# ERISA

Edited By
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BNA BOOKS

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## Text of the Law As Amended Through 1982

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# INTRODUCTION

The Employee Retirement Income Security Act was signed into law by President Gerald Ford September 2, 1974, after years of deliberation and intensive debate. The first major major changes in the law were enacted September 29, 1980, when President Jimmy Carter signed the Multiemployer Pension Plan Amendments Act of 1980. MPPAA also was the product of lengthy debate.

Although ERISA itself remained virtually untouched for six years, a number of changes affecting pension and benefit plans were enacted through various tax laws that amended the qualified plan provisions of the Internal Revenue Code.

In 1981, a series of savings incentives bills were introduced in Congress. Proposals were made to raise the limits on deductible contributions to individual retirement accounts and Keogh plans, encourage the adoption of employee stock ownership plans, and change the tax treatment of stock options. The retirement plan proposals and other savings incentive provisions eventually were consolidated, and in August 1981 President Ronald Reagan signed the Economic Recovery Tax Act.

Then, in May 1982, a bill was introduced in the House to reduce the contribution and benefit limits for qualified corporate plans, modify the rules for integration with Social Security, tighten the rules for loans from plans to key employees, and limit the estate tax exclusion for retirement annuities paid to beneficiaries, among other changes in the pension tax area.

Despite opposition from the pension industry, those proposals were modified and rolled into a revenue raising package introduced in an attempt to reduce budget deficits. The revenue package became the Tax Equity and Fiscal Responsibility Act of 1982, and was approved by Congress and signed by President Reagan in August of that year, only a few short months after it was first introduced.

The material that follows includes the text of conference reports and other relevant documents on ERISA (PL 93-406), MPPAA (PL 96-363), ERTA (PL 97-34), and TEFRA (PL 97-248). It also includes the text of ERISA, as amended by MPPAA and various other laws, and the text of pertinent sections of the Internal Revenue Code, as amended through January 1983, when President Reagan signed the Technical Corrections Act (PL 97-448).

# CONTENTS

# JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE ON ERISA

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2) to provide for pension reform, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute amendment. The conference has agreed to a substitute for both the Senate amendment and the House bill. The statement following the table of contents explains the principal differences between the substitute agreed to in conference and the House and Senate bills.

## I. Reporting and Disclosure (Secs. 101-111 of the Bill)

The House bill requires annual reporting of detailed financial and actuarial data and comprehensive plan descriptions to the Secretary of Labor, and disclosure of more limited data to the participants. The financial and actuarial data filed with the Secretary of Labor are required to be in the form of a conventional audited financial statement prepared by a qualified accountant and a certified actuarial statement prepared by an enrolled actuary.

The Senate bill requires submission of comparable financial and actuarial data and plan descriptions to both the Secretary of Labor and participants. Like the House bill, actuarial data is required to be certified by an enrolled actuary. Unlike the House bill, all reports were required to be submitted on forms promulgated by the Secretary. The conference substitute is described below. In general, the substitute combines the rules of both the House and Senate bill.

The conference substitute adopts the reporting format contained in both the House and Senate bills. Each plan (unless exempted) is to be required to report annually to the Secretary of Labor certain financial and actuarial data. In addition to these reports, each plan will be required to have prepared an audited financial statement and defined benefit plans must have a certified actuarial report. Special reports are also required at the time of plan terminations.

The Secretary of Labor is given the authority to prescribe forms for reports to him (other than the audited financial statement and certified actuarial report) paralleling similar authority already available to the Secretary of Treasury. The two Secretaries are to unify, to the extent feasible, the reports made to them and it is expected that all of the material subject to the form authority of either Secretary, comprising the annual reports to be made by a plan, can and should be reported on a single form.

### Plans Subject to the Provisions and Exemptions

Under the conference substitute, the new reporting and disclosure requirements are to be administered by the Secretary of Labor and are to be applied to all pension and welfare plans established or maintained by an employer or employee organization engaged in, or affecting, interstate commerce. Governmental plans, certain church plans, workmen's compensation and unemployment compensation plans, plans maintained outside the United States for the benefit of persons substantially all of whom are nonresident aliens, and so-called excess benefit plans, which provide benefits in addition to those for which deductions may be taken under the tax laws, are exempted from the requirements. The Secretary of Labor also is authorized to waive and modify certain of these requirements for employee benefit plans.

All plans of the types subject to the reporting and disclosure provisions are to be required to file an annual report with the Secretary of Labor regardless of the number of participants involved. However, simplified reports may be authorized for plans with fewer than 100 participants.

**Contents of Annual Report**

The annual report generally is to include audited financial statements for both welfare plans and pension plans. With respect to welfare plans the statement is to include a statement of assets and liabilities, a statement of changes in fund balance, and a statement of changes in financial position. With respect to employee pension plans the statement is to include a statement of assets and liabilities and a statement of changes in net assets available for plan benefits, including details as to revenues and expenses and other changes aggregated by general source and application.

In the notes to the annual financial statement, the accountant is to disclose any significant changes in the plan, material lease commitments and contingent liabilities, any agreements and transactions with persons known to be parties-in-interest, information as to whether a tax ruling or determination letter has been obtained, and any other relevant matters necessary to fairly present the financial status of the plan. In addition, in he case of employee pension plans the notes should also deal with funding policy (including policy with respect to prior service costs and changes in such policies during the year). An accountant may rely on the correctness of any actuarial matter certified by any enrolled actuary if the accountant indicates his reliance on such certification.

In addition to the audited financial statement, the annual report is to include for all employee benefit plans a statement on separate schedules showing among other things, a statement of plan assets and liabilities aggregated by categories, a statement of receipts and disbursements, a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessee and a schedule of each transaction involving a person known to be a party-in-interest. Also, a schedule of all loans and leases in default at the end of the year or which are classified during the year as uncollectible is to be included in the annual report.

There is also to be supplied with the annual report a schedule listing each transaction which exceeds 3 percent of the value of the fund. If some or all of the assets of a plan are held in a common or collective trust maintained by a bank or similar institution the annual report is to include the most recent annual statement of assets and liabilities of the common or collective trust. (The Secretary of Labor will have authority to prescribe for the filing of a master copy of the annual statement of this common or collective trust in order to avoid duplicative filings of this statement by plans participating in this common or collective trust.)

With respect to persons employed by the plan the annual report is to include the name and address of each fiduciary, the name of each person who receives more than minimal compensation from the plan for services rendered, along with the amount of compensation (or who performs duties which are not ministerial), the nature of the services, and the relationship to the employer or any other party in interest to the plan. Also, the reasons for any changes in trustees, accountant, actuary, investment manager, or administrator are to be provided in the annual report.

As indicated in the discussion of the funding provisions, under the conference agreement, the annual report is to include an actuarial statement for all pension plans which are subject to the funding requirements of title I. If plan benefits are purchased from, and guaranteed by, an insurance company, the annual report is to include the premiums paid, benefits paid, charges for administrative expenses, commissions and other information. The insurance carrier is to certify to the plan administrator the information needed to comply with the annual reporting requirements within 120 days after the close of the plan year, or within such other period as is prescribed by the Secretary of Labor.

The annual report for a plan is to be filed within 210 days after the close of the plan year or within such period of time as the Secretary of Labor may require in order to reduce the necessity for duplicate filing with the Internal Revenue Service. The Secretary of Labor may reject the filing of an annual report if he finds that it is incomplete or there is a material qualification in the accountant's or actuary's opinion. If a revised report is not submitted within 45 days after rejection, the Secretary may retain an accountant to perform an audit, or retain an actuary, whichever is appropriate, or bring a civil action for legal or equitable relief. The plan is to bear the costs of any expenses of an audit or actuarial report.

### Accountant and Actuary Reports

Every plan is to retain on behalf of its participants an independent qualified public accountant who annually is to prepare an audited financial statement of the plan's operations. The accountant is to give an opinion as to whether the financial statements of the plan conform with generally accepted accounting principles and the statement is to be based upon an examination in accordance with generally accepted auditing standards. An accountant's opinion is not to be required for statements prepared by banks or similar institutions or an insurance carrier if the statements of the bank or insurance carrier are certified by the bank and are made part of an annual report. For purposes of this provision a qualified public accountant includes certified public accountants, licensed public accountants and any person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in a State where there is no certification or licensing procedure for accountants. Further, to the extent a plan is not required to make an annual report to the Secretary of Labor an annual audit is not required (and an independent, qualified public accountant need not be retained). Also the Secretary of Labor may waive the requirement of an audited financial statement in cases where simplified annual reports are permitted to be filed.

Every plan subject to the funding requirements of title I must retain an enrolled actuary who is to prepare an actuarial statement on an annual basis. This statement is to show the present value of all plan liabilities for nonforfeitable pension benefits allocated by the termination priority categories. The actuary is to supply a statement to be filed with the annual report as to his opinion as to whether the actuarial statements of the plan are reasonably related to the experience of the plan and to the reasonable expectations of the plan. The actuary is to use assumptions and techniques as are necessary to form an opinion as to whether the contents of the matters upon which he reports are in the aggregate reasonably related to the experience of the plan and to reasonable expectations, and represent his best estimate of anticipated experience under the plan. The actuarial statement is not required for plans which need not file annual reports, and may be waived by the Secretary of Labor for plans for which simplified annual reports are allowed.

### Reports on Termination

In addition to the annual reports which must be filed with the Secretary of Labor, special terminal reports are required to be filed for pension plans that are winding up their affairs. These terminal reports may also be required by the Secretary of Labor for welfare plans. Also in the year a plan is terminated the Secretary may require the supplementary information to be filed with the annual report.

### Disclosure to Participants

Each administrator of an employee benefit plan is to furnish to each participant and to each beneficiary a summary plan description written in a manner calculated to be understood by the average plan participant or beneficiary. The summary is to include important plan provisions, names and addresses of persons responsible for plan investment or management, a description of benefits, the circumstances that may result in disqualification or ineligibility and the procedures to be followed in presenting claims for benefits under the plan.

Summary plan descriptions are to be furnished to participants within the later of 120 days after the plan is established or 90 days after an individual becomes a participant. Updated plan descriptions are also to be provided to participants every five years thereafter where there have been plan amendments in the interim; in any case, a new description is to be provided every ten years. Also, participants are to receive descriptions of material changes in a plan within 210 days after the end of any plan year in which a material change occurs. Also, the annual report and plan documents are to be available for examination by participants or beneficiaries at the principal office of the plan administrator and such other places as is necessary to provide reasonable access to these reports and documents. Thus, if the participants covered under the plan are employed in more than one geographic area, each geographic area is to have available for examination the required documents. Each participant is also to be furnished a copy within 210 days after the close of the plan year of the schedule of plan assets and liabilities and receipts and disbursements as submitted with the annual report, including any other material which is necessary to thoroughly summarize the latest annual report. Upon a written request, a plan administrator is to furnish a participant or beneficiary a complete copy of the comprehensive plan description, the latest annual report and other instruments under which the plan is established and operated. The plan administrator may charge a reasonable amount for fulfilling such a request.

Upon the request of a plan participant or beneficiary, a plan administrator is to furnish on the basis of the latest available information the total benefits accrued and the nonforfeitable pension benefit rights, if any, which have accrued. No more than one request may be made by any participant or beneficiary for this information during any one 12-month period.

A copy of the statement of the deferred vested benefits in the plan for individuals who have terminated employment during a plan year which is furnished to the Social Security Administration also is to be furnished to the individual participant.

### Reports Made Public Information

The contents of the descriptions of plans and reports filed with the Secretary of Labor are to be public information and are to be available for inspection in the Department of Labor. In addition, the Secretary of Labor may use the information and data for statistical and research purposes and for the compiling and publishing of studies as he may deem appropriate. However, information with respect to a plan participant's accrued benefits and nonforfeitable pension rights is to be disclosed only to the extent that information respecting a participant's benefits for old age retirement insurance may be disclosed under the Social Security Act.

### Forms to Be Provided

The Secretary of Labor may require that any information required to be filed with the Labor Department, including statements and schedules attached to the annual report, must be submitted on forms that he may prescribe. The financial statement prepared by the independent qualified accountant and the actuarial statement prepared by the enrolled actuary and the summary of the plan description are not required to be submitted on forms. However, the Secretary may prescribe the format and content of the accountant's and actuary's statements and of the summary plan description, the summary annual report, and other statements or reports required under title I to be furnished or made available to participants and beneficiaries.

**Effective Dates**

The conference agreement provides that the reporting and disclosure provisions generally are to take effect on January 1, 1975. However, in the case of a fiscal year plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary of Labor may by regulation postpone the effective date until the beginning of the first plan year of the plan which begins after January 1, 1975.

## II. Participation and Coverage (Secs. 201, 202, and 1011 of the Bill and Secs. 401 and 410 of the Internal Revenue Code)

The House bill provides that an employee cannot be excluded from a plan on account of age or service if the employee is at least 25 years old and has had at least one year of service, or, if he has three years of service, the employee cannot be excluded even though he is not yet 25. The 1-year service requirement (for employees 25 and older) may be extended to 3 years if the plan provides full and immediate vesting for all participants. Under the Senate amendment, an employee cannot be excluded on account of age or service if he has attained age 30 with 1 year of service.

The conference substitute is described below. In general, the substitute follows the rules of the House bill in this area with respect to technical matters.

**Plans Subject to the Provisions**

Under title I of the conference substitute (the labor law provisions) the new participation and coverage rules are to be enforced by the Secretary of Labor when participants bring violations to his attention or when cases come to his attention which initially were under consideration by the Secretary of Treasury on which he has previously initiated action. The rules are to apply to employee pension benefit plans of employers or employee organizations established in or affecting interestate commerce. Under this title II (the tax law provisions), the participation and coverage rules are to be administered by the Secretary of the Treasury or his delegate, and the rules apply to tax-qualified pension, profit-sharing, and stock bonus plans.[1]

**Exceptions to Coverage**

The participation and coverage requirements of title I (the labor law provisions) do not apply to governmental plans (including Railroad Retirement Act plans), church plans (except those electing coverage), plans maintained solely to comply with workmen's unemployment, disability, or compensation laws, plans maintained outside the United States primarily for the benefit of nonresident aliens, employee welfare plans, excess plans (which provide for benefits or contributions in excess of those allowable for tax-qualified plans), unfunded deferred compensation arrangements, plans established by labor organizations (those referred to in sec. 501(c)(5) of the Internal Revenue Code) which do not provide for employer contributions after the date of enactment, and fraternal or other plans of organizations (described in sec. 501(c)(8), 501(c)(9)) which do not receive employer contributions, or trusts described in 501(c)(18) of the Internal Revenue Code. Title I does not apply to buy-out agreements involving retiring or deceased partners (under sec. 736 of the Internal Revenue Code). In addition, title I does not apply to employer or union-sponsored individual retirement accounts (see "Employee Savings for Retirement").

The participation requirements of title II apply only to plans which qualify for certain tax deferral privileges by meeting the standards as to participation and other matters set forth in the Internal Revenue laws. However, governmental plans and

1 The division of administrative responsibility between Labor and Treasury is discussed in Part XII, below "General Provisions Relating to Jurisdiction, Administration, Enforcement: Joint Pension Task Force, Etc." Except where otherwise noted, the regulations with respect to participation, vesting and funding are to be written by the Secretary of the Treasury or his delegate.

church plans which do not elect to come under the new provisions will nevertheless be treated as qualified for purposes of the tax deferral privileges for the employees, if they meet the requirements of present law. Also the rules do not apply to plans of labor organizations (described in sec. 501(c)(5)) or fraternal or other organizations (described in sec. 501(c)(8) or (9)) which do not provide for employer contributions.

**Exemption for Church Plans**

As indicated above, both title I and title II exempt church plans from the participation and coverage requirements of the conference substitute (although title II requires these plans to comply with present law in order to be qualified). This exemption does not apply to a plan which is primarily for the benefit of employees engaged in an unrelated trade or business, or (except as noted below) to a multiemployer plan unless all of the participating employers are churches or conventions or associations of churches (rather than merely church-related agencies). However, a multiemployer plan which was in existence on January 1, 1974, and which covers church-related agencies (such as schools and hospitals) is to be treated as a church plan for purposes of the exemption (even though it continues to cover those agencies) for plan years beginning before January 1, 1983, but not for subsequent plan years.

A church plan may make an irrevocable election to be covered under title I and title II (in a form and manner to be prescribed in regulations). A plan which makes this election is to be covered under the bill for purposes of the new participation, vesting, funding and form of benefit rules, as well as the fiduciary and disclosure rules and will also be covered under the plan termination insurance provisions.

**General Rule as to Participation**

Generally, under title I and title II of the conference substitute, an employee cannot be excluded from a plan on account of age or service if he is at least 25 years old and has had at least one year of service. However, if the plan provides full and immediate vesting for all participants, it may require employees to be age 25, with 3 years of service, in order to participate. As an alternative, any plan which is maintained exclusively for employees of a governmental or tax-exempt educational organization which provides full and immediate vesting for all participants may have a participation requirement of age 30, with 1 year of service.

**Maximum Age Requirement**

Under the conference substitute, in general, a plan may not exclude an employee because he is too old. However, because of cost factors, it was decided that in a defined benefit plan it would be appropriate to permit the exclusion of an employee who is within 5 years of attaining normal retirement age under the plan (or older) when he is first employed. (These employees would be counted as part of the employer's work force, however, for purposes of determining whether or not his plan satisfied the breadth-of-coverage requirements.) Of course, if a plan defines normal retirement age as the later of age 65, or the tenth anniversary of the employee's participation in the plan, the plan could not impose a maximum age requirement (because no employee would be within 5 years of normal retirement age when first employed). A "target benefit" plan, as defined in Treasury regulations, could also impose a maximum age requirement (even though it is not a defined benefit plan), because in many respects the pattern of costs and benefits of target benefit plans closely resembles the pattern of costs and benefits of defined benefit plans.

**Year of Service Defined**

Under the conference substitute, in general, for purposes of the participation requirements, the term "year of service" means a 12-month period during which the employee has worked at least 1,000 hours. This 12-month period is measured from the date when the employee enters service. Thus, the employee has fulfilled his 1,000-hour-requirement if he has 1,000 hours of work by the first anniversary date of his employment. Under the substitute, the employee (if age 25 or older) would then be admitted to the plan within 6 months of his anniversary date of employment or by the beginning of the first plan year following his first anniversary date, whichever occurred earlier. (Of course, this does not mean that an employee would have to be admitted to the plan if he were lawfully excluded for reasons other than age or service.)

The plan would not be required to admit the employee if he had "separated from the service" before the otherwise applicable admission date. In general, "separated from the service" means the employee was discharged or quit; it does not mean temporary absence due to vacation, sickness, strike, seasonal layoff, etc.

If the employee did not complete 1,000 hours of service by his first anniversary date, but is still employed, he would start over toward meeting his 1,000 hour requirement. For this purpose, the plan could provide (on a consistent basis) that the relevant 12-month period is either (a) the year between his first anniversary date and his second anniversary date, or (b) the first plan year which began after the individual was first employed. For example, assume the plan is on a calendar year basis, and that an employee begins work on July 1, 1976. Between July 1, 1976, and June 30, 1977, the employee has less than 1,000 hours of service. The plan could provide that the employee would be tested the second time for purposes of participation based on the year from July 1, 1977 through June 30, 1978, or based on the year from January 1, 1977 through December 31, 1977 (but not January 1, 1978 through December 31, 1978).

The regulations with respect to "year of service" are to be written by the Secretary of Labor for purposes of participation and vesting. The term "hour of service" will also be defined in Labor Department regulations.

For purposes of participation (and vesting), in the case of any maritime industry (as defined in Labor Department regulations), 125 days of service are to be treated as the equivalent of 1,000 hours of service, but this rule will not apply to other industries.

### Seasonal and Part-time Workers

In general, the 1,000 hour standard is to apply for purposes of determining whether or not an employee may be excluded from the plan as a seasonal or part-time employee (replacing the 5-month year, 20-hour week standard now in the Internal Revenue Code). However, in the case of seasonal industries where the customary period of employment is less than 1,000 hours, the term "year of service" is to be determined in accordance with Labor Department regulations.

### Breaks in Service

Under the conference substitute, a 1-year break in service occurs in any calendar year, plan year, or other consecutive 12-month period designated by the plan on a consistent basis (and not prohibited under Labor Department regulations) in which the employee has 500 hours of service or less.

The general rule is that all service with the employer (pre-break and post-break) is to be taken into account for purposes of determining whether the employee has met the participation requirements. However, if an employee has a 1-year break in service, the plan may require a 1-year waiting period before reentry, at which point the employee's pre-break and post-break service are to be aggregated, and the employee is to receive full credit for the waiting period service. For example, if the plan is on a calendar year basis, and an employee who has a 1-year break in service reenters employment on November 1, 1976, works 200 hours in 1976, and 1700 hours by November 1, 1977, the employee under this provision would be considered as reentering the plan for 1977. As a result, his pre-break and post-break service would be aggregated, and he would advance one year on the vesting schedule for 1977. He would also accrue benefits for that year. (Other rules with respect to break-in-service are explained below in connection with vesting and benefit accrual.)

In the case of a plan which has a 3-year service requirement for participation (because the plan provides 100 percent immediate vesting), the plan may provide that employees who have a 1-year break in service before completing their 3-year service requirement must start over toward fulfilling that requirement after the break in service.

**Eligibility — Collective-bargaining Units, Air Pilots**

Title II of the conference substitute provides that employees who are under a collective bargaining agreement can be excluded for purposes of the breadth-of-coverage requirements (coverage for 70 percent of all employees or 80 percent of all eligible employees if at least 70 percent of all employees are eligible to benefit under the plan, or coverage on a nondiscriminatory basis), if the employees are excluded from the plan and there is evidence that retirement benefits have been the subject of good-faith bargaining. However, if the union employees are covered under the plan, benefits or contributions must be provided for them on a nondiscriminatory basis.

Title II of the substitute provides another exception to the breadth-of-coverage rule. It provides that air pilots represented in accordance with the Railway Labor Act may bargain separately for tax-qualified employee plan benefits, without including other workers within the industry (but only in the case of a plan which covers no employees other than air pilots). In addition, the conferees intend that the joint congressional pension task force study group, created under this legislation, study this area to see whether a similar rule should be applied to other unions or professional groups in the future.

**Nonresident Aliens**

Title II of the conference substitute provides that employees who are nonresident aliens with no United States income from the employer in question are to be excluded for purposes of applying the breadth-of-coverage requirements and for purposes of applying the antidiscrimination rules (whether or not they are covered under the plan).

**Predecessor Employer**

Service with a predecessor employer must be counted for purposes of the plan if the successor employer continues to maintain the plan of the predecessor employer (and, of course, the successor employer cannot evade this requirement by nominally discontinuing the plan). The question of the extent to which such service must be counted in other circumstances is to be determined under regulations.

**Multiemployer Plans**

Under the conference substitute, service with any employer who is a member of a multiemployer plan is to be counted for purposes of the plan. 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. (This percentage test would become a 75-percent test once the plan qualifies as a multiemployer plan.) Also, the plan must provide that benefits will be payable to each participant, even though his employer subsequently ceases to make contributions under the plan. However, the plan would not be required to provide past service benefits, i.e., benefits for periods before the participant's employer entered the plan. Also, service during a period for which the employer was not a member of the plan would not be required to be counted for participation or vesting purposes.

Additional requirements relating to multiemployer plans may be prescribed in Department of Labor regulations. The conferees intend that a plan not be classified as a multiemployer plan unless it is a collectively bargained plan to which a substantial number of unaffiliated employers are required to contribute. Also, a plan is not to be classified as a multiemployer plan where there is no substantial business purpose in having a multiemployer plan (except to obtain the advantages of multiemployer plan status under this bill).

In addition to employees of employers making contributions to a multiemployer plan, under the conference substitute such a plan may cover employees of labor unions which negotiated the multiemployer plan and employees of the plan itself. For this purpose, the plan would have to satisfy the general breadth-of-coverage and nondiscrimination requirements of the Internal Revenue Code separately with respect to these union or plan employees and collectively (i.e. with respect to all groups of employees covered under the plan), but would not be required to meet the exclusive benefit rules of the tax law. Instead, the exclusive benefit rules would be applied to the beneficiaries of the multiemployer plan as a whole. (Similar treatment for union employees or plan employees would also be available in the case of a single-employer collectively bargained plan.)

**H.R. 10 Plans**

In general, the provisions of present law which allow a 3-year service requirement for participation (but do not allow the plan to impose an age requirement), and require 100 percent immediate vesting, would continue to govern owner-employee H.R. 10 plans (those for sole proprietors and 10 percent owners and their employees). However, certain provisions of this bill, such as the rules with respect to year of service and breaks in service are also to apply for purposes of the H.R. 10 plans.

**Affiliated Employers**

Title II of the conference substitute 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. A comparable rule is to be provided in the case of partnerships and proprietorships which are under common control (as determined under regulations). The conferees agree with the interpretation of these provisions, as expressed in the Ways and Means Committee report (No. 93-807).

**Effective Dates** [2]

Under the conference substitute the changes made in the bill with respect to participation and vesting are to apply to new plans in plan years beginning after the date of enactment. For plans in existence on January 1, 1974, the general effective date of these provisions is to be plan years beginning after December 31, 1975.

The general effective date of plan years beginning after December 31, 1975 applies in the case of collectively bargained plans in the same manner as in the case of other plans. However, in order that the opening up of the contract to comply with the requirements of this bill will not require negotiations with respect to other matters, the conference substitute provides that a collective bargaining contract, in existence on January 1, 1974, which does not expire until after the general effective date for existing plans, may be reopened solely for the purpose of allowing the plan to meet the requirements of this bill, without having to be opened for any other purpose. Where it is necessary, as a result of this bill, to modify an employee benefit plan, it is the conferees' understanding that it is not an unfair labor practice under the National Labor Relations Act for a party to a collective bargaining agreement to refuse to bargain re-

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2 Because of the interrelationship of the effective date provisions for participation and vesting, this discussion deals with the effective dates for both.

garding matters unrelated to the modification required by this bill, provided this refusal is not otherwise an unfair labor practice. In addition, the changes required to be made in a plan are not themselves to be treated as constituting the expiration of a contract for purposes of any other provisions of this bill which depend on the date of the expiration of a contract.

Finally, the conference substitute provides that if a plan, adopted pursuant to a collective bargaining agreement in effect on January 1, 1974, contains a clause: (1) which provides supplementary benefits which are in the form of a lifetime annuity and refer to not more than one-third of the basic benefit to which the employees generally are entitled; or (2) which provides that a 25-year service employee is to be treated as a 30-year service employee, if that right is granted by a contractual agreement which is based on medical evidence as to the effects of working in an adverse environment for an extended period of time (such as workers in foundries or workers in asbestos plants), then the application of the accrued benefit provision of this bill to those benefits is to be delayed until the expiration of the collective bargaining agreement (but no later than plan years beginning after December 31, 1980). For purposes of applying the effective date rules, the conferees agree with the statement appearing in the paragraph beginning at the bottom of page 51, and in the first full paragraph on page 52 of the Ways and Means Committee report (No. 93-807). This explanation relates to situations where a collective bargaining agreement is to be treated as having terminated, and as to how the effective date rules are to be applied to a plan which includes some employees covered under one or more collective bargaining agreements, and also employees not covered under any such agreement.

An existing plan which would be entitled to a delayed participation vesting, funding, etc. provision is to be permitted to elect to have all those provisions apply sooner. Any such election is to be made under regulations, must apply with respect to all the provisions of the Act, and is to be irrevocable.

### III. Vesting and Related Rules (Secs. 203-209, 1012, 1015, 1021, 1022, and 3032 of the Bill, and Secs. 401, 411, and 414 of the Internal Revenue Code.)

Under the House bill a plan was required to meet one of three minimum vesting schedules. First, a plan could provide a graded vesting standard, under which the employee must be at least 25 percent vested in his accrued benefit after 5 years of covered service, with 5 percent additional vesting for each of the next 5 years, and 10 percent additional vesting for each year thereafter (so that the employee was 100 percent vested after 15 years of service). Second, a plan could provide that each employee must be 100 percent vested after 10 years of service. Third, a plan could provide for a "rule of 45," under which each employee with 5 years or more of service would be 50 percent vested when the sum of his age and his years of service equaled 45, with 10 percent additional vesting for each year thereafter.

Under the Senate amendment, plans generally were required to comply with the first of these alternatives, the graded vesting schedule. However, plans which were already using the 10-year/100-percent vesting schedule were permitted to continue to use that method.

The conference substitute is described below.

#### Plans Subject to the Provisions; Exceptions from Coverage; Exemption for Church Plans

The rules in these areas are the same as the corrsponding rules discussed above under Participation and Coverage.

#### General Rules

Under the conference substitute [1] plans must provide full and imme-

[1] Unless otherwise indicated, the rules with

diate vesting in benefits derived from employee contributions.

With respect to employer contributions, the plan (except class year plans) must meet one of three alternative standards. Two of those, the 5- to 15-year graded standard and the 10-year/100-percent standard are the same as provided in the House bill (and briefly described above). The third standard under the conference substitute is a modificiation of the House-bill "rule of 45". As under the House rule, under the modified rule of 45, an employee with 5 or more years of covered service must be at least 50 percent vested when the sum of his age and years of covered service total 45, and there must be provision for at least 10 percent additional vesting for each year of covered service thereafter. Unlike the House bill, however, each employee with 10 years of covered service (regardless of his age) must be at least 50 percent vested and there must be provision for 10 percent additional vesting for each year of service thereafter.

In addition, all plans would have to meet the requirement of present law that an employee must be 100 percent vested in his accrued benefit when he attains the normal or stated retirement age (or actually retires).

### Service Credited For Vesting Purposes

Generally, under the conference substitute, 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. However, the plan may ignore periods for which the employee declined to make mandatory contributions, and periods for which the employer did not maintain the plan or a predecessor plan, as defined in Treasury regulations (i.e., if the plan provides past service credits for purposes of benefit accrual, it must also provide past service credits for purposes of participation and vesting).

respect to vesting appear in both title I and title II of the conference substitute. Unless otherwise indicated, the regulations with respect to vesting are to be written by the Secretary of the Treasury, or his delegate.

Generally, the plan may also ignore service performed before age 22; however, if a plan elects to use the rule of 45, service before age 22 may be ignored only if the employee was not a participant in the plan during the years before age 22.

The plan may also exclude part-time or seasonal service (i.e., generally years when the employee has less than 1,000 hours of service).

Also, if the employee has had a "break in service", his service performed prior to the break may be ignored to the extent permitted under the "break in service" rules (discussed below).

Service performed prior to January 1, 1971, may be ignored by the plan, unless (and until) the employee has at least 3 years of service after December 31, 1970.

### Year of Service Defined

In general, under the conference substitute, the rules with respect to "year of service", seasonal and part-time employees, etc., are the same for purposes of the vesting schedule as they are for purposes of participation (i.e., generally 1,000 hours of service except for seasonal industries, where the customary work year is less than 1,000 hours). However, the relevant year for purposes of applying the vesting schedule may be any 12-month period provided under the plan (plan year, calendar year, etc.) regardless of the anniversary date of the participant's employment (even though the anniversay date is the measuring point for purposes of the participation requirements for an employee's first year).

For purposes of benefit accrual, in general, the plan may use any definition of the term "year of service" which the plan applies on a reasonable and consistent basis (subject to Department of Labor regulations). (Of course, the "year" for benefit accrual purposes cannot exceed the customary work year for the industry involved.) However, the plan must accrue benefits for less than full time service on at least a pro rata basis. For example, if a plan requires 2,000 hours of service for a full benefit accrual (50 weeks of 40 hours each) then the plan would have to accrue at least 75 percent of a full benefit for a participant with 1,500 hours of service. Generally, a plan would not be required to accrue any benefit for years in which the participant had less than 1,000 hours of service. In the case of industries or occupations where the customary year is less than 1,000 hours (for example, the tuna fishing industry, or the winter season employees of a ski lodge), the rules with respect to benefit accrual would be determined under Department of Labor regulations. As previously indicated a special rule is provided for the maritime industries.

**Breaks in Service**

Under the conference substitute, a 1-year break in service occurs in any calendar year, plan year, or other consecutive 12-month period designated by the plan and applied on a consistent basis (and not prohibited under Labor Department regulations) in which the employee has no more than 500 hours of service. For example, if the plan is on a calendar year basis, and the employee works 1,000 hours in 1976, 501 hours in 1977, 501 hours in 1978, and 1,000 hours or more in 1979, the employee would not have a break in service (although the plan would not be required to accrue benefits or give vesting schedule credit for 1977 or 1978).

The rules with respect to breaks in service for vesting and benefit accrual purposes may be summarized as follows:

(1) If an employee has a 1-year break in service, the plan may require (for administrative reasons) a 1-year waiting period before his pre-break and post-break service must be aggregated under the plan. However, once the employee has completed this waiting period, he must receive credit for that year (for purposes of vesting and accrued benefit).

(2) In the case of an individual account plan (including a plan funded solely by individual insurance contracts, as well as a "target benefit plan") if any employee has a 1-year break in service, his vesting percentage in pre-break benefit accruals does not have to be increased as a result of a post-break service.

(3) Subject to rules (1) and (2), 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.

(4) For all nonvested employees (and subject to rules (1) and (2)), the employee would not lose credits for pre-break service until his period of absence equaled his years of covered service. Under this "rule of parity" for example, if a nonvested employee had three years of service with the employer, and then had a break in service of 2 years, he could return, and after fulfilling his 1-year reentry requirement, he would have 4 years of covered service, because his pre-break and post-break service would be aggregated.[2]

For years beginning prior to the effective date of the vesting provisions, a plan may apply the break-in-service rules provided under the plan, as in effect from time to time. However, no plan amendment made after January 1, 1974, may provide for break-in-service rules which are less beneficial to any employee than the rules in effect under the plan on that date, unless the amendment complies with the break-in-service rules established under this bill.

The principles of some of the rules outlined above may be illustrated as follows: For example, assume a plan is on a calendar year basis, and an employee with a 1-year break in service reenters employment on November 1, 1976, works 200 hours in 1976, and 1,700 hours by November 1, 1977. In this case, the employee

[2] Also, in the case of a defined benefit plan, the employee would have at least 3 years of accrued benefits under the plan (2 years of accrued benefits due to his pre-break participation and 1 year of benefits accrued with respect to the 1 year reentry period).