[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

HE HOUSE AND SENATE CONFEREES ON H.R. 2

PART FOUR

LIMITATIONS ON CONTRIBUTIONS AND BENEFITS, EMPLOYEE SAVINGS FOR RETIREMENT, LUMP-SUM DISTRIBUTIONS, ADMINISTRATION AND ENFORCEMENT, AND MISCELLANEOUS

JUNE 19, 1974

JCS-14-74

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1974

CONTENTS

	Page
Limitations on contributions and benefits	1
1. Specific contribution limits on proprietorships, partnerships, or subchapter S corporations	1
2. Defined benefit limits for proprietorships, partnerships, and subchapter S corporations	1
3. Excess contributions	2
4. Premature distributions	3
5. Withdrawing of voluntary contributions by owner-employees	3
6. Partnership pooling	3
7. Overall limitation—coverage of provisions	3
8. Overall limitation—defined benefit plans	3
9. Overall limitation—defined contribution plans	5
10. Overall limitation—combinations of plans	5
11. Overall limitation—section 403(b) annuities for teachers or employees of tax exempt organizations	6
12. Overall limitation—additional benefits	6
13. Overall limitation—special rule where records not available	7
14. Overall limitation—grandfather clause	7
15. Maximum deduction limits—in general	7
16. Aggregate deduction limits—profit-sharing and pension plans, etc	8
17. Timing of contributions	8
18. Effective dates	8
Employee savings for retirement	9
A. Individual retirement accounts	9
1. Deductions for contributions to individual retirement accounts, etc	9
2. Individual retirement accounts—requirements	10
3. Individual retirement annuities—requirements	11
4. Employer- and union-sponsored accounts	11
5. Taxation of distributions—in general	12
6. Premature distributions, etc	13
7. Taxation of individual retirement accounts, etc	14
8. Excess contributions	14
9. Excise tax on excess accumulations	15
10. Tax-free rollovers	16
11. Qualified retirement bonds	16
12. Other rules	17
13. Effective dates	17
B. Salary reduction plans and other matters	17
1. Salary reduction plans and cash and deferred profit-sharing plans	17
2. Amounts designated as employee contributions	19
3. Integration with social security	20
Lump-sum distributions	20
1. Post-1973 portion—ordinary income—averaging; pre-1974 portion—long-term capital gains	20
2. Definition of lump-sum distribution	21
3. Multiple lump-sum distributions in one taxable year	21
4. Aggregation of distributions over 6 years	21
5. Treatment of distributions of annuity contracts	21
6. Number of elections	22
7. Distributions to trusts	22
8. Lump-sum distributions to the self-employed	22
9. Whether an employee is to be taxed as self-employed	23

Page

Administration and enforcement ---- 23
1. Tax Court declaratory judgment proceedings ---- 23
2. Administering office in Internal Revenue Service ---- 24
3. Reporting and disclosure—Internal R(venue Serivce ---- 24
a. Reports required ---- 24
b. Sanctions for failure to file ---- 25
c. Disclosure ---- 25
d. Effective dates ---- 26

Miscellaneous:
1. Trustees of H.R. 10 plans ---- 26
2. Custodial accounts ---- 26
3. Section 403(b) plan investments in mutual funds ---- 26
4. Federal credit unions ---- 26
5. Certain Puerto Rican pension plans ---- 27
6. Deduction for severance payments required by foreign law ---- 27
7. Remedial retroactive plan amendments ---- 27
8. Rules for certain negotiated plans ---- 27

LIMITATIONS ON CONTRIBUTIONS AND BENEFITS

1. Specific Contribution Limits on Proprietorships, Partnerships, or Subchapter S Corporations

House bill[1]—

Page numbers †

(1) The bill increases the maximum deductible contribution on behalf of self-employed persons[2] to the lesser of (a) $7,500 or (b) 15 percent of earned income. (Under present law, the limitation is the lesser of (a) $2,500 or (b) 10 percent of earned income.) The same change is made as to excludible contributions on behalf of subchapter S corporation shareholder-employees.[3] — 280, 281 (A–169, A–171)

(2) No more than the first $100,000 of earned income may be taken into account in applying the percentage limits, both as to self-employed persons and as to shareholder-employees. — 281 (A–171)

(3) Self-employed persons (but not shareholder-employees) are permitted to set aside up to $750 a year out of earned income, even though it exceeds the 15-percent limitation of point (1). — 280 (A–170)

Senate amendment.—

(1) The Senate amendment is the same with respect to self-employed persons. As to shareholder-employees of subchapter S corporations, the Senate amendment repeals the limitations, instead of merely increasing them. — 621, 614 (A–169, A–171)

(2) The Senate amendment is essentially the same as the House bill except that, consistent with point (1), it does not apply to subchapter S corporation shareholder-employees. — 625 (A–171)

(3) Essentially the same as the House bill. — 624 (A–170)

2. Defined Benefit Limits for Proprietorships, Partnerships, and Subchapter S Corporations — 282 (A–172)

House bill.—(1) The bill authorizes Treasury regulations to allow self-employed persons and shareholder-employees to translate, in effect, the 15-percent-$7,500 limitations on contributions into limitations on

† "Page numbers" outside parentheses are the numbers of the relevant pages in the print of H.R. 2 dated March 4, 1974. The first 358 pages of that print, in linetype, represent the bill as passed by the House of Representatives; the remaining pages of that print, in italic type, constitute the Senate amendment.

"Page numbers" inside parentheses are the numbers of the relevant pages in the comparative prints prepared by the staffs.

[1] The House bill provisions relating to limitations on contributions and benefits are those of title II only. Title I does not deal with limitations on contributions and benefits.

[2] Sole proprietors and partners are "self-employed persons".

[3] A shareholder-employee of a subchapter S corporation is an employee of the corporation who owns more than 5 percent of the Corporation's outstanding stock.

benefits which those individuals could receive under a defined benefit plan. The bill also contains a table (based on certain interest and mortality rates) which will serve as a "guideline regulation."

284 (A-174) (2) Treasury is given authority to replace this table from time to time in years beginning after December 31, 1977, based on changes in mortality and interest rates occurring after 1973.

284 (A-174) (3) The bill also contains technical rules to prevent an individual from establishing a "token plan" early in his career in order to obtain high benefit accruals later in his career.

285 (A-175) (4) A plan which covers owner-employees[4] is not to be permitted to use the defined benefit provisions unless it provides benefits for all participants on a non-integrated basis.

602, 603 (A-172) *Senate amendment.*—

(1) The Senate amendment is essentially similar to the House bill, except that it does not deal with subchapter S corporation shareholder-employees.

605 (A-174) (2) The Senate amendment is essentially the same as the House bill.

(3), (4) No comparable provisions.

286 (A-177) *3. Excess Contributions*

Present law.—Any excess contributions made to a plan on behalf of an owner-employee must be repaid (together with the earnings thereon) within 6 months after the mailing of notice by the Internal Revenue Service; otherwise the plan will become disqualified with respect to that individual. If an excess contribution is willfully made on behalf of an owner-employee, the plan is to become disqualified with respect to the owner-employee, and he is barred from participating in a qualified plan for the next 5 years.

286 (A-177) *House bill.*—The bill repeals the provisions of present law outlined above, and imposes an excise tax of 6 percent on excess contributions to plans for the self-employed. The tax is imposed every year that the excess is outstanding. The tax is to be paid by the employer who maintains the plan.[5]

Senate amendment.—The Senate amendment contains no comparable provisions (and so, under the amendment, excess contributions to H.R. 10 plans would continue to be governed under present law).

---

[4] An "owner-employee" is a self-employed person who owns more than 10 percent of either the capital interest or the profits interest in the business.

[5] In the case of a defined contribution plan (for example, a money purchase pension plan), excess contributions include amounts contributed for the employee in excess of the 15-percent, or $7,500 deduction limits on contributions on behalf of self-employed persons. In the case of a defined benefit plan, the tax is imposed where the plan is fully funded at the close of the employer's taxable year, and is imposed upon the amount that has not been deductible for the taxable year or any prior taxable year. Also, in either type of plan, excess contributions include voluntary contributions by owner-employees in excess of the allowable amount of such contributions.

4. Premature Distributions

Present law.—In general, where amounts are distributed under a qualified plan to an owner-employee before he attains age 59½ (except in the case of disability) a tax is imposed equal to 10 percent of the increase in regular taxes due to the distribution.

House bill.—The bill would increase the extra tax to 10 percent of the amount of the premature distribution (instead of 10 percent of the amount of the marginal regular tax on the premature distribution). 292 (A-183)

Senate amendment.—The Senate amendment left the premature distribution provisions of present law essentially unchanged. 624 (A-183)

5. Withdrawing of Voluntary Contributions by Owner-Employees

House bill.—The bill would allow an owner-employee to withdraw his own voluntary contributions to an H.R. 10 plan before retirement without penalty. 292 (A-183)

Senate amendment.—The amendment contains a similar provision. 629 (A-183)

6. Partnership Pooling

House bill.—The House bill contains no provision with respect to partnership pooling.

Senate amendment.—The Senate amendment would permit self-employed individuals, in effect, to pool their contribution limits, so that certain partners could accrue more than their share of retirement benefits, if other partners accrue less, and the overall contribution limits are met. 644 (A-188)

7. Overall Limitation—Coverage of Provisions

House bill.—The bill imposes an overall limitation (described below) on the contributions and benefits which are allowable under qualified pension, profit-sharing, and stock bonus plans and annuities; annuity contract arrangements for employees of charitable, etc., organizations or of public schools (403(b)); and individual retirement accounts and annuities. 321 (A-237)

Senate amendment.—The Senate amendment also imposes an overall limitation which applies in the case of qualified pension, profit-sharing, and stock bonus plans and annuities. The Senate amendment would not apply to individual retirement accounts or 403(b) annuities. 636 (A-237)

8. Overall Limitation—Defined Benefit Plans

House bill.—

(1) Under the bill, in general, the highest annual benefit which can be paid (in the form of a straight life annuity) out of a defined benefit plan to a participant is not to exceed the lesser of (a) $75,000, or 323 (A-240)

(b) 100 percent of the participant's average high-3-consecutive-year compensation from his employer.

329 (A–252) (2) The $75,000 and the 100-percent ceilings are to be adjusted annually under Treasury regulations to reflect cost-of-living increases (in a manner similar to the way old age and survivor's benefits are adjusted under the social security law).

324, 326 (A–241, A–243) (3) In the event of retirement before age 55, the $75,000 limitation is to be scaled down on an actuarial basis (but not below $10,000). However, there would be no reduction in the 100-percent-of-salary limitation.

324 (A–241) (4) In general, the benefits payable under a defined benefit pension plan would not have to be reduced for preretirement ancillary benefits (such as medical, death, and disability), but post-retirement ancillary benefits, such as term-certain annuities, post-retirement death benefits, or a guaranteed payment for a period of years would be taken into account.

324 (A–241) (5) A joint and survivor annuity for the benefit of the participant and his spouse would not be taken into account unless the survivor benefit were greater than the joint benefit.

324 (A–241) (6) Upward adjustments in the benefit schedule would be permitted to reflect any employee contributions to the plan.

326 (A–243) (7) Also, the bill provides a de minimis rule, which would allow the plan to pay an annual retirement benefit of up to $10,000 per annum, notwithstanding the 100-percent limitation, or the required adjustment for certain ancillary benefits, to any employee who has not participated in a defined contribution plan of the employer.

(8) As a further adjustment to the rules described above, the maximum allowable defined benefit would have to be scaled down proportionately for an employee with less than 10 years of service (or part thereof).

Senate amendment.—

605 (A–240) **(1) Under the amendment, in the case of a defined benefit pension plan, no deduction is allowable for any contribution which exceeds the amount necessary to fund, from employer contributions and the earnings therefrom, a basic annual benefit (in the form of a straight-life annuity commencing at age 65) in excess of 75 percent of the participant's average high-three-consecutive-year compensation from his employer, taking into account no more than the first $100,000 of compensation per year.**

(2) There is no provision for a cost-of-living adjustment.

(3), (4), (5) The otherwise allowable benefit would be adjusted in the event early retirement benefits, or other ancillary benefits were payable. 622 (A-245)

(6) Upward adjustments in the benefit schedule would be permitted to reflect employee contributions.

(7) The amendment does not contain a de minimis provision. 606 (A-241)

(8) In the case of employees who participate in the plan for less than 10 full years, the maximum permissible benefit is to be scaled down proportionately.

9. Overall Limitation—Defined Contribution Plans

House bill.—

(1) Under the bill, the annual additions to a participant's account under a tax-qualified plan are not to exceed the lesser of (a) $25,000 or (b) 25 percent of the participant's compensation from his employer during the year. 326 (A-244)

(2) The "annual additions" are the sum for any year of: (a) the employer's contributions, (b) the lesser of (i) one-half of all employee's contributions or (ii) the employee's contributions in excess of 6 percent of his compensation, and (c) any forfeitures which are added to the employee's account during the year.

(3) The $25,000 limitation is to be adjusted annually for the cost of living.

(4) No corresponding provision.

Senate amendment.—

(1), (2) The employer would be permitted to make deductible contributions sufficient to fund for the employee a pension equal to 75 percent of average high three years of compensation (not in excess of the first $100,000 in any one year). This was done in accordance with a formula and the overall attempt was to make the defined contribution plan limitations and the defined benefit plan limitations as nearly equivalent as possible. 621 (A-244)

(3) No comparable provision.

(4) Also, the Senate amendment provides that tax-excludible contributions to a money purchase pension plan are not to exceed 20 percent of the employee's compensation, and any additional amounts contributed on his behalf must be included in income.

10. Overall Limitation—Combinations of Plans

House bill.—

(1) Where a corporation has two or more plans, the overall ceiling is to be computed, in general, by aggregating similar plans (defined contribution or defined benefit) and reducing the limitation on one type by taking into account the extent to which the permissible limits are utilized under the other. If an 330 (A-253)

employer maintains a defined benefit and a defined contribution plan each plan would be subject to the limit appropriate to that type of plan ($75,000 or 100 percent benefits for the defined benefit plan, $25,000 or 25 percent contributions for the defined contribution plan); in addition, the two plans must be combined in computing the overall limitation.

(2) To achieve this purpose, the bill establishes a formula (to be applied each year to each employee) under which a defined benefit plan fraction for the year is added to a defined contribution plan fraction. The fraction indicates what portion the participant has used of the maximum permitted limit for the kind of plan involved. If the sum of these fractions exceeds 1.4, then one or more of the plans will be disqualified.

335 (A-258) (3) Plans of all corporations, partnerships, or proprietorships which are under common control must be aggregated (using a 50-percent common control test).

Senate amendment.—

606, 612 (A-253) (1), (2) If the corporation has both a defined benefit plan and a defined contribution plan, the maximum benefit payable under the defined benefit plan would have to be reduced in proportion to the amount of the benefit which was funded through the defined contribution plan.

(3) Essentially the same as the House bill.

11. Overall Limitation—Section 403(b) Annuities for Teachers or Employees of Tax Exempt Organizations

328 (A-246) *House bill.*—In general, section 403(b) annuities would be subject to the same limitations as defined contribution plans. However, these annuities would not have to be combined with the qualified plans of the schools for purposes of applying the limitations. Also, the bill would permit catch-up funding of an annuity, so that in a teacher's last year the school could provide make-up contributions for a 4-year period, without regard to the 25 percent limitation.

Senate amendment.—The Senate amendment did not apply to 403(b) annuities.

12. Overall Limitation—Additional Benefits

334 (A-258) *House bill.*—The bill provides that benefits or contributions in addition to those allowable in connection with qualified plans may be paid or accrued on behalf of an employee under a qualified plan, if the contributions of the employer for the purpose of providing such additional benefits are not allowable as a deduction to the employer before they are includible in the gross income of the individual.

388, 419 *Senate amendment.*—The amendment contains no provision to this effect, and prohibits an employer from maintaining a nonqualified plan, other than a plan providing deferred compensation for executives.

13. Overall Limitation—Special Rule Where Records Not Available

House bill.—The Treasury is authorized to prescribe regulations establishing reasonable assumptions which may be used by the employer in cases where the facts needed to compute the overall limitation are not known. 335 (A–261)

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

14. Overall Limitation—Grandfather Clause

House bill.—

(1) The House bill contains a "grandfather clause" for any individual who is, on October 2, 1973, an active participant in a defined benefit plan. 337 (A–265)

(2) An employee who elects to use that provision is permitted to receive an annual benefit which does not exceed 100 percent of the individual's annual rate of compensation on October 2, 1973 (including bonuses).

(3) However, the benefit is not to exceed the annual benefit which would have been payable to the participant on retirement if all the terms and conditions of the plan in effect on October 2, 1973, had remained in effect until the employee's retirement, and his compensation taken into account under the plan for any period after October 2, 1973, had not exceeded his annual compensation on that date.

(4) If, on October 2, 1973, the plan provides for a post-retirement (but not preretirement) cost-of-living adjustment, such an adjustment may also be taken into consideration in determining the allowable benefits for a participant under this provision.

Senate amendment.—The amendment contains no comparable provision.

15. Maximum Deduction Limits—In General

House bill.— 208

(1) The bill provides that an employer may deduct the amount necessary to meet the minimum funding standard (even if this is more than the otherwise allowable maximum deduction). (A–63)

(2) Also, the bill amends the "normal cost" method of funding so that unfunded past service liabilities may be fully amortized over a 10-year period.

Senate amendment.— 388, 403, 631

The Senate amendment provides as follows:

(1) Same as the House bill.

(2) No comparable provision.

16. Aggregate Deduction Limits—Profit-Sharing and Pension Plans, etc.

Present law.—The contributions allowable as a deduction in a combination profit-sharing and pension plan may not exceed 25 percent of the aggregate compensation to employees covered under the plan. However, where excess contributions are made, these may be carried forward and deducted in succeeding years, and the deduction limit for those years is increased from 25 to 30 percent. Also, under present law, in the case of a profit-sharing plan alone, the limitation on deductible contributions is 15 percent of the aggregate compensation paid to covered employees. In cases where the employer fails to use his full 15-percent allowance, the unused portions may be carried forward and used in succeeding years, up to 30-percent-of-aggregate-compensation limit for the year.

211, 335 (A-67, A-261) *House bill.*—The bill continues to allow the carryovers described above, but provides that the ceiling on deductible contributions remains at 25 percent in the succeeding years.

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

17. Timing of Contributions

210 (A-66) *House bill.*—Contributions by cash basis taxpayers (as well as accrual basis taxpayers as under present law) which are made by the time for filing the employer's tax return for the year in question may be treated as paid in the year in question.

633 (A-66) *Senate amendment.*—Substantially the same as the House bill.

18. Effective Dates

336 (A-191, A-263) *House bill.*—(1) In general, the amendments with respect to H.R. 10 plans, including the provisions increasing the amount of the deductible contributions which may be made on behalf of the self-employed, are to apply to taxable years beginning after December 31, 1973.

(2) The rules facilitating the use of defined benefit plans for the self-employed, as well as the rules modifying the treatment of excess contributions and the taxation of premature distributions, are to apply to taxable years beginning after December 31, 1975.

(3) The new rules with respect to corporate limitations are to apply to contributions made or benefits accrued in years beginning after December 31, 1975.

(4) The effective dates for the new maximum deduction rules are the same as the effective dates for the new funding rules (see Part One, Funding, *Effective Dates*, Item 29).

Senate amendment.—(1), (2), and (3) Generally, the provisions under the amendment are to take effect in years beginning after December 31, 1973. 615, 625 (A-192, A-263)

(4) The effective dates for the new maximum deduction rules are generally the same as the effective dates for the new funding rules. However, the provision regarding the timing of contributions takes effect on January 1, 1974, as does the provision allowing a deduction to the extent of the required minimum funding.

EMPLOYEE SAVINGS FOR RETIREMENT

A. Individual Retirement Accounts

1. Deductions for Contributions to Individual Retirement Accounts, etc.

House bill.[1]— 294 (A-193)

(1) An individual who does not participate in a qualified plan, a government plan, or a section 403(b) annuity program during the year is to be allowed a maximum retirement savings deduction of up to $1,500 per year, or 20 percent of his compensation includible in gross income, whichever is less, for contributions to an individual retirement account or for the purchase of an individual retirement annuity or a qualified retirement bond.

(2) This deduction is available whether or not the taxpayer itemizes his other deductions.

(3) The account may be established by the individual, his employer, or his labor union.

(4) If both husband and wife are eligible, each can make contributions to his or her own individual retirement account.

Senate amendment.— 577 (A-193)

(1) An individual who was not a participant in a qualified plan, a section 403(b) annuity, or a government plan, would be permitted to deduct up to $1,000 a year (but not in excess of earned income), or (where the employer does not contribute) 15 percent of earned income up to a maximum deductible contribution of $1,500 for contributions to an individual retirement account or for the purchase of an individual retirement annuity or bond.

(2) Same as the House bill.

(3) The individual retirement account may be established by the individual or by his employer (but not by his labor union).

(4) Similar to the House bill.

[1] The House bill provisions relating to employee savings for retirement are those of title II only. Title I does not deal with employee savings for retirement.

297 (A-198)

2. Individual Retirement Accounts—Requirements

House bill.—(1) Under the bill, an individual retirement account is to be a domestic trust (or custodial account) created or organized under a written instrument for the exclusive benefit of an individual or his beneficiaries. Banks may be trustees. In addition other persons may serve as trustees if they satisfy the Internal Revenue Service that the trust will be administered in accordance with law.

(2) The governing instrument is to provide that the trustee will not accept more than $1,500 per year on behalf of any individual (except in the case of rollovers), and the individual's interest in the account must be nonforfeitable, without exception.

(3) The balance in an individual retirement account may generally be invested in any assets that are acceptable investments for a qualified plan, but the assets are not to be commingled with other property except in a common trust fund.

(4) No assets of the account may be invested in life insurance contracts (however, contributions may be invested in annuity contracts issued by life insurance companies).

(5) The trust instrument also is to provide that the entire interest of a participant will be distributed by the end of the year in which he reaches age 70½ or that distribution will begin by that time and continue at least ratably over his lifetime (or the lives of the participant and his spouse).

308, 314 (A-217)

(6) The bill provides that the trustee of an individual retirement account (or issuer of a retirement annuity) is to report annually to the Secretary of the Treasury regarding contributions to the account or annuity and such other matters as may be prescribed by regulations. A $10 penalty is provided for each violation of the reporting requirements, unless the violation is due to reasonable cause.

Senate amendment.—Many of the requirements of the Senate amendment with respect to the individual retirement accounts are quite similar to those of the House bill; however, there are some differences in the approach of the two bills with respect to specific points above, as follows:

581 (A-198)

(2) Under the governing instrument, contributions to the account cannot exceed amounts that are deductible under the retirement savings deduction.

589 (A-209)

(4) The amendment does not prohibit investment of the assets in a life insurance contract. However, any contribution to the account, or any income of the account which is applied to the purchase of life insurance protection under any retirement income, endow-

ment, or other life insurance contract will constitute income to the individual.

(6) With respect to reporting, the amendment provides generally that an individual retirement account is to be subject to the provisions relating to returns by exempt organizations (sec. 6033) and fiduciary returns required to be filed in connection with certain trusts, annuity and bond purchase plans (sec. 6047). 586, 644 (A-217)

3. Individual Retirement Annuities—Requirements 299 (A-202)

House bill.—(1) Under the bill, retirement savings may also be invested in annuity contracts, called individual retirement annuities.

(2) This is to be an individual annuity contract that is issued by an insurance company in the name of the participant, and the participant's rights in the contract are to be nonforfeitable.

(3) The annual premium is not to exceed $1,500.

(4) The contract is to be nontransferable and is not to be used as security for a loan.

(5) The prohibitions on life insurance elements and requirement of distribution by age 70½ are essentially the same as apply to individual retirements accounts.

Senate amendment.—Under the Senate amendment, the requirements for a retirement annuity are the same as those for an individual retirement account, and generally these requirements are similar to those of the House bill. However, as a matter of form, under the Senate amendment an annuity contract is one permitted type of investment under an individual retirement account. 580 (A-198)

There is no prohibition against the use of a life insurance contract and no prohibition against using the contract as security for a loan. In either of these events, the individual is to be treated as having income to the extent of the premiums applied toward life insurance protection, or the portion of the annuity contract pledged as security. 587, 589 (A-209, A-211)

4. Employer- and Union-Sponsored Accounts

House bill.—(1) Employers and labor unions are to be able to establish individual retirement accounts for their members. In this case, the same rules that govern individual retirement accounts generally are to apply to employer or union-established accounts. 301 (A-203)

(2) An employer or union may establish a single individual retirement account trust for a number of employees or members. The assets of the trust may be commingled for investment purposes. However, the trust must provide a separate accounting for each individual participant's interest in the trust. These trusts

are subject to the rule (applicable under present law to qualified plans) that the assets are to be held exclusively for the benefit of the participants or their beneficiaries.

(3) Regardless of whether the contributions are made by the employer or the employee, these amounts constitute income to the employee (which may, however, be deductible, if the requirements of the bill are met). This means the amounts are subject to FICA and FUTA taxes, but are not subject to withholding if it is reasonable for the employer to believe that the employee will be entitled to receive a deduction for the contribution.

581, 584 (A–198, A–204) *Senate amendment.*—(1) The Senate amendment does not contain a provision allowing the establishment of union-sponsored retirement accounts.

(2) Employers are permitted to establish individual retirement accounts for their employees, and the assets of these accounts may be commingled for investment purposes.

(3) Amounts contributed by the employer are tax excludable to the employee and are not to be subject to FICA and FUTA taxes.

(4) If the employer contributes to the account, the maximum contribution is limited to $1,000 a year.

(5) Separate records must be maintained for employer and employee contributions, but the interest of the employee in all contributions must be nonforfeitable.

(6) Apart from these rules, employer-sponsored retirement accounts are subject to the same rules which apply under the Senate amendment to all other retirement accounts.

5. Taxation of Distributions—In General

302 (A–206) *House bill.*—(1) Generally, the proceeds from an individual retirement account (individual retirement annuity and qualified retirement bond) are to be fully taxable to the individual when distributed.

(2) The amounts distributed from a retirement account, etc., are not to be eligible for capital gains treatment, and the special averaging rules applicable to lump-sum distributions (under sec. 72) also are not to be available.

(3) However, the individual is permitted to use the general averaging rules (sec. 1301).

(4) For purposes of the estate and gift taxes, the amounts in individual retirement accounts, etc., are not to be excluded from tax (secs. 2039(c) and 2517).

587 (A–206) *Senate amendment.*—In general, the rules with respect to taxation of distributions are the same.

6. Premature Distributions, etc.

House bill.—(1) In the event of a premature distribution (or deemed distribution) from the account, before the individual reaches age 59½, the individual's income tax is to be increased by 10 percent of the total amount of the distribution that is included in his gross income for the taxable year. 307 (A–213)

(2) The tax on premature distributions is not to apply in the case of distributions because of death or disability, or to distributions of excess contributions made within the time for filing the individual's tax return for the year in which the excess contributions occur.

(3) If an individual borrows money from an individual retirement account, this would generally constitute a prohibited transaction, the entire account would then be disqualified, and the participant is then to be taxed as if he had received a distribution of the fair market value of all the assets in his account. On the other hand, if he borrows money, using his interest in the account as security, the portion used as security is to be treated as a distribution from the account to the individual.

(4) In the case of individual retirement annuities the bill prohibits the owner of the contract from borrowing money from the insurance company issuing the contract, or otherwise using the contract as security for a loan. If borrowing does occur, the contract is to lose its qualification as an individual retirement annuity, and the individual is to include in income for that year the fair market value of the contract (determined as of the first day of that year). If the annuity contract is sold, exchanged, or hypothecated, the same consequences are to occur.

Senate amendment.—(1) The additional income tax on premature distributions is 30 percent of the distribution (rather than 10 percent, as under the House bill). 587, 589 (A–213)

(2) The penalty is not imposed in the event of distributions on account of death or disability. Also the tax is not imposed on any refund of excess contributions which were not willfully made (whereas the House bill allows a tax-free refund only if the refund occurs before the due date for filing the relevant tax return).

(3) If an individual borrows money, pledging his interest in the account or annuity as security, the portion pledged as security is to be treated as a distribution from the retirement account to the individual. Also, any contribution to an individual retirement account, or any income of the account, applied to the 590 (A–209)

purchase of life insurance protection under any retirement income, endowment or other life insurance contract also will constitute income to the individual. These transactions would not disqualify the account, but distributions in the form of borrowing prior to age 59½ would be subject to the 30-percent penalty tax.

(4) No comparable provision.

7. Taxation of Individual Retirement Accounts, etc.

304 (A-210) *House bill.*—(1) Generally an individual retirement account is to be exempt from Federal tax.

(2) The unrelated business income of the account, if any, is to be subject to tax under section 511.

(3) The bill also applies the existing prohibited transaction rules (sec. 503(b) and sec. 503(g)) to individual retirement accounts.

(4) However, in the case of a union or employer-sponsored account, where there is an individual retirement account trust covering more than one employee, only the employee who engages in the prohibited transaction will be penalized (i.e., only his account will be disqualified).

(5) If the employer is the party engaging in a prohibited transaction, the participants are not penalized under the bill, but the employer is to lose all deductions for compensation to the extent of the contributions to the retirement account in his taxable year in which the prohibited transaction occurs, and for all prior open years.

Senate amendment.—(1), (2) Same as House bill.

(3), (4), and (5) The accounts would also be subject to the Senate amendment rules with respect to fiduciary responsibility (which differ substantially from the rules of present law with respect to prohibited transactions). A party in interest who participates in a violation of these rules is to be subject to an excise tax.

311 (A-222) *8. Excess Contributions*

House bill.—(1) In general, no contributions in excess of the deductible limits may be made to an individual retirement account, etc.

(2) Where such contributions do occur (through inadvertence or otherwise) a retirement savings deduction is not allowed for the excess.

(3) If excess contribution, plus earnings on the excess, are distributed to the individual no later than the time for filing the employee's tax return for the year in question, the excess contribution is not taxable (see point (4)) but the earnings, if any, are taxable to the participant.

(4) If a timely distribution of the excess contribution is not made, a nondeductible excise tax equal to 6 percent of the excess contributions is imposed for that year, and each successive year so long as there is an excess. The tax is payable by the individual on whose behalf the excess contribution was made.

(5) The individual may withdraw the excess contribution after the due date for filing his return, and eliminate the 6 percent excise tax for future years. However, the withdrawn amounts will be subject to tax (since the individual's basis in the account is always zero) and will also be subject to a 10 percent additional tax if the withdrawal constitutes a premature distribution (before age 59½).

(6) No retirement savings deduction is to be allowed for contributions made during or after the year in which the individual attains age 70½, and all such contributions are to be treated as excess contributions. 296 (A–196)

Senate amendment.—(1), (2) Similar to the House bill. 584 (A–222)

(3) Excess contributions which are not made willfully are to be refunded to the individual (with earnings) within six months after notice of the excess contribution is sent by the Internal Revenue Service.

(4) If the excess contributions are not repaid, the account is to be disqualified for that year and all future years. In this case, the balance in the account would generally constitute income to the individual.

(5) If it is found that the excess contributions are made willfully, the taxpayer's interest in all individual retirement accounts is to be distributed to him and he is not to be permitted to establish another retirement account for a period of five years.

(6) Similar to the House bill.[2]

9. Excise Tax on Excess Accumulations 313 (A–224)

House bill.—After the participant has attained age 70½, an excise tax of 50 percent is imposed on the amount, if any, by which the amount of the distributions from the account failed to equal the minimum distribution (as determined under regulations) required for the year in order to satisfy the age 70½ payout requirements.

Senate amendment.—After age 70½, an excise tax of 10 percent a year is imposed on that proportion of an individual's account (valued as of the beginning of the taxable year) which equals the ratio between the amount which was required to be distributed dur- 592 (A–224)

[2] Generally, an individual would be permitted to receive a deduction for contributions to only one individual retirement account in any one taxable year, except where the employee enters or leaves employment during the year with an employer who contributes to his individual retirement account.

ing the year, and the amount which was actually distributed.[8]

10. Tax-free Rollovers

House bill.—

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.

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 the House bill.

11. Qualified Retirement Bonds

309 (A–218) *House bill.*—(1) Deductible employee savings may also be invested in a special retirement bond to be issued by the Federal Government. The bonds are to be issued under the Second Liberty Bond Act and are to provide for the accumulation of interest until the time of redemption.

---

[8] For example, if an account had a value of $1,000, and $100 was required to be distributed in order to satisfy the age 70½ payout requirements, and $10 was distributed, the penalty tax would equal $90 (90/100ths, or 90 percent of the required distribution was not made: 90 percent of $1,000 equals $900 and 10 percent of this amount equals the penalty tax—$90). By contrast, under the House bill, a tax of $45 would be payable ($100 required distributions minus $10 of actual distributions equals $90, and 50 percent of this amount is $45).

(2) The bonds are to be issued in the name of the individual on whose behalf they are purchased, and cannot be transferred or pledged under any circumstances (except in the event of death or incompetency).

(3) The bonds generally may be cashed only after the individual has reached the age of 59½ years, or if he becomes disabled.

(4) However, the bond may be redeemed within 12 months of its purchase without penalty (and without payment of interest) and in this case the individual is not entitled to a deduction for the contribution.

(5) The bonds are to cease to bear interest when the individual reaches age 70½ and the individual is also required to take any of the bonds he is still holding into income even if he does not cash them in.

(6) If the owner dies, the bonds cease to bear interest five years after his death.

(7) When the bonds are redeemed, the full pro- 596
ceeds of the bonds (including interest) constitutes in- (A-218)
come to the individual (except when the bond is redeemed within 12 months of its purchase).

(8) However, this income could be treated under the general averaging provisions of the tax law (sec. 1301).

Senate amendment.—The provisions are essentially the same.

12. Other Rules

House bill.—(1) The House bill provides that the 315
proceeds of individual retirement accounts, annuities (A-227)
and bonds are to constitute retirement income for purposes of the retirement income credit.

Senate amendment.—(1) Similar to the House bill. 599
(2) Also, the amendment provides that contribu- (A-227)
tions to a retirement account may not be used to create 638
or increase a net operating loss. (A-234)
(3) If a retirement account or annuity is trans- 586
ferred pursuant to a divorce settlement, the transfer (A-216)
is not to be taxable under the amendment.

13. Effective Dates

House bill.—The deduction for retirement savings 321
is to be available for taxable years beginning after (A-236)
December 31, 1973.

Senate amendment.—Same as the House bill.

B. *Salary Reduction Plans and Other Matters* 602

1. Salary Reduction Plans and Cash and Deferred (A-236)
Profit-Sharing Plans

Present law.—Generally, under present law, an employee is not allowed to deduct amounts which he contributes from his own funds to a retirement plan.

While an employer's qualified plan may allow employees to contribute their own funds to the plan, no deduction is allowed for these contributions. However, the income earned on employee contributions to an employer's qualified plan is not taxed until it is distributed.

In the case of a salary reduction plan or a cash or deferred profit-sharing plan, however, the Internal Revenue Service has permitted employees to exclude from income amounts contributed by their employers to the plan, even where the source of these amounts is the employees' agreement to take salary or bonus reductions or forgo salary increases. In the case of a cash or deferred profit-sharing plan, the employee generally has the election to take a bonus currently in cash or have it deferred by payment into the plan. In the case of a salary reduction plan, the employee generally agrees with his employer to reduce his salary or forgo a salary increase which is contributed into a pension plan for his benefit. In either case, if the plan met certain nondiscrimination requirements, the Internal Revenue Service in the past had taken the position that, under certain circumstances, the payment into the plan would be treated as an employer contribution, not taxable to the employee until benefits were received from the plan. The maximum amount that could be so treated under a salary reduction plan generally was 6 percent of compensation.[4]

On December 6, 1972, the Service issued proposed regulations (37 Fed. Reg. 25938) which would change this result in the case of qualified pension plans by providing that amounts contributed to such a plan in return for a reduction in the employee's basic or regular compensation, or in lieu of an increase in such compensation, will be considered to have been contributed by the employee and consequently will be taxable income to the employee.

The proposed regulations would not affect the tax treatment of contributions to certain qualified profit-sharing plans, where the contributed amounts could be received as a bonus; however, it was indicated that there would be reconsideration of the rulings permitting exclusion of such profit-sharing contributions. (Rev. Rul. 56–497, 1956–2 C.B. 284; Rev. Rul. 63–180, 1963–2 C.B. 189; Rev. Rul. 68–89, 1968–1 C.B. 402.) Public hearings have been held on these proposed reg-

[4] In the case of employees of tax-exempt charitable, educational, religious, etc., organizations and employees of public educational institutions, a specific statutory provision provides for employer contributions of up to 20 percent of compensation, times years of service, reduced by amounts previously contributed by the employer for annuity contracts on a tax excluded basis to the employees (sec. 403(b)). The regulations under the statute allow the employer contributions to be made under these salary reduction plans. Antidiscrimination provisions that apply generally to qualified plans do not apply to those tax sheltered annuities. Neither the bill nor the amendment affect the tax treatment of these contributions (although limits are applied to them under the House bill).

ulations but regulations in final form have not yet been issued.

House bill.—(1) Under the House bill, the proposed Treasury regulations with respect to salary reduction plans are to be withdrawn. 350 (A–280)

(2) No proposed regulations are to be issued in this area before January 1, 1975.

(3) At that point, if Congress has not acted, Treasury may, at its discretion, issue a new set of proposed regulations, which may or may not be similar to the regulations which are to be withdrawn. However, if regulations are issued, they may not become final prior to March 16, 1975, and may not be retroactive for income tax purposes prior to January 1 of that year.

(4) Until new regulations are issued in final form, the law is to be administered in accordance with the legal principles which were applied before January 1, 1972.

(5) Cash or deferred profit-sharing plans are to be treated in a similar manner. During the period until new regulations are issued in final form, the qualified status and the tax treatment of contributions to such plan is to be governed in accordance with the principles set forth in existing revenue rulings. However, if Congress does not act, Treasury may change its pre-1972 positions on the law in this area by regulations, so long as such changes do not become final before March 16, 1975, and are not retroactive prior to January 1, 1975.

(6) For purposes of the social security taxes and the Federal withholding taxes, the regulations are not to be retroactive.

(7) So-called "cafeteria plans", under which the employee may have a choice between cash and certain fringe benefits, some of which may be nontaxable, are also to be governed under pre-1972 principles during this period.

Senate amendment.—Contributions made after December 31, 1973, to a qualified plan in return for a reduction in the employee's compensation or bonus, or in lieu of an increase in such compensation or bonus, would be treated for Federal tax purposes as nonexcludible employee contributions to the plan. 639 (A–280)

2. Amounts Designated as Employee Contributions

House bill.—(1) To clarify present law, the bill provides that amounts contributed to a qualified plan after the date of enactment are to be treated as employee contributions if they are designated as employee contributions under the plan. 220 (A–83)

(2) This rule would not apply to government "pick-up" plans, however, where the contribution is

paid by the government, with no withholding from the employee's salary, and these amounts would be treated as employer contributions, no matter how designated under the plan.

639 *Senate amendment.*—(1) The rule is the same as to
(A–83) designated contributions (except that the rule applies to taxable years beginning after December 31, 1973).

(2) There is no rule providing an exception for government pick-up plans.

3. Integration With Social Security

House bill.—As discussed above, title I and title II of the House bill provide that plans may not use increases in social security benefit levels to decrease plan benefits in the case of retirees, or individuals who separate from service prior to retirement. (See Part One, Vesting, item 20.) In addition, the Ways and Means Committee report (page 29) proposes a study, by the committee, of the issues involved in the integration of private pension plans with the social security system and directed that no further integration of social security and pension benefits should be allowed by the Internal Revenue Service, at least until June 30, 1975.

Senate amendment.—No comparable provision.

LUMP-SUM DISTRIBUTIONS

1. Post-1973 Portion—Ordinary Income—Averaging; Pre-1974 Portion—Long-Term Capital Gains

House bill.[1]—

344 (1) A lump-sum distribution attributable to post-
(A–273) 1973 plan participation is to be taxable as ordinary
338 income—
(A–267) (a) without regard to the taxpayer's other income
338 (i.e. in a "separate basket");
(A–267) (b) averaged over 10 years; and
338 (c) the tax is to be computed using the tax sched-
(A–267) ule for unmarried individuals (whether or not the
346 taxpayer is married).
(A–275) (2) That portion of the lump-sum distribution that is attributable to pre-1974 participation in the plan is to be taxed as long-term capital gain.

344 (3) Where the participant has service both before
(A–273) 1974 and after 1973, then the amount attributable to the post-1973 service is the total taxable distribution times a fraction, the numerator of which is calendar years of active participation after 1973 and the denominator of which is total years of active participation.

617, 619 *Senate amendment.*—The Senate amendment is es-
(A–267, sentially the same, except that the averaging is over 15
A–275) years.

[1] The House bill provisions on lump-sum distributions are those of title II only. Title I does not deal with lump-sum distributions.

2. Definition of Lump-Sum Distribution

House bill.— 341 (A–270)

(1) The bill amends present law to permit a lump-sum distribution to be made to a common-law employee after he attains age 59½, even though he has not left his employment. (Under present law, the age 59½ rule applies only to self-employed persons.)

(2) The entire balance of the employee's account in the plan must be distributed in order for the distribution to receive lump-sum treatment. For this purpose, 343 (A–272)

(a) all trusts which are part of a plan are to be treated as a single trust, and

(b) all plans of a given kind (i.e., all pension plans or all profit-sharing plans or all stock bonus plans) maintained by the employer are to be treated as a single plan.

(Under present law, a distribution generally is treated as a lump-sum distribution if it clears the employee's balance in a single trust, even though there are other trusts in that plan and even though that employee is in several plans maintained by the same employer.)

Senate amendment.—No comparable provisions.

3. Multiple Lump-Sum Distributions in One Taxable Year

House bill.—A taxpayer who wishes to use the special averaging and capital gains treatment described above for one lump-sum distribution, must use that treatment for the aggregate of the lump-sum distributions be receives in that taxable year. 342 (A–271)

Senate amendment.—No comparable provision, but the intent is the same.

4. Aggregation of Distributions over 6 Years. 339 (A–268)

House bill.—

(1) In determining the correct tax brackets on the lump-sum distributions to a recipient during the current taxable year, all lump-sum distributions to that recipient during the 5 prior taxable years are to be aggregated.

(2) For this purpose, only distributions in taxable years after 1973 are to be taken into account.

Senate amendment.—The Senate amendment is substantially the same as the House bill except that the Senate amendment does not restrict the aggregation requirement to distributions in post-1973 taxable years. 618 (A–268)

5. Treatment of Distributions of Annuity Contracts

House bill.—

(1) Although a distributed annuity contract itself is not taxable, the value of the annuity contract is to be 342 (A–271)

included in the aggregation computation in order to determine the tax rate on a taxable lump-sum distribution.

342 (A-269) (2) For purposes of the aggregation computation, the value of the annuity contract is to be its fair market value.

619 (A-269) *Senate amendment.*—The Senate amendment is essentially the same, except that the value of the annuity contract to be taken into account is the cash surrender value of the contract on the date of distribution.

6. Number of Elections

340 (A-271) *House bill.*—The special averaging treatment may be elected freely until the employee reaches age 59½, after which only one election may be made with respect to that employee.

Senate amendment.—The Senate amendment does not have an election procedure. As a result, it makes the above-described special averaging and capital gains treatment mandatory for lump-sum distributions and does not limit the number of times this special treatment may be used.

7. Distributions to Trusts

342 (A-271) *House bill.*—(1) A trust may elect the special averaging and capital gains treatment only if (1) the use of the trust does not affect the includibility of the distribution in the employee's gross estate, and (2) the trust is the sole recipient of the entire balance to the credit of the employee.

340 (A-269) (2) In general, an employee must be regarded as the recipient, for purposes of the requirement of aggregation of all lump-sum distributions in a period of six taxable years, even if he or she causes the distribution to be made to a trust, if the employee retains such an interest in the trust as would require his taxation as the substantial owner of the trust under the present tax rules, even if the grantor of the trust is technically the employer or the plan.

Senate amendment.—No comparable provisions.

8. Lump-Sum Distributions to the Self-Employed

344 (A-273) *House bill.*—The same 10-year ordinary income averaging may be elected for distributions on account of plan participation by self-employed persons as may be elected on account of the participation of regular employees. (Under present law, lump-sum distributions to self-employed persons are taxed under special 5-year averaging provisions.)

Senate amendment.—No comparable provision.

9. Whether an Employee Is To Be Taxed as Self-Employed

House bill.—The House bill provides much the same averaging treatment for a lump-sum distribution to a self-employed individual as it applies to a regular employee. (Accordingly, it does not contain any provision declaring whether an individual who has participated in a plan as both a regular employee and as a self-employed individual is to be taxed, upon receiving a lump-sum distribution, as a regular employee or as self-employed.) 344 (A-273)

Senate amendment.—The Senate amendment provides that a participant is to be taxed as self-employed if he was self-employed more than half the years of his plan participation. 616 (A-266)

ADMINISTRATION AND ENFORCEMENT

1. Tax Court Declaratory Judgment Proceedings

Both the House bill and the Senate amendment provide a procedure for obtaining a declaratory judgment with respect to the tax-qualified status of an employee benefit plan. Under both bills, jurisdiction to issue such declaratory judgments is given to the United States Tax Court. The remedy is available only if (1) the Internal Revenue Service has issued an adverse determination as to the status of the plan or (2) the Service has failed to issue a determination but the petitioner has exhausted his administrative remedies in the Service. 273, 554 (A-157)

House bill.—

(1) The House bill does not make specific provision for burden of proof; it is contemplated that such matters will be determined by the Tax Court under its existing rule-making authority.

(2) Under the House bill, the declaratory judgment provisions are to take effect on January 1, 1978. 278 (A-164)

Senate amendment.—

(1) The Senate amendment provides that the burden of proof is to be on the petitioner (the employer, plan administrator, or employee) as to those grounds set forth in the Internal Revenue Service determination; the burden of proof is to be on the Service as to any other grounds that the Service relies upon in the court proceeding (i.e., if the Service does not issue a determination, then the Service is to have the burden of proof as to every ground upon which it relies). 559 (A-163)

(2) The Senate amendment provides that the Tax Court declaratory judgment provisions are to take effect on January 1, 1975. 560 (A-164)

2. Administering Office in Internal Revenue Service

278, 357 (A–165) Both the House bill and the Senate amendment establish an Office of Employee Plans and Exempt Organizations in the Internal Revenue Service, headed by an Assistant Commissioner of Internal Revenue, to administer the tax provisions with regard to employee benefit plans and other exempt organizations.

House bill.—

(1) The House bill does not provide for the compensation schedule of this Internal Revenue Service office.

279 (A–168) (2) The House bill authorizes appropriations for this office in the amounts of $20 million for fiscal 1974 and $70 million for each fiscal year thereafter. The House bill neither imposes nor earmarks any specific revenue source for this authorization of appropriation.

279 (A–167) (3) Provisions regarding the new office are to take effect 90 days after enactment of the Act.

Senate amendment.—

358 (A–165) (1) The Assistant Commissioner in charge of this office is to be classified as GS–18 and is to be in addition to the number of positions at that level otherwise authorized for the Internal Revenue Service. Also, the amendment authorizes an additional 20 positions in the level of GS–16 and 17.

359, 560 (A–168) (2) The Senate amendment authorizes appropriations for each of the fiscal years 1974, 1975, and 1976 in the amount of $35 million plus one-half of the private foundation investment income taxes (under sec. 4940). For each fiscal year thereafter, there is authorized appropriations of amounts equal to a new excise tax on employee benefit plans plus half of the private foundation investment income tax collections. The new tax would be $1 per participant per plan per calendar year, beginning with 1974.

(3) Since no effective date is specified under the Senate amendment, the provisions regarding the new office would take effect on the date of enactment of this Act.

3. Reporting and Disclosure—Internal Revenue Service

a. Reports Required[1]

263 (A–142) *House bill.—*

(1) The bill restates present law by requiring employers (or plan adminstrators) who establish or maintain funded deferred compensation plans to file annual information returns.

---

[1] The reporting and disclosure provisions with respect to the Internal Revenue Service appear only in title II of the House bill.

(2) Also, the bill provides that the Secretary of the Treasury may provide reporting requirements with respect to the retirement savings deduction and individual retirement accounts, etc.

Senate amendment.—Substantially the same as the House bill. 641 (A–142)

b. Sanctions for Failure To File 265 (A–146)

House bill.—

(1) Sanctions (in the form of an addition to tax) for failure to file annual plan information returns are established.

(2) The addition to tax is to be $10 for each day that a return is late, up to a maximum of $5,000 for any one failure to file.

(3) This addition to tax will not be owed if failure to file is due to reasonable cause.

Senate amendment.—Same as the House bill. 644 (A–146)

c. Disclosure

House bill.— 246 (A–120)

(1) The bill opens to public inspection applications to the Internal Revenue Service for a determination that a plan is qualified and for a determination that the trust under the plan is exempt (including papers submitted in support of the application).

(2) Determination letters issued by the Internal Revenue Service dealing with qualification or exemption of plans and trusts are to be open to public inspection.

(3) Annual information returns with respect to qualified plans are also to be opened to public inspection.

(4) However, under the bill, information contained in these papers and documents from which the compensation of any participant may be ascertained is not to be open to public inspection.

Senate amendment.—

(1) Same as the House bill, except applications are not to be open for public inspection for plans where the employer has less than 26 employees. 642 (A–120)

(2) No comparable provision.

(3) Same as House bill.

(4) No comparable provision.

(5) In addition, certain information returns are to be open for inspection by proper officers of the Pension Benefit Guarantee Corporation, in order that the Corporation can properly administer the insurance program.

d. Effective Dates

House bill.—

249 (A–122) (1) The provisions of the bill making applications, determination letters, and other documents open to public inspection are to go into effect for applications filed or documents issued after December 31, 1975.

273 (A–156) (2) The provisions of the bill requiring annual returns to be filed are to become effective for plan years beginning after the date of enactment.

321 (A–236) (3) The provisions regarding reporting with respect to individual retirement accounts are to become effective on January 1, 1974.

648 *Senate amendment.*—The provisions are to go into effect on January 1, 1974.

MISCELLANEOUS

243 *1. Trustees of H. R. 10 Plans*

(A–115) *House bill.*—Trustees of H.R. 10 plans may be banks or other persons who satisfy the Secretary of the Treasury that they will hold assets in a manner consistent with the requirements of the Internal Revenue Code.

603 (A–115) *Senate amendment.*—Substantially the same as the House bill.

2. Custodial Accounts

Present Law.—Plan assets may be held in a custodial account if (1) the custodian is a bank (as defined in section 581), and (2) the plan funds are invested only in mutual funds or annuity, endowment, etc., contracts issued by an insurance company.

244 *House bill.*—

(A–116) (1) Custodians may be banks or other persons who satisfy the Secretary of the Treasury that they will hold the assets in a manner consistent with requirements of the Internal Revenue Code.

(2) The provision would not impose limitations on the type of assets that could be held in a custodial account.

629 (A–116) *Senate amendment.*—Same as the House bill.

3. Section 403(b) Plan Investments in Mutual Funds

244 (A–117) *House bill.*—Assets of section 403(b) plans may be invested in mutual funds (in addition to annuity contracts as under present law).

630 (A–117) *Senate amendment.*—Same as the House bill.

246 *4. Federal Credit Unions*

(A–119) *House bill.*—Federally insured credit unions are included in the definition of "bank" in determining the type of financial institutions which can serve as plan custodians or trustees.

Senate amendment.—No comparable provision.

5. Certain Puerto Rican Pension Plans

House bill.—A trust which is part of a pension, profit-sharing, or stock bonus plan, all of the participants of which are residents of Puerto Rico, is to be treated (for years after 1973) as though it were an exempt U.S. employee benefit trust if the trust is exempt from income taxes under the laws of Puerto Rico. 249 (A-124)

Senate amendment.—No camparable provision.

6. Deduction for Severance Payments Required by Foreign Law

Present law.—Contributions to a nonqualified trust are deductible by the employer when the contribution is includable in the income of the participant, but only if separate accounts are maintained under the plan for each participant.

House bill.—The House bill provides that for years after 1973 the employer may deduct contributions for severance payments for nonresident alien employees, even though separate accounts are not maintained (and even though the contributions which are included in income by the aliens are not subject to U.S. tax) if three conditions are satisfied: 249 (A-125)

(1) The employer is engaged in a trade or business in a foreign country;

(2) The employer is required by foreign law to make the severance payments, based on periods of service;

(3) The employer establishes a U.S. trust to fund these payments.

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

7. Remedial Retroactive Plan Amendments

House bill.—Retroactive plan amendments which correct a plan that does not meet the requirements for tax qualification are allowed to cure a new plan or to cure an amendment to an existing plan. Such retroactive changes can be made within the time for filing the employer's tax return for the year in which the plan was put into effect or in which the amendment was adopted (or such later time designated by the Secretary of the Treasury). 258 (A-135)

Senate amendment.—Same as the House bill. 638 (A-135)

8. Rules for Certain Negotiated Plans

Present law.—Present law provides special rules for contributions to a plan established before 1954 under an agreement between a union and the United

States Government. Under this provision, contributions are not deductible under the general deferred compensation provisions of the code but are deductible solely as general trade or business compensation expenses. Such a plan must provide both welfare and pension benefits.

351 (A-282) *House bill.*—In order to facilitate conversion of the pension benefits plan into a regular tax-qualified pension plan, the House bill would provide the following amendments:

(1) people who technically were self-employed individuals before July 1, 1974, are permitted to have their service under the plan credited as though they were regular employees;

(2) no such self-employed individual is permitted to establish a separate H.R. 10 plan for service covered under the regular plan;

(3) people who were plan participants before July 1, 1974, are to be treated as employees of participating employers even though in some circumstances those employers do not officially become participating employers until July 1, 1975; and

(4) a code provision relating to deductions incurred by certain membership organizations in transactions with members is not to apply to the trust described above.

These provisions generally are to apply to taxable years ending on or after June 30, 1972.

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

O