The attached summary of differences between the House version and Senate version of H.R. 2 was prepared by the staffs of the various committees involved for the use of the conferees. Of the suggestions which the conferees have gone over, the agreements of the conferees differ in significant respects from the staffs' suggestions, and it is undoubtedly true that subsequent decisions of the conferees also will depart significantly from the staffs' suggestions. For that reason, the staffs' suggestions should not be taken as indicative of the conclusions which might be reached by the conferees.

This statement is issued in the name of the following Chairmen:

Russell Long	Harrison Williams	Carl Perkins	Al Ullman
Senate Finance	Senate Labor and Public Welfare	House Education and Labor	House Committee on Ways and Means

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[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

[TH]E HOUSE AND SENATE CONFEREES ON H.R. 2

PART ONE

[PAR]TICIPATION, VESTING, FUNDING, ACTUARIES, JURISDICTION, AND PORTABILITY

MAY 15, 1974

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PARTICIPATION AND COVERAGE

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### *1. Plans Subject to the Provisions*	
House bill.—	
(1) Under title I the new participation and coverage rules are to be administered by the Secretary of Labor. The participation and coverage rules of title I are to apply to plans established or maintained by employers or employee organizations engaged in or affecting interstate commerce.	73 (166)
(2) Under title II, the new participation and coverage rules are to be administered by the Secretary of the Treasury. The participation and coverage rules of title II are to apply to qualified pension, profit-sharing, and stock bonus plans.	163 (A–2)
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Staff comment.—This is a jurisdictional matter discussed below.	
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House bill.—Title I of the House bill exempts the following plans from the new participation and coverage rules:	17, 18, 74 (36, 41, 168)

(1) governmental plans, including Railroad Retirement Act plans;

(2) church plans which do not elect coverage (see below, *3. Exemption for Church Plans*);

(3) non-U.S. plans primarily for aliens;

(4) unfunded plans maintained by the employer primarily to provide deferred compensation for select management or highly-compensated employees;

(5) union plans which have not provided for employer contributions after the date of enactment;

(6) supplementary plans; and

(7) plans established by fraternal societies or other organizations described in section 501(c) (8) or (9) of the Internal Revenue Code.

†"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, in linetype, represent the bill as passed by the House of Representatives; the remaining pages, 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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169, 216 (A–10, A–78) Title II of the House bill exempts the following plans from the new participation and coverage rules:

(1) government plans, including Railroad Retirement Act plans (however, in order to remain qualified, such plans must meet requirements of present law);

(2) church plans which do not elect coverage (however, in order to remain qualified, such plans must meet requirements of present law), see below, *3. Exemption for Church Plans;*

(3) non-U.S. plans primarily for aliens are excluded only if they are nonqualified plans (see below, *10. Eligibility—Non-resident Aliens*);

(4) unfunded plans generally are excluded because they are nonqualified plans;

(5) no corresponding provision (plan excluded if it is nonqualified);

(6) no corresponding provision (plan excluded if it is nonqualified); and

(7) no corresponding provision (plan excluded if it is nonqualified).

388, 419 *Senate amendment.*—The Senate amendment deals with the categories of plan exclusions from the new participation and coverage rules as follows:

(1) nonqualified governmental plans are to be excluded;

(2) nonqualified church plans are to be excluded;

(3) nonqualified non-U.S. plans primarily for aliens are excluded if the plans' funds are maintained outside the United States;

(4) exclusion for nonqualified plans which either require benefits to be paid in full within 5 years after the benefits accrue or which provide benefits only for corporate officers or for persons who own at least 3 percent of the stock of the corporate employer;

(5) no corresponding provisions;

(6) no corresponding provision; and

(7) nonqualified plans of section 501(c) (8) or (9) organizations are to be excluded, but only if no employer contributions.

Staff comment.—

(1) The conferees may wish to adopt the rules of title II of the House bill with respect to governmental plans. The conferees may also wish to adopt the rules of title I of the House bill with respect to the railroad retirement plans.

(2) The conferees may wish to adopt the rules in title II of the House bill with respect to church plans (see below, *3. Exemption for Church Plans*).

(3) The conferees may wish to adopt the rule of title I of the House bill excluding non-U.S. plans for aliens, but additionally require that to be excluded substan-

tially all of the participants and beneficiaries of a plan must be nonresident aliens. *Page numbers*

(4) The conferees may wish to adopt the rules of title I of the House bill.

(5) The conferees may wish to adopt the rules of title I of the House bill.

(6) The 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.

(7) The conferees may wish to adopt the rule of the Senate amendment; in addition, the conferees may wish to provide an exclusion for plans established and maintained by an organization described in section 501 (c) (18) of the Internal Revenue Code.

(8) The conferees may wish to consider clarifying that title I does not apply to employer or union sponsored individual retirement accounts, or to section 403 (b) plans.

3. Exemption for Church Plans

House bill.—Title I and title II both contain points (1) through (4) listed below. Title II also contains point (5).

(1) An exemption is provided for church plans from the new participation and coverage standards. 74, 170 (168, A–10)

(2) The above exemption does not apply to a plan primarily for employees of unrelated trades or businesses or to a multiemployer plan if one or more of the employers is not a church. 17, 216 (37, A–78) 18, 217 (37, A–79)

(3) However, if on January 1, 1974, a church maintained a plan that covered employees of tax-exempt agencies of the church, then the employees of that agency are to be treated as employees of the church (in effect, the agencies are to be treated as part of the church, under the multiemployer rule of point (2) above).

(4) A church plan may elect irrevocably to come under the new standards. 75, 170 (169, A–11)

(5) Title II provides that a church plan which wants qualification must continue to meet the participation standards of present law. 170 (A–10)

Senate amendment.—The Senate amendment exempts church plans from the participation and coverage standards, only if the plans are not tax-qualified. 365, 419 (170, 168)

Staff comment.—The conferees may wish to adopt the House bill's rules on all five points listed above.

4. General Rule

House bill.—Title I and title II rules are the same. 75, 163 (170, A–2)

(1) Plans may not (because of age or service) exclude any employee who (a) has attained age 25 and has completed one year of service or (b) has completed

Page numbers 3 years of service (even though the employee is not yet age 25).

(2) However, any plan may require 3 years of service of all employees before participation, if it provides full vesting immediately on participation.

365 (170, A–2) *Senate amendment.*—Plans may not (because of age or service) exclude any employee who has attained age 30 and completed one year of service. (A 5-year "lookback" rule is also provided; see VESTING, item 4, below.)

Staff comment.—

(1) The conferees may wish to consider agreeing to the House rule of age 25* and one year of service ((1)(a)), but deleting the requirement that no employee with three years of service could be excluded from the plan ((1)(b)). (In lieu of this second rule, a 3-year lookback to age 22 could be provided for purposes of the vesting schedule, as discussed below.)

(2) Any plan which provides full immediate vesting for all participants (similar to the House bill) could be permitted to adopt a 3-year service requirement.

5. Maximum Age Requirement

76, 164 (171, A–3) *House bill.*—Title I and title II rules are the same.

(1) The exclusion of employees, because they are too old, is forbidden unless (a) a plan is a defined benefit plan and (b) the employee is within 5 years before normal retirement age when he begins employment.

Senate amendment.—The amendment does not provide any authority to exclude older employees, as such, under the plan.

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

6. Year of Service Defined (Generally Relates Also to Vesting)

94, 164 (211, A–4) *House bill.*—Title I and title II rules are the same.

(1) The definition of year of service generally is left to regulations.

(2) However, no employee with more than 17 months of continuous service may be excluded from the plan on account of service, and

(3) the average employee (assuming hypothetically that employees are hired at the same rate each day throughout the year) could not be excluded from the plan for more than 12 months on account of service.

(4) The regulations are to take account of special industries whose work schedules are measured in hours, days, weeks, or months.

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*There was not full staff agreement on this point.

	Page numbers
Senate amendment.—An employee is considered to have performed a year of service if he was employed for more than 5 months during the year, for at least 80 hours each calendar month.	366 (211, A–4)

Staff comment.—The conferees may wish to provide the following rules in this area:

(a) *Participation and coverage.*—Any individual who is employed on or after the anniversary date of his hire, and works for 1,000 hours during this initial 12-month period cannot be excluded from the plan on account of age or service after the earlier of (i) the first day of the next plan year following the anniversary date of his hire (if he is still employed on such date), or (ii) 6 months from the anniversary date of his hire (if he is still employed on such date). If he fails to work 1,000 hours in the initial 12-month period, he starts over toward meeting his 1,000 hour requirement in the next 12-month period.

(b) *Vesting schedule.*—A plan participant is to move up one year on the statutory minimum vesting schedules at the end of each year (calendar year, plan year, or other 12-consecutive-month period as designated by the plan, subject to regulations) during which the participant has completed at least 1,000 hours of service ("hours of service" to be defined in regulations, to take account of special industries, such as the maritime industry).

(c) *Breaks in service.*—A one-year break in service occurs in any year where the employee has less than 500 hours of service.

(d) *Benefit accrual.*—

(i) In general, the plan may use any definition of the term "year of service" for purposes of benefit accrual which the plan applies on a reasonable and consistent basis.

(ii) However, the plan must accrue benefits for less than full time service on at least a pro rata basis.

(iii) A plan is not required to accrue any benefit for a participant who works less than 1,000 hours during the year.

7. Coverage of Seasonal and Part-time Employees

House bill.—Title I and title II rules are the same. (1) If a seasonal employee's customary employment is at least 5 months, his normal season is to be treated as a year.	95, 165, 168 (211, A–4, A–8)
(2) The definition of a part-time employee, who may be excluded from the plan, is left to regulations.	
Senate amendment.—A plan may exclude an employee whose customary employment is for not more than 80 hours in any one month, or not more than 5 months in any one year.	367 (212, A–8)

Page numbers

Staff comment.—The staff comment on this issue appears above in item 6.

8. *Breaks in Service* (*Generally Relates Also to Vesting*)

95, 166 (212, A–6)

House bill.—Title I and title II rules are the same.

(1) If an employee has a one-year break in service, the plan may require a one-year reentry period before his pre-break and post-break service are aggregated under the plan.

(2) Subject to this one-year waiting period, all pre-break service of any employee who is at least 50 percent vested must be taken into account in determining the employee's right to participation and vesting and accrued benefit.

(3) Generally (also subject to the one-year waiting period) all service of an employee who has at least 4 years of consecutive service must also be taken into account.

(4) However, point (3) may be disregarded where such an employee (who is not at least 50 percent vested) has a break in service of at least 6 years.

371, 374 (176, 180, A–6, A–13, A–16)

Senate amendment.—

(1) Generally pre-break and post-break service are to be aggregated for purposes of participation and vesting and accrued benefit.

(2) However, a plan could require 3 years of consecutive service for attaining the first step (the 25-percent step) on the vesting schedule.

(3) Also it is intended (Finance Committee Report, p. 49) that after a 10-year break in service, the record-keeping burden would shift to the employee.

Staff comment.—The conferees may wish to consider agreeing to the following rules.

(a) Point (1) of the House bill might be agreed to. However, it could also be provided that once an employee had satisfied the one-year re-entry period, he would receive a full "look-back" (for purposes of vesting and accrued benefit) for this year of service.

(b) In the case of an individual account plan, if any employee has a one-year break in service, his vesting percentage in pre-break benefit accruals does not have to be increased as a result of post-break service.

(c) Subject to rules (a) and (b), once an employee has achieved any percentage of vesting, then all of his pre-break and post-break service must be aggregated for all purposes.

(d) For all nonvested employees (and subject to rules (a) and (b)), a rule of parity would apply and the employee would not lose credits for his pre-break service until his period of absence equaled his years of covered service.

9. Eligibility—Collective-Bargaining Units, Air Pilots — *Page numbers*

House bill.—(1) Title II provides that employees who are under a collective bargaining agreement can be excluded for purposes of the breadth-of-coverage requirements, if the employees are excluded from the plan and there is evidence that retirement benefits have been the subject of good-faith bargaining. (This applies to both corporate plans and H.R. 10 plans.) — 168, 242 (A–9, A–114)

(2) Also, title II provides that air pilots represented in accordance with the Railway Labor Act may bargain separately for corporate tax-qualified employee plan benefits, without regard to the breadth-of-coverage requirements.

Senate amendment.—Very similar, except that—

(1) the amendment requires that there is evidence that retirement benefits were the subject of good-faith bargaining at the most recent contract negotiations and — 367, 418 (A–9, A–114)

(2) there is no provision concerning air pilots.

Staff comment.—

(1) The conferees may wish to adopt the House bill's rules as to the breadth-of-coverage rules for collective bargaining units. The conferees may wish to make it clear that if a union group is excluded either for (a) breadth-of-coverage purposes or (b) an antidiscrimination purpose, then it must be excluded for both sets of purposes.

(2) The conferees may wish to adopt the House rule as to air pilots, and also to consider stating an intention to study whether such a rule should in the future be applied to other unions.

10. Eligibility—Nonresident Aliens

House bill.—Title II provides for the exclusion, for purposes of the breadth-of-coverage requirements, of employees who are nonresident aliens with no United States income from the employer in question (even if they have United States income from other sources). — 169 (A–9)

Senate amendment.—Provides essentially the same rule, except that the exclusion from the breadth-of-coverage and the antidiscrimination rules is not allowed for employees who have United States income from other sources. — 368, 416 (A–9)

Staff comment.—The conferees may wish to adopt the substance of the House bill's rules as to nonresident aliens, but also exclude them for antidiscrimination purposes.

11. Predecessor Employers

House bill.—Under title II, regulations are to specify the extent to which service with a predecessor of the employer is to be counted for purposes of the eligibility requirements. — 215 (A–72)

Page numbers

366 (A–72)

Senate amendment.—Essentially the same.

Staff comment.—The conferees may wish to consider providing in the statute that service with a predecessor of the employer must be counted if the successor employer continues to maintain the plan of the predecessor employer. In other circumstances, the regulations would specify the extent to which such service would be counted.

12. Multiemployer Plans

19, 212, 218 (42, A–68, A–80)

House bill.—

(1) Under title II, in the case of a multiemployer plan, service with any employer who was a member of the plan is to be counted.

(2) Under title I and title II the term "multiemployer plan" means a plan maintained pursuant to a collective bargaining agreement, to which more than one employer is required to contribute, and to which no one employer makes as much as 50 percent of the contributions (with other factors to be prescribed in regulations).

(3) Under title I and title II if a plan meets this 50-percent limit and qualifies as a multiemployer plan, then the plan does not become disqualified on account of excess contributions from one employer, until a year for which one employer makes more than 75 percent of the contributions.

Senate amendment.—

441, 626 (A–68, A–80)

(1) Essentially the same.

(2) Essentially the same, except that (a) for certain purposes under the amendment, a multiemployer plan [1] is required to provide that plan benefits are payable to each participant even though his employer ceases to make contributions under the plan, and (b) the amendment does not include specific authority to add other requirements by regulations.

(3) The Senate amendment does not include the 75-percent rule.

Staff comment.—

(1) The conferees may wish to consider agreeing to the rules of the House bill, but adding the requirements of the Senate amendment (point (2) (a)) that benefits must be payable to a participant in a multiemployer plan even though his employer ceases to make contributions under the plan.

(2) The conferees may also wish to consider a statement in the conference report, as guidelines for the regulations, that a plan would not be a multiemployer plan unless it is a collectively bargained plan to which a substantial number of unaffiliated employers are required to contribute and which covers a substantial

[1] The definition of this term in the Senate amendment is contained in the insurance provisions.

portion of the industry in terms of employees or a substantial number of employees in the industry in a particular geographic area.

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13. H.R. 10 Plans

House bill.—The provisions of present law, which allow a 3-year service requirement for participation, and require 100 percent immediate vesting, would continue to govern H.R. 10 plans. 242 (A–114)

Senate amendment.—The rule is the same.

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

14. Affiliated Employers

House bill.— 215 (A–73)

(1) Title II provides that in applying the breadth-of-coverage and antidiscrimination rules (as well as the vesting rules and the limitations on contributions and benefits), employees of all corporations who are members of a "controlled group of corporations" (within the meaning of sec. 1563(a) of the Internal Revenue Code of 1954) are to be treated as if they were employees of the same corporation.

(2) A comparable rule is provided in the case of partnerships and proprietorships which are under common control (as determined under regulations).

Senate amendment.—Essentially the same, except that the rule in the amendment to cover the case of partnerships and proprietorships applies only to the limitations on contributions and benefits. 368, 606, 612 (A–73)

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

15. Regulations

House bill.—Title I and II rules are the same. The bill provides that regulations of the Labor Department and the Treasury Department with respect to the participation, vesting, and funding requirements of the bill (other than regulations to enforce the antidiscrimination requirements of section 401(a)(4) of the Internal Revenue Code) are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of the cooperating department (i.e., the Secretary of the Treasury or the Secretary of Labor, respectively). 16, 154, 221 (35, 377, A–85)

Senate amendment.—The Senate amendment, by not specifying otherwise, has the effect of providing generally that the regulations with respect to the participation, vesting, and funding requirements of the bill are to be prescribed by the Secretary of the Treasury.

Staff comment.—This is a jurisdictional matter discussed below.

Page numbers

16. *Effective dates*

97, 233 (216, A–99) *House bill.*—Title I and title II both contain points (1) through (4) listed below. Title II also contains points (5) and (6).

(1) The participation provisions generally are to apply to plan years beginning after the date of enactment.

(2) Delayed effective dates are to be provided for plans in existence on January 1, 1974.

(3) The general effective date for existing plans is to be plan years beginning after December 31, 1975 (unless a later date results from application of one of the rules discussed below).

(4) For collectively bargained plans, the provisions are to take effect in plans years beginning after December 31, 1976, or, if later, the expiration of the collective bargaining agreement in effect on January 1, 1974, (but no later than plan years beginning after December 31, 1980).

(5) Title II (but not title I) provides that, for plans maintained by a tax-exempt labor organization, the effective date is postponed to plan years beginning after December 31, 1976, or, if later, the first plan year following the date of the second convention of the organization held after the date of enactment. However, all plans are to be subject to these provisions not later than plan years beginning after December 31, 1980.

(6) Title II (but not title I) permits an existing plan to elect to have the new participation provisions (and the new vesting, funding, and form of benefit provisions), apply to plan years beginning after the date of enactment but before the otherwise applicable effective date.

370 (A–99) *Senate amendment.*—

(1) The Senate amendment is the same as the House bill, as to items (1) and (3).

(2) The delayed effective dates are to apply to plans in existence on the date of enactment.

(4) For collectively bargained plans, the provisions are to take effect in plan years beginning after December 31, 1974, or, if later, the expiration of the collective bargaining agreement in effect on January 1, 1974, (but not later than plan years beginning after December 31, 1980).

The Senate amendment does not include provisions comparable to items (5) and (6), above.

Staff comment.—

(1) The conferees may wish to apply the provisions generally to plan years beginning after the date of enactment, with delayed effective dates for plans in existence on the date of enactment.

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(2) In the case of a plan existing on the date of enactment, the provisions are to become effective for plan years beginning after December 31, 1976.

(3) In the case of collectively bargained plans existing on the date of enactment, some of the staff believe that the effective date should be the same as that for other plans (point (2)); others believe that the 1976 date might be postponed to plan years beginning after the date of the expiration of the collective bargaining agreement in effect on January 1, 1974, but not later than until plan years beginning after December 31, 1979.

(4) If a contract were to be opened for other than limited purposes, then it would be treated as having expired on the date that the newly negotiated provisions take effect (if that date is before the date that the contract would otherwise have expired).

(5) The conferees may wish in the case of plans maintained by tax exempt labor organizations to apply the new standards by December 31, 1979.

(6) The conferees may wish to agree to House bill item (6).

VESTING

1. Plans Subject to the Provisions, Exceptions to Coverage, Exemption for Church Plans — 73, 171, 188 (166, A–12 A–36)

House bill.—Same as under PARTICIPATION AND COVERAGE, items 1, 2, and 3, above (except that title II of the House bill has a vesting provision corresponding to title I, item 2, point (5)).

Senate amendment.—Same as under PARTICIPATION AND COVERAGE, items 1, 2, and 3, above. — 371, 388, 419 (166, 167, (A–12, A–78)

Staff comment.—The staff comments appear in PARTICIPATION AND COVERAGE, items 1, 2, and 3, and under JURISDICTION below.

2. General Rule

House bill.—Title I and title II rules are the same. — 76, 171 (174, A–12)

(1) Plans must provide full and immediate vesting in benefits derived from employee contributions.

(2) With respect to benefits derived from employer contributions, plans must meet one of three minimum standards:

(a) graded vesting, under which the participant must be at least 25 percent vested after 5 years of credited service, plus 5 percent a year for each of the next 5 years of service, and 10 percent a year for each year of service thereafter, reaching 100 percent vesting after 15 years of service;

(b) fully vested after 10 years of service; or

(c) a "rule of 45" under which an employee with 5 or more years of covered service must be

Page numbers

at least 50 percent vested when the sum of his age and years of covered service total 45, with 10 percent additional vesting for each year of service thereafter.

371, 373 (174, A–12) *Senate amendment.*—(1) Plans must provide full and immediate vesting in benefits derived from employee contributions.

(2) With respect to benefits from employer contributions:

(a) the graded vesting standard is the same (except that the plan could require that 3 of the first 5 years of service must be consecutive).

(b) The 10-year-100-percent vesting alternative is available only for plans which use this standard on the date of enactment.

(c) The "rule of 45" is not available as an alternative.

Staff comment.—The conferees may wish to consider agreeing to the rules of the House bill, except for the "rule of 45." Some would suggest having the rule of 45, as an additional option, while others would suggest that two options are sufficient.*

3. Transition Rule

78, 173 (178, A–14) *House bill.*—Title I and title II rules are the same.

(1) For plans in effect on December 31, 1973, there is a reduced vesting requirement during a transition period. During the first year to which the bill's vesting standards apply, the plan is to provide at least 50 percent of the vesting required under the applicable regular vesting schedule. This 50 percent level is increased by 10 percent a year, so that the new rules would fully apply in the sixth year after the effective date.

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

Staff comment.—The conferees may wish to consider agreeing to the position of the Senate amendment.

4. Service Credited for Vesting Purposes

79, 174 (180, A–16) *House bill.*—Title I and title II rules are the same, except that item (2) (c) appears only in title II.

(1) Generally, once an employee becomes eligible to participate in a pension plan, all his years of service with an employer (including preparticipation service, and service performed before the effective date of the Act) are to be taken into account for purposes of determining his place on the vesting schedule.

(2) However, the plan may ignore

(a) periods for which the employee declined to make mandatory contributions;

(b) periods for which the employer did not maintain the plan;

*There was not full staff agreement on this point. Some would suggest that if there are to be only two options, the rule of 45 is preferable to 10-year 100-percent vesting.

(c) service before age 25 (under title II, but not under title I); *Page numbers*

(d) seasonal or part-time service that is not taken into account under the "year of service" rules;

(e) service broken by periods of suspension of employment to the extent allowed under the rules on breaks in service (discussed above) under PARTICIPATION, (item 8, above);

(f) service before January 1, 1969, unless the employee has at least 5 years of service after December 31, 1968.

Senate amendment.— 372, 374

(1) Same as House bill. (180, A–16)

(2) (a) no corresponding provision;

(b) same as House bill;

(c) service more than 5 years before participation may be ignored unless the employee made contributions under the plan or the employer made contributions on behalf of the employee;

(d) similar to House rule;

(e) similar to House rule;

(f) preenactment service, as such, may not be ignored.

Staff comment.—

(1) The conferees may wish to consider agreeing to the basic House rule.

(2) The conferees may also wish to consider agreeing to the following rules:

(a) House rule permiting an exclusion where mandatory contributions were not made;

(b) House rule permitting an exclusion for periods that the plan was not maintained;

(c) modification of House title II rule, to permit an exclusion for service performed before age 22;

(d) permitting exclusion of seasonal or part-time service not taken into account under "year of service" rules;

(e) permitting exclusion of service broken by periods of suspension of employment, to the extent allowed under "breaks in service" rules; and

(f) modification of House rule, to permit exclusion of service before January 1, 1971, unless the employee has at least 3 years of service after December 31, 1970.

5. Year of Service Defined

House bill.—Title I and title II rules are the same. 90, 97, 175, 181 (204, 214, A–17 A–26)

(1) For purposes of determining an employee's place on the vesting schedule, the term "year of service" has the same meaning it has under the participation requirements. (See above, PARTICIPATION, items 6, 7, and 8.)

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Page numbers	
	(2) For purposes of determining the employee's accrued benefit, a plan may use any reasonable definition of year of service that is consistently applied, so long as the plan meets the antidiscrimination requirements of the law.
372 (214, A-17)	*Senate amendment.*—"Year of service" is to be defined under regulations prescribed by the Secretary of Treasury (after consultation with the Department of Labor) for years ending before January 1, 1982. Thereafter, "year of service" is to be defined as any year where the employee has more than 5 months of service with at least 80 hours of work each month.
	Staff comment.—The staff comment on this issue appears above under PARTICIPATION, item 6.
	6. Benefits Accrued in the Past
79, 174 (180, A-16)	*House bill.*—Generally, the vesting requirements of the bill are to apply to all accrued benefits, including those which accrued before the effective date of the provision. (See, however, item 4 (point (2)(f)), above, relating to pre-1969 service in the case of employees who subsequently left employment.)
374 (180, A-16)	*Senate amendment.*—The rule is the same (except as to the pre-1969 service rule).
	Staff comment.—The conferees may wish to clarify whether a plan should be required to accrue benefits for service prior to the effective date, even though it had no accrual formula for this period.
	7. Predecessor Employers
215 (A-72)	*House bill.*—Title II provides that service with the predecessor of the employer can be counted for purposes of the vesting schedule, to the extent provided in regulations.
372, 373, 375 (A-72)	*Senate amendment.*—The rules are essentially the same.
	Staff comment.—See PARTICIPATION, item 11.
	8. Multiemployer Plans
19, 213, 218 (42, A-69, A-80)	*House bill.*—Title II provides that in the case of a qualified multiemployer plan, the vesting requirements of the bill are to be applied as if all employers who are parties to the plan are a single employer.
441, 627 (42, A-69, A-80)	*Senate amendment.*—The rules are essentially the same.
	Staff comment.—While the House and Senate rules are essentially the same, the House rule may be preferred from a technical standpoint.
	9. Permitted Forfeitures of Vested Rights
12, 173 (21, A-15)	*House bill.*—Title I and title II rules are the same, except with respect to items (2) and (3).
	(1) Plans are permitted to provide that nonforfeitable benefits attributable to employer contributions nevertheless may be forfeited, but only in the event of

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the employee's death (unless a "joint and survivor" annuity is to be provided).	
(2) An employee's rights to benefits derived from employer contributions may not be forfeited on account of the employee withdrawing his mandatory contributions. (Title I forbids forfeitures on account of withdrawals whether or not the benefits have vested; title II forbids such forfeitures only if they have vested.)	80, 241 (184, A–112)
(3) A plan is permitted to suspend payment of benefits while the participant has resumed working for the employer, or in the same industry in the case of a multiemployer plan. (Under title I, but not title II, the multiemployer plan rule is limited to employment resumed before normal retirement age.)	12, 173 (21, A–15)
(4) Vested rights may be "cashed out" in a lump-sum distribution if the value of the nonforfeitable benefit is less than $1,750, or if the employee consents.	80, 176 (181, A–19)
(5) With the permission of the Secretary of Labor, and in order to prevent termination of the plan or a substantial curtailment of benefits, a retroactive plan amendment may provide for divestiture of otherwise vested rights.	12, 144, 173, 199 (21, 341, A–15, A–51)
Senate amendment.—Plans are permitted to provide that all nonforfeitable benefits attributable to employer contributions nevertheless may be forfeited, but only—	488 (21)
(1) In the event of the employee's death (unless a joint and survivor annuity is to be provided); or	371 (A–15)
(2) If the employee withdraws any part of his own mandatory contributions to the plan.	381 (184, A–112)
(3), (4), (5) No corresponding provisions.	

Staff comment.—

(1) The House and Senate rules are essentially the same with respect to forfeitures in the event of death.

(2) On the one hand, it may be argued that plans must be permitted to penalize employees who withdraw mandatory contributions, for otherwise employees would find it too easy to dissipate currently what was intended to be for their retirement years. On the other hand, it may be argued that that is not a good reason for permitting forfeiture of vested benefits, because employers who wish to prevent current dissipation of retirement funds may do so by forbidding withdrawal of employee contributions since those employee contributions, too, were originally committed for retirement income purposes. One possible resolution might be to permit forfeitures proportional to the employee's withdrawal (i.e., if the employee withdraws half of the employee's own contributions, then there could be a forfeiture of half of benefits attributable to the employer's contributions). Another alternative might be to forbid forfeitures of vested

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benefits on account of withdrawals, but only as to benefits that have become vested after the effective date of this provision. (See also item 15 (point (2)) (*Class Year Plans*), below.)

(3) With respect to suspension of benefits when employment is resumed, the conferees may wish to consider allowing a single employer or a multiemployer plan to suspend benefits where the retired employee has resumed employment with that employer (or, in the case of a multiemployer plan, the retiree has resumed employment in the industry) before age 65. However, where employment is resumed after age 65, the conferees may wish to consider forbidding a suspension of benefits, except where the employee agrees to the suspension, participates in the employer's plan, and accrues additional benefits under the plan.

(4) The conferees may wish to consider modifying the rule of the House bill with respect to cashing out vested rights. The involuntary cashing out (i.e., without the employee's consent) might be permitted under regulations, where the present value of the benefits was so small that the plan should be permitted to avoid the administrative costs involved in preserving the right to deferred benefits. However, the regulations would not be permitted to authorize involuntary cashing out if the current value of the benefits exceeded $1,750. Also, the conferees might wish to make clear that such a provision should not be construed as an endorsement of the cashing out of retirement benefits. Further, the conferees may wish to consider clarifying in the legislative history that a labor union may bargain for a lower maximum cash-out provision than that which might be permitted under the regulations.

(5) The conferees may wish to agree to the position of the Senate amendment and not allow retroactive decreases in vested rights.

10. Accrued Benefit

14, 18, 86, 175, 178 (26, 39, 197, A–18, A–22)

House bill.—Title I and title II rules are the same.

(1) The term "accrued benefit" refers to pension or retirement benefits and does not apply to certain ancillary benefits, such as medical or life insurance.

(2) In the case of a retirement plan other than a defined benefit plan, the accrued benefit is to be the balance in the employee's plan account.

(3) In the case of a defined benefit plan, the accrued benefit is to be determined under the plan, subject to certain requirements. Normal retirement age is generally to be the age specified in the plan, but not later than age 65, or the tenth anniversary of the time the participant commenced participation.

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(4) Each defined benefit plan is to be required to satisfy one of the following two accrued benefit tests:

(a) the accrual rate for any year for each participant is no more than 133⅓ percent of that participant's accrual rate for any other year, however, greater accrual rates are permitted for the first 10 years of participation; this alternative may be used only by plans which continue to accrue benefits during participation, at least until early retirement) ; or

(b) for any year each participant accrues not less than 3 percent of the maximum benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served until age 65 (or the earlier normal retirement date under the plan).

These rules are to be applied without regard to subsidized early retirement benefits and without regard to social security supplements.

(5) In the case of a defined benefit plan funded through an insurance contract, the accrued benefit is to be the annuity which might be purchased by the cash surrender value of the policy.

(6) Notwithstanding the above rules, the Internal Revenue Service is directed to take account of the rates of accruals, as well as vesting schedules in determining whether there is a prohibited discrimination.

Senate amendment.—(1) The term "accrued benefit" refers to the pension or retirement benefits and does not apply to certain ancillary benefits, such as medical or life insurance. 374, 498 (26, 197, A–18, A–22)

(2) In the case of any retirement plan other than a defined benefit pension plan, the employee's accrued benefit is the balance in his plan account.

(3) In the case of a defined benefit pension plan, the minimum accrued benefit is to be a fraction of the amount the employee would receive at normal retirement age, under the plan as in effect at the time for which the accrued benefit is to be determined. Normal retirement age is to be defined by regulations and would generally be that age between 55 and 65 at which the retirement benefit has the greatest actuarial value.

(4) For purposes of determining the accrued benefit, the retirement benefit is to be computed as though the employee continued to earn the same rate of compensation annually that he had earned during the years which would have been taken into account under the plan, had the employee retired on the date in question. This amount is then to be multiplied by a fraction, the numerator of which is the employee's total years of active participation in the plan up to the date when the computation is being made and the denominator of which is the total number of years of active partici-

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pation he would have had if he continued his employment until normal retirement age. For purposes of this calculation, ancillary benefits, such as medical insurance or life insurance, would not be considered, but the value of the right to receive early retirement benefits or social security supplements would be taken into account.

(5) In the case of a defined benefit pension plan funded through an insurance contract, the accrued benefit is to be the annuity which might be purchased by the cash surrender value of the policy.

Staff comment.—The conferees may wish to consider agreeing to a combination of the House bill and Senate amendment rules in this area.

(1) The House and Senate rules are the same in excluding ancillary benefits, such as medical or life insurance from the definition of accrued benefits.

(2) The House and Senate rules are the same in the case of a retirement plan other than a defined benefit plan.

(3) The conferees may wish to consider adopting the House rule with respect to the definition of normal retirement age.

(4) The conferees may wish to require each plan to satisfy any of the following three accrued benefit tests:

(a) the 133⅓ percent rule (with no prohibition on front loading);

(b) the 3-percent rule on a cumulative basis (which permits front loading); or

(c) the Senate rule, modified to use the House definition of "normal retirement age," and applied only to the benefit payable at or after normal retirement age (i.e., it would not take account of subsidized early retirement and social security supplements).

(d) None of the above would require an accrual with respect to the first year of participation. This is provided by agreeing to a rule that, for purposes of benefit accrual, a plan could require two continuous years of service, with at least 1,000 hours of service in each of those years.*

(5) The House and Senate rules are essentially the same with respect to a defined benefit plan funded through an insurance contract.

(6) The conferees may wish to consider agreeing to the House rule that the Internal Revenue Service must take account of rates of accrual in applying the antidiscrimination rules.

(7) The conferees may also wish to consider clarifying that an accrued benefit may not decrease on account of increasing age or service (except for Social Security supplements or their approximate equivalents).

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*There was not full staff agreement on this point.

11. Changes in Vesting Schedule — *Page numbers*

House bill.—Title I and title II rules are the same. 81, 177

(1) If a plan changes its vesting schedule, each person who is a participant in the plan on the date the amendment is adopted (or on the amendment's effective date) must continue to vest in his accrued benefits at no less than the rate at which he would have been vested under the pre-amendment vesting schedule. (185, A–21)

(2) Also, the plan is to specify which of the statutory minimum vesting schedules it is operating under.

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

Staff comment.—

(1) The conferees may wish to consider agreeing to a rule that if a plan amendment changes the vesting schedule, any participant with at least 5 years of service can elect to stay under the preamendment vesting schedule.* (If he makes no election, he will come under the new schedule, but in on event is this to result in a forfeiture of already vested benefits.)

(2) The conferees may wish to consider agreeing to the House rule that each plan is to specify which of the statutory minimum vesting schedules it is operating under.

12. Allocation Between Employee and Employer Contributions

House bill.—Title I and title II rules are the same. 91, 181

(1) In the case of any plan other than a defined benefit pension plan, the accrued benefit derived from the employee's contributions is the amount in his own separate account. If employee and employer contributions were not accounted for separately, the employee-contributed portion of the total accrued benefit would be treated as the fraction of the total which is the ratio of the employee's contributions to total contributions (after taking account of withdrawals). (205, A–27)

(2) In the case of a defined benefit pension plan which provides an annual benefit in the form of a single life annuity commencing at normal retirement age (without ancillary benefits), the accrued benefit derived from mandatory employee contributions [2] (which could never be in excess of his total accrued benefit under the plan) would be treated as the total amount of the employee's "accumulated contributions" multiplied by the conversion factor (see point (4)).

(3) In determining the employee's accumulated contributions, interest on the employee's mandatory contributions is to be compounded annually, initially at a rate of 5 percent (beginning with the first plan year subject to the vesting requirement imposed under the

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*There was not full staff agreement on this point.

[2] Voluntary employee contributions are to be treated the same as a separate account.

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retirement age. In addition, any interest accumulated on the employee's contributions in accordance with the plan prior to the date when the vesting provisions of the bill first applied to that plan, is to be treated as part of the employee's accumulated contributions.

(4) The conversion factor (the value, at age 65, of the right to receive $1 per year for life) and the rate of interest on employee contributions are to be adjusted prospectively under regulations from time to time, as may be appropriate.

(5) Where a defined benefit plan provides a benefit other than an annual benefit in the form of a single life annuity commencing at normal retirement age (without ancillary benefits), or if the employee's mandatory contributions are applied toward some other form of benefit, the accrued benefit, or amount of accrued benefit derived from employee contributions, is to be the actuarial equivalent of the single life annuity (without ancillary benefits) as determined under regulations.

377 (205, A–27) *Senate amendment.*—The Senate rule is essentially the same.

Staff comment.—The conferees may wish to consider agreeing to the rules, as outlined above; and, in addition, agreeing to provide, as to defined benefit plans, that the accrued benefit derived from the employee's contributions could never be less than the value of his own contributions (without interest).

13. Discrimination

80, 185 (182, A–32) *House bill.*—Title I contains point (1); title II contains points (2) and (3).

(1) Title I provides that the vesting requirements of title I are not to be construed to prohibit plan provisions adopted pursuant to Treasury regulations to prevent discrimination.

(2) Title II provides that the Internal Revenue Service is to require more rapid vesting than that required under the minimum schedules, if (a) there has been a pattern of abuse under the plan (such as firing of employees before their accrued benefits vest), or (b) it appears that there have been, or are likely to be, forfeitures or accruals of benefits under the plan which have the effect of discriminating in favor of officers, shareholders, or highly-paid employees.

(3) Title II also contains a provision to make clear that the vesting requirements under the bill are not intended to operate to overturn rules which provide that, in the event of plan termination, the benefits under the plan are not provided in a manner that discriminates in favor of officers, shareholders, or highly-compensated employees.

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Senate amendment.—	
(1) The amendment specifically provides that compliance with the minimum vesting schedules does not automatically constitute compliance with the antidiscrimination requirements.	380, 382 (A–32)
(2) The amendment also contains a provision, similar to that of point (3) in the House bill, concerning early plan termination.	
Staff comment.—The conferees may wish to consider agreeing to the rules of the House bill. In addition, the conferees may wish to consider agreeing to point (1) of the Senate amendment.	
14. Plan Termination	
House bill.—Title I provides point (2); title II provides all 3 points.	61, 186, 223 (131, A–33, A–88)
(1) Under present law, all accrued benefits in a qualified pension plan must become fully vested (to the extent then funded) in the event of a plan termination, or the complete discontinuance of contributions under the pension plan.	
(2) Under the House bill, (both title I and title II), this rule will no longer be necessary with respect to discontinued contributions to plans covered under the funding requirements of the bill, because the bill provides for an excise tax on underfunding.	
(3) However, title II makes it clear that the rule of full immediate vesting is still to apply in the case of a termination, or partial termination of a plan, and in the case of the discontinuance of contributions to the plans which are not subject to the new funding requirements (*e.g.*, profit-sharing plans, church plans, and government plans).	
Senate amendment.—The Senate amendment provides an essentially similar rule.	382, 385 (A–33, A–88)
Staff comment.—While the two sets of rules are essentially similar, the rules of the House bill may be preferred for technical reasons.	
15. Class Year Plans	
House bill.—Title I and title II rules are the same.	78, 187 (179, A–34)
(1) The minimum vesting requirements of the bill are satisfied in the case of a class year plan if the plan provides for 100 percent vesting of the benefits derived from the employer contributions within five years after the end of the plan year for which the contributions were made.	
(2) No forfeitures of benefits attributable to employer contributions are to be permitted, even if the employee withdraws his own mandatory contributions to the plan.	

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Senate amendment.—

380 (179, A-34)

(1) Same as the rule of the House bill.

(2) The Senate amendment would permit forfeiture of benefits attributable to employer contributions, on a class-year-by-class-year basis, if the employee withdraws his own mandatory contributions.

Staff comment.—

(1) The rules are the same with respect to point (1).

(2) The conferees may wish to consider conforming their decision on this point, with the decision they reach on item 9, point (2) (*Permitted Forfeitures of Vested Rights*), above.

16 Recordkeeping Requirements

42, 189 (96, A-37)

House bill.—Title I and title II rules are essentially the same, except that point (3) is contained only in title II.

(1) The employer is to be required to keep records of each employee's years of service and percentage of vesting, together with any additional information required by regulations in order to determine the employee's benefits.

(2) In the case of a multiemployer plan, the employer is to furnish the required information to the plan administrator.

(3) Under title II, failure to maintain or furnish the required records is to result in a civil penalty of $10 for each employee with respect to whom the failure occurs, unless it is shown that the failure is due to reasonable cause.

360, 382 (96, A-37)

Senate amendment.—The Senate rule is essentially the same.

Staff comment.—The conferees may wish to consider agreeing to the rules as outlined above and, in addition, may wish to consider clarifying the rules as follows:

(1) The employee would be entitled to receive a statement from the plan administrator as to his accrued benefit and vesting status upon the request of the employee, but not more often than once a year.

(2) In addition, when there is an indication that the employee is terminating service under the plan, the information would be supplied automatically to the employee.

(3) Whenever there is a break in service, the information must be supplied to the employee.

(4) In addition, the conferees may wish to consider including in the committee report a statement to the effect that multiemployer plans should comply with the same rule with respect to recordkeeping and the furnishing of information as single employer plans to the extent this is practical in light of the special prob-

lems of multiemployer plans. In other words, the regulations could include additional requirements requiring multiemployer plans to meet the same requirements as single employer plans to the extent this is found to be practical. *Page numbers*

17. Variations

House bill.—Title I and title II rules are the same. except as described in point (4) below. 144, 204, 221 (341, A–56, A–86)

(1) The Secretary of Labor may prescribe an alternative method of satisfying the vesting schedule and other requirements with respect to participation and vesting, if it is established to his satisfaction that application of the requirements of the bill would increase the cost of the plan to such an extent that there would result a substantial risk that the plan would be terminated, that there would be a substantial reduction in benefits under the plan or in the compensation of the employees, or that the regular rules of the bill would impose unreasonable administrative burdens in connection with the plan. It would also have to be found that the application of these requirements, or the discontinuance of the plan, would be adverse to the interests of the plan participants in the aggregate. In addition, it would have to be found that the alternative method is necessary or appropriate to carry out the purposes of the bill and that it provides adequate protection to the plan's participants and beneficiaries.

(2) During the period for which the alternative method is in effect, no plan amendment may be adopted which increases plan liabilities because of (a) benefit increases, (b) changes in accruals, or (c) changes in rate of vesting.

(3) The Secretary may prescribe an alternative method only after giving interested persons an opportunity for a hearing.

(4) Title II provides that the Secretary of Labor may grant a variance only in the case of a multiemployer plan, only with respect to the requirements of the vesting schedule and the minimum standards regarding accrued benefits, only if all plan participants and other interested persons have received notice, and only if the Secretary of the Treasury has been notified of the hearing.

Senate amendment.—The Senate amendment contains no comparable provision, but would permit the Secretary of Labor to postpone the otherwise applicable effective date of the vesting provisions for a period of up to 6 years, if he finds that implementation of the vesting requirements will impose "substantial economic hardship" on the plan. 386 (381, A–86)

Staff comment.—The conferees may wish to consider agreeing to the following rules in this area:

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(1) A variance would be available for plans (whether or not they are multiemployer plans) which were in existence on January 1, 1974.

(2) A variance would be available only with respect to the requirements of the vesting schedule. (Separate rules would be provided as to funding.)

(3) A variance would be available only if it were found that:

(a) application of the regular rules of the bill would increase the cost of the plan to such an extent that there would result a substantial risk that the plan would be terminated, or there would be a substantial reduction in benefits under the plan or in the compensation of the employees;

(b) that the application of the vesting schedule requirements, or discontinuance of the plan, would be adverse to the interests of plan participants in the aggregate; and that

(c) the needed results could not be obtained by waivers or extensions of time under the funding standards.

(4) No plan could receive a variance unless it is applied within 2 years after the date of enactment.

(5) The variance would be granted for an initial period of 4 years. Plans could receive one additional 4-year variance, if the additional variance was applied for at least one year before expiration of the initial variance.

(6) During the period when a variance was in effect, there could be no plan amendment which would have the effect of increasing plan liabilities because of (a) benefit increases, (b) changes in accruals, or (c) changes in rate of vesting.

18. Joint and Survivor Annuities

84, 235 (194, A–104) *House bill.*—Title I and title II rules are the same.

(1) Where the plan provides for a retirement benefit in the form of an annuity, and the participant has been married for a five-year period ending on the annuity starting date, the plan must provide for a joint and survivor annuity, unless the participant elects otherwise.

(2) The survivor annuity must be not less than half of the annuity payable to the participant during the joint lives of the participant and his spouse.

(3) The survivor annuity is required to be payable if the participant has reached the earliest age which retirement is permitted under the plan (whether or not the participant has actually retired) and the participant and his spouse had been married throughout the five-year period ending on the date of the participant's death.

(4) The plan may provide that the participant has a reasonable period (as prescribed by regulations) be-

fore the annuity starting date during which he may elect in writing not to take the joint and survivor annuity. *Page numbers*

(5) The plan may provide that such an election, or any revocation of such an election, would not become effective if the participant dies within some period of time (not in excess of 2 years) of such election or revocation.

Senate amendment.—

(1) Essentially similar to House rule, except that there is no 5-year marriage requirement.

(2) Essentially similar to House rule.

(3) No corresponding provision.

(4) The participant may elect in writing, within 2 years of normal retirement age (or, if earlier, first payment of regular retirement benefits) not to have the benefit paid in the form of a joint survivor annuity.

(5) No corresponding provision.

Staff comment.—

(1) The conferees may wish to consider agreeing to point (1) of the House bill except that the 5-year marriage requirement might be reduced to a one-year requirement.

(2), (4), (5) The conferees may wish to consider agreeing to the rules of the House bill as to points (2), (4), and (5).

(3) The House bill may be regarded as requiring a preretirement death benefit beyond the appropriate scope of the bill. On the other hand, the Senate amendment may be regarded as discriminating against the spouse of the participant who remains in the plan after early retirement age, in effect, establishing a governmental policy of favoring early retirement. If the conferees prefer the House approach, they may wish to permit participants to make one choice as to preretirement (e.g., electing out, if the employer provides generous preretirement life insurance) and another choice as to postretirement annuities.

19. Alienation

House bill.—Title I and title II rules are the same. Generally, the plan must provide that benefits may not be assigned or alienated. However, a plan will be permitted to provide for a voluntary revocable assignment (not to exceed 10 percent of any benefit payment) and vested benefits may be used as collateral for reasonable loans from the plans where fiduciary requirements of the law are not violated. 59, 239 (127, A–109)

Senate amendment.—An employee's accrued benefits, once vested, cannot be assigned or alienated. 417 (127, A–109)

Staff comment.—The conferees may wish to consider agreeing to the House rule, except that no alienation would be permitted until the benefit is in pay status; thereafter the 10-percent rule would apply.

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The conferees also may wish to consider providing that any such alienation is not to be made for the purpose of defraying plan administration costs.

20. Social Security Benefits of Terminated Participants

83, 240 (192, A–111) *House bill.*—Title I and title II rules are the same.

(1) The provisions codify current administration practice which provides that qualified plans may not use increases in social security benefit levels to reduce employee plan benefits that are already in pay status.

(2) A similar protection is also extended against reductions in plan benefits where social security benefit levels are increased, where the individuals concerned are separated from service prior to retirement and have vested rights to deferred benefits.

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

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

21. Payment of Benefits

82, 239 (191, A–110) *House bill.*—Title I contains point (1) below. Title II contains point (2).

(1) Title I provides that in the case of a participant who has terminated his service under the plan payment of benefits must begin at the earlier of the following dates:

(a) the date when a non-terminated participant with the same amount of credited service could have exercised any unrestricted option under the plan to receive regular retirement benefits; or

(b) age 65.

(2) Title II requires that a qualified plan is generally required to commence benefit payments (unless the participant otherwise elects) not later than the sixtieth day after the close of the plan year in which the latest of the following events occurs:

(a) the participant attains age 65;

(b) ten years have elapsed from the time the participant commenced participation in the plan; or

(c) the participant terminates his service with his employer.

489 (A–110) *Senate amendment.*—A plan is required to begin the payment of benefits within 30 days after the participant attains age 65 or completes ten years of participation in the plan (which occurs later).

Staff comment.—The conferees may wish to consider agreeing to the rules of title II of the House bill with a clarification that if the normal retirement age under the plan is less than age 65, then the normal retirement age will be substituted for the requirement of point (2) (a) above.

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22. Comparability of Plans Having Different Vesting Provisions Under the Antidiscrimination Rules

House bill.—Title II provides that highly mobile employees, such as engineers, are permitted to trade off high benefits which might be available under one retirement plan of their employer for their right to participate in another plan with lower benefits, but more rapid vesting. 190 (A-39)

Senate amendment.—The Senate provision is the same. 384 (A-39)

Staff comment.—No difference in provisions.

23. Protection of Pension Rights Under Government Contracts

House bill.—Title II provides the following rules. 251 (A-128)

(1) The Secretary of Labor is directed to undertake a study of steps which could be taken to ensure that professional, scientific, technical, and other personnel employed under Federal contracts are protected against loss of their pensions resulting from job transfers or loss of employment.

(2) The Secretary of Labor is to report to Congress on this subject within two years after the date of enactment and shall, if feasible, develop recommendations for Federal procurement regulations to safeguard pension rights in the situation within one year after filing his report.

(3) These regulations are to become effective unless either House of Congress adopts a resolution of disapproval within 90 days after the proposed regulations are submitted to the Congress, by the Secretary of Labor. Any such disapproval is to be referred to the Labor Committee of the relevant House.

Senate amendment.—

(1) The Senate provision is generally similar in requiring a study of this situation. 422 (A-128)

(2) However, the Senate provision does not provide for a report to Congress, but would require the Secretary of Labor to publish recommendations for protective regulations, which are to be published in the *Federal Register* within 6 months after enactment.

(3) These regulations are to be adopted by each Federal department and agency, unless the head of such department or agency has substantial grounds for disapproving the regulations in the case of his department.

Staff comment.—The conferees may wish to consider agreeing to the rules of the House bill with point (3) modified as follows:

(a) allow each House of Congress 120 days, instead of 90 days to adopt disapproval resolution;

(b) refer such resolutions to both the Labor committees and the Tax committees, with each committee having jurisdiction to report to the relevant House.

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24. Union-Sponsored Plans

74, 188 (168, A–36) *House bill.*—Title I and title II rules are the same. Union-sponsored plans which do not, at any time after enactment, provide for employer contributions are exempted from the vesting requirements of the bill.

Senate amendment.—The amendment contains no comparable provision.

Staff comment.—The conferees may wish to consider agreeing to the rule of the House bill.

25. Excise Tax on Failure To Provide Vesting

405 (A–40) *House bill.*—Title I and title II make no provision for an excise tax on failure to provide vesting.

Senate amendment.—(1) The Senate amendment provides for the imposition of an excise tax on the employer in cases where the employer is not complying with the vesting provisions in practice, even though the plan contains a vesting schedule which is consistent with the requirements of the bill.

(2) Initially, the tax would equal 5 percent of the accumulated vesting deficiencies.

(3) However, this tax could go to 100 percent of the amount of the deficiencies if the offense were not corrected.

Staff comment.—The conferees may wish to consider agreeing to the approach of the House bill.

26. Effective Dates

97, 233 (216, A–99) *House bill.*—Title I and title II both provide the same effective date for the vesting provisions as is provided for requirements with repect to participation and coverage.

386 (216, A–100) *Senate amendment.*—(1) The provisions generally are to apply to plan years beginning after the date of enactment.

(2) However, in the case of a plan already in existence on the date of enactment, the provisions will take effect for plan years beginning after December 31, 1975.

(3) Where a plan is subject to a collective bargaining agreement, if the Secretary of Labor should find that implementation of the vesting requirement would impose substantial economic hardship on the plan, he may require that the effective date be postponed for a period of up to six years.

(4) The provisions apply to government plans and plan years beginning after December 31, 1980.

Staff comment.—(1) Generally, the staff comments in this area appear under PARTICIPATION AND COVERAGE, *Effective dates*, above.

(2) If the conferees decide that government plans will not be covered under the participation and vest-

ing requirements, there will, of course, be no need for a delayed effective date with respect to such plans.

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FUNDING

1. Plans Subject to the Provisions

House bill.— 98, 191

(1) Under title I the new minimum funding rules are to be administered by the Secretary of Labor. The funding rules of title I apply to plans established or maintained by employer or employee organizations engaged in or affecting interstate commerce. (219, A–42)

(2) Under title II, the new minimum funding rules also are to be administered by the Secretary of the Treasury. The funding rules of title II are to apply to pension, annuity, and bond purchase plans that are qualified or were determined by the Internal Revenue Service to be qualified.

Senate amendment.—The new funding rules are to be administered only by the Secretary of the Treasury and are to apply to pension and annuity plans which are qualified or which were determined by the Internal Revenue Service to be qualified. In addition, the Senate amendment generally prohibits a person engaged in a business that affects interstate commerce from having a nonqualified plan. 390, 419 (219, A–42)

Staff comment.—This is a jurisdictional matter discussed below.

2. Exceptions to Coverage

House bill.—Title I of the House bill exempts the following plans from the new funding rules: 99, 112 (220)

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

(2) Church plans which do not elect coverage.

(3) Non-U.S. plans primarily for nonresident aliens.

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

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

(6) Profit-sharing, savings, or other individual account plans.

(7) Plans funded exclusively by the purchase of individual qualified insurance contracts.

(8) Supplementary plans.

(9) Plans exclusively for a sole proprietor or exclusively for partners, all of whom own more than 10 percent of the capital or profits interest in the partnership.

(10) Plans established by fraternal societies or other organizations described in section 501(c)(8) or (9) of the Internal Revenue Code.

Page numbers	
204 (A–59)	Title II of the House bill exempts the following plans from the new funding rules: (1) Government plans (including Railroad Retirement Act plans) are excluded if they meet the requirements of present law. (2) Church plans are excluded if they meet the requirements of present law. (3) Non-U.S. plans primarily for nonresident aliens are excluded only to the extent they are nonqualified plans. (4) Unfunded plans generally are excluded as nonqualified plans. (5) Same as title I. (6) Profit-sharing and stock bonus plans are excluded as under title I (however, money purchase pension plans are not excluded). (7) Same as title I. (8) No analogous exclusion. (9) No analogous exclusion. (10) No analogous exclusion.
400 (220, A–57)	*Senate amendment.*—The Senate amendment deals with plan exclusions as follows: (1) Excluded, no requirement that governmental plans meet present rules. (2) Excluded, no requirement that church plans meet present rules, no option to elect to come under new rules, no special requirements as to unrelated businesses or multiemployer plans. (3) Excluded if the fund for the plan is maintained outside the United States. (4) Exclusion for nonqualified plans which either require benefits to be paid in full within 5 years after the benefits accrue or which provide benefits only for corporate officers or for persons who own at least 5 percent of the stock of the corporate employer. (5) No analogous exclusion. (6) No exclusion as such, but payment of required contributions to defined contribution plans satisfies new funding rules. (7) No exclusion as such, but payment of premiums satisfies new funding rules. (8) No analogous exclusion. (9) No analogous exclusion. (10) Excluded, but only if no employer contributions.

Staff comment.—

(1) The conferees may wish to adopt the rules of title II of the House bill with respect to governmental plans. The conferees may also wish to adopt the rules

of title I of the House bill with respect to the exclusion of railroad retirement plans. *Page numbers*

(2) The conferees may wish to adopt the rules of title II of the House bill with respect to church plans.

(3) The conferees may wish to adopt the rule of title I of the House bill excluding non-U.S. plans for nonresident aliens, but additionally require that to be excluded substantially all of the participants and beneficiaries of a plan must be nonresident aliens.

(4) The conferees may wish to adopt the rules of title I of the House bill. Additionally, in the conference report it may be appropriate to specifically indicate that the funding rules do not cover "consulting contracts" for retired management employees and do not cover plans adopted by a partnership exclusively for the benefit of a partner pursuant to section 736 of the Internal Revenue Code.

(5) The conferees may wish to adopt the rules of titles I and II of the House bill.

(6) The conferees may wish to adopt the rules of title II of the House bill.

(7) The conferees may wish to adopt the rules of titles I and II of the House bill. In addition, the conferees may wish to provide that group insurance contracts which have the same characteristics, as determined by regulation, as qualified individual insurance contracts are to be excluded from the minimum funding rules.

(8) The 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.

(9) The conferees may wish to adopt the rule of title I of the House bill for plans which are not tax-qualified.

(10) The conferees may wish to adopt the rule of the Senate bill; in addition, the conferees may wish to provide an exclusion for plans established and maintained by an organization described in section 501 (c) (18) of the Internal Revenue Code.

3. Normal Cost

House bill.—Title I and title II rules are the same. Normal costs are to be contributed currently. 102, 192 (225, A–43)

Senate amendment.—Same as the House bill. 391

Staff comment.—No difference in provisions. (225, A–43)

4. Existing Past Service Liabilities

House bill.—Title I and title II rules are the same. For plans in existence on January 1, 1974, past service liabilities as of the applicable effective date of the 102, 192 (225, A–43)

Page numbers

new funding rules are to be amortized over no more than 40 years on a level payment basis (principal plus interest).

391, 397 (225, A–43) *Senate amendment.*—Past service liabilities are to be amortized over no more than 30 years (40 years for multiemployer plans).

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

5. Newly-established Initial Past Service Liabilities

102, 193 (225, A–44) *House bill.*—Title I and title II rules are the same.

(1) Initial past service liabilities of new plans are to be amortized over no more than 30 years (40 years for multiemployer plans).

391, 397 (225, A–43) *Senate amendment.*—Same as the House bill.

Staff comment.—No difference in provisions.

6. Past Service Liabilities from Plan Amendments

102, 103, 193, 194 (224, 228, A–44, A–45) *House bill.*—Title I and title II are the same.

(1) Changes in past service liabilities from plan amendments that increase or decrease past service costs are to be amortized over no more than 30 years (40 years for multiemployer plans).

391 (225, 226, 228, 229, A–44, A–46) *Senate amendment.*—

(1) Same as the House bill for plan amendments that increase or decrease unfunded past service liabilities by 5 percent or more.

(2) If the change in past service liabilities is less than 5 percent, amortization is to be over no more than 15 years (or the average remaining service life of participants if shorter).

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

7. Experience Gains and Losses

102, 104, 193 195 226, 228, A–44, A–45) *House bill.*—Title I and title II rules are the same.

(1) Experience gains and losses are to be amortized over no more than 15 years (20 years for multiemployer plans).

392, 393 (226, 228, A–44, A–45) *Senate amendment.*—Amoritization is to be over no more than 15 years (or the average remaining service life of participants, if shorter).

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

8. Additional Funding Standard

103, 193 (226, A–44) *House bill.*—Title I and title II rules are the same.

(1) The additional standard is to be used only if it requires a larger contribution than the basic funding standard.

(2) The additional standard requires a contribution of the first year's payment under a 20-year amortization schedule of unfunded vested liabilities. A new determination with respect to the applicability of this

funding standard (and a new calculation of the amortization schedule) is to be made in each year. *Page numbers*

Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to follow the Senate bill and not include this additional funding standard.

9. Combining and Offsetting Amounts

House bill.—Title I and title II are the same. 104, 195 (230, A–47)

(1) The various funding amortization schedules may be combined and offset to reduce the number of accounts that must be maintained.

Senate amendment.—No comparable provision.

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

10. Determination of Costs

House bill.—Title I and title II rules are the same. 104, 196 (232, A–48)

(1) For purposes of the minimum funding rules, normal costs, etc., are to be determined under the funding method used to determine costs under the plan.

Senate amendment.—Same as the House bill. 394 (232, A–48)

Staff comment.—No difference in provisions.

11. Valuation of Assets

House bill.—Title I and Title II rules are the same. 105, 196 (233, 234, A–48)

(1) Generally, assets may be valued under any reasonable actuarial method of valuation that takes into account fair market value and is permitted under regulations.

(2) Also, an election is available to value certain debt assets on an amortized basis.

Senate amendment.—Asset valuation is to be based on average values for five (or fewer) years. 396 (239, A–48)

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

12. Reasonable Actuarial Assumptions

House bill.—Title I provides: 27, 105, 197 (235, A–49)

(1) Actuarial assumptions are to be reasonably related to plan experience and reasonable expectations.

(2) Actuarial assumptions are, in combination, to offer the plan actuary's single best estimate of anticipated plan experience.

Title II provides that actuarial assumptions are, in the aggregate, to be reasonable.

Senate amendment.—Substantially the same as title II of the House bill. 394, 396 (235, A–49)

Staff comment.—

The conferees may wish to adopt a combination of the rules of title I and title II of the House bill and the rules of the Senate amendment, providing that:

(1) Actuarial assumptions in the aggregate are to be reasonable, taking into account the experience of the plan and expectations.

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(2) Actuarial assumptions are to represent the actuary's best estimate of anticipated experience under the plan.

13. Change in Funding Method or Plan Year

House bill.—Title I and title II rules are the same.

105, 198 (1) A change in funding method or plan year re-
(236, A–50) quires the prior approval of the administering Secretary.

Senate amendment.—Same as the House bill.

396 *Staff comment.*—No difference in provisions.

(236, A–50) *14. Definition of Experience Gain or Loss*

House bill.—Title I provides:

106, 197 (1) An experience gain or loss occurs when plan
(237, A–49) experience deviates from projected assumptions sufficiently to require a change in assumptions.

(2) The amount of the gain or loss is the increase or decrease in accrued unfunded liabilties attributable to this change in assumptions.

Under title II, it is expected that experience gain or loss will be treated as the difference between the anticipated experience of the plan and the actual plan experience.

Senate amendment.—Same as title II of the House
396 bill.

(235, A–49) *Staff comment.*—The conferees may wish to adopt the approach of title II of the House bill and of the Senate bill.

15. Certain Changes as Experience Gain or Loss

House bill.—Title I and title II rules are the same.

106, 197 Experience gain or loss occurs with changes of plan
(237, A–49) liabilities resulting from:

(1) a change in social security or other government retirement benefits;

(2) a change in the definition of "wages" under sec. 3121 of the Internal Revenue Code; or

(3) a change in the amount of wages taken into account for purposes of plan integration with social security.

Senate amendment.—The Senate amendment deals
396 as follows with the above-described rules:
(235, A–49) (1) Same as House bill.

(2) Same as House bill.

(3) No comparable provision.

(4) The Senate amendment also includes changes in liabilities from changes in the funding method or the actuarial assumption used.

Staff comment.—

(1), (2), (3) The conferees may wish to adopt the rules of the House bill.

(4) In addition, the conferees may wish to make clear that changes in plan liabilities resulting from changes in actuarial assumptions are to be amortized over a 30-year period.

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Also, the conferees may wish to make clear that if experience losses occur, they will not be eliminated for purposes of amortization under the minimum funding schedule on account of consequent later changes in actuarial assumptions. For this purpose it is suggested that assets be valued at their fair market value.*

16. Three-year Determination of Gains and Losses

House bill.—Title I and title II rules are the same. Experience gains and losses are to be determined, and plan liabilities are to be valued, at least every three years and more frequently in particular cases, as required by regulations. 107, 201 (239, A–53)

Senate amendment.—An annual determination of gains and losses and an annual valuation of liabilities is required. 396 (239, A–53)

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

17. Full Funding

House bill.—Title I and title II rules are the same. 107, 198 (240, A–50)

(1) Where a plan is fully funded, or nearly so, only the amount needed to bring the plan to full funding (where assets equal liabilities) is to be contributed.

(2) For purposes of determining whether assets equal liabilities, assets are to be valued under the usual method used by the plan or at fair market value, whichever is lower.

Senate amendment.—(1) Same as the House bill. 395 (240, A–50)

(2) In determining whether assets equal liabilities, assets are valued by taking the average value of plan assets for five (or fewer) years on the valuation date.

Staff comment.—The conferees may wish to adopt the rules of the House bill, if they adopt the rules of the House bill for purposes of valuing plan assets in general.

In addition, the conferees may wish to permit an alternative minimum funding standard in certain cases where the assets are sufficient to pay all the liabilities of the plan if it then terminated. *

18. Retroactive Plan Amendments Having Limited Effect

House bill.—Title I and title II rules are the same. 81, 199 (186, A–51)

(1) A plan may be amended to reduce (or increase) plan liabilities without the approval of the Secretary of Labor after the close of a plan year, but by the time required to file the employer's tax return for that

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* Not all staff members agree with this suggestion.

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year. For multiemployer plans, such an amendment may be made up to two years after the close of the plan year.

(2) However, such an amendment cannot reduce the accrued benefit (whether or not vested) of any participant determined as of the beginning of the plan year to which the amendment applies.

Senate amendment.—No comparable provision.

Senate amendment.—No comparable provision.

the rules of the House bill, but in addition, provide:

(1) Such retroactive amendments can be made only upon a filing with the Secretary of Labor notifying him that such an amendment has occurred.

(2) The Secretary of Labor would have the authority to approve or disapprove of the amendment. If the amendment were not approved, it would be treated as not having gone into effect.

(3) Standards for approval or disapproval would include economic hardship, the inability to acquire a timely funding waiver, etc.

(4) Additionally, a retroactive reduction in benefits would only be allowed to the extent required by the circumstances.

19. Retroactive Plan Amendments With Approval

81, 144, 200 (186, 341, A–52) *House bill.*—Title I and title II both contain points (1) and (2) listed below. Title I (but not title II) also contains point (3). Title II (but not title I) contains points (4) and (5).

(1) Plans may be amended to reduce benefits retroactively with the approval of the Secretary of Labor after a public hearing.

(2) The Secretary of Labor may allow an amendment to reduce benefits on a determination that (a) the amendment is necessary or appropriate to carry out the purposes of the bill and to provide protection to participants and beneficiaries, (b) without the amendment, there would be a substantial risk that the plan would not be continued or that pension benefits or compensation would be substantially curtailed, and (c) failure to allow the amendment would be adverse to plan participants in the aggregate.

(3) Under title I, but not title II, retroactive amendments may be approved if there would otherwise be unreasonable administrative burdens for the plan.

(4) Under title II, but not title I, all participants and beneficiaries must receive adequate prior notice of any hearing regarding a retroactive plan amendment.

(5) Under title II, but not title I, amendments approved by the Secretary of Labor cannot retroactively reduce accrued benefits for purposes of the initial 5 percent excise tax on a failure to meet the minimum funding standards.

Senate amendment.—No comparable provision.

Staff comment.—The conferees may wish to provide that no retroactive reduction of vested benefits be permitted and therefore delete this House provision.

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20. Year-by-year waivers

House bill.—Title I has a general variance procedure (see item 22 below); the provision described below appears only in title II. 81, 144, 200 (341, A–54)

(1) The Secretary of the Treasury may waive the minimum funding requirements for a year in which the employer would otherwise experience substantial business hardships, but only if failure to do so would be adverse to the interests of the participants in the aggregate. Also, guidelines as to substantial business hardships are defined.

(2) This waiver is available for no more than 5 out of any 15 consecutive plan years.

(3) The amount waived is to be amortized over no more than 15 years.

Senate amendment.—Similar to title II of the House bill, with differences described below. 397 (A–54)

(1) The Senate amendment does not require that for funding to be waived this must be in the interests of the participants, nor does it set out guidelines as to substantial business hardship.

(2) Waivers are available for no more than 5 out of any 10 consecutive years.

(3) Waived amounts are to be amortized over no more than 10 years.

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

21. Variances—Extension of Amortization Periods for Multiemployer Plans

House bill.—Title I has a general variance procedure (see item 22 below); the provision described below appears only in title II. 202 (A–55)

(1) If the Secretary of Labor finds that at least 10 percent of the employers contributing to a multiemployer plan would otherwise incur substantial business hardship, he may extend for up to 10 years (i.e. amortize over a period of up to 50 years) the amortization period for funding past service liabilities or experience losses.

(2) An extension is allowed only if the basic funding requirement would be adverse to the interests of participants in the aggregate. Guidelines are set as to what constitutes substantial business hardship.

Senate amendment.—Substantially the same as the House bill, except as indicated below. 397 (A–55)

(1) No 10-year extension is allowed for amortizing experience losses.

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(2) No factors are specified for determining substantial business hardship.

(3) There is no requirement that the basic funding requirement be adverse to interests of the participants. No guidelines are provided as to what constitutes business hardship.

Staff comment.—The conferees may wish to combine this variance and the variance described in item 22 below, in the manner described in *Staff comment* for item 22.

22. Variances—Alternative Funding Standards

144, 221 (341, A–86) *House bill.*—Title I provides as follows:

(1) The Secretary of Labor may prescribe an alternative minimum funding method for multiemployer or single employer plans.

(2) The alternative funding method may be prescribed if the Secretary determines (a) it is desirable to carry out the purposes of the Act, and (b) it provides adequate protection for participants and beneficiaries.

(3) The Secretary also must find that failure to provide an alternative would result in certain hardships, and there would be (a) a substantial risk that the plan would be discontinued, (b) substantial curtailment of pension benefit levels or employee compensation, or (c) unreasonable administrative burdens imposed on the plan. Additionally, he must find that not to provide the alternative would be adverse to the interests of participants in the aggregate.

As noted above, title II includes similar provisions,
414 for multiemployer plans only.

(250, A–100) *Senate amendment.*—The Senate amendment contains no comparable provision, but would permit the Secretary of Labor to postpone the effective date of the funding provisions (for existing plans) for a period of up to 6 years, if he finds that implementation of the funding requirements would impose substantial economic hardship on the plan.

Staff comment.—The conferees may wish to combine the variances allowing an extension of amortization period (described in item 21 above) and this alternative funding standard provision, as follows:

(1) An extension of amortization periods of up to 10 years could be provided for both multiemployer and single employer plans.

(2) Additionally, the rules of title I of the House bill (points (2)–(3) above) would apply to variances.

145, 204 *23. Variances—Limit on Plan Amendments*

(349, A–56) *House bill.*—Title I and title II rules are the same.

If a variance is granted, then while the variance is in effect, the plan cannot be amended to increase liabilities by an increase in benefits, a change in the accrual of benefits, or a change in the rate of vesting.

	Page numbers
Senate amendment.—A similar limitation, with some technical differences, is included in the Senate amendment.	415, 398 (349, A–56)
Staff comment.—The conferees may wish to adopt the rules of the House bill. The conferees may also wish to allow "de minimis" plan amendments that would increase liabilities during a period that a variance is in effect, with the prior approval of the Secretary of Labor. Additionally, the conferees may wish to provide that no such amendment can be adopted if there has been (within a limited period of time) a retroactive decrease in benefits as described in item 18 above.	

24. Funding Standard Account

House bill.—The rules of title I and title II are the same.	101, 192 (244, A–43)
(1) Covered plans must maintain funding standard accounts.	
Senate amendment.—Same as the House bill.	391 (244, A–43)
Staff comment.—No difference in provisions.	

25. Interest on Funding Standard Account

House bill.—Title I and title II rules are the same. The funding standard account is to be charged or credited with interest at an appropriate rate consistent with the rate or rates used under the plan to determine costs.	104, 196 (231, A–47)
Senate amendment.—Substantially the same as the House bill.	394 (231, A–47)
Staff comment.—The conferees may wish to adopt the rules of the House bill.	

26. Enforcement (Civil Actions)

House bill.—These provisions are included only in title I.	108, 150 (245)

(1) The plan administrator is to take whatever actions are needed to bring the level of funding and benefits into conformity with each other and with the funding requirements. He may require payment of required contributions, may amend benefit schedules to reduce benefits, may suspend the accumulation of benefits or the operation of the plan, and may take any other actions needed to secure the rights of the participants.

(2) When a plan does not meet the funding requirements for five consecutive years, the administrator must reduce plan liabilities to the extent needed to conform liabilities and funding.

(3) The Secretary of Labor is to be notified when the administrator determines the funding requirements have not been met. The Secretary may require additional information and order the administrator to stay or take any of the actions described above.

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(4) Civil actions also may be brought by participants, beneficiaries, or fiduciaries and by the Secretary of Labor to enjoin any act which violates the funding standards.

Senate amendment.—No comparable provisions.

Staff comment.—This is a jurisdictional matter discussed below.

27. Enforcement (Excise Taxes)

206, 214, 215 (A–61) *House bill.*—These provisions are included only in title II.

(1) a 5-percent excise tax is imposed on the amount of any funding deficiency under the plan for each plan year in which the deficiency exists.

(2) If the funding deficiency is not corrected within a specified period after notice from the Internal Revenue Service, there is to be an additional 100 percent excise tax on the accumulated funding deficiency.

(3) These taxes are not deductible and are to be paid by the employer who is responsible for contributing to the plan.

(4) Special rules are provided for determining the tax to be paid by corporations that are members of a controlled group and that have adopted a single plan, and for the payment of taxes by employers who are parties to collective bargaining agreements under which a plan is established or maintained.

405 (245, A–61) *Senate amendment.*—The Senate amendment includes substantially the same provisions as the House bill, but differs as follows:

(1) No differences.

(2) The Senate amendment does not clearly provide that the 100 percent excise tax is to be paid only to the extent of an uncorrected funding deficiency.

(3) No differences.

(4) There is no provision in the Senate bill governing the excise tax to be paid by members of a controlled group of corporations.

Staff comment.—This is a jurisdictional matter discussed below.

28. Coordination of Administration—Joint Regulations

154, 221 (377, A–85) *House bill.*—Title I provides that funding regulations issued by the Secretary of Labor are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of the Treasury.

Title II provides that funding regulations issued by the Secretary of the Treasury generally are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of Labor.

Senate amendment.—No comparable provisions are included, since only the Secretary of the Treasury administers the funding provisions under the Senate amendment.

Staff comment.—This is a jurisdictional matter discussed below. *Page numbers*

29. Effective Dates

House bill.—Title I and title II both contain points (1) through (3). Title I, but not title II, contains points (4) and (5). Title II, but not title I, contains point (6). 111, 233 (250, A–99)

(1) The provisions apply generally to plan years beginning after the date of enactment.

(2) For plans in existence on January 1, 1974, the provisions take effect for plan years beginning after December 31, 1975.

(3) For collectively bargained plans (in existence on January 1, 1974), the provision takes effect for plan years beginning after December 31, 1976, or if later, the expiration of the collective bargaining agreement in effect on January 1, 1974. However, these plans are to be subject to these provisions not later than plan years beginning after December 31, 1980.

(4) Under title I, but not title II, after enactment and before the effective date of the rules, plans must contribute at least normal cost plus interest on unfunded accrued liabilities. (This is substantially the same as present law for qualified plans.)

(5) Also, under title I, but not title II, the new funding rules apply seven years after the date of enactment for employee organization plans which are in effect on January 1, 1974, and are financed entirely by dues.

(6) Under title II, but not title I, for existing plans maintained by tax-exempt labor organizations the effective date is postponed to plan years beginning after December 31, 1976, or, if later, the first plan year following the date of the second convention of the organization held after the date of enactment. However, these plans are to be subject to these provisions not later than plan years beginning after December 31, 1980.

Senate amendment.—The Senate amendment includes the following provisions: 414 (270, A–99)

(1) Same as title I and title II of the House bill.

(2) In the case of plans in existence on the date of enactment, the amendments apply to plan years beginning after December 31, 1975.

(3), (4), (5), (6) No comparable provisions.

(7) If the Secretary of Labor determines that the new rules would create substantial economic hardship for a plan in existence on the date of enactment, the new rules apply to plan years beginning after a later date as specified by the Secretary of Labor, but not later than after December 31, 1981. Criteria which may be used for determining substantial economic hardship are provided. If such an extension is granted, plan

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benefits may not be increased by amendment while the extension is in effect.

Staff comment.—Some of the staff believe the effective dates for funding should be the same as for vesting, and others believe (if an early effective date is chosen for vesting) that the effective dates for funding should be later than for vesting.

ACTUARIES

1. Reports by Actuaries to Department of Labor

27, 35 (72, 82) *House bill.*—These rules are included only in title I.

(1) The annual report filed with the Secretary of Labor is to include an actuarial report with information as to the minimum contributions, normal cost, accrued liabilities, asset values, etc.

(2) The annual report also is to include the opinion of an enrolled actuary (a) that the contents of the actuarial report are reasonably related to the experience of the plan and to reasonable expectations, and (b) that the plan uses assumptions which, in combination, offer the single best estimate of anticipated experience under the plan.

513 (82) (3) An actuarial valuation of the plan generally is to be made every third plan year.

Senate amendment.—(1) The annual report filed with the Secretary of Labor is to include a copy of an actuarial report, which is to include the actuarial assumptions used in computing contributions and benefits and used in connection with other information required to be furnished.

(2), (3) No comparable provision with respect to reports filed with the Labor Department.

Staff comment.—(1) See Reporting and Disclosure—Labor Department in a subsequent part.

(2) See Funding, item 12, *Staff comment.*

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

2. Reports by Actuaries to Internal Revenue Service

269 (A–151) *House bill.*—These rules are included in title II.

(1) Actuarial reports generally are to be filed with the Secretary of the Treasury every three years.

(2) The actuarial report is to include a plan description, a description of the funding method and actuarial assumptions, etc.

(3) The actuarial report also is to include (a) a statement by the enrolled actuary that to the best of his knowledge the report is complete and accurate, and (b) a statement of his opinion regarding the reasonableness of the funding methods and actuarial assumptions used.

(4) A penalty of $1,000 is to be imposed for each failure to file an actuarial report, unless due to reasonable cause.

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Senate amendment.—Substantially the same as the House bill. 563 (A–151)

Staff comment.—The conferees may wish to instruct the Department of Labor and the Internal Revenue Service if at all possible to consolidate their actuarial reports. They may also wish to consider the use of a joint board in order to assure as much of this coordination as possible.*

3. Enrollment of Actuaries

House bill.—Title I and title II are essentially the same. 27, 271 (73, A–154)

(1) Reasonable standards of qualifications are to be established for enrolling actuaries to practice before the government.

(2) If a person applies for enrollment before January 1, 1976, the standards and qualifications are to include a requirement for actuarial experience or experience in pension plan administration.

(3) If an individual applies for enrollment after January 1, 1976, the standards and qualifications are to include education and training in actuarial mathematics and methodology (evidenced by a college degree or successful completion of examination), and appropriate actuarial experience.

(4) Both the Secretaries of Labor and Treasury are to separately enroll actuaries to practice before their respective departments. However, neither the Secretary of Labor nor the Secretary of the Treasury is to issue regulations defining the standards and qualifications for enrollment without the approval of the other.

Senate amendment.— 565 (72, A–154)

(1) The Secretary of the Treasury is to establish standards and qualifications for enrolling actuaries to practice before the Internal Revenue Service.

(2) The Senate amendment does not include a "grandfather" provision as under the House bill.

(3) The Senate amendment does not specify the types of standards and qualifications that are to be used after January 1, 1976.

(4) No comparable provision.

Staff comment.—(1), (3) The conferees may wish to generally adopt the rules of the House bill.

(2) With respect to the "grandfather" provision, the conferees may wish to (a) provide that the standards for qualification are to include a requirement for "responsible actuarial experience relating to pension plans," and (b) not provide for enrollment based on experience in pension plan administration.

(4) The conferees may also wish to consider providing that actuaries are to be enrolled to practice before the government by a joint commission composed of

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* There was not full staff agreement on this point.

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persons appointed by the Department of Treasury and the Department of Labor. This Commission would set uniform standards for both enrolling and disenrolling actuaries.*

4. Effective Dates

73,273 (146, A–156) *House bill.*—The provisions of title I are to take effect six months after the date of enactment.

Under title II, actuarial reports are to be required for years in which the new funding rules become effective, and the provisions regarding enrollment of actuaries are to take effect on the date of enactment.

537,566 (145, A–156) *Senate amendment.*—The provisions in the Senate amendment regarding reporting to the Secretary of Labor are to take effect January 1, 1974.

The provisions requiring actuarial reports to the Secretary of the Treasury are to apply to plan years beginning on or after January 1, 1976. The provisions governing enrollment of actuaries are to take effect on the date of enactment.

Staff comment.—With respect to reports to the Department of Labor, the conferees may wish to provide that these provisions are to go into effect at the same time that the other reporting requirements are to go into effect (see Reporting and Disclosure—Labor Department, in subsequent part).

With respect to reports to the Department of Treasury, the conferees may wish to provide that these provisions are to go into effect for years in which the new funding rules become effective or at such earlier time as the Treasury Department may by regulation provide.

With respect to enrollment of actuaries, the conferees may wish to provide that these provisions are to go into effect as soon as regulations are published, but no later than six months after the date of enactment.

STAFF COMMENTS RELATING TO JURISDICTIONAL MATTERS [3]

The staff suggests the procedure outlined below will provide a significant and appropriate role in the enforcement of the participation, vesting and funding standards to both the Department of Labor and the Internal Revenue Service.

The concept of repeating the participation, vesting and funding standards in titles I and II is generally

* There was not full staff agreement on this point.

[3] While recognizing that the staffs have made a valiant effort to resolve the jurisdictional problem, some staff members believe the proposed solution falls short of eliminating the inevitable complexities, costs and inequities which will result from dual jurisdiction and enforcement.

not preferred by the Senate staff members.[4] However, it is believed that repetition of this type need not result in duplication if the writing of the regulations on the subject (although in two titles) is assigned to a single administrative agency. In this regard, the Department of Labor might write the regulations on preemption, the definition of a year of service, the definition of a break in service, the variances which are subject to the discretion of the Secretary of Labor, and possibly other minor items which would be more appropriately handled by the Department of Labor. The remaining regulations in title I might simply represent an adoption of comparable regulations prepared for the Internal Revenue Service for title II.

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As indicated previously, it is not expected that the administrative functions of the two agencies will result in any unnecessary duplication. The manner in which this is effected can be shown by indicating the activities of each agency, first in the so-called initial stage jurisdiction (that is, when a plan is requesting a determination of qualification), and second in the operational stage jurisdiction. The functions of the two agencies are discussed below under these two headings.

A. Initial Stage Jurisdiction

(1) The applicant, if he files for qualification with the Internal Revenue Service, must notify the Department of Labor, the Pension Insurance Corporation, and the participants of his intention to request such a determination.

(2) At any time prior to qualification, the Secretary of Labor (in his discretion) may upon petition of a group of participants intervene on their behalf in an Internal Revenue Service qualification determination relating to vesting or participation either at the time of its administrative consideration by the Internal Revenue Service or in connection with an appeal with respect to an adverse determination at the time of consideration by the Tax Court.

(3) The Secretary of Labor (in his discretion) upon petition of the Pension Insurance Corporation may intervene on its behalf in an Internal Revenue Service qualification determination relating to participation, vesting, or funding.

(4) In a case where the Internal Revenue Service finds that a plan is qualified, it is to certify this fact to the Department of Labor and the Department of Labor is to accept this certification as conclusive evidence of initial compliance with the participation, vesting, and funding standards.

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[4] To provide assurance as to joint jurisdiction if there were only one title, they would suggest that a statutory provision could provide that jurisdiction in these areas would be shared by the Labor and Tax committees.

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(5) The plan must register with the Department of Labor and include in the registration, certification of participation, vesting, and funding qualification. It must also file with the Department of Labor a full description of its plan.

(6) The sponsor of the plan retains his right to appeal adverse determinations through the administrative procedures of the Internal Revenue Service and ultimately to the Tax Court.

(7) In the case of a plan which does not seek Internal Revenue Service qualification for tax purposes, the Secretary of Labor can through the Federal courts require compliance with the participation, vesting, and funding standards of the bill to the extent such plan is subject to its jurisdiction.*

B. Operational Stage Jurisdiction

(1) Plans which are qualified under the tax law would generally be audited by the Internal Revenue Service. Where problems come to the attention of the Department of Labor, as a general rule it will deal directly with the matters relating to individual benefits but will take up with the Internal Revenue Service broader issues which relate to the issue as to whether the plan is operating according to qualified standards.

(2) With respect to the matters relating to participants' benefits which remain with the Department of Labor, it would, assuming violation of Federal law is involved, secure compliance by court action.

(3) The Internal Revenue Service would only disqualify a plan for violation of participation or vesting standards after national office review. During the national office review, the Department of Labor would be a participant and have an opportunity to reflect its views. Any disqualification, however, would be held in abeyance (except in the case of jeopardy) for a period of at least 60 days to determine whether the Department of Labor wanted to require compliance through direct court action. The Service could, if it saw fit, hold its action in abeyance for any additional period of time it believed was desirable while the Department of Labor was seeking to compel compliance.*

(4) The Internal Revenue Service would submit to the Department of Labor any portions of 30-day letters dealing with pension plans. The Department of Labor would indicate to the Internal Revenue Service any action it has taken with respect to individual benefits.

(5) The Internal Revenue Service would in its national office review of funding with respect to any employer inform the Department of Labor before the imposition of the 5-percent or 100-percent penalty and give it an opportunity to reflect its views in this re-

*Not full staff agreement with these points.

spect. In addition, the Department of Labor, representing the Insurance Corporation, could shortcut the normal administrative procedures of the Internal Revenue Service and petition the national office to disqualify a plan where funding is inadequate and where it is in the interest of the Insurance Corporation to take immediate action. The Department of Labor could, through its authority to provide variances, modify the funding requirements.* *Page numbers*

(6) The Internal Revenue Service would inform the Department of Labor before imposing a 5-percent excise tax with respect to cases involving violations of fiduciary standards by parties in interest. It would also consult with the Labor Department before the imposition of any 100-percent penalty in this case.[5]

(7) The Labor Department would have full jurisdiction over violations by fiduciaries.[5]

(8) Employees believing that the administration of pension plans was not being carried on according to law or their contractual rights under the plan would retain the right to bring action in the Federal courts. The Internal Revenue Service or Department of Labor would have the right to intervene in any such case if the case involved the general administrative determinations made by the Internal Revenue Service under plans generally*

PORTABILITY, SOCIAL SECURITY REGISTRATION, TAX-FREE ROLLOVERS

1. Central Portability Fund

House bill.—The House bill does not provide for a central portability fund.

Senate amendment.—A voluntary central portability fund is to be established to enable an employee who changes jobs to consolidate all of his vested retirement benefits in a single account in a government maintained central fund. Employers with tax-qualified plans may register (and withdraw registration) with the central fund on a voluntary basis. When an employee leaves an employer who is registered with the central fund, he may direct the employer's qualified plan to pay the value of his entire vested benefits to the central fund. The central fund is to establish an account for each employee on whose behalf it receives funds. The central fund will invest its assets and its income will be allocated to the participants' accounts. Funds may be invested in U.S. government obligations or interest-bearing accounts (or certificates of deposit) of banks, savings and loan 424 (399)

[5] The two departments should coordinate the regulations governing party-in-interest transactions.

*There was not full staff agreement on this point.

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associations, and credit unions which are members of a Federal insurance system (*e.g.*, Federal Deposit Insurance Corporation).

Income earned on amounts in the central fund will not be taxed until it is distributed to the participants or their beneficiaries, and transfers between the central fund and qualified plans will be tax-free.

On a participant's retirement (no earlier than age 59½ and no later than age 70½) the central fund will pay him the value of his account or, at his request, will distribute an annuity contract to him. If a participant is disabled, payment may be made at that time, or if he dies prior to retirement or disability, payment will be made to his beneficiaries. Alternatively, if a participant is hired by an employer who is a member of the central fund, the participant may direct (with this employer's concurrence) the central fund to transfer the value of his account to the new employer's qualified plan, to purchase actuarily equivalent retirement benefits in this plan. This transfer would be tax-free.

The central fund is to be operated by the Pension Benefit Guaranty Corporation which is to be established within the Labor Department (the Corporation is also in charge of the insurance program, under the Senate bill). Administrative expenses incurred in carrying on the portability program are to be provided for by appropriations. The Corporation is to establish the rules which govern the fund's operation, including its relations with individual participants and employers.

Staff comment.—Some of the staff believe that the central portability fund should be established and some of the staff believe it should not be established.

An alternative that the conferees may wish to consider would be to combine some of the provisions of the tax-free rollover (described below in item 2) with some of the portability provisions in the Senate bill. Under this possible compromise:

(1) Amounts could be transferred on a tax-free basis from qualified plans to an individual retirement account when an employee leaves employment. These funds could remain in the individual retirement account on a tax-free basis until the employee retires, or until he acquires employment with a new employer. With the approval of the new employer, the employee could transfer funds on a tax-free basis from his individual retirement account to a qualified plan of this employer.

(2) The Department of Labor would provide individuals actuarial assistance on the transfer of funds from an individual retirement account to a pension plan, so the employee could determine if the benefits he was acquiring in the plan were in an appropriate amount.

(3) The Department of Labor would be directed to assist employers, etc., in their efforts to provide greater retirement protection for individuals who are separated from employment and covered under plans. The assistance would include, but not be limited to, the development of reciprocity arrangements between plans in the same industry or area and the development of special arrangements for portability or credit within a particular industry or area.

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(4) If a plan allowed an employee, on terminating employment, to direct that the amount of his vested benefits are to be transferred to an individual retirement account, then the plan must allow this for all participants.

(5) The tax-free transfer from individual retirement accounts to qualified plans would be allowed only with respect to amounts (and earnings thereon) previously received from a qualified plan. A separate accounting would be required to keep track of these amounts.

(6) A recipient plan could not discriminate (within the meaning of the Internal Revenue Code) between participants who wish to transfer money from individual retirement accounts to the plan.

(7) Restrictions would be imposed on the transfer of funds from an individual retirement account to a qualified plan so that individuals could not avoid existing tax rules by transferring funds between individual retirement accounts and qualified plans.

2. Tax-free Rollovers

House bill.—These provisions are included only in Title II. 302, 317 (A–206, A–231)

(1) Money or property may be distributed from a tax-qualified plan or from an individual retirement account to the plan participant, on a tax-free basis, if this same money or property is reinvested by the participant within 60 days in a qualifying individual retirement account.

(2) In the case of distributions from a qualified plan, the distribution must occur on account of the individual's separation from service and within one taxable year to qualify for this treatment. Additionally, the participant must receive his entire interest in the plan.

(3) Also, in the case of distributions from a qualified plan, the amount contributed to the individual retirement amount is to be the amount received, less the amount contributed to the plan by the individual as an employee contribution.

(4) Tax-free rollovers between individual retirement accounts may occur only once every three years.

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435, 591 (A–206, A–231)

Senate amendment.—The provisions of the Senate amendment are as follows:

(1) Substantially the same as the House bill. In addition, however, reinvestments may be made on a tax-free basis in another qualified plan or in the central portability fund. Furthermore, amounts equal to the employee's own voluntary nondeductible contributions to the plan need not be reinvested.

(2) Substantially the same as the House bill. However, the tax-free rollover is available only with respect to complete distributions from a plan that occur within 12 months after termination of employment.

(3) Amounts equal to the employee's own voluntary, nondeductible contributions to the plan may be reinvested, but need not be so.

(4) Same as House bill.

Staff comment.—

(1) If the conferees decide to accept the staff's suggestion described above, under item 1, *Central Portability Fund*, then the policy of the Senate bill allowing reinvestment of a rollover contribution from an individual retirement account to a qualified plan should be accepted also to the extent that the amount initially came from a qualified plan.

(2) The conferees may wish to adopt the policy of the Senate bill with respect to limiting rollovers from a qualified plan to distributions that occur within 12 months after termination of employment (by regulation the Treasury Department could provide for situations where rollovers would be permitted more than 12 months after employment is terminated).

(3) To the extent that the conferees adopt the staff suggestion in *Central Portability Fund*, item 1, the conferees may wish to provide that employee contributions may be rolled over on a tax-free basis to an individual retirement account.

(4) This provision is the same in both bills.

3. Registration with Social Security

42, 259, 267 (96, A–137)

House bill.—Title I and title II are essentially the same.

(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. *Page numbers*

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

Senate amendment.—The Senate amendment is substantially the same as the House bill, with differences noted below. 360 (96, A–137)

(1) Plans are to report only to the Internal Revenue Service and not to the Secretary of Labor.

(2), (3) No differences.

(4) No comparable provision.

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

4. Effective Dates

House bill.—

(1) The tax-free rollover provisions are to take effect on January 1, 1974. 73, 273, 321 (146, A–236)

(2) The provisions for registration with Social Security are to take effect 6 months after enactment under title I, and are to apply to plan years beginning after December 31, 1975, under title II.

Senate amendment.—

(1) The tax-free rollover provisions are generally to be effective on enactment. 365, 440 (A–156)

(2) The provisions for registration with Social Security are to be effective for plan years ending after December 31, 1973.

(3) The central portability funds provisions are to take effect on enactment.

Staff comment.—

(1) The conferees may wish to provide that the tax-free rollover provisions generally are to take effect on the date of enactment.

(2) The conferees may wish to provide that the provisions requiring registration with Social Security are to apply to plan years beginning after December 31, 1975, except that reports need not be made by Social Security for 3 years after that date.

(3) If the conferees decide to establish a central portability fund, they may wish to provide that the central portability fund provisions are to take effect on enactment.

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