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# Major Changes Raise Concerns on Pension Bill

By [MARY WILLIAMS WALSH](#)

With a strong directive from the Bush administration, Congress set out more than a year ago to fashion legislation that would protect America's private pension system, tightening the rules to make sure companies set aside enough money to make good on their promises to employees.

Then the political horse-trading began, with lawmakers, companies and lobbyists, representing everything from big Wall Street firms to tiny rural electric cooperatives, weighing in on the particulars of the Bush administration's blueprint.

In the end, lawmakers modified many of the proposed rules, allowing companies more time to cover pension shortfalls, to make more forgiving estimates about how much they will owe workers in the future, and even sometimes to assume that their workers will die younger than the rest of the population.

On top of those changes, companies also persuaded lawmakers to add dozens of specific measures, including a multibillion-dollar escape clause for the nation's airlines and a special exemption for the makers of Smithfield Farms hams.

As a result, the bill now being completed in a House-Senate conference committee, rather than strengthening the pension system, would actually weaken it, according to a little-noticed analysis by the government's pension agency. The agency's report projects that the House and Senate bills would lower corporate contributions to the already underfinanced pension system by \$140 billion to \$160 billion in the next three years.

That shortfall raises the specter of more pension plans failing, pushing their liabilities on to the government, according to the agency and critics of the bills. And some companies with fully financed pensions feel unfairly penalized by having to pay higher pension premiums to make up for others' shortfalls.

"It takes a better economist than me to understand how reducing contributions by that much is going to protect benefits and put the system on a sounder footing," said Jeremy I. Bulow, an economist at

Stanford University.

Both pieces of legislation — one passed by the House and the other by the Senate, both by overwhelming majorities — do contain measures that would reduce some of the lapses and inaccuracies that the current pension law permits. They would also increase the premiums that companies pay to the federal guarantor, the Pension Benefit [Guaranty Corporation](#), an agency grappling with a \$23 billion deficit.

Senator [Charles E. Grassley](#), Republican of Iowa and chairman of the Senate Finance Committee, says the bills attempt to strike the proper balance between providing for workers' pensions and allowing companies to remain competitive.

"My goal is to make sure that companies set aside enough money for the pensions they promise their workers," Mr. Grassley said. "At the same time, we can't put burdens on plan sponsors that are too heavy."

The overhaul of the pension system is being undertaken at a time when it is reeling from a series of big bankruptcies, like those of United Airlines and [Bethlehem Steel](#), which sent billions of dollars' worth of obligations to the pension agency.

The agency's pension insurance is limited, and a growing number of these companies' employees have discovered to their dismay that their benefits exceed the limits and that they will simply lose part of the money they had been promised.

The House-Senate conference committee intends to reconcile the bills before April 15, when the next round of corporate pension contributions are due. But the White House already warned in November that President Bush might veto any bill that extended too much special pension relief to individual companies and industries.

Legislators argue that, while they want the pension agency to be strong, they also want to encourage companies to continue offering pensions. Lately, some companies, like [I.B.M.](#) and [Verizon](#), have moved to freeze their pension plans, arguing that the costs of their plans make it hard to compete.

Kevin Smith, the spokesman for Representative [John A. Boehner](#), Republican of Ohio and the new House majority leader, who was one of the driving forces behind pension changes, defended the House bill, arguing that many specific measures, particularly those phasing in the new rules slowly, were necessary.

"Both the House and Senate pension bills represent the most comprehensive pension reforms in a generation," Mr. Smith said, "so a responsible transition period for employers to meet the new, stricter rules is appropriate."

He added that he believed the pension agency's analysis did not take into account the weakened financial condition of many companies that offer pensions.

The law that Congress wants to amend was enacted in 1974 after a series of scandals in the auto industry in which employees of dying companies like Studebaker and Packard discovered that little or nothing had been set aside for their pensions. It gave rise to rules for the financing of pensions and to an insurance program roughly comparable to the federal insurance program for bank deposits.

The law did help safeguard pension benefits, but it has not been strong enough to stop some companies from falling short in their contributions.

When Labor Secretary Elaine L. Chao sent Congress a blueprint for amending the pension law in January 2005, many companies thought her proposals were too tough.

From the start of the legislative process, lobbyists representing a wide swath of American business, including those from the United States Chamber of Commerce, the American Benefits Council and the Erisa Industry Committee (which represents large companies with pension plans), argued for easing the burden on companies by allowing them more latitude in estimating how long their workers would live, for example, and what they would need to set aside for future payouts.

The biggest single-industry pension break in the bill passed by the Senate is for the airlines, to allow them to keep their unstable pension plans going.

Among other things, the airlines would be given 20 years to close the shortfalls in their pension funds — nearly three times as long as other companies. They would also be allowed to factor in highly optimistic assumptions about their investment returns when calculating how much they needed to contribute to their pension funds each year.

The measures were written into the bill at the request of [Northwest Airlines](#), which is in bankruptcy proceedings and is trying to keep its pensions alive, though in sharply reduced form. Northwest sought a 14-year breather on its pension contributions.

But then Senator Johnny Isakson, Republican of Georgia, said that 14 years of relief would not be enough to help Delta, a big airline based in his state, which is also operating under Chapter 11 bankruptcy protections. Senator Isakson amended the bill to provide 20 years of relief. After complaints from other big airlines, the relief was expanded to them all.

The Senate bill would also help recover more than \$1 billion of benefits that thousands of pilots for Braniff, PanAm, Eastern, United and other airlines have lost in bankruptcy cases going back as far as the 1980's. That amendment was made by Senator Daniel H. Akaka, Democrat of Hawaii.

But helping those pilots would be expensive: the pension agency projected that the entire provision

would increase its total obligations to retirees by more than \$1 billion.

Someone must pay for this. Currently, the pension agency finances itself in part through the insurance premiums that companies are required to pay into the system. Raising the premiums to support pilots or help other victims of corporate bankruptcies, some companies in other industries are starting to say, would be unfair.

In a letter to shareholders last week, Edward S. Lampert, chairman of [Sears Holdings](#), which is responsible for the pension plans of employees at Kmart and Sears, complained that his company's pension insurance premiums were going up by 60 percent, "not in order to address any risk associated with Sears, but rather to make up for the difficulties of other companies."

Mr. Lampert also deplored the current pension law, which bars companies with richly financed pension plans from taking any of the surplus money out, except in rare instances.

[Prudential Financial](#) has the same complaint, but instead of writing to its shareholders, it took direct action in Washington, hiring William F. Sweetnam Jr., until recently the Treasury Department's senior legal adviser on employee benefits, to lobby on the issue of surplus pension assets. Mr. Sweetnam is now a principal at the Groom Law Group, a Washington law firm that specializes in employee benefits issues.

Prudential has a \$1.2 billion surplus in its pension fund. Mr. Sweetnam was able to persuade several senators, including [Frank R. Lautenberg](#), Democrat of New Jersey (where Prudential has its headquarters), that the companies that are more than 15 percent overfinanced should be allowed to remove some of the surplus and use the money to buy health insurance for retirees.

Currently, only companies that are 25 percent overfinanced are allowed to do so.

Robert DeFillippo, a Prudential spokesman, said that the provision would improve pension security because in exchange for the ability to take more money out of the pension fund, the company would be required to handle the money remaining in the fund much more carefully.

Smithfield Farms also got help in the name of strengthening the system. It bought another meat company out of bankruptcy in 2003, taking over its pension fund at the same time. That kept the bankrupt firm's pension plan alive, Smithfield said, and saved the government from having to take it over. In light of that, the company contends that it would hardly be fair to impose tougher new financing rules on Smithfield.

That argument caught the ear of Senator Mike DeWine, Republican of Ohio, where Smithfield has major operations. Mr. DeWine added a provision that would let Smithfield follow the old pension rules until 2014, no matter what Congress does in the meantime.

The bills would also be a boon to Wall Street by permitting financial service companies to handle more

retirement money with fewer restrictions. Hedge funds, for example, would be permitted to manage more pension money without being held to the pension law's exacting standards of fiduciary duty.

Mr. Boehner has championed easing the restrictions on investment advice for several years. He included a provision that would permit investment firms to advise participants in 401(k) retirement plans, even if the firms' own mutual funds were among the employees' investment choices. Current pension law forbids this practice, on the thinking that it could taint investment recommendations.

Mr. Boehner has argued that employees need more investment advice, however, so that they can save more and earn better returns on their money. The securities industry is his top campaign contributor, providing more than \$125,000 already in the 2005-06 House election cycle.

Mr. Smith, the spokesman for Mr. Boehner, said that the House bill would provide better quality financial advice for workers, adding that the Bush administration strongly supported that amendment.

"The Senate advice provision does little more than restate current law," he said, "which has left workers to fend for themselves without the type of quality advice they so desperately need."

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