percent limit is met at September 30, 1979, however, the city plans may acquire city and agency obligations for the remainder of the plan year ending June 30, 1980, provided the other applicable requirements of the bill are met.

In any case where the aggregate percentage test is not met at the close of the plan year, the test percentage applicable on September 30 of the succeeding plan year is the arithmetic mean of five fractions. The first four fractions are the same as the first four fractions used to compute the test percentage at the close of the plan year. The fifth fraction is the ratio of city and agency obligations to the sum of city and agency obligations plus other plan assets determined at the close of the first quarter of the succeeding plan year (September 30). The numerator of this fraction is the value of city and agency obligations at the close of the first quarter of the succeeding plan year. If the fraction is determined before the value of city and agency obligations and other plan assets at the close of the second quarter of the succeeding plan year is known, the denominator of this fraction is the sum of the value of all plan assets at the close of the plan year (June 30) plus one-half of the difference between the value of all plan assets at the close of the plan year (June 30) and the value of all plan assets at the close of the second quarter of the plan year (December 31). If the fraction is determined after the value of city and agency obligations and other plan assets at the close of the second quarter of the succeeding plan year is known, the denominator is the sum of the value of all plan assets at the close of the plan year (June 30) plus one-half of the difference between that amount and the value of all plan assets at the close of the second quarter of the succeeding year (December 31).

If the test percentage is not met on September 30, then the test percentage applicable on December 31 of the succeeding plan year is the arithmetic mean of six fractions. The first five fractions are the same five fractions used to compute the test percentage applicable on September 30 of the succeeding plan year. The sixth fraction is the ratio of city and agency obligations to the sum of city and agency obligations plus other plan assets determined at the close of the second quarter of the succeeding plan year (December 31). The numerator of this fraction is the value of city and agency obligations at the close of the second quarter of the succeeding plan year. If the fraction is determined before the value of city and agency obligations and other plan assets at the close of the second quarter of the succeeding plan year is known, the denominator of this fraction is the sum of the value of all plan assets at the close of the plan year (June 30) plus the difference between the value of all plan assets at the close of the plan year (June 30) and the value of all plan assets at the close of the second quarter of the plan year (December 31). If the fraction is determined after the value of city and agency obligations at the close of the second quarter of the succeeding plan year (December 31) is known, the denominator is that amount.

If the test percentage is not met on December 31, then the test percentage applicable on March 31 of the succeeding plan year is the arithmetic mean of seven fractions. The first six fractions are the first six fractions used to compute the test percentage applicable on December 31 of the succeeding plan year. The seventh fraction is the ratio of city and agency obligations to the sum of city and agency obligations plus other plan assets determined at the close of the third quarter of the succeeding plan year (March 31). The numerator of this fraction is the value of city and agency obligations at the close of the third quarter of the succeeding plan year. The denominator of this fraction is the sum of the value of all plan assets at the close of the second quarter of the succeeding plan year (December 31) plus one-half of the difference between the value of all plan assets at the close of the second quarter of the succeeding plan year (December 31) and the value of all plan assets at the close of the plan year (June 30).

The committee intends that in computing the fractions (the arithmetic mean of which is the aggregate test percentage at a particular date) actual values, rather than interpolated values at that date will be used except to the extent that the committee has specifically indicated that the denominator of a fraction should be derived on some other basis.

To determine whether a city plan meets the 50-percent limit or whether a state plan meets the 10-percent limit following an acquisition and is thus permitted to make the acquisition, the bill requires a test percentage to be computed at the date of the proposed acquisition. The test percentage at any date is the ratio of the value of city and agency obligations held by the plan at that date (including city and agency obligations proposed to be acquired) to the value of the total assets of the plan at the most recent date (December 31 or June 30) for which asset valuation figures are available.

(2) *Financial condition of the City.*

The bill provides that during the City's fiscal year ending in 1982 the Secretary is to disapprove an agreement by a plan to acquire city or agency obligations (and a plan may not acquire such obligations pursuant to a previous agreement) (1) unless he finds that the City's budget for that year does not anticipate a deficit and, (2) unless he finds that the City's audited financial statements for the preceding years show substantial progress toward achieving a balanced budget for its fiscal year ending in 1982. An agreement made by a plan during a fiscal year of the City ending in 1979, 1980, or 1981 to acquire city or agency obligations is to be disapproved by the Secretary (and a plan may not acquire city or agency obligations during such year) unless he finds that on the basis of (1) its budget for the year and (2) its audited financial statements for the previous year, the City is making substantial progress toward a balanced budget for its fiscal year ending in 1982. The Secretary is to make a determination about such progress toward a balanced budget for each fiscal year. The budget requirements of the bill are the same as those provided under paragraph (5) of section 103 of Public Law 95–339 as in effect on the date of enactment of this bill. However, the budget requirements also must be met whether or not they are required to be met under Public Law 95–339 as in effect on the date of enactment of this bill.

The City's financial statements for its fiscal years ending June 30, 1979, 1980, 1981, and 1982 are to be audited by an independent public accountant and are to be prepared in conformity with generally accepted accounting principles (including principles applicable to municipal governments which provide a clear division between operating outlays and revenues on the one hand and capital expenditures and revenues on the other hand). As under Public Law 95–339, the independent public accountant's examination of the City's financial statements is to be conducted in accordance with generally accepted auditing standards and is to include such tests of the City's accounting records and such audit procedures as he considers necessary under the circumstances. In other respects, the audit requirements of the bill are the same as section 103(7) of Public Law 95–339 as in effect on the date of enactment of that Act and must be met whether or not they are required to be met under Public Law 95–339 as in effect on the date of enactment of the bill.

(3) *Financial condition of plans.*

The bill requires that the Secretary disapprove any agreement to acquire city or agency obligations by a city plan if he determines that for a plan year of an acquisition the plan will have a negative cash flow after taking the proposed acquisition into account. In addition, the protection of the bill does not extend to the acquisition by a city plan of city or agency obligations during any plan year for which the plan has a projected negative cash flow.

Cash flow is to be determined without regard to capital items (such as proceeds from the sale of assets); however, the proceeds of the scheduled sale of short-term securities and principal payments on debt obligations held by the plan may be taken into account. In addition, the pension plans are to make available to the Secretary their audited financial statements. The requirements of the bill with respect to audited financial statements of the plans are generally the same as the audit requirements for financial statements of large private pension plans under the Employee Retirement Income Security Act of 1974 (ERISA) as in effect on the date of the enactment of the bill. Accordingly, in offering his opinion under the bill on the financial statements of a plan the auditor may rely upon the correctness of any actuarial matter certified to by an enrolled actuary. The requirements of the bill are not satisfied by a plan unless, in the auditor's opinion, the plan's financial statements are prepared in accordance with generally accepted accounting principles. The bill does not, however, require the preparation of the schedules required to be prepared by large private pension plans under sections 103(b)(3) and 104(b)(3) of ERISA.

In connection with the cash flow standard and the percentage limitations on plan acquisitions, the bill provides that a city plan's acquisition of city or agency obligations does not meet the requirements of the bill for a year unless (1) for that year the plan has prepared and submitted cash flow projections and (2) each participating city plan has submitted audited financial statements for each preceding plan year beginning after June 30, 1978.[6]

Under the bill, the audit report for each participating city plan is to include the relevant figures necessary for the Secretary to determine each participating city plan's compliance with the percentage limitations of the bill. The committee understands that audited financial statements of a plan will include a statement of receipts and disbursements, asset holdings, and changes in asset holdings. The cash flow projections and financial statements of each plan are to be submitted to the Secretary, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives.

Certification to the Secretary

Under the provisions of the bill, it is mandatory that any city plan certify that any acquisition of city or agency obligations are made under the terms of the agreement under which such obligations are to be acquired, that following the acquisition the plan continues to satisfy the 50-percent limit of the bill's specific standards, and that, after taking the acquisition into account, the plan does not have a projected negative cash flow for the plan year in which the acquisition takes place. A similar certification is required of the state plans with respect to the 10 percent limitation. With respect to the cash flow statement of a plan, the certification is to be based upon a report of cash flow prepared by the plan showing projected cash flow for the plan year of the acquisition, after reflecting the acquisition. (For an additional requirement of a financial report of each participating city plan prepared in accordance with generally accepted accounting principles see "(3). *Financial condition of plans*," above.)

In the case of an acquisition which is under an agreement that has not been disapproved by the Secretary, under the bill, the Secretary would accept the certifications (subject to his review) and would not

[6] The bill does not require submission of audited financial statements with respect to a plan year until 8 months and 15 days after the close of that year.

be required to make an independent determination that the requirements of the bill are met.

Notification by the Secretary

The bill provides that whenever the Secretary determines that a future acquisition of city or agency obligations by a plan will fail to meet one or more of the requirements of the bill, he is to notify the plans and the City of New York of his determination. Under the bill, however, the Secretary's determination with respect to an acquisition is not conclusive; that is, an acquisition may be found to satisfy the requirements of the bill despite the Secretary's notice to the contrary, or an acquisition may be found to violate the requirements of the bill even in the absence of a notice of the Secretary's determination to that effect.

Actions by the Secretary

The bill authorizes the Secretary of the Treasury or his delegate to prescribe regulations to carry out the provisions of the bill. Under the bill, no other function, power, or duty of the Secretary may be delegated.

Relationship With Public Law 94-236

Existing law relating to New York City pension funds applies to acquisitions made before the end of 1978. In order to prevent purchases of long-term debt between July 1, 1978, and December 31, 1978, from being under two sets of rules (P.L. 94-236 and the committee bill), the committee bill provides that the provisions of Public Law 94-236 will not apply to acquisitions made on or after, upon the effective date of the bill.

Effective Date

H.R. 4007 will be effective on the date of enactment. In addition, on that date, provisions in section 1(a) of Public Law 94-236, which are substantively identical to those in section (a) of this bill, will cease to apply with respect to acquisitions of City indebtedness on or after such date.

Revenue Effect

It is estimated that this committee amendment will have no effect on Federal revenues in fiscal year 1979 or in any one of the four subsequent fiscal years.

B. Continued Federal Matching for Child Support Collection for Nonwelfare Families

Present Law

The child support enforcement program, enacted at the end of the 94th Congress as title IV–D of the Social Security Act (Public Law 93–647), mandates aggressive administration at both the Federal and local levels with various incentives for compliance and with penalties for noncompliance. The program includes child support enforcement services for both welfare and nonwelfare families. The child support enforcement program leaves basic responsibility for child support and establishment of paternity to the States, but provides for an active role on the part of the Federal Government in monitoring and evaluating State child support enforcement programs, in providing technical assistance, and, in certain instances, in undertaking to give direct assistance to the States in locating absent parents and obtaining support payments from them.

To assist and oversee the operation of State child support programs, the Department of Health, Education and Welfare is required to set up a separate organizational unit under the direct control of a person designated by and reporting to the Secretary. This office reviews and approves State child support enforcement plans, evaluates and audits the implementation of the program in each State, and provides technical assistance to the States.

HEW regional child support staff, under the regional child support representative, are responsible solely for title IV–D and report directly to the Office of Child Support Enforcement. The manner in which the Department of Health, Education, and Welfare has complied with the requirement of a separate organizational unit for child support enforcement is in keeping with the spirit and intent of present law and is analogous to the organizational structure for child support enforcement in many States—particularly States with highly cost-effective programs such as Michigan, Massachusetts, Washington and Iowa.

The Act also provides for a parent locator service within the Department of HEW's separate child support enforcement unit. The Act further requires that a mother, as a condition for welfare, assign her right to support payments to the State and cooperate in identifying and locating the father and securing support payments except when cooperation is determined not to be in the best interest of the child.

The legislation creating the child support program requires each State to have a program of child support collection and paternity establishment services for both AFDC and non-AFDC families administered by a single and separate organizational unit within the State under a separate State plan for child support administered separately from other State plans. The statute provides Federal matching of 75 percent for services to AFDC families on a permanent basis. Matching for services to non-AFDC families was provided for one year, but has been extended through fiscal year 1978.

Committee Amendment

The committee believes that the requirement that every State have a program of child support collection and paternity establishment services for families that are not receiving welfare is an essential component of the child support program. The purpose of the requirement is to assure that abandoned families with children have access to child support services before they are forced to apply for welfare. It is the opinion of the committee, supported by the statements of many State child support administrators, that access to these services often means the difference between a family's reliance on welfare support and being supported by a legally responsible parent. Most of the families being served are marginally eligible for AFDC, and without services are likely to end up on the welfare rolls.

The committee believes that the existing programs of required services for non-AFDC families may flounder if Federal financing for the services is allowed to terminate. It also believes that States will be more willing to develop and expand the programs if they are convinced that Federal financing will be continued. In addition, it seems reasonable and fair to assist in the financing of a State program which is mandated by Federal law. The committee notes in particular that States which do not have an effective program for non-AFDC families are subject to a penalty provision which requires a reduction in Federal matching for AFDC of 5 percent if a State is found as the result of a Federal audit to have failed to have an effective child support program. For these reasons, the committee amendment would provide for Federal matching for services to non-AFDC families on a permanent basis.

III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING H.R. 4007, AS AMENDED

Budget Effect

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs incurred in carrying out H.R. 4007, as amended by the committee.

New York City pension plans

The committee estimates that the New York City pension plan provisions of this bill will have no effect on the budget receipts for fiscal years 1979–83. The Department of the Treasury agrees with this statement.

Child support collection for families not on welfare

The Administration has estimated the following costs for the provision continuing Federal matching for child support services to nonwelfare families: $40 million in fiscal year 1979, $43 million in fiscal year 1980, $45 million in fiscal year 1981, and $47 million in fiscal year 1982. The committee does not agree with these estimates because they make no allowance for the savings to be generated. The committee believes that it is quite clear from the experience with respect to welfare families that the savings which can be realized through the child support enforcement program far outweigh the costs. While the exact amount of savings from keeping families off welfare by obtaining support from absent parents has not been calculated, the committee is convinced that it would substantially exceed the estimated cost of the provision.

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. H.R. 4007, as amended by the committee, was ordered favorably reported by a voice vote.

IV. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

Regulatory Impact

Pursuant to rule XXIX of the Standing Rules of the Senate, as amended by S. Res. 4, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out provisions of this bill.

A. New York City Pension Plan Provisions

1. *Numbers of individuals and businesses who would be regulated.*—The bill establishes criteria which relate to the authority of five pension plans of employees of the City of New York and three pension plans of employees of the State of New York to purchase debt obligations issued by the City of New York or the Municipal Acceptance Corporation on behalf of the City of New York. These criteria also relate to the fiscal performace of the City of New York and the financial characteristics of debt obligations issued by the Municipal Assistance Corporation.

2. *Economic impact of regulation on individuals, consumers, and businesses affected.*—The bill modifies present law with respect to the requirements that (1) there be no prohibited transactions, e.g., self-dealing, between an employer and pension plans for its employees and (2) the pension plans must be managed for the exclusive benefit of the employees. As a result, the pension plans may purchase New York City obligations, so long as the City makes progress toward achieving a balance in its expense budget for the fiscal year beginning July 1, 1981. Such fiscal achievement will increase the capability of the City's government to meet the needs of the individuals and businesses who reside and work in the City.

3. *Impact on personal privacy.*—The provision has no impact on the personal privacy of individuals.

4. *Determination of the amount of paperwork.*—There will be a nominal increase in the amount of paperwork over the present amount of paperwork for the City and the pension plans to prepare reports for the Secretary of the Treasury. He will use the reports in determining whether the pension plans may continue to purchase New York City indebtedness, as stated in an agreement to be reached with the City of New York.

B. *Child support collection for families not on welfare*

The regulatory impact of this provision is minimal and is limited to those families who are being aided by the child support program and to State and local agencies administering the program.

Consultation with the Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has prepared no statement on the budget estimates with respect to the committee amendments.

New Budget Authority

In compliance with section 308(a)(1) of the Budget Act, the committee states that the bill does not provide any new budget authority. The provision relating to child support for nonwelfare families was passed by the Senate on August 23, 1978, as part of H.R. 12232. The Committee on Finance did not receive any formal communication from the Congressional Budget Office with respect to the child support provision in this bill. However, the following communication was received from the Congressional Budget Office concerning the provision that was included in H.R. 12232.

AUGUST 28, 1978.

Memorandum to: Files.
From: Al Peden.
Subject: Amendment to Extend Non-AFDC Child Support Enforcement.

Under current law, the 75 percent federal matching payments for non-AFDC child support enforcement administrative expenses are due to expire September 30, 1978. This amendment would drop this cutoff date and extend payments indefinitely.

CBO currently estimates that the extension of these federal payments will result in no additional costs in fiscal year 1979 or thereafter.

Previously, CBO had taken the administration's estimate for this provision (the estimate for fiscal year 1979 was $40 million for the identical provision in the Senate Finance Committee's version of H.R. 7200). This estimate represents only the direct administrative expenses of state and local governments for this part of the program and ignores factors which would result in savings of federal expenditures. These savings come from two sources: (1) Families are kept off of AFDC and other welfare programs as a result receiving child support collections under this program, and (2) "Non-welfare recipients may be required, in some states, to pay an application fee and the costs of collection may be deducted from collections made."[1] While current information does not permit a precise estimate of these savings, CBO feels that they would at least offset the proposed expenditures. Some prima facie evidence may illustrate the point. For fiscal year 1979 it is estimated that there would be 500,000 nonwelfare families receiving child support enforcement collections should this provision become law.[2] If only 5 percent of these families (25,000) were forced to turn to AFDC, this could mean an increase in AFDC payments in excess of $40 million. This is shown as follows:

Number of families effected	25, 000
Estimate average AFDC payment per family for fiscal year 1979	$3, 179
Federal share of payment	. 543
Federal expenditures for effected families in fiscal year 1979	$42, 000, 000

This estimate does not include savings from collections received or savings in other programs such as food stamps and medicaid.

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[1] From the Budget of the U.S. Government, Appendix, fiscal year 1979, p. 448.
[2] Op. cit.

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