[COMMITTEE PRINT]

SUMMARY OF DIFFERENCES BETWEEN THE SENATE VERSION AND THE HOUSE VERSION OF H.R. 2

TO PROVIDE FOR PENSION REFORM

PREPARED FOR THE USE OF

THE HOUSE AND SENATE CONFEREES ON H.R. 2

PART TWO

TERMINATION INSURANCE
REPORTING AND DISCLOSURE

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†"Page numbers" outside parentheses are the numbers of the relevant pages in the print of H.R. 2 dated March 4, 1974. The first 353 pages of that print, in linetype, represent the bill as passed by the House of Representatives; the remaining pages of that print, in italic type, constitute the Senate amendment.
"Page numbers" inside parentheses are the numbers of the relevant pages in the comparative prints prepared by the staffs.

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119 (267)	(2)(a) Part of the premium amount for a particular plan is to be based on the plan's unfunded insured benefits. The premium rate on this part is not to exceed 0.1 percent for single-employer plans and 0.025 percent for multiemployer plans.
120 (267)	(b) The other part of the premium amount for a particular plan is to be based on the plan's total (i.e., whether or not funded) insured benefits. The rate for total insured benefits is to be determined separately for single-employer and multiemployer plans on a yearly basis by the Corporation at levels calculated to produce the same aggregate premium revenue as is produced by the premiums based on unfunded insured benefits.
119 (267)	(3)(a) The Corporation may revise the rates as to the unfunded insured benefits; it is to annually revise the rates as to the total insured benefits, in order to correspond to the requirements in point (2)(b).
124 (277)	(b) If the Corporation wishes to exceed the rate limits specified in point (2), or change the rate base, it may do so, but only as to plan years beginning more than 30 days after Congress approves the revision by a House concurrent resolution.
123 (274)	(4) The Corporation may charge interest, at appropriate rates, on unpaid premiums that are past due.
120, 128 (269, 289)	(5) The premiums for such supplemental coverage as the Corporation determines to offer are to be based upon the actual and projected costs of providing such coverage.
117, 124, 143 (261, 275, 324)	(6) Each single-employer plan choosing to avoid contingent employer liability is to pay a premium based upon (a) the plan's insured benefits, (b) the plan's unfunded insured benefits, and (c) the actual and projected experience of all plans choosing to avoid contingent employer liability.

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(7) Since multiemployer plans or employers in those plans would not be liable, under the House bill, for losses suffered by the Corporation as a result of termination of such plans, there is no provision fixing a premium rate for multiemployer plans to pay to avoid this liability.	143 (324)
Senate amendment.—	
(1) Separate uniform premium rates are to be established by the Corporation for single-employer plans and for multiemployer plans.	447 (265)
(2) The premium rate through 1976, for both single-employer plans and for multiemployer plans, is to be $1 per year per participant.	447 (267)
(3) The Corporation may revise both the premium rate and the rate base for years after 1976, but any such change is not to become effective until plan years beginning more than 30 days after Congress approves the change by a House concurrent resolution.	448 (277)
(4) Since the premiums are to be collected as excise taxes, the Internal Revenue Code's excise tax interest, addition to tax, and penalty provisions would apply to these amounts.	490
(5) The Corporation is permitted to determine which if any ancillary benefits are to be includible as covered benefits under the basic premium; also, it is authorized to insure other benefits and to establish and collect the necessary premiums.	455, 461 (288, 326)
(6) and (7) Each plan (single-employer or multiemployer) choosing to avoid contingent employer liability is to pay such premiums as the Corporation determines are necessary to cover payments resulting from the offering of such contingent liability insurance.	460 (275)
Staff comment.—	
(1) The conferees may wish to require the Corporation to establish separate uniform premium rates for single-employer plans and for multiemployer plans.	
(2) In order to provide a relatively simple initial premium structure, the conferees may wish to consider establishing (for the first 2 years) a premium rate of $1 per plan participant for single-employer plans and 50 cents per plan participant for multiemployer plans, with an option to use instead the formula proposed in the House bill (to the extent the House bill formula does not lower the plan's liability for premium payments to less than half of the amount the plan would have had to pay under the $1 or 50 cents rules). The conferees may wish to require that no participant in a multiemployer plan is to be counted more than once as to any one year's premium for that plan.	

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(3) The conferees may wish to provide the following as to premium rates after the first 2 years:

(a) The Corporation may revise the rates and the rate bases, but (i) if it bases premiums on number of participants, the rates are not to exceed the $1 and the 50 cents referred to in point (2), above; (ii) if it bases premiums on unfunded insured benefits, the rates are not to exceed the 0.1 percent and 0.025 percent referred to in *House bill* point (2)(a), above; (iii) if it bases premiums on total insured benefits, the rates are not to exceed the amounts which would be calculated under *House bill* point (2)(b) above; and (iv) if it uses any 2 or all 3 of the above 3 rate bases, it must set the premium rules so as to produce approximately equal amounts of aggregate premium revenue from each of the rate bases it uses.

(b) If the corporation wishes to (i) exceed the rate limits specified above, (ii) produce unequal amounts of aggregate premium revenue from the different rate bases, or (iii) use different rate bases, it may do so, but only as to plan years beginning after Congress approves these revisions.

(4) The conferees may wish to provide for the collection of premiums as such, and not as taxes, and with the enforcement mechanism to be a civil action brought by the Corporation. The conferees may also wish to provide that all premiums are to be paid by the plan, and that there will be a civil penalty equal to 100 percent of the premium liability if premiums are not paid when due, with the penalty also to be paid by the plan. In addition, the Corporation might be enabled to charge interest at a current rate (as in the House bill) for unpaid premiums that are past due. Coverage would continue even though premiums are not paid.

(5) The conferees may wish to permit the Corporation to insure benefits that are supplemental to the basic retirement and ancillary benefits, and to prescribe premiums based on actual and projected costs of this coverage. Some staff members maintain that these premium payments should not be based upon any uniform rate structure, while others assert that premiums for the insurance of each category of supplemental benefits (such as medical and layoff benefits) should be at separate uniform rates.

(6) and (7) The conferees may wish to adopt the House bill's provision for establishing the additional premium to be paid by single-employer plans insuring themselves against contingent liability, and this system might be extended to multiemployer plans.

The conferees may also wish to provide specifically that premiums in single-employer plans are to be based upon uniform rates and that premiums in multiemployer plans are to be based upon uniform rates.

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6. Valuation of Plan Assets and Insured Benefits

House bill.— 121

(1) The Corporation is to adopt rules for valuation of a plan's assets for purposes of determining premium payment amounts. Special rules are provided as to securities for which a market exists and as to bonds or other evidences of indebtedness. (271)

(2) Also for the purpose of determining a plan's premium payment amounts, the Corporation is to adopt rules on the valuation of a plan's insured benefits. Special rules are provided as to triennial valuation of plan liabilities and as to comparability of mortality rates and interest rates. 122 (272)

Senate amendment.—The actuarial value of a benefit is to be determined in accordance with the Corporation's bylaws. 457 (291)

Staff comment.—The conferees may wish to authorize the Corporation to establish by regulations equitable methods of valuing assets and benefits.

7. Trust Funds

House bill.—

(1) There is to be a Single-Employer Primary Trust Fund and a Multiemployer Trust Fund. 117 (261)

(2) The Corporation is to have discretion to establish a Single-Employer Optional Trust Fund (for employers in single-employer plans electing to pay the extra premium charge to avoid employer liability) and other trust funds.

(3) The resources of each fund are to be kept separate from the other funds and are not to be used to pay the expenses and losses of another fund.

Senate amendment.—

(1) There is to be a Pension Benefit Guaranty Fund. 446, 460, 461

(2) Authority is granted to establish funds for insurance of contingent employer liability and insurance of other classes of benefits. (261, 275, 326)

(3) It is intended that premium rates for single-employer plans and multiemployer plans reflect experience and corporation costs for single-employer plans and multiemployer plans, respectively, even though the assets are maintained in a single fund.

Staff comment.—The conferees may wish to provide for separate funds for single-employer and multiemployer plans. Under this approach, the fund for single-employer plans would encompass, as to those plans, the basic termination insurance (including that

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of single-employer plans voluntarily covered), the employer liability insurance, and the assets of terminated plans which the Corporation has liquidated or transferred into the fund. The fund for multiemployer plans would encompass the corresponding element for those plans. The conferees may also wish to provide for two additional funds—one for the insurance of supplemental benefits of single-employer plans and one for the insurance of supplemental benefits of multiemployer plans. The resources of each fund are to be kept separate from the other funds and are not to be used to pay the expenses of another fund.*

8. Premium Phase-in

121 (270)

House bill.—The amount of premiums otherwise payable by any plan (except a successor plan) is to be phased in from 50 to 100 percent, depending on how long the plan has been in effect, so that a plan in effect 6 years or more would pay 100 percent of the premium rate.

Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to consider following the approach of the Senate amendment (i.e., not providing for phasing in of premium payments).

9. Plans Covered

House bill.—

98, 125 (219, 283)

(1) Except as noted in point (2) below, the insurance provisions are to apply on a mandatory basis to all plans to which the funding standards apply.

(2) However, the insurance provisions are not to apply to a plan unless:

(a) the plan has more than 25 participants (of whom at least 10 have nonforfeitable benefits) at all times during any 5 consecutive years; and

(b) the plan's assets cover at least 10 percent of the present value of the plan's insured benefits.

453 (283)

Senate amendment.—

(1) The insurance provisions are to apply to all qualified plans except:

(a) money purchase pension plans, profit-sharing plans, and stock bonus plans.

(b) governmental plans.

(c) church plans (other than those electing to come under the insurance provisions) and

(d) certain fraternal association plans.

(2) No corresponding provisions.

Staff comment.—

(1) The conferees may wish to provide that (apart from what may be decided below under point (2),

*Not all staff members agree with this point.

relating to plans with relatively few participants and plans with little assets) all plans that are subject to the funding standards of the bill (other than defined contribution plans) are to be covered.

This would mean that the following kinds of plans would be excluded from mandatory insurance coverage:

(a) Governmental plans, including plans financed by contributions required under the Railroad Retirement Act.

(b) Church plans that do not elect coverage.

(c) Non-U.S. plans for nonresidents aliens, substantially all of the participants and beneficiaries of which are nonresident aliens.

(d) Unfunded plans maintained by the employer primarily to provide deferred compensation for select management or highly-compensated employees.

(e) Plans which have not provided for employer contributions after the date of enactment.

(f) Profit-sharing and stock bonus plans (money purchase plans also would be excluded).

(g) Plans funded exclusively by the purchase of individual qualified insurance contracts and group insurance contracts which have the same characteristics, as determined by regulations, as individual qualified insurance contracts.

(h) Unfunded plans which provide benefits in excess of the limitations in the Internal Revenue Code on contributions and benefits which may be adopted, and which are plans for the highly-paid.

(i) Nonqualified plans exclusively for sole proprietors, or exclusively for partners all of whom own more than 10 percent of the capital or profits interest in the partnership.

(j) Plans established by fraternal societies or other organizations described in section 501(c)(8), (9), or (18) of the Internal Revenue Code which receive no employer contributions and which cover only members (not employees). The conferees may also wish to provide that all plans are to be excluded from coverage during their first 5 years of existence, but to provide for refunds of all premiums paid during that period for plans terminating before coverage.

(2) Some staff members would follow the House rule (generally excluding from mandatory coverage those plans with fewer than 26 participants or with assets covering less than 10 percent of the insured benefits). Others would follow the Senate approach (not excluding such plans).

10. Benefits Covered

House bill.—

(1) Insurance protection is to apply to benefits (other than those which became vested solely because

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(288)

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of the plan's termination) required to be vested under the statutory minimum vesting schedule designated by the plan (and to certain ancillary benefits), up to the insurance limitations, except as noted below.

129 (291) (2) The terminated plan must have been subject to the insurance provision for more than 5 years prior to termination if any of its benefits are to be covered, but the Corporation may authorize insurance of benefits under other plans that have been in effect at least 5 years if the Corporation believes that the plan has been in substantial compliance with the standards of the Act before the plan was subject to the Act, and that the coverage will not prevent equitable underwriting of benefits otherwise covered. Also, the insured benefits must have arisen under plan provisions adopted and in effect more than 5 years before termination.

128 (289) (3) If the Corporation determines that additional benefits are insurable, the Corporation may prescribe the conditions and the premiums to be charged for this insurance. Insurance payments for these benefits are not to be made from either the Single-Employer Trust Fund or the Multiemployer Trust Fund.

126 (286) (4) The Corporation may also insure the benefits of plans not otherwise covered if they are tax-qualified and registered under section 512 of the Act, and if the coverage will not unreasonably increase the premium payments of plans that are required to be insured.

131 (293) (5) For purposes of meeting the time requirements, periods in which predecessor plans have been in effect are added to periods in which successor plans have been in effect.

Senate amendment.—

455 (288) (1) Insurance protection is to apply to benefits (other than those which became vested solely because of the plan's termination) that are vested under the plan, even though they exceed the statutory minimum vesting requirements (and to ancillary benefits which the Corporation determines to be insurable), up to the insurance limitations, except as noted below.

455 (290) (2) The insured benefits must have arisen under plan provisions adopted and in effect for at least 3 years prior to termination in order to be covered, and no discretionary coverage is provided for plans or benefits not in effect for 3 years.

461 (326) (3) Essentially similar to the House rules.

(4) No corresponding provision.

453 (283) (5) For purposes of meeting the time requirements, periods in which predecessor plans were in effect are added to the periods in which successor plans have been in effect.

Staff comment.— Page numbers

(1) The conferees may wish to adopt the Senate rule.

(2) The conferees may wish to provide that plans and plan amendments are to be fully covered (up to the insurance limitations) after they have been in existence for five years and that, in the meantime, there is to be no phasing in or insurance coverage. (But see "*22. Transitional Rule*," *infra*.)

(3) The conferees may wish to provide that if the Corporation determines that supplemental benefits are to be insured, the Corporation may prescribe the premiums to be charged for this coverage and conditions to the coverage. The staff has not agreed upon whether the premium rates for this coverage should be absolutely uniform or only uniform as to each separate category of supplemental benefits covered. The staff has also not agreed upon whether there should be additional trust funds for this insurance, but the staff has agreed that if additional trust funds are to be established, there should be one for single-employer plans and one for multiemployer plans.

(4) and(5) In addition, the conferees may wish to accept the House proposals dealing with (4) the discretion of the Corporation to insure plans voluntarily requesting coverage, and (5) "tacking on" periods of existence of predecessor and successor plans for purposes of the time requirements for coverage.

11. Insurance Limitations

House bill.—

(1) Insured benefits with respect to an individual are not to exceed the actuarial equivalent of an annuity, beginning at age 65, of $20 per month per year of credited service. 128 (290)

(2) This maximum is to be adjusted according to changes in all employees' average wages, as reported to the Secretary of Health, Education, and Welfare. 129 (290)

(3) The amount of insurance payable with respect to any individual is not to exceed this limitation regardless of the number of plans in which that individual was a participant. 131 (294)

(4) Insurance is withheld entirely from any "substantial owner"—a person who owns a sole proprietorship, more than 5 percent of a partnership, or 5 percent of either the entire stock or the voting stock of a corporation. 131 (296)

Senate amendment.—

(1) Insured benefits with respect to a participant are not to exceed the actuarial equivalent of the lesser of (a) 50 percent of average wages during the 5 years preceding termination or (b) $750 monthly. 456 (290)

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457 (291) (2) The $750 amount is to be adjusted according to changes in the social security contribution and benefit base.

457 (3) Essentially the same as the House bill.

(294) (4) The insured benefits of a participant who was an 458 "owner-employee" during the plan year of the termi- (296) nation or any of the preceding 3 years are reduced by the amount of that participant's pro rata share of any accumulated funding deficiency at the time of termination.

Staff comment.—

(1) The conferees may wish to provide that insured benefits with respect to a participant are not to exceed the actuarial equivalent of the lesser of (a) 100 percent of average wages during the individual's highest-paid 5 years of participation in the plan or (b) $750 monthly.*

(2) The limits described in point (1) would be adjusted according to changes in the social security contribution and benefit base.

(3) The amount of insurance payable with respect to any individual is not to exceed this limitation regardless of the number of plans in which that individual was a participant.

(4) The insured benefits of a participant who was an "owner-employee" during the plan year of the termination or any of the preceeding 3 years are reduced by the amount of that participant's pro rata share of any accumulated funding deficiency at the time of termination.

12. Effect of Tax Disqualification

132 (298) *House bill.*—Benefits that accrue after a tax disqualification of a plan are not insured.

458 (298) *Senate amendment.*—The Senate amendment is essentially similar to the House bill.

Staff comment.—The conferees may wish to provide that benefits which accrue after a tax disqualification of a plan are not insured.

13. Reportable Events

House bill.—

134 (300) (1) Certain events indicating possible danger of plan termination must be reported by the plan administrator to the Corporation. These events are:

(a) a tax disqualification;

(b) a benefit decrease by plan amendment;

(c) a decrease in active participants to 80 percent of the number at the beginning of the plan year, or 75 percent of the number at the beginning of the previous plan year;

* Not all staff members agree with this suggestion.

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(d) an IRS determination that there has been a plan termination or partial termination for tax purposes;

(e) a failure to meet the minimum funding standards;

(f) inability to pay benefits when due;

(g) a distribution of $10,000 or more in a 24-month period to a "substantial owner," if the plan has unfunded nonforfeitable benefits after the distribution (unless the distribution was made on account of death);

(h) filing of a report preliminary to a merger, consolidation, transfer of assets or liabilities, or a distribution in excess of $25,000 to a participant in any plan year, or the granting by the Secretary of Labor of a hearing in regard to a variation on the bill's standards; or

(i) the occurrence of any other event which the Corporation determines may be indicative of a need to terminate the plan.

(2) The Secretary of the Treasury is to notify the Corporation of the occurrence of events (a), (d), or (e), or any other event which indicates the plan is not sound, and the Secretary of Labor is to notify the Corporation of the occurrence of events (a), (d), or (h), or any other event which indicates the plan is not sound. 136 (302)

Senate amendment.—

(1) Essentially the same as House bill points (1)(a) through (f). As to point (1)(g), the Senate amendment requires reporting of any distribution of $10,000 or more to an owner-employee (unless the distribution is made on account of death or disability), if the distribution creates or increases unfunded vested liabilities. The Senate amendment does not include provisions corresponding to points (1)(h) and (i) of the House bill. 470 (300)

(2) Essentially the same as the House bill, as to the Secretary of the Treasury; no corresponding provisions as to the Secretary of Labor. 472 (302)

Staff comment.—The conferees may wish to adopt the House bill provision, with the modification that the Secretary of Labor may waive the requirement that any of these events be reported, in accordance with regulations to be established by the Corporation.

14. Terminations Instituted by the Corporation

House bill.—

(1) The Secretary of Labor may terminate a plan, after a hearing, (a) if he determines that (i) the plan failed to meet the minimum funding standards, (ii) the plan is unable to pay benefits when due, or (iii) 137 (304)

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failure to terminate will cause long-run loss to the Corporation, or (b) if the employer or an appropriate employee organization applies to him for authority to terminate.

137 (305) (2) The Secretary of Labor must distribute the plan's assets in accordance with the priority schedule given below under "*19. Distribution of Assets upon Termination*"; he is permitted to distribute the assets without ending the plan or appointing a receiver; and also he may order the plan's continuation under a receiver until all benefit liabilities are satisfied, in which case no benefits may thereafter accrue or vest, and benefits payable would not be limited to insurable benefits. At any time, however, he may wind up the plan (after a hearing) with a distribution of remaining assets.

464 (307) *Senate amendment.*—

(1)(a) The Corporation (not the Secretary of Labor) may institute termination proceedings in a United States District Court in which the plan administrator resides or does business, or in which any of the plan's trust property is located. Causes for the Corporation's intervention may be those described in the House bill, or a distribution in excess of $10,000 to an owner-employee (made other than on account of death or disability) if, after the distribution, there are unfunded vested liabilities.

464 (308) (b) In terminating, the Corporation may, upon notice to the plan, apply for appointment of a trustee for the plan, in which case the plan administrator must show cause within 3 days why the trustee should not be appointed. If a trustee is appointed, the Corporation must apply for a termination decree within 30 days; if the Corporation fails to do so, the assets must be transferred back to the plan administrator.

466 (309) (2) The trustee is granted various relevant powers to be used either prior to termination or both before and after termination. In general, a trustee is to be subject to the same duties as a trustee appointed under section 47 of the Bankruptcy Act.

469 (312) The Corporation may apply for appointment of a trustee or termination of a plan regardless of the pendency in any court of any action against a plan's assets, and the court may stay any such action pending its adjudication.

Staff comment.—

(1)(a) The conferees may wish to provide that, in order for the corporation to terminate a plan, the Corporation must go to court, as under the Senate amendment.

(b) The conferees may wish to specify that the Corporation may submit a list of recommended trustees

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to the court, but that the court is to appoint the trustee, with the preferred choice normally to be the existing plan administrator. In addition, the conferees may wish to specify that the Corporation may ask the court to appoint the Corporation itself as trustee, in special circumstances.

(2) The conferees may wish to enable the Corporation to decide whether the trustee should liquidate the plan immediately or continue to operate it under court supervision, while allowing the trustee, if he disagrees with the Corporation's decision, to ask the court to overrule the Corporation.

The conferees may decide to require the Corporation to create an Advisory Board to suggest trustees, to suggest favorable investments of plans' funds at any particular time, and to advise the Corporation, in view of existing economic circumstances, whether terminating plans should be liquidated immediately or continued in operation under trustees. The Advisory Board might consist of a representative from labor, another from management, and another from the general public.

15. Terminations at the Request of the Plan

House bill.—The House bill requires that an employer or employee organization seeking to terminate a plan must apply to the Secretary of Labor for authority to terminate. 137 (304)

Senate amendment.—A plan administrator wishing to terminate must first notify the Corporation of this fact and may make no termination distributions for 90 days. (This 90-day period may be extended by agreement.) The Corporation must notify the plan administrator within 90 days (or as extended) of its determination whether the plan assets are sufficient to discharge all insured benefit obligations. A notification that the assets are not sufficient is to be treated as a termination by the Corporation as of the date of notification. 461 (304)

If, in terminating with authorization of the Corporation, a plan administrator should find the plan assets insufficient to discharge all insured benefits, he must notify the Corporation, which is then to terminate under the regular proceedings for involuntary terminations. 463 (306)

If an insured plan is changed to a money purchase plan, a profit-sharing plan, or a stock bonus plan (which are not covered by the insurance provisions), the change is treated as a voluntary termination (for which the plan administrator must first obtain authorization). 463 (306)

Staff comment.—The conferees may wish to adopt essentially the Senate amendment, but to provide as

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well that both the plan administrator and the Corporation are to have the option to go to court to request the appointment of a trustee when the best interests of the participants and beneficiaries would thereby be served. In addition, the conferees may wish to provide that there shall be a special expedited court process for all instances in which there is no disagreement between the plan administrator and the Corporation.*

16. Management Functions

House bill.—The Secretary of Labor is given authority to transfer funds of terminated plans to the Corporation for investment and for payment of benefits, as well as to obtain outside financial counsel and to take any other consistent action to assure equitable payments to participants and beneficiaries.

Senate amendment.—Investment of funds of terminated plans is to be handled by the court-appointed trustee.

139 (308)

Staff comments.—The conferees may wish to provide that the court-appointed trustee is to take charge of the assets of a terminated plan and invest them, that gains and losses thereafter incurred are to adhere to the Corporation, and that the court-appointed trustee may employ financial analysts to advise him on investment and related matters. However, the conferees may also wish to provide that the Corporation may establish investment policies, including whether annuities should be purchased (for plans in general or for particular plans whether or not an insurable event has yet occurred), and that the Corporation may obtain advise for that purpose from an Advisory Board to be established.

466 (310)

17. Duties of Corporation to Secretary of Labor

140 (315)

House bill.—The Secretary may examine the Corporation's records and require reports as he deems appropriate. There are also requirements for certain regular reports from the Corporation to be transmitted with appropriate comments by the Secretary to the President and Congress.

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Senate amendment.—The Secretary of the Treasury is to be the trustee of the insurance fund and to report annually to Congress.

Staff comment.—The conferees may wish to adopt the House provision.

18. Employer Liability

House bill.—

141 (317)

(1) In general, each solvent employer is liable to reimburse the Corporation for insurance benefits paid

* Not all staff members agree with this point.

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because of termination of that employer's plan (other than a multiemployer plan).	
(2) The employer liability is not to exceed 50 percent of the employer's net worth.	141 (317)
(3) The House bill does not provide for employer liabilities in the case of multiemployer plans.	113 (324)
(4) An employer liability which arises because of a termination is to give rise to a lien against the employer's property. This lien is to be subordinate to the basic Federal tax lien. The Corporation is authorized to arrange for payment of this liability on equitable and appropriate terms.	142 (321)
(5) The Corporation is authorized to permit employers to elect to avoid employer liability, upon payment of the appropriate premiums.	117, 123, 143 (261, 275, 321)
(6) A plan may be amended to end further participation, accrual of additional benefits, and further vesting without thereby necessarily causing an insurable termination.	143 (325)
(7) and (8) No corresponding provision.	
Senate amendment.—	
(1) Each employer is liable to reimburse the Corporation for insurance benefits paid because of the termination of that employer's plan (whether or not it is a multiemployer plan).	478, 486 (317, 334)
(2) The employer liability is not to exceed 30 percent of the employer's net worth, determined as of 120 days prior to termination of the plan.	479, 487 (318, 335)
(3)(a) The employer liability on termination of a multiemployer plan is to be allocated among the employers who contributed during the 5 years before termination, in proportion to those contributions. The 30-percent limit (point (2), above) is to be applied separately to each employer.	486 (335)
(b) If a substantial employer withdraws from a multiemployer plan, the withdrawing employer is required to furnish a bond to cover that employer's possible liability if the multiemployer plan terminates within 5 years after the withdrawal. Alternatively, the Corporation is authorized to allocate the multiemployer plan's assets between the participants who are no longer in covered service because of this withdrawal and the other participants, and treat that portion of the plan allocable to the withdrawing employer's employees as though it were a terminated plan. A third alternative is to permit the Corporation to accept an indemnity agreement among the employers in the plan.	182 (330)
(c) A definition is provided for "multiemployer plan" (see Part One of this summary, Participation and Coverage, item 12, page 8).	441 (A-80)

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479, 488 (320, 321)	(4) An employer liability which arises because of a termination is to give rise to a lien on the employer's property. This lien is to be subordinate to certain Federal tax liens and also to other liens perfected not later than 30 days after termination. The Corporation is authorized to further subordinate this lien, and also to arrange for payment of this liability on equitable and appropriate terms.
460, 478 (275, 317)	(5) (a) The Corporation is authorized to permit employers to elect to avoid liability, on payment of the appropriate premium for each of the 5 plan years immediately preceding the plan year during which the plan terminates. However, the liability will not be avoided if the employer remains in the same business or a similar business. The employer liability is not to apply to the extent that the insurance shortfall arises out of the insolvency of a qualified insurance company.
461 (326)	(b) The amendment specifically permits employers to secure, from the private insurance industry, insurance against this liability.
	(6) No corresponding provision.
480 (293)	(7) A successor employer incurs the liability for insurance losses caused by the termination of its predecessor's plan.
482 (318)	(8) If at least 20 percent of an employer's employees (who are participants in the plan) are separated from employment due to the employer's ceasing operations in any facility, that employer incurs employer liability according to the rules regarding liability for losses caused by the withdrawal of "substantial owners" from multiemployer plans.

Staff comment.—

(1) The conferees may wish to agree to impose employer liability in the case of multi-employer plans as well as other plans.

(2) The conferees may wish to adopt the Senate approach, with the employer liability not to exceed 30 percent of net worth, modified as follows: (a) the date of the determination of the employer's net worth is to be 120 days prior to the termination date, and (b) the date of the valuation of the plan's assets and liabilities to be the termination date itself.

(3) (a) The conferees may wish to consider agreeing to the approach of the Senate rule allocating employer liability on terminations of multiemployer plans among the employers who contributed during the five years before termination, in proportion to those contributions, and with the 30-percent limit (point 2, above) to be applied separately to each employer. The conferees may also wish to allow such other equitable approach as may be determined by regulations.

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(b) The conferees may wish to consider adopting the rules of the Senate amendment, except that they may wish to authorize regulations to provide for alternative methods to indemnity bonds in order to assure that a withdrawing substantial employer will contribute its fair share in the event of a plan termination.

(c) The conferees may wish to use the same definition of "multiemployer plan" for the insurance provisions as they agreed to for purposes of the participation provisions, above. In addition, the conferees may wish to provide that, if a plan has more than one employer, but does not qualify as a multiemployer plan under this definition, then the Corporation would be authorized to provide by regulations for allocations of employer liability among the employers in the plan and that such regulations should generally follow the rules for multiemployer plans.

(4) The conferees may wish to provide that the Government lien on account of the employer's liability is to be subordinate to all liens perfected 120 days prior to the termination date and also subordinate to all claims of general creditors existing as of the date of enactment of the insurance provisions.*

(5) The conferees may wish to authorize the Corporation to work out an arrangement whereby private insurers would insure employers against liability for terminations of their plans, but with the Corporation also authorized to provide a governmental insurance against employer liability if a satisfactory private plan cannot be arranged. The conferees may also wish to allow the Corporation to specify the extent to which all employers must purchase the insurance against employer liability (whether the insurance arrangement is public or private) and to permit the Corporation the discretion to determine circumstances under which employer liability insurance benefits would not be paid an employer despite that employer's purchase of the insurance. If a combination of governmental and private insurance is chosen, the conferees may wish to allow the Corporation to require each employer to determine within three years after the effective date whether to take private or the public insurance.

(6) The conferees may wish to provide that where there is a technical plan termination for purposes of the Internal Revenue Code (*e.g.*, a stopping of further accruals), this is not necessarily to be a termination for purposes of the insurance provisions (although the Corporation could make it such a termination).

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* Not all staff members agree with this suggestion.

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but that it would be a reportable event. The conferees may also wish to provide that the employer could still claim business deductions for contributions to the plan under the same rules as would apply to regular ongoing plans.

(7) The conferees may wish to consider adopting rules along the line of the Senate amendment relating to a successor employer's liability arising from the termination of a predecessor employer's plan.

(8) The conferees may wish to consider adopting rules along the line of the Senate amendment relating to termination of a substantial facility.

19. Distribution of Assets upon Termination

House bill.—

143, 59 (337, 130) (1) The bill provides for priorities in distribution of plan assets on termination. In general, net assets (assets less expenses and less those assets irrevocably allocated to individual accounts at least 2 years before termination) are allocated in the following order:

(a) employee contributions,

(b) vested benefits of employees already receiving benefits or entitled to choose early retirement (except for disability),

(c) other vested benefits,

(d) other accrued benefits,

(e) interest on employee contributions,

(f) remaining liabilities proposed in the plan for payment upon termination, and

(g) pro rata to each person entitled to receive a distribution on account of priorities (a) through (f).

62 (133) (2) If the assets are insufficient to cover all of the claims within a priority class (after satisfaction in full of the higher priority claims), then they are to be allocated pro rata within that class. However, the plan may grant priority of distribution to a subclass that is established on the basis of age or length of service, or both.

60 (131) (3) There is to be no double allocation of assets resulting from a benefit being includible in more than one priority category. That is, to the extent that a benefit is satisfied in a higher priority category, it is to be removed from entitlement in the lower priority category.

61 (131) (4) If there has been a plan amendment during the 5 years prior to termination and the assets are insufficient to cover all the priority categories, then allocations are to be made, first, in accordance with the benefit formula in effect 5 years before termination, and then in accordance with subsequent formulas, until the assets are exhausted.

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(5) In the case of a plan to which only participants contribute, the first two priority classes are to be interchanged with first priority being given to vested benefits for those receiving benefits or generally entitled to begin receiving benefits upon termination, and second priority being given to employee contributions. — 64 (135)

(6) If the present value of the accrued benefits of employees not entitled to coverage is at least 25 percent of the value of the benefits of covered employees for five consecutive years, the House bill provides that the plan is to file a report, and the Secretary is to determine whether a partial termination has taken place. In other cases, as when participants are excluded by a plan amendment, benefits or employee contributions are reduced, or vesting or eligibility requirements are made more restrictive, the Secretary of Labor is to judge, according to all the facts and circumstances, whether a partial termination has taken place. — 65 (136)

(7) The Secretary may vary these distribution priorities, after a hearing, if to do so would further the purposes of Title I of the bill, protect plan participants and beneficiaries, prevent a substantial increase in plan costs or administrative burdens or a substantial decrease in benefit levels or employee compensation, and if the application of the priority schedule is detrimental to plan participants. — 143, 144 (337, 341)

(8) No corresponding provision.

Senate amendment.—

(1) The amendment provides for distribution of plan assets, in the event of termination, in the following order of priorities: — 473 (130, 337)

(a) voluntary employee contributions,

(b) mandatory employee contributions,

(c) benefits in pay status at least 3 years (at the benefit level existing 3 years before termination),

(d) other insured benefits.

(2) Essentially the same as the House bill. — 473

(3) Essentially the same as the House bill. — (130, 337)

(4), (5), (6), and (7) No comparable provisions. — 473

(8) In cases of voluntary terminations of uninsured plans not yet in existence on the date of enactment of the Act (and those already in existence if they have no written provision governing allocation of assets upon a termination), the same priorities are to apply, with the exception that all insured benefits will have the same priority status as those benefits in pay status for 3 years. — (130, 338) 494 (133)

Staff comment.—

(1) The conferees may wish to consider providing that, upon termination of a plan covered by the insurance provisions, the plan assets would be allocated in the following order of priorities:

(a) to voluntary employee contributions, then

(b) to mandatory employee contributions, then

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(e) to benefits in pay status for at least three years (and those which would have been in that status for at least three years if the employee had retired that long ago), based on plan provisions in effect five years prior to termination, then

(d) to other insured benefits (if termination insurance is payable), then

(e) to other nonforfeitable benefits, based on plan provisions in effect five years prior to termination, then

(f) to other vested benefits, taking into account benefits added by plan amendments adopted within the previous five years in order of adoption (unless assets are exhausted prior to taking such an amendment into account), and then

(g) to all other benefits.

(2) The conferees may wish to require pro rata allocations within a class, but also to permit a plan to provide subclass priorities, within limitations to be set by regulations and as long as the creation of the subclass priorities does not violate the antidiscrimination requirements of the Internal Revenue Code.

(3) The conferees may wish to provide that there is to be no double allocation arising from a benefit otherwise includible in more than one priority category as is provided for in both the House bill and the Senate amendment.

(4)–(8) These items are replaced by the staff comment on point (1).

20. Recovery of Plan Payments

475 (327)

House bill.—The House bill contains no provision for recovery of plan payments.

Senate amendment.—The Corporation is, in general, given the authority to recover all a terminated plan's benefit payment begun within three years prior to termination if the plan affects interstate commerce. The amount recoverable is reduced by the amount the plan participant would have received under an annuity commencing at 65 and by the amount of his insured benefits (reduced by his pro rata share of his company's liability to the Corporation for the insurance losses).

476 (328)

Payments subject to recovery are not to include those made on account of death or disability. The Corporation may waive recovery of certain amounts if recovery would cause substantial hardship to the participant or his beneficiary.

In the event of a distribution to an owner-employee that exceeds $10,000 and creates or increases unfunded vested liabilities, the three-year lookback period would not begin until the Corporation is informed of the distribution (which is a reportable event).

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Staff comment.—The conferees may wish to provide for recapture of any aggregate of $10,000 distributed to a plan participant in any 12-month period in the three years preceding termination, except distributions made under life annuities.

Payments subject to recovery are not to include those made on account of death or disability. The Corporation may waive recovery of certain amounts if recovery would cause substantial hardship to the participant or his beneficiary.

21. Liability on Withdrawal of Substantial Employers in Multiemployer Plan

House bill.—Since employees in multiemployer plans are not liable for the Corporation's losses under the House bill, there is no provision similar to the Senate amendment provision fixing liabilities to substantial employers in multiemployer plans caused by insurance losses to the Corporation. 143 (324)

Senate amendment.—The plan administrator of a multiemployer plan is required to inform the Corporation of the withdrawal of a substantial employer in the multiemployer plan within 60 days. (A substantial owner is defined as one who for two consecutive years has contributed at least 10 percent of employer contributions to a multiemployer plan and who, following the required notification by the plan administrator as to his status as a substantial owner, does not withdraw from the plan within two years.) Following its notification, the Corporation has two alternative procedures available. 482 (330)

In one of these, the substantial employer must pay or deposit a bond in the amount of his potential liability. His potential liability is computed as the share (with the share determined according to that employer's proportion of the total employer contributions to the plan within the past five years) of the total plan liability that would have existed if the plan had terminated when that employer withdrew from it. If the substantial employer desposits a bond, the Corporation may require the bond to be up to 150 percent of this potential liability. 483 (331)

If the plan terminates within five years, the payment or bond is forfeited for the benefit of the plan. If there is no termination, the payment or bond is to be returned to the substantial employer or cancelled. 484 (332)

Alternatively, the Corporation may, if the withdrawal causes a significant reduction in the amount of plan contributions, require the plan fund to be allocated between those participants no longer under the plan because of the withdrawal and those participants still covered. That portion of the fund allocable 484 (333)

Page numbers

to participants no longer in the plan is to be treated as a termination, while the remainder is to be a new plan.

485 (334) The Corporation is entitled to waive the use of either of these procedures if there is an indemnity agreement between all the other employers in the plan sufficient to satisfy all plan liabilities.

441 A multiemployer plan is a plan established or maintained under a collective bargaining agreement if benefits are payable for any participant regardless of whether that particular participant's employer ceases to make plan contributions and if the contributions of any one employer are less than 50 percent of the total in any one plan year.

Staff comment.—The conferees may wish to adopt the Senate provision in general, but to provide that the Corporation may choose a method in addition to the posting of a bond to assure satisfaction of liability of a withdrawing substantial employer. Presumably, the conferees would wish to have the same definition of multiemployer plan applied for termination insurance as they have agreed to with regard to participation, vesting, and funding.

22. Transitional Rule

131 (292) *House bill.*—If a plan has been in existence less than 5 years as of its termination, what would otherwise be the maximum insurance payments to its participants is to be phased in until the five-year age is reached. The percentage payable is to be 20 percent in the case of a plan less than 2 years of age, 40 percent for a plan less than 3 years of age, and so on to 100 percent after 5 years of existence.

Senate amendment.—No corresponding phase-in provision.

Staff comment.—Some suggest that the benefit coverage of plans already in existence as of enactment should be phased in at 20 percent per year; with a minimum benefit initially set at $20 per month and increasing each year by $20 per month until the total plan benefits, up to the insurance limitations, are covered after 5 years. Others maintain that these benefits should be phased in equally over 3 years, with a basic minimum of $30 monthly. Yet another position is that 50 percent of the benefits should be covered immediately, with the rest phased in at 10 percent per year for the next 5 years, but that the minimum payment should be the lesser of the benefit due under the plan or $100 monthly (up to the insurance limitations).

23. Effective Dates

144 (340) *House bill.*—The provisions regarding premiums and benefits payable apply to plan years beginning

after June 1, 1974, for single employer plans. In the case of a multiemployer plan involving a collective bargaining agreement covering more than 25 percent of the total participants, these provisions apply to plan years beginning after the earlier of December 31, 1980, or the date on which the last such agreement relating to that plan terminates (without regard to extensions made after the date of enactment of the Act). *Page numbers*

Provisions other than those regarding premiums and benefits payable take effect on the date of enactment of the Act.

Senate amendment.—Premiums are to be collectible with respect to plan years and taxable years beginning after December 31, 1973. The provisions regarding terminations and Corporation and employer liability apply to plan years beginning after December 31, 1976, unless the Corporation determines it has sufficient funds to cover earlier terminations. 493 (340)

The remaining provisions take effect as of the date of enactment of the Act.

Staff comment.—The conferees may wish to provide that the provisions regarding premiums and benefits payable in single-employer plans are to apply to plan years beginning after December 31, 1974.*

As to multiemployer plans, some propose that the effective date should be the same as for single-employer plans. Others suggest the provisions should be applicable to plan years of multiemployer plans beginning after December 31, 1975, while still others maintain that this should be varied to provide that the effective date for multiemployer plans covered by collective bargaining agreements covering more than 25 percent of the total participants should be the earlier of the first day of plan years beginning after December 31, 1978, or the date on which the last collective bargaining agreement relating to that plan terminates.*

24. Special Distribution and Merger Requirements

House bill.—Title I includes the following requirements dealing with distribution and merger of plans: 110 (248)

(1) Where plans merge, the adequacy of the participants' protection (both as to value of benefits and the extent to which the benefits have not yet been funded) is to be tested by determining what would have been the participants' benefits if (a) the plans had terminated just before the merger and (b) the merged plan had terminated just after the merger. Each participant's hypothetical post-merger termination benefit must not be less than that participant's hypothetical pre-merger termination benefit.

(2) A pension plan cannot make a lump-sum distribution to a participant or beneficiary if the distri-

*The staff is not in complete agreement on this point.

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bution would exceed the termination benefit that would be received if the plan terminated on the date of distribution.

(3) There can be no merger, consolidation, transfer of assets or liabilities, or distribution of assets to any participant in any year of more than $25,000, unless the plan administrator files an actuarial statement of valuation that shows compliance with the requirements of the Act at least 30 days prior to the merger, etc.

Title II includes the following provisions:

238
(A–108)

(1) Where plans merger, the adequacy of the participants' protection (both as to value of benefits and the extent (if any) to which the benefits have not yet been funded) is to be tested by determining what would have been the participants' benefits if (a) the plans had terminated just before the merger and (b) the merged plan had terminated just after the merger. Each participant's hypothetical post-merger termination benefit must not be less than that participant's hypothetical pre-merger termination benefit. This rule is to apply to mergers occurring after October 22, 1973.

(2) No comparable provision.

(3) No merger, consolidation, or transfer of assets or liabilities may occur without an actuarial statement showing compliance with the bill being filed with the Secretary of the Treasury at least 30 days before the merger, etc.

Senate amendment.—The Senate amendment contains no comparable provision.

Staff comment.—

(1) The conferees may wish to consider agreeing to the rule of the title II provision, except that the effective date would be the date of enactment.

(2) The conferees may wish to eliminate this provision regarding lump sump distributions.

(3) The conferees may wish to consider providing that there can be no merger, consolidation, or transfer of assets or liabilities, unless the plan administrator files an actuarial statement of valuation that shows compliance with the requirements of the Act at least 30 days prior to the merger, etc.

REPORTING AND DISCLOSURE—LABOR DEPARTMENT

1. Coverage

21
(51)

House bill.[1]—The reporting and disclosure provisions cover all employee benefit plans established or maintained:

(1) by employers engaged in or affecting interstate; and

[1] The reporting and disclosure provisions with respect to the Labor Department appear only in title I of the House bill.

(2) by employee organizations representing employees engaged in or affecting interstate commerce.

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Senate amendment.— 502

(1), (2) Substantially the same as the House bill. (51)

Staff comment.—The provisions are substantially the same.

2. Exemptions from Coverage 21

House bill.—The reporting and disclosure provisions do not apply to: (51)

(1) governmental plans (including Railroad Retirement Act plans financed by contributions required under that Act);

(2) church plans which have not elected to be covered by the new vesting, etc., rules;

(3) workmen's compensation and unemployment compensation disability insurance plans;

(4) non-U.S. plans primarily for nonresident aliens; and

(5) unfunded plans primarily providing deferred compensation for management or highly compensated employees.

Senate amendment.—The reporting and disclosure provisions do not apply to: 502, 534 (51)

(1) governmental plans; however, under the Senate amendment "governmental plan" does not include railroad retirement plans;

(2) plans of religious organizations that are tax-exempt under section 501(a) of the Internal Revenue Code;

(3) same as House bill;

(4) non-U.S. plans primarily for non-resident aliens if the situs of a plan's fund is outside the United States;

(5) no similar provision.

Staff comment.—

(1) Governmental plans: the conferees may wish to adopt the rules of the House bill.

(2) Church plans: the conferees may wish to adopt the rules of the House bill.

(3) Workmen's compensation plans: same in both bills.

(4) Non-U.S. plans: the conferees may wish to adopt the rule of the House bill, but additionally require that, for a plan to be excluded, substantially all of the participants and beneficaries of a plan must be nonresident aliens.

(5) Management plans: the conferees may wish to adopt the rules of the House bill. In addition, conferees may wish to exclude unfunded plans which provide benefits in excess of the limitations on contributions and benefits which may be adopted in the Internal Revenue Code, and which are plans for the highly-paid.

Page numbers

38 (89) *3. Exemption from Annual Reporting Requirements*

House bill.—

(1) Plans with fewer than 26 participants are exempt from the annual reporting requirements.

(2) The Secretary of Labor may exempt pension plans with fewer than 100 participants from the annual reporting requirements.

(3) The Secretary of Labor may exempt any class or type of welfare plan from all or part of the reporting, disclosure, and publication requirements.

(89) 503 *Senate amendment.*—

(1) No comparable provision.

(2) (a) The Secretary of Labor is to prescribe simplified reports for plans which cover less than 100 participants and maintain an employee benefit fund with less than $100,000 in assets.

(b) The Secretary of Labor may exempt any class or type of employee benefit plan from the reporting, disclosure, and publication requirements. Exemptions must be necessary or appropriate and consistent with the purposes of the Act.

(3) Same as the House bill (as part of the general exemption power, item (2) (b) above).

Staff comment.—With respect to pension plans, the conferees may wish to adopt the following compromise between the Senate and the House provisions:

(a) Generally, all plans would be covered (including plans with less than 26 participants). Simplified reports would be required for plans with fewer than 100 participants.

(b) However, the Secretary of Labor may waive the reporting and disclosure requirements for plans with fewer than 100 participants.

(c) In the case of plans involving fewer than 100 participants, the Secretary of Labor may prescribe different kinds of simplified reports for different types of plans and may waive the reporting requirements on a case-by-case basis or on a class basis.

(d) The Secretary of Labor may not waive the requirement that participants be given statements of their rights and benefits.

With respect to welfare plans, the conferees may wish to follow both the House and Senate rules and provide that the Secretary of Labor may exempt any class or type of plan from all or part of the reporting, disclosure, and publication requirements, and may provide simplified returns for them.

4. Variation of Contents of Reporting and Disclosure Requirements.

House bill.—No comparable provision.

503 (89) *Senate amendment.*—The Secretary of Labor may, by regulation, provide a variation in the form or

manner of reporting, disclosure, and publication required if the variation is necessary or appropriate and consistent with the purposes of the Act. *Page numbers*

Staff comment.—The conferees may wish to adopt the following:

(a) With respect to pension plans, the Secretary of Labor could grant variations, but not eliminate reporting requirements with respect to "line item transactions.", and in the case of pooled funds, he may not eliminate reporting but he could provide for reporting on an aggregate basis

(b) With respect to welfare plans, the Secretary of Labor would have unlimited variation authority.

5. Special Terminal Reports

House bill.—

(1) Special terminal reports are required for pension plans that are winding up their affairs; terminal reports may be required by the Secretary of Labor for welfare plans. 22, 38 (57)

(2) In addition, in the year a plan is terminated, the Secretary of Labor may require supplementary information to be filed with the annual report.

Senate amendment.—

(1), (2) Substantially the same as the House bill. 503

(3) Additionally, a special terminal report is to be made for any period during which the plan had assets and for 150 days thereafter. (57)

Staff comment.—The conferees may wish to adopt the rules of the House bill.

6. Plan Description—Contents 23 (61)

House bill.—

(1) Plan descriptions are to be comprehensive and written so they are understandable by average plan participants.

(2) Descriptions are to include the plan name and type of plan administration, the names and addresses of plan administrators and trustees, and a description of relevant collective bargaining agreements.

(3) Plan descriptions also are to include the plan participation and benefit requirements, benefit schedule, vesting provisions, funding source, plan year, procedures for claiming benefits, and remedies available under the plan where benefits are denied. 501 (61)

Senate amendment.—

(1), (2), and (3) Substantially the same as the House bill, with some minor differences.

Staff comment.—The conferees may wish to agree to the rules of the House. In addition, the conferees may wish to adopt a compromise combining the plan description and a summary of major provisions (Item 7 below) as described below.

Page numbers

7. Summary of Major Provisions—Contents

House bill.—No comparable provision.

516
(63)

Senate amendment.—The plan summary is to include important plan provisions, names and addresses of persons responsible for plan investment or management, a description of benefits, the circumstances that may result in disqualification or ineligibility, and requirements of the Welfare and Pension Plans Disclosure Act regarding the availability of plan documents.

Staff comment.—The conferees may wish to adopt the following compromise that would combine the plan description (Item 6) and plan summary:

(a) A booklet would be provided to all plan participants. The booklet would include two parts: (i) a comprehensive detailed plan description, and (ii) a reasonably comprehensive plan summary written so it is understandable by average plan participants.

(b) The conditions that would disqualify a person from receiving benefits from a plan would be included both in the plan summary and the plan description that would be in the booklet given to participants.

(c) The booklet would be filed with the Secretary of Labor by each plan subject to the Act. The Secretary would establish format guidelines for the booklet. The booklet could be used unless the Secretary rejected it.

(d) In addition, the Secretary of Labor is to require each plan to file a plan description on prescribed forms. (Simplified forms would be required for small plans, consistent with Item 3 above.)

8. Annual Report—Independent Accountant and Financial Audit

House bill.—

24
(69)

(1) Plan administrators are to engage, on behalf of plan participants, an independent qualified public accountant to examine plan financial statements and form an opinion as to whether the financial statements fairly conform with generally accepted accounting principles.

(2) The accountant is to conduct his examination in accordance with generally accepted auditing standards.

(3) He is to report whether certain supplementary financial data present information fairly in all material respects.

(4) the accountant's opinion is to be made part of the annual report.

(5) The accountant's opinion is not required for statements prepared by a bank or similar institution or insurance carrier if the statements are certified by the bank, etc., and are made part of the annual report.

(6) The bill defines qualified public accountant as including:

(a) certified public accountants,

(b) licensed public accountants,

(c) other persons who meet standards of education and experience prescribed by the Secretary of Labor in regulations,

(d) in addition, the Secretary may prescribe by regulation higher standards for qualification.

Page numbers

Senate amendment— 506

(1) Plan administrators are to have the plan audited annually. (69)

(2) The audit is to be in accord with regulations issued by the Secretary of Labor and in accordance with generally accepted standards of auditing.

(3) No comparable provision.

(4) The auditor's opinion is to form a part of the annual report.

(5) An audit is not to be required of the records of a bank, insurance company, or other institution providing insurance, investment, or related functions for the plan if the records are subject to periodic examinations by Federal or State agencies.

(6) No comparable provision.

Staff comment.—The conferees may wish to adopt the House provisions with the following changes:

(a) To the extent a plan is not required to make an annual report, an annual audit would not be required. Thus, if the annual report requirement was waived (see Item 3 above), the audit would not be required.

(b) With respect to plans that report on simplified forms (see Item 3 above), the Secretary of Labor may waive the requirement of an annual audit.

(c)(i) An audit would not be required of a bank, insurance company, or other institution providing insurance, investment, or other related functions for the plan if the records are subject to periodic examination by State or Federal agencies, to the extent the transactions in question are certified by the financial institution.

(ii) Where a bank, etc., performs functions for the plan and certifies records or transactions to the plan, this certification must occur within 120 days after the end of the plan year.

(d) With respect to reporting on forms, see Item 23, below.

(e) The provisions of the House bill which define qualified public accountant would be followed, except that, with respect to point (6)(c) of the House bill, Secretary of Labor would be authorized to prescribe standards only for persons who practice in States where there is no certification or licensing procedure for accountants.

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9. Annual Report—Enrolled Actuary and Actuarial Opinion

House bill.—

27
(72)

(1) Plan administrators are to engage, on behalf of plan participants, enrolled actuaries to supervise the preparation of the required actuarial statement. (For more detail with respect to the actuarial statement, see Item 18 below.)

(2) The actuary is to form an opinion as to whether the contents of the actuarial statement are reasonably related to the experience of the plan and to reasonable expectations.

(3) The actuary is to use assumptions which, in combination, offer his single best estimate of anticipated experience under this plan.

(4) The actuary's opinion and the actuarial statement are to be part of the annual report.

Senate amendment.—

513, 565
(72, 82)

(1) and (4) An actuarial report is to be included with the annual report filed with the Secretary of Labor.

(2) and (3) No comparable provision with respect to reports to the Secretary of Labor. However, the actuarial report provided the Secretary of the Treasury must include a statement that to the best of the actuary's knowledge the report is complete and accurate, and the actuary must give his opinion regarding the reasonableness of this funding method and actuarial assumptions used to determine the normal costs of the plan.

Staff comment.—

(1) and (4) [The conferees may wish to follow the House bill.]

(2) and (3) See Funding, Item 12, in Part One.

10. Annual Report—Contents of Financial Statement in General

29
(74)

House bill.—Financial statements are to be included in the annual report for welfare plans and pension plans.

With respect to welfare plans:

(1) The statement is to include plan assets and liabilities, revenues and expenses (by general sources and applications), changes in fund balance, and changes in financial position.

(2) The accountant is to consider disclosures in the notes to the financial statement with respect to the following: plan description and changes in the plan, material lease commitments, contingent liabilities, agreements and transactions with persons known to be parties-in-interest, tax rulings, and generally any other matters necessary to fairly present the financial statements of the plan.

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With respect to pension plans:

(3) The statement is to include plan assets and liabilities (including the estimated present value of accrued benefits to be paid), and changes in net assets (including details of revenues and expenses by general source and application).

(4) The accountant is to consider certain items with respect to the notes to the financial statement. These items are substantially the same as with welfare plans, but also include consideration of the funding policy, plan valuation date, and actuarial methods and assumptions.

With respect to both pension and welfare plans, the report also is to include:

(5) Plan assets and liabilities by categories, valued at current value, and

(6) Receipts and disbursements by general sources and applications.

Senate amendment.—The Senate amendment does not distinguish between reports required for welfare plans and pension plans. The annual report for covered plans is to include: 507 (75)

(1), (3), (5), and (6) A statement of assets and liabilities, receipts and disbursements, and amounts contributed by the employer and the employees, and the amount of benefits paid.

(2), (4) No comparable provisions.

In addition, under the Senate amendment the report is to include:

(7) The number of employees covered.

(8) A detailed statement of salaries, fees, and commissions charged to the plan (to whom paid, amounts, purposes), the name, address, and position of each plan fiduciary (and any relationship he has to the employer or employee organization and any position he has with a party-in-interest).

Staff comment.—(a) The conferees may wish to adopt the provisions of the House bill, adding any requirements of the Senate amendment which are not included in the House bill, and specifically provide that employer contributions are to be included in the report. (With respect to reporting to the Secretary of Labor on forms, see Item 23, *Staff Comment.*)

(b) In certifying, the accountant is to be permitted to rely on the correctness of any actuarial matter certified to by an enrolled actuary; where the accountant does so rely, he is to state his reliance.

11. Annual Report—Assets Held for Investment

House bill.—The annual report is to include: 31 (77)

(1) A schedule of all assets held for investment, aggregated and identified by issuer, borrower, lessor or

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similar party, maturity date, rate of interest, collateral, par or maturity value, cost and current value.

Senate amendment.—The annual report is to include:

507
(75)

(1) A schedule of all plan investments:

(a) with respect to securities, the schedule is to show the aggregate cost and value of the security by issuer;

(b) with respect to other investments, the schedule is to show aggregate cost and value by type or category and is to separately identify each investment which is more than 3 percent of the total, and each investment in property (including securities) of any person known to be a party-in-interest.

(2) (a) A schedule of purchases, sales, exchanges, etc., of securities with a list of issuers. Where the issuer is known to be a party-in-interest, additional detail is to be provided (quantity, price, proceeds, gain or loss, etc.).

(b) With respect to assets other than securities, a schedule of the aggregate amount of purchases, sales, etc., is also required.

Staff comment.—The House and Senate provisions are similar, and the conferees may wish to combine the provisions of both.

12. Reporting—Transactions With Parties-In-Interest

House bill.—

31
(77)

(1) The annual report is to include a schedule of each transaction involving a person known to be a party-in-interest.

(2) The schedule is to include the person's identity in relation to the plan, the asset involved, price (or rental or interest rate and maturity date), expenses incurred in the transaction, asset costs and current value, and gain or loss on the transaction.

508
(77, 78, 79)

Senate amendment.—

(1) Similar to the House bill.

(2) Similar to the House bill. In addition, special rules are provided with respect to transactions with parties-in-interest involving specific types of transactions.

(a) With respect to a transaction involving a security issued by a party-in-interest, the report is to include the issuer, type of security, quantity, gross purchase price, gross and net proceeds, and net gain or loss with respect to the transaction.

(b) With respect to loans and leases, the type

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of reporting required with respect to party-in-interest transactions is the same as that described below for loans and for leases in default (Items 13 and 14).

Staff comment.—The conferees may wish to merge the requirements of the House and Senate provisions.

13. Annual Report—Loans

House bill.— 32

(1) A report is required with respect to all loans in default at the end of the plan year or which were classified as uncollectible during the year. (78)

(2) The report is to include the original principal amount, the amount of principal and interest received during the year, the unpaid balance, identity of the obligor, a detailed description of the loan (when made, maturity date, interest date, collateral, material terms), the amount overdue, etc.

Senate amendment.— 509

(1), (2) Substantially the same as the House bill. (78)

(3) Additionally, this information is required for loans:

(a) that exceed 3 percent of the value of the fund, or

(b) are made to parties-in-interest.

Staff comment.—The conferees may wish to merge the two provisions, and include the requirements with respect to loans that exceed 3 percent of the value of the fund and loans to parties-in-interest. The conferees may wish to clarify that these reporting requirements apply to transactions normally considered as "loans" and not to transactions involving what is normally considered a "security."

14. Annual Report—Leases 32

House bill.— (78)

(1) The annual report is to include a list of all leases which were in default or which were classified during the year as uncollectible.

(2) The report is to include the type and location of the property, the identity of the lessor and the lessee and their relationship to the plan, the terms of the lease (rent, taxes, insurance, etc.), the gross rent received and expenses paid, the net receipts, when the property was acquired and its costs, the amount in arrears, etc.

Senate amendment.— 510

(1), (2) Substantially the same as the House bill. (78)
This information is also required for leases with parties-in-interest.

Staff comment.—The provisions are quite similar, and the conferees may wish to merge the two provisions.

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15. Annual Report—Large Transactions

34 *House bill.*—

(80) (1) The annual report is to include a schedule of each transaction (or the aggregate of multiple transactions with one person during the year) that exceeds 3 percent of the value of the fund or $300,000, if less.

(2) The schedule is to include the name of the person involved, a description of the assets, purchase or selling price (or rental, or interest rate and maturity), expenses incurred, asset cost and current value, net gain or loss, etc.

509 *Senate amendment.*

(77) (1) The annual report is to include a schedule for each transaction involving over 3 percent of the value of the fund.

(2) Substantially the same as the House bill.

Staff comment.—The conferees may wish to require this report only for transactions that exceed 3 percent of the value of the fund. Otherwise, the conferees may wish to merge the two provisions.

16. Annual Report—Common Trust

33 *House bill.*—If plan assets are held in a common

(79) trust maintained by a bank, etc., in a separate account maintained by an insurance company, or in a separate trust maintained by a banker-trustee, the annual report is to include a statement of assets and liabilities of the trust or account and other information needed by the plan administrator to comply with the annual report requirements.

Senate amendment.—Similar to the House bill.

512 *Staff comment.*—The provisions are substantially

(86) the same.

17. Annual Report—Persons Employed by the Plan

34 *House bill.*—The annual report is to include:

(81) (1) the name and address of each fiduciary;

(2) the name of each person who received more than $5,000 in compensation from the plan for services rendered, along with the amount of compensation, the nature of services, relationship to the employer, etc.;

(3) the reasons for any change in trustee, accountant, actuary, investment manager, administrator, etc.

507 *Senate amendment.*—

(81) (1) and (2) Similar to the House bill, except the Senate amendment requires a report with respect to each person who received fees, etc., from the plan and is not limited to persons who received more than $5,000.

(3) No comparable provision.

Staff comment.—

(1) and (2) The conferees may wish to require a report with respect to each person who received com-

pensation from the plan, but allow the Secretary of Labor to establish exemptions by regulation in the case of minimal amounts.

(3) The conferees may wish to adopt the rule of the House bill.

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18. Annual Report—Actuarial Report

House bill.— 35

(1) The annual report is to include an actuarial statement for all pension plans which are subject to the vesting or funding requirements of title I. (82)

(2) The actuarial statement is to include

(a) the actuarial report, the minimum contribution, normal cost, accrued liabilities, present value of vested benefits, value of assets, etc.;

(b) the annual contribution to the plan, the number of plan participants and beneficiaries, and vested benefits allocated by termination priority categories; and

(c) the value of plan assets (and an explanation of the basis of valuation), the ratio of the current value of assets to liabilities (with both assets and liabilities being allocated to termination priority categories), etc.

Senate amendment.— 513

(1) The annual report is to include an actuarial report. (82)

(2) The actuarial report is to include actuarial assumptions and an explanation of changes therein, the present value of vested liabilities, the value of accrued liabilities and the ratio of market value of reserves and assets to liabilities. It also is to include the type and basis of funding.

Staff comment.—The conferees may wish to adopt the provision of the House bill, and also include any Senate amendment provisions which are not in the House bill.

With respect to reporting on forms, see Item 23.

19. Annual Report—Insured Plans 24, 37

House bill.— (68, 86)

(1) If plan benefits are purchased from and guaranteed by an insurance company, the report is to include the premiums paid, benefits paid, charges for administrative expenses, commissions (and who is paid them) and the amount held to pay future benefits.

(2) If benefits are provided by an insurance carrier or other organization, the carrier, etc., is to certify to the plan administrator the information he needs to comply with the reporting, etc., requirements within 180 days after the plan year.

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506 (86)	*Senate amendment.*— (1), (2) Similar to the House bill (see also section 7(d) of the Welfare and Pension Plan Disclosure Act). *Staff comment.*—The conferees may wish to merge the House and Senate provisions and the provisions of present law.
	20. Annual Report—Pay-As-You-Go Plans
38 (87)	*House bill.*—If the only assets available for paying claims are the general assets of the employer or the employee organization, the report is to include the benefits paid and the average number of employees eligible for participation, for the previous five years.
512 (87)	*Senate amendment.*—Same as the House provisions. *Staff comment.*—The provisions are the same.
	21. Annual Report and Plan Description—Filing
38 (89)	*House bill.*— (1) Annual reports and plan descriptions are to be filed with the Secretary of Labor within 270 days after the plan year. (2) The descriptions and reports are to be made available for public inspection.
504, 515 (60, 89)	*Senate amendment.*— (1) The annual report is to be filed with the Secretary of Labor within 150 days after the plan year (as under present law). Plan descriptions are to be filed within 90 days after the plan is established or when the plan becomes subject to this requirement. (2) Same as House bill. (3) Any other documents relating to the plan are to be furnished upon request to the Secretary of Labor. *Staff comment.*— (1) The conferees may wish to require that annual reports be filed within 210 days after the plan year. (2) Same in both bills. (3) The conferees may wish to adopt the rule of the Senate amendment.
	22. Annual Report—Rejection of Filing
39 (91)	*House bill.*— (1) After notice and hearing, the Secretary of Labor may reject a filing if he finds that it is incomplete or if there is a material qualification in the accountant's or actuary's opinion. (2) If a revised report is not submitted within 45 days after rejection, the Secretary of Labor may retain an accountant to perform an audit, retain an actuary to make an actuarial report, or bring a civil action for legal or equitable relief.

(3) The plan is to be liable for any expenses of such an audit or report. *Page numbers*

Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to adopt the provisions of the House bill. However, the conferees may wish to provide that the filing may be rejected through administrative action by the Secretary of Labor, without the need of holding a hearing governed by the Administrative Procedure Act. A rejection of a filing by the Secretary would be subject to judicial review, however.

23. Annual Report—Forms

House bill.—The House bill eliminates the provision in present law authorizing the Secretary of Labor to prescribe forms for annual reports and to make these forms available to plan administrators (sec. 5(b) of the Welfare and Pension Plan Disclosure Act). Generally, forms are not to be required for annual reports under the House bill.

Senate amendment.—The Senate amendment retains the provisions of existing law authorizing the Secretary to prescribe and make available forms for plan descriptions and annual reports.

Staff comment.—The conferees may wish to adopt the following:*

(1) The Secretary of Labor would not prescribe forms for the booklet to be given to plan participants, annual financial statement, and annual actuarial reports. However, the Secretary of Labor would be able to regulate the format of these documents.

(2) The Secretary of Labor could prescribe forms for all other parts of the annual report. In addition, the Secretary could require that some or all of the information which is to be included in the plan booklet, annual financial report, and annual actuarial report be reported on prescribed forms.

24. Disclosure to Participants—Booklets Containing Plan Description, on Establishing a Plan

House bill.—Plan descriptions are to be furnished to participants within 120 days after the plan is established or after it becomes subject to the bill, if later. 23 (60)

Senate amendment.—Plan descriptions are to be published to participants within 90 days after the plan is established or becomes subject to the bill. 504 (60)

Staff comment.—The conferees may wish to adopt the provisions of the House bill and apply them to the plan booklet described in Item 7, *Staff Comment.*

*There was not complete staff agreement on this point.

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25. Disclosure to Participants—Booklets Containing Plan Description and Summary

40
(93)

House bill.—

(1) Plan descriptions are to be provided plan participants within 30 days after they begin covered employment, 90 days for multiemployer plans.

(2) All participants also are to receive plan descriptions at least once every 5 years.

(3) Descriptions of material changes are to be furnished each participant within 1 year after the change takes effect.

515
(93)

Senate amendment.—

(1), (2), (3) The plan description is to be available for examination by plan participants and beneficiaries in the principal office of the plan administrator. Additionally, plan descriptions are to be furnished to plan participants or beneficiaries upon written request.

(4) The administrator also is to furnish or make available (whichever is most practicable) a summary of the plan's important provisions (see Item 7, above). A summary is to be available (a) upon enrollment in the plan, (b) every 3 years, and (c) within 120 days after each major amendment.

Staff comment.—If the conferees decide to adopt the compromise suggested by the staff with respect to the booklet (see *Staff comment* Item 7), they may also wish to adopt the following rules with respect to disclosure to participants:

(a) Plan booklets are to be provided within 90 days after the individual becomes a participant.

(b) Plan booklets should be received by participants every 5 years.

(c) However, participants would receive descriptions of material changes in the plan within 210 days after the end of the plan year in which the amendments occur.

26. Disclosure to Participants—Annual Reports, etc.

House bill.—

41
(93)

(1) The annual report (and plan documents) is to be made available for examination by the plan participants or beneficiaries at the principal office of the plan administrator and such other places as is necessary to fully disclose all pertinent facts.

(2) Each participant is to be furnished a copy of the statement of plan assets and liabilities, and receipts and disbursements contained in the annual report.

(3) Each participant also is to be furnished a copy of the statement of the value of the plan assets, the plan liabilities, and the ratio of assets and liabilities allocated to termination priority categories. (These also are included in the annual report.)

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(4) Other material necessary to fairly summarize the latest report also must be furnished.

(5) This information must be furnished within 270 days after the plan year.

(6) On written request, the administrator is to furnish participants and beneficiaries a complete copy of the latest annual report and other instruments under which the plan is established and operated. A reasonable charge may be made.

Senate amendment.—

(1) The annual report and the governing instrument of the plan is to be available for inspection in the principal office of the plan administrator. 516 (93)

(2), (3), (4), (5) No comparable provisions.

(6) On written request a fair summary of the annual report is to be furnished participants or beneficiaries. They also are to be furnished with a complete annual report and plan documents on written request.

Staff comment.—The conferees may wish to adopt the rules of the House bill, except that with respect to point (5), the information would be furnished within 210 days.

27. Reporting and Disclosure of Participant's Benefit Rights

House bill.—Points (1), (2), (3), and (4) of this provision appear both in title I and title II.[1] Point (5) appears only in title I. 22, 42, 259 (58, 96)

(1) Under title I, each plan which must file an annual report with the Secretary of Labor is to file an annual statement regarding individuals who have terminated employment in the year in question and who have a right to a deferred vested benefit in the plan. Under title II, a similar report also is to be filed with the Internal Revenue Service.

(2) The plan administrator also is to furnish each person an individual statement giving him the same information which is reported to the Government.

(3) The Social Security Administration is to maintain records of the retirement plans in which individuals have vested benefits, and is to provide this information to participants and beneficiaries on their request and also on their application for Social Security benefits.

(4) The provisions governing registration with Social Security are to apply to a multiemployer plan only to the extent provided in regulations.

(5) The Secretary of Labor also may, by regulation, require that participants or surviving beneficiaries be furnished a statement of vested rights.

[1] Points (1) through (4) of this provision are also described in Portability, Item 3, in Part One.

Page numbers

Senate amendment.—

360, 517 (96) (1), (2), (3), and (4) Substantially the same as the House bill, except that reports are to be filed only with the Secretary of Treasury.

(5) The plan administrator must furnish a participant or beneficiary requesting in writing a statement of whether he has a vested right to the pension benefit, the vested benefits which have accrued or the earliest date on which benefits will become vested, and the total pension benefits accrued.

Staff comment.—

(1), (2), (3), and (4) See Part One, Portability, Item 3, *Staff Comment.*

(5) The conferees may wish to adopt the rules of the Senate amendment, subject to regulations of the Secretary of Labor.

28. Descriptions and Reports as Public Information

45 (99) *House bill.—*

(1) Descriptions and reports filed with the Secretary of Labor are to be public information available for inspection.

(2) However, information with respect to individuals that is reported to the Social Security Administration is to be disclosed only to the extent allowed under the Social Security Act.

(3) The Secretary of Labor may use the information received for research and may publish studies, etc., as he deems appropriate.

519 (99) *Senate amendment.—*

(1) Substantially the same as the House bill.

(2) No comparable provision. (However, under the Senate amendment reports to Social Security are not filed with the Secretary of Labor but are filed with the Secretary of the Treasury.)

(3) The Secretary of Labor is to develop a comprehensive program of collecting and analyzing information on employee benefit plans.

Staff comment.—

(1), (2) The conferees may wish to adopt the rules of the House bill.

(3) The conferees may wish to adopt the rule of the Senate bill, merging it with appropriate provisions of the House bill.

29. Retention of Records

46 (100) *House bill.—*

(1) Persons subject to the filing requirements are to retain records which provide the basic information from which filed documents may be verified.

(2) These records are to be retained for 6 years after filing or for 6 years after the date on which the documents would have been filed but for exemptions.

Senate amendment. — No comparable provision. (However, sec. 11 of the Welfare and Pension Plan Disclosure Act has a similar provision requiring record retention for 5 years.)

Staff comment.—The conferees may wish to adopt the 6-year retention rule of the House bill. (This would conform with the *Staff comment* with respect to the statute of limitations in Fiduciary Responsibility, item 12.)

30. Effective Dates

House bill.—The reporting and disclosure provisions are to go into effect 6 months after enactment. 73 (145)

Senate amendment.—The reporting and disclosure provisions are to go into effect on January 1, 1974. 537 (145)

Staff comment.—The conferees may wish to provide that the reporting and disclosure provisions are to go into effect for plan years beginning after December 31, 1974. In addition, the conferees may wish to provide that the provisions of the existing Welfare and Pension Plan Disclosure Act are to govern for prior plan years.

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