

103^D CONGRESS
2^D SESSION

H. R. 5226

To amend title I of the Employee Retirement Income Security Act of 1974 to improve enforcement of such title by adding certain provisions with respect to the auditing of employee benefit plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1994

Mrs. MINK introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to improve enforcement of such title by adding certain provisions with respect to the auditing of employee benefit plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ERISA Audit Improve-
5 ment Act of 1994”.

6 **SEC. 2. REPEAL OF LIMITED SCOPE AUDIT.**

7 (a) IN GENERAL.—Section 103(a)(3) of the Em-
8 ployee Retirement Income Security Act of 1974 (29

1 U.S.C. 1023(a)(3)) is amended by striking subparagraph
2 (C) and by redesignating subparagraph (D) as subpara-
3 graph (C).

4 (b) CONFORMING AMENDMENT.—Section
5 104(a)(5)(A) of such Act (29 U.S.C. 1024(a)(5)(D)) is
6 amended by striking “section 103(a)(3)(D)” and inserting
7 “section 103(a)(3)(C)”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply with respect to opinions required
10 under section 103(a)(3)(A) of the Employee Retirement
11 Income Security Act of 1974 for plan years beginning on
12 or after January 1 of the calendar year following the date
13 of the enactment of this Act.

14 **SEC. 3. EXTERNAL QUALITY CONTROL REVIEW REQUIRE-**
15 **MENT FOR QUALIFIED PUBLIC ACCOUNT-**
16 **ANTS.**

17 (a) IN GENERAL.—Section 103(a)(3)(C) of the Em-
18 ployee Retirement Income Security Act of 1974 (as redes-
19 ignated by section 2) is amended—

20 (1) by striking “means” and inserting “means,
21 with respect to any engagement of an accountant
22 under subparagraph (A)”;

23 (2) by redesignating clauses (i), (ii), and (iii) as
24 subclauses (I), (II), and (III), respectively;

25 (3) by inserting “(i)” after “(C)”;

1 (4) in subclause (III) (as redesignated), by
2 striking the period and inserting a comma;

3 (5) by adding after and below such subclause
4 (III) the following:

5 “if such person meets the requirements of clause (ii) with
6 respect to such engagement.”; and

7 (6) by adding at the end the following new
8 clauses:

9 “(ii) A person meets the requirements of this clause
10 with respect to an engagement of such person as an ac-
11 countant under subparagraph (A) if such person—

12 “(I) has in operation an appropriate internal
13 quality control system, and

14 “(II) has undergone a qualified external quality
15 control review of the person’s accounting and audit-
16 ing practices, including such practices relevant to
17 employee benefit plans (if any), during the 3-year
18 period immediately preceding such engagement.

19 “(iii) For purposes of clause (ii)(II), an external qual-
20 ity control review shall be treated as ‘qualified’ with re-
21 spect to a person referred to in clause (ii) if—

22 “(I) such review is performed in accordance
23 with the requirements of external quality control re-
24 view programs of recognized auditing standard-set-
25 ting bodies, as determined by the Comptroller Gen-

1 eral of the United States or in regulations of the
2 Secretary, and

3 “(II) in the case of any such person who has
4 conducted one or more previous audits of employee
5 benefit plans, such review includes the review of an
6 appropriate number (determined as shall be provided
7 in such regulations but in no case less than one) of
8 plan audits in relation to the scale of such person’s
9 auditing practice.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to plan years begin-
12 ning on or after the date which is 3 years after the date
13 of the enactment of this Act.

14 **SEC. 4. REQUIREMENT FOR REPORTING OF CERTAIN**
15 **EVENTS.**

16 (a) IN GENERAL.—Part 1 of subtitle B of title I of
17 the Employee Retirement Income Security Act of 1974
18 (29 U.S.C. 1021 et seq.) is amended—

19 (1) by redesignating section 111 as section 112;
20 and

21 (2) by inserting after section 110 the following
22 new section:

23 “DIRECT REPORTING OF CERTAIN EVENTS

24 “SEC. 111. (a) REQUIRED NOTIFICATIONS.—

25 “(1) NOTIFICATIONS BY PLAN ADMINIS-
26 TRATOR.—In the case of an administrator of an em-

1 ployee benefit plan, within 5 business days after the
2 administrator first has reason to believe (or after the
3 administrator is notified under paragraph (2)) that
4 an irregularity may have occurred with respect to
5 the plan, the administrator shall—

6 “(A) notify the Secretary of the irregular-
7 ity in writing; and

8 “(B) furnish a copy of such notification to
9 the accountant who is currently engaged under
10 section 103(a)(3)(A).

11 “(2) NOTIFICATIONS BY ACCOUNTANT.—

12 “(A) IN GENERAL.—In the case of an ac-
13 countant engaged by the administrator of an
14 employee benefit plan under section
15 103(a)(3)(A), within 5 business days after the
16 accountant first has reason to believe in connec-
17 tion with such engagement that an irregularity
18 may have occurred with respect to the plan, the
19 accountant shall—

20 “(i) notify the plan administrator of
21 the irregularity in writing, or

22 “(ii) if the accountant has reason to
23 believe that the irregularity may have in-
24 volved an individual who is the plan admin-
25 istrator or who is a senior official of the

1 plan administrator, notify the Secretary of
2 the irregularity in writing.

3 “(B) NOTIFICATION UPON FAILURE OF
4 PLAN ADMINISTRATOR TO NOTIFY.—In any case
5 in which an accountant who has provided notifi-
6 cation to the plan administrator pursuant to
7 subparagraph (A)(i) with respect to any irregu-
8 larity has not received a copy of the administra-
9 tor’s notification to the Secretary with respect
10 to such irregularity within the 5-business-day
11 period specified under paragraph (1)(B), the
12 accountant shall furnish to the Secretary a copy
13 of the accountant’s notification made to the
14 plan administrator within the next business day
15 following such 5-business-day period.

16 “(3) IRREGULARITY DEFINED.—For purposes
17 of this subsection, the term ‘irregularity’ means an
18 indication of—

19 “(A) theft, embezzlement, or a violation of
20 section 664 of title 18, United States Code (re-
21 lating to theft or embezzlement from employee
22 benefit plan),

23 “(B) extortion or a violation of section
24 1951 of such title 18 (relating to interference
25 with commerce by threats or violence),

1 “(C) bribery, a kickback, or a violation of
2 section 1954 of such title 18 (relating to offer,
3 acceptance, or solicitation to influence oper-
4 ations of employee benefit plan),

5 “(D) a violation of section 411, 501, or
6 511 of this title (relating to criminal violations),
7 or

8 “(E) any intentional misstatement or omis-
9 sion of an amount or disclosure in a financial
10 statement, accounting record, or supporting
11 document undertaken to mislead,

12 except that such term shall not include any act or
13 omission described in this paragraph involving less
14 than \$1,000 unless there is reason to believe that
15 the act or omission may bear on the integrity of plan
16 management.

17 “(b) NOTIFICATION UPON TERMINATION OF EN-
18 GAGEMENT OF ACCOUNTANT.—

19 “(1) NOTIFICATION BY PLAN ADMINIS-
20 TRATOR.—Within 5 business days after the termi-
21 nation of an engagement for auditing services under
22 section 103(a)(3)(A) with respect to an employee
23 benefit plan, the administrator of such plan shall—

1 “(A) notify the Secretary in writing of
2 such termination, giving the reasons for such
3 termination, and

4 “(B) furnish the accountant whose engage-
5 ment was terminated with a copy of the notifi-
6 cation sent to the Secretary.

7 “(2) NOTIFICATION BY ACCOUNTANT.—If the
8 accountant referred to in paragraph (1)(B) has not
9 received a copy of the administrator’s notification to
10 the Secretary as required under paragraph (1)(B),
11 or if the accountant disagrees with the reasons given
12 in the notification of termination of the engagement
13 for auditing services, the accountant shall notify the
14 Secretary in writing of the termination, giving the
15 reasons for the termination, within 10 business days
16 after the termination of the engagement.

17 “(c) DETERMINATION OF PERIODS REQUIRED FOR
18 NOTIFICATION.—In determining whether a notification re-
19 quired under this section with respect to any act or omis-
20 sion has been made within the required number of busi-
21 ness days—

22 “(1) the day on which such act or omission be-
23 gins shall not be included; and

24 “(2) Saturdays, Sundays, and legal holidays
25 shall not be included.

1 For purposes of this subsection, the term ‘legal holidays’
2 means the Federal legal holidays of New Year’s Day,
3 Birthday of Martin Luther King, Washington’s Birthday,
4 Memorial Day, Independence Day, Labor Day, Columbus
5 Day, Veterans Day, Thanksgiving Day, Christmas Day,
6 and any other day appointed as a holiday by the President
7 or the Congress of the United States, or by the State in
8 which the person responsible for making the notification
9 principally conducts his business.

10 “(d) IMMUNITY FOR GOOD FAITH NOTIFICATION.—
11 Except as provided in this Act, no accountant shall be lia-
12 ble to any person for any finding, conclusion, or statement
13 made in any notification made pursuant to subsections
14 (a)(2) or (b)(2), or pursuant to any regulations issued
15 thereunder, if such finding, conclusion, or statement is
16 made in good faith.”.

17 (b) CIVIL PENALTY.—

18 (1) IN GENERAL.—Section 502(c) of such Act
19 (29 U.S.C. 1132(c)) is amended by adding at the
20 end the following new paragraph:

21 “(5) The Secretary may assess a civil penalty of up
22 to \$100,000 against any administrator and against any
23 accountant who fails to provide the Secretary with any no-
24 tification as required under section 111.”.

1 (2) CONFORMING AMENDMENT.—Section
2 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is
3 amended by striking “subsection (c)(2) or (i) or (l)”
4 and inserting “paragraph (2), (3), (4), or (5) of sub-
5 section (c) or subsection (i) or (l)”.

6 (c) CLERICAL AMENDMENTS.—

7 (1) Section 514(d) of such Act (29 U.S.C.
8 1144(d)) is amended by striking “111” and insert-
9 ing “112”.

10 (2) The table of contents in section 1 of such
11 Act is amended by striking the item relating to sec-
12 tion 111 and inserting the following new items:

“Sec. 111. Direct reporting of certain events.
“Sec. 112. Repeal and effective date.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to any irregularity de-
15 scribed in such amendments only if the 5-day period de-
16 scribed in such amendments in connection with such irreg-
17 ularity commences on or after the date of the enactment
18 of this Act.

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