"(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

"(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary or his delegate, be treated as service for the employer.

"(b) EMPLOYEES OF CONTROLLED GROUP OF CORPORATIONS.—For purposes of sections 401, 410, 411, and 415, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 412, the tax imposed by section 4971, and the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary or his delegate.

26 USC 401. Ante, pp. 898, 901; Post, p. 979. 26 USC 1563. Ante, p. 920.

"(c) EMPLOYEES OF PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—For purposes of sections 401, 410, 411, and 415, under regulations prescribed by the Secretary or his delegate, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

"(d) GOVERNMENTAL PLAN.—For purposes of this part, the term 'governmental plan' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term 'governmental plan' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669).

22 USC 288 note.

"(e) CHURCH PLAN.—

"(1) IN GENERAL.—For purposes of this part the term 'church plan' means—

"(A) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501, or

26 USC 501.

"(B) a plan described in paragraph (3).

"(2) CERTAIN UNRELATED BUSINESS OR MULTIEMPLOYER PLANS.—The term 'church plan' does not include a plan—

"(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513), or

"(B) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501.

"(3) SPECIAL TEMPORARY RULE FOR CERTAIN CHURCH AGENCIES UNDER CHURCH PLAN.—

"(A) Notwithstanding the provisions of paragraph (2)(B), a plan in existence on January 1, 1974, shall be

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treated as a church plan if it is established and maintained by a church or convention or association of churches and one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501.

26 USC 501.

"(B) Subparagraph (A) shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974.

"(C) Subparagraph (A) shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

"(f) MULTIEMPLOYER PLAN.—

"(1) IN GENERAL.—For purposes of this part, the term 'multiemployer plan' means a plan—

"(A) to which more than one employer is required to contribute,

"(B) which is maintained pursuant to a collective-bargaining agreement between employee representatives and more than one employer,

"(C) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions,

"(D) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

"(E) which satisfies such other requirements as the Secretary of Labor may by regulations prescribe.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) If a plan is a multiemployer plan within the meaning of paragraph (1) for any plan year, subparagraph (C) of paragraph (1) shall be applied by substituting '75 percent' for '50 percent' for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions.

"(B) All corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(e)(3)(C)) shall be deemed to be one employer.

26 USC 1563.

"(g) PLAN ADMINISTRATOR.—For purposes of this part, the term 'plan administrator' means—

"(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

"(2) in the absence of a designation referred to in paragraph (1)—

"(A) in the case of a plan maintained by a single employer, such employer,

"(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or

S. Rep. No 93-383, at 81 (1973)
Report of the Senate Committee on Finance
"Private Pension Plan Reform"
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page 1149

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tinuation may arise, for example, when a plan of one employer is merged into another plan of that employer (with or without a reorganization involving the employer) or is merged into a multiemployer plan.

Excluded from participation in the insurance program are: money purchase, profit-sharing, and stock bonus plans; government plans; and (under certain circumstances) church plans.

Money purchase, profit-sharing, and stock bonus plans are excluded from the insurance program since they generally are characterized by some type of promise with regard to contributions and no promise with regard to benefits—the participant is merely entitled to benefits determined by reference to his own account. Since no particular benefits are promised in these cases there appears to be no appropriate amount to insure. A collective bargaining plan where defined benefits are determined under a process in which the employers in the aggregate have a voice (e.g., under sec. 302(c)(5)(B) of the Labor Management Relations Act of 1947, where employers are required to have a substantial voice) in the determination of the forms and levels of benefits, is not to be treated as a money purchase plan for these purposes (in the insurance provisions, and elsewhere under the committee bill where distinctions are made between defined benefit plans and money purchase or other kinds of defined contributions plans), even though the collective bargaining agreement may specify only the level of employer contributions into the plan. Thus, these collective bargaining plans are covered by the insurance program.

In the case of government plans, it is believed that the ability of the governmental entities to fulfill their obligations to employees through their taxing powers is an adequate substitute for termination insurance.

At the option of an exempt church (or of a convention or association of churches), plans covering its employees may be included in the insurance coverage. The committee is concerned that the examinations of books and records that may be required in any particular case as part of the careful and responsible administration of the insurance system might be regarded as an unjustified invasion of the confidential relationship that is believed to be appropriate with regard to churches and their religious activities. However, if the church itself has determined to consent to such examinations, to the premium tax payments, and to the contingent employer liabilities, then it may elect to have the insurance program apply to its plan or plans. The Corporation is to prescribe the manner and time of the elections.

The insurance system is to apply to a church plan, even in the absence of such an election, if the plan is only for employees of the church's unrelated trades or businesses, or if the plan is a multiemployer plan and one of the employers in the plan is not a church.

Benefits covered.—In general, the insurance under the bill covers vested benefits, but not more than $750 per month and not more than 50 percent of wages (sec. 422). This limitation is placed on the insurance coverage because the insurance is not intended as a full replacement of a pension plan, but rather as covering the basic retirement benefits provided under it. However, in practice, it is expected that this will fully cover the great bulk of all benefit payments. In addition, there is an advantage in not fully covering all pension bene-

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quired 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 interstate 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

[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.

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 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.