DESCRIPTION OF THE PENSION PROTECTION TECHNICAL CORRECTIONS ACT OF 2008

I. AMENDMENTS RELATED TO TITLE I OF THE ACT: REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

A. Minimum Funding Standards (Act secs. 101 and 111)

Prohibition on increases in benefits while a waiver is in effect (ERISA sec. 302(c)(7)(A) and Code sec. 412(c)(7)(A))

The Act restates the prior-law provision prohibiting plan amendments that increase benefits while a waiver or amortization extension is in effect or if a retroactive amendment was previously made within a certain period. As under prior law, an exception applies for a plan amendment increasing benefits that only repeals a previously made retroactive amendment. The provision provides that the references to retroactive amendments are limited to those that reduced accrued benefits.

Minimum funding standards (ERISA sec. 302(d)(1) and Code sec. 412(d)(1))

Under the Act, the Secretary of the Treasury must approve a change in a plan's funding method, valuation date, or a plan year. The provision deletes the reference to valuation date because a change in such date is a change in the plan's funding method.

B. Funding Rules for Single-Employer Defined Benefit Plans (Act secs. 102 and 112)

Determination of target normal cost (ERISA sec. 303(b), (i) and Code sec. 430(b), (i))

The Act defines the term "target normal cost" for a plan year as the present value of all benefits which are expected to accrue or be earned under the plan during the plan year. The provision clarifies that a plan's target normal cost is increased by the amount of plan-related expenses expected to be paid from plan assets during the plan year, and is decreased by the amount of mandatory employee contributions expected to be made to the plan during the plan year.

Determination of at-risk status (ERISA sec. 303(i)(4)(B) and Code sec. 430(i)(4)(B))

Under the Act, the 80-percent and 70-percent prongs of the at-risk status definition are based on funded status for the preceding plan year. The Act provides that determination of the 70-percent prong for 2008 may be determined using methods of estimation provided by the Secretary of Treasury. The provision applies this rule also for purposes of the 80-percent prong (as phased in under the Act).

Quarterly contributions (ERISA sec. 303(j)(3)) and Code sec. 430(j)(3))

Under the Act, quarterly contributions are required if a plan has a funding shortfall for the preceding year. The provision includes a transition rule for the 2008 plan year; under this rule, in the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary of the Treasury may provide.

The quarterly installment rules require a higher rate of interest to be charged on required contributions. Small plans are permitted to use a valuation date other than the first day of the plan year. The provision provides that the Secretary of the Treasury is to prescribe rules relating to interest charges and credits in the case of a plan with a valuation date other than the first day of the plan year.

C. Benefit Limitations under Single-Employer Plans (Act secs. 103 and 113)

Definition of prohibited payment (ERISA sec. 206(g)(3)(E) and Code sec. 436(d)(5))

The Act provides that certain underfunded plans may not make prohibited payments, which include accelerated forms of distribution such as lump sums. Present law provides that if the present value of a participant's vested benefit exceeds $5,000,[1] the benefit may not be distributed without the participant's consent. If the vested benefit is less than or equal to this amount, the consent requirement does not apply. The provision provides that the payment of benefits that may be immediately distributed without the consent of the participant is not a prohibited payment.

Small plans (ERISA sec. 206(g)(10) and Code sec. 436(k))

The benefit restriction provisions are based upon a plan's adjusted funding target attainment percentage as of the first day of the plan year. This presents issues for small plans, which are allowed to designate any day of the plan year as their valuation date, because a plan's adjusted funding target attainment percentage cannot be determined until the valuation date. The provision provides that the Secretary of the Treasury may prescribe rules for the application of the benefit restrictions which are necessary to reflect the alternate valuation date.

Notice requirement (Act sec. 103(b) and ERISA sec. 101(j))

The provision provides that the Secretary of the Treasury, in consultation with the Secretary of Labor, has the authority to prescribe rules applicable to the notice of funding-based limitations on distributions required under section 101(j) of ERISA as added by the Act.

[1] The portion of a participant's benefit that is attributable to amounts rolled over from another plan may be disregarded in determining the present value of the participant's vested benefit.

<u>Definition of single employer plan (Code sec. 436(l))</u>

The Act provides rules under ERISA and the Code that limit the benefits and benefit accruals that can be provided under a single employer plan, depending on the funding level of the plan. The provision adds a definition of the term "single employer plan" for purposes of the limitations in the Code.

D. Technical and Conforming Amendments (Act secs. 107 and 114)

The Act provides for technical and conforming amendments to reflect the new funding rules. The provision provides that the effective date for the amendments to the excise tax on a failure to satisfy the funding rules is taxable years beginning after 2007 and, for the other technical and conforming amendments, plan years beginning after 2007.

E. Restrictions on Funding of Nonqualified Deferred Compensation Plans by Employers Maintaining Underfunded or Terminated Single-Employer Plans (Act sec. 116 and Code sec. 409A(b)(3)(A)(ii))

The Act provides that if, during any restricted period in which a defined benefit pension plan of an employer is in at-risk status, assets are set aside (directly or indirectly) in a trust (or other arrangement as determined by the Secretary of the Treasury), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation of an applicable covered employee, such assets are treated as property transferred in connection with the performance of services (whether or not such assets are available to satisfy the claims of general creditors) under Code section 83.

The Act further provides that if a nonqualified deferred compensation plan of an employer provides that assets will be restricted to the provision of benefits under the plan in connection with a restricted period (or other similar financial measure as determined by the Secretary of the Treasury) of any defined benefit pension plan of the employer, or assets are so restricted, such assets are treated as property transferred in connection with the performance of services (whether or not such assets are available to satisfy the claims of general creditors) under Code section 83. The provision provides that this rule applies with respect to assets that are restricted under the plan with respect to a covered employee.

II. AMENDMENTS RELATING TO TITLE II OF THE ACT: FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

A. Funding Rules for Multiemployer Defined Benefit Plans (Act secs. 201 and 211)

Shortfall funding method (Act sec. 201(b))

The Act provides that a multiemployer plan meeting certain criteria may adopt, use or cease using the shortfall funding method and such adoption, use, or cessation of use is deemed to be approved by the Secretary of the Treasury. One of the criteria is that "the plan has not used the shortfall funding method during the 5-year period ending on the day before the date the plan is to use the method" under the Act. The provision changes this so that the criterion is that "the plan has not adopted or ceased using the shortfall funding method during the 5-year period ending on the day before the date the plan is to use the method" under the Act.

B. Funding Rules for Multiemployer Plans in Endangered or Critical Status (Act secs. 202 and 212)

Notice requirements (ERISA secs. 305(b)(3)(D), 305(e)(8)(C), and Code secs. 432(b)(3)(D), 432(e)(8)(C))

The Act requires the plan sponsor of a multiemployer plan to distribute a notice if the plan is in endangered or critical status and if the plan is required to make reductions to adjustable benefits. The provision clarifies that the Secretary of the Treasury, in consultation with the Secretary of Labor, shall provide guidance with respect to the plan sponsor's notice obligations.

Implementation and enforcement of default schedule (ERISA secs. 305(c)(7), 305(e)(3)(C), and Code secs. 432(c)(7), 432(e)(3)(C))

Under the Act, a default schedule applies if a funding improvement plan or rehabilitation plan is not timely adopted. The provision removes the rule that provides that the default schedule is implemented upon the date on which the Department of Labor certifies that the parties are at impasse. Thus, under the provisions, the plan trustees are required to implement the default schedule within 180 days of the expiration date of the collective bargaining agreement. In addition, the provision clarifies that any failure to make a default schedule contribution is enforceable under sec. 515 of ERISA.

Restriction on payment of lump sums while plan is in critical status (ERISA sec. 305(f)(2)(A) and Code sec. 432(F)(2)(A))

Under the Act, the payment of accelerated forms of payment, including lump sums, while a plan is in critical status is restricted. Under the provision, the restriction on payment of accelerated forms of payment applies only to participants whose benefit commencement date is after notice of the plan's critical status is provided. This change conforms the rule for multiemployer plans to the rule applicable to single-employer plans.

Definition of plan sponsor (Code sec. 432(i)(9))

The funding rules for multiemployer plans and the excise tax rules that apply in the event of a failure to comply with the funding rules refer to the term “plan sponsor.” This term is not defined in the Code. The provision adds a definition to the Code that conforms with the applicable ERISA definition.

Excise tax on trustees for failure to adopt a timely rehabilitation plan (Code sec. 4971(g)(4))

The Act imposes an excise tax on the sponsor of a multiemployer plan in the event of a failure to timely adopt a rehabilitation plan. Under the Act, the plan sponsor has a 240 day period in which it must adopt a plan. The excise tax for failure to timely adopt is based on the beginning of this 240 day period, rather than the end of the period. The provision revises the calculation of the excise tax so that it applies to the period beginning on the due date for adoption of the rehabilitation plan.

Effective date of excise tax provisions (Act sec. 212(e))

The Act provides that the excise tax provisions relating to a failure to satisfy the multiemployer plan funding rules are effective with respect to plan years beginning after 2007. The provision clarifies that the excise tax provisions are effective with respect to taxable years beginning after 2007.

III. AMENDMENTS RELATED TO TITLE III OF THE ACT: INTEREST RATE PROVISIONS

A. Extension of Replacement of 30-Year Treasury Rates (Act sec. 301)

The Pension Funding Equity Act of 2004 provided for a temporary interest rate. The Pension Funding Equity Act of 2004 also provided that, if certain requirements were satisfied, plan amendments to reflect such interest rate did not need to be made before the last day of the first plan year beginning on or after January 1, 2006. The Act extended the temporary interest rate through 2007 and also extended the required amendment date by changing "January 1, 2006" to "January 1, 2008." The provision further extends the required amendment date to conform generally to the amendment period permitted under the Act.

B. Interest Rate Assumption for Determination of Lump Sum Distributions (Act sec. 302 and Code sec. 415(b)(2)(E))

The Act amended the interest and mortality table used in calculating the minimum value of certain optional forms of benefit, such as lump sums. The provision clarifies that the mortality table required to be used in calculating the minimum value of optional forms of benefit is also used in adjusting benefits and limits for purposes of applying the Code section 415 limitation on benefits that may be provided under a defined benefit plan. This clarification of the required mortality table is effective for years beginning after December 31, 2008. However, a plan may elect to use the new mortality table for years beginning after December 31, 2007, and before January 1, 2009, or for any portion of such a year.

IV. AMENDMENTS RELATED TO TITLE IV OF THE ACT: PBGC GUARANTEE AND RELATED PROVISIONS

A. Missing Participants (Act sec. 410)

Plans covered by missing participant program (ERISA sec. 4050(d))

The Act extended the prior-law missing participant program to terminating multiemployer plans and to certain plans not subject to the PBGC termination insurance program. Under the provision, the missing participant program applies to plans that have at no time provided for employer contributions. In addition, the provision limits the program to qualified plans.

V. AMENDMENTS RELATED TO TITLE V OF THE ACT: DISCLOSURE

A. Defined Benefit Plan Funding Notice and Disclosure of Withdrawal Liability (Act sec. 501 and ERISA sec. 101(f))

Under the Act, the administrator of a single employer or a multiemployer defined benefit plan must provide an annual plan funding notice (section 101(f) of ERISA). The provision conforms the measurement dates of several of the items that must be included in the notice and also conforms the information that must be provided by the administrator of a multiemployer plan with respect to the assets and liabilities of the plan to the information that must be provided by the administrator of a single employer plan.

B. Access to Multiemployer Pension Plan Information (Act sec. 502 and ERISA secs. 101(k), 101(l), and 4221(e))

Under the Act, the administrator of a multiemployer plan is required to provide participants and employers copies of certain financial reports prepared by an investment manager, advisor or other fiduciary, upon request (section 101(k) of ERISA). However, the administrator is prohibited from disclosing "any individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer." The provision clarifies that this prohibition does not prevent the plan from disclosing the identities of the investment managers or advisors, or any other person preparing a financial report (other than an employee of the plan), whose performance is being reported on or evaluated.

Under the Act, the plan sponsor or administrator of a multiemployer plan must provide upon an employer's request certain information regarding the employer's withdrawal liability with respect to the plan (section 101(l) of ERISA). The provision repeals section 4221(e) of ERISA, which also requires the disclosure upon an employer's request information relating to the employer's withdrawal liability.

C. Disclosure of Termination Information to Plan Participants (Act sec. 506 and ERISA secs. 4041 and 4042)

In the case of an involuntarily termination of a plan, the Act requires the plan sponsor (or administrator) and the PBGC to disclose certain information to affected parties, and special rules apply with respect to the disclosure of confidential information by the plan sponsor (or administrator). Under the provision, these special rules relating to the disclosure of confidential information also apply to the PBGC.

Under the Act, the plan administrator must provide affected parties with certain information that it has provided to the PBGC. The provision clarifies that this information includes information that the plan administrator is required to disclose to the PBGC at the time the written notice of intent to terminate is given as well as information the plan administrator is required to disclose to the PBGC after the notice of intent to terminate is given.

D. Periodic Pension Benefit Statements (Act sec. 508 and ERISA sec. 209(a))

The Act revises the rules that apply under ERISA with respect to a plan administrator's obligation to provide periodic information relating to a participant's accrued benefits under a plan (section 105 of ERISA). The provision makes conforming changes to section 209 of ERISA, which also imposes recordkeeping and reporting obligations with respect to participant benefits.

E. Notice to Participants or Beneficiaries of Blackout Periods (Act sec. 509 and ERISA sec. 101(i)(8)(B))

The Sarbanes-Oxley Act of 2002 amended ERISA to require that participants and beneficiaries of an individual account plan be provided advance notice of a blackout period during which certain plan operations, such as the ability to make investment changes, will be restricted. The notice requirement does not apply to one-participant plans. The Act amended the definition of one-participant plan to conform to Department of Labor regulations. The Act, however, did not provide complete conformity with those regulations. The provision amends the Act so that the definition of one-participant plan for purposes of the notice is in conformity with Department of Labor regulations. Under the provision, a one-participant plan means a retirement plan that on the first day of the plan year: (1) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or (2) covered only one or more partners (or partners and their spouses) in the plan sponsor. Thus, under the provision, plans that are not subject to title I of ERISA are not subject to the blackout notice provisions.[2]

[2] This provision is effective as if included in the Sarbanes-Oxley Act.

VI. AMENDMENTS RELATED TO TITLE VI OF THE ACT: INVESTMENT ADVICE, PROHIBITED TRANSACTIONS, AND FIDUCIARY RULES

A. Prohibited Transaction Rules Relating to Financial Investments (Act sec. 611, ERISA sec. 408(b)(18)(C), and Code sec. 4975(d)(21)(C))

Under the Act, an exemption from the prohibited transaction rules of the Code and ERISA applies in the case of foreign exchange transactions between a plan and a bank or broker-dealer if certain requirements are met. Included in the Act is a requirement that the exchange rate used by the bank or broker-dealer for a particular transaction cannot deviate by more or less than three percent from the interbank bid and asked rates for transactions of comparable size and maturity. Under the provision, the exchange rate cannot deviate by more than three percent.

VII. AMENDMENTS RELATING TO TITLE VII OF THE ACT: BENEFIT ACCRUAL STANDARDS

A. Benefit Accrual Standards (Act sec. 701)

Preservation of capital (ERISA sec. 204(b)(5)(B)(i)(II) and Code sec. 411(b)(5)(B)(i)(II))

The Act prohibits an applicable defined benefit plan account balance from being reduced below the aggregate amount of contributions. Under the provision, failure to comply with this rule is treated as a violation of the age discrimination rules under ERISA or the Code, as applicable.

Application of present-value rules (ERISA sec. 203(f)(1)(B) and Code sec. 411(a)(13)(A)(ii))

The Act permits an applicable defined benefit plan to distribute a participant's accrued benefit under the plan in an amount equal to the participant's hypothetical account balance under the plan without violating the present-value rules of ERISA section 205(g) and Code section 417(e). ERISA section 203(e) and Code section 411(a)(11), which allow automatic cash-outs of amounts not exceeding $5,000, apply the section 205(g) and section 417(e) present-value rules by cross-reference. The provision adds cross-references to apply the new ERISA and Code provisions for purposes of ERISA section 203(e) and Code section 411(a)(11).

Effective date (Act sec. 701(e))

The general effective date under Act section 701(e)(1) is periods beginning on or after June 29, 2005, and special effective dates are provided for certain provisions. The provision provides that the vesting provisions under Act section 701 are effective on the basis of plan years and that the vesting provisions apply with respect to participants with an hour of service after the applicable effective date for a plan.

The Act established interest credit requirements for applicable defined benefit plans, which, under the general effective date, would apply to periods beginning on or after June 29, 2005. Act section 701(e)(3) provides that, in the case of a plan in existence on June 29, 2005, the new interest credit rules apply to years beginning after December 31, 2007, unless the employer elects to apply them for any period beginning after June 29, 2005, and before the rules would otherwise apply. The provision changes this rule so that it refers to any period beginning "on or after" June 29, 2005.

The Act established rules with respect to a conversion of a plan into an applicable defined benefit plan. Act section 701(e)(5) provides that these rules are applicable to plan amendments adopted after, and taking effect after, June 29, 2005. Similarly, ERISA section 204(b)(5)(B)(ii) and Code section 411(b)(5)(B)(ii) apply the conversion rules to conversion amendments adopted after June 29, 2005. The provision clarifies that the effective date for the conversion rules is on or after June 29, 2005.

The Act establishes a special effective date for the vesting and interest crediting requirements for applicable defined benefit plans in the case of a collectively bargained plan.

The provision clarifies that these rules do not apply to plan years beginning before the earlier of:
(1) the later of the termination of the collective bargaining agreement or January 1, 2008, or
(2) January 1, 2010.

VIII. AMENDMENTS RELATED TO TITLE VIII OF THE ACT: PENSION RELATED REVENUE PROVISIONS

A. Deduction Limitations (Act secs. 801 and 803)

1. Increase in deduction limit for single-employer plans (Act sec. 801 and Code sec. 404)

If an employer sponsors one or more defined benefit plans and one or more defined contribution plans that cover at least one of the same employees, an overall deduction limitation applies to the total contributions to all plans for a plan year. The overall deduction limit is generally the greater of (1) 25 percent of compensation or (2) the amount necessary to meet the minimum funding requirement of the defined benefit plan for the plan year. Under the Act, in the case of a single-employer plan not covered by the PBGC, the combined plan limit is not less than the plan's funding shortfall as determined under the funding rules. Under the provision, in the case of a single-employer plan not covered by the PBGC, the combined plan limit is not less than the excess (if any) of the plan's funding target over the value of the plan's assets.

2. Updating deduction rules for combination of plans (Act sec. 803 and Code sec. 404(a)(7))

If an employer sponsors one or more defined benefit plans and one or more defined contribution plans that cover at least one of the same employees, an overall deduction limitation applies to the total contributions to all plans for a plan year. The overall deduction limit is generally the greater of (1) 25 percent of compensation or (2) the amount necessary to meet the minimum funding requirement of the defined benefit plan for the plan year. The Act provides that the overall deduction limit applies to contributions to one or more defined contribution plans only to the extent that such contributions exceed six percent of compensation. IRS guidance (Notice 2007-28, 2007-14 I.R.B. 880) takes the position that if defined contribution plan contributions are less than six percent of compensation, contributions to the defined benefit plan are still subject to limitation of the greater of 25 percent of compensation or the minimum required contribution. The provision provides that if defined contributions are less than six percent of compensation, the defined benefit plan is not subject to the overall deduction limit. If defined contributions exceed six percent of compensation, only defined contributions in excess of six percent are counted toward the overall deduction limit.

B. Improvements in Portability, Distributions, and Contribution Rules (Act secs. 824 and 829)

1. Allow direct rollovers from retirement plans to Roth IRAs (Act sec. 824 and Code sec. 408A(c)(3)(B), (d)(3)(B))

The Act permits distributions from tax-qualified retirement plans, tax-sheltered annuities, and governmental 457 plans to be rolled over directly from such plan into a Roth IRA, subject to certain conditions. Such conditions include recognition of the distribution in gross income (except to the extent it represents a return of after-tax contributions) and phase-out of the ability to perform such a rollover pursuant to the distributee's adjusted gross income. The provision provides that a rollover from a Roth designated account in a tax-qualified retirement plan or tax-sheltered annuity (described in section 402A of the Code) to a Roth IRA is not subject to the gross income inclusion and adjusted gross income conditions.

2. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions (Act sec. 829 and Code sec. 402(c)(11), (f)(2)(A))

The Act permits rollovers of benefits of nonspouse beneficiaries from qualified plans and similar arrangements. The provision clarifies that the current law treatment with respect to a trustee-to-trustee transfer from an inherited IRA to another inherited IRA continues to apply.

Under the provision, effective for plan years beginning after December 31, 2008, rollovers by nonspouse beneficiaries are generally subject to the same rules as other eligible rollovers.

C. Health and Medical Benefits
(Act secs. 841 and 845)

1. Use of excess pension assets for future retiree health benefits and collectively bargained retiree health benefits (Act sec. 841 and Code sec. 420)

In the case of a section 420 transfer, present law requires the funded status of the defined benefit plan to be maintained by employer contributions or asset transfers from the health accounts. Under the provision, asset transfers from the health accounts to maintain the plan's funded status are not subject to the excise tax on reversions.

The provision also allows assets transferred to a health benefits account in a qualified section 420 transfer to be used to pay health liabilities in excess of current-year retiree health liabilities. In the case of a qualified future transfer, assets may be used to pay qualified current retiree health liabilities which the plan reasonably estimates will be incurred. In the case of a collectively bargained transfer, assets may be used to pay collectively bargained retiree health liabilities.

2. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers (Act sec. 845 and Code sec. 402(l))

The Act provides an exclusion from gross income for up to $3,000 annually for certain pension distributions used to pay for qualified health insurance premiums. Under IRS Notice 2007-7,[3] Q&A 23, the exclusion applies only to insurance issued by an insurance company regulated by a State (including a managed care organization that is treated as issuing insurance) and thus does not apply to self-insured plans. Under the provision, the exclusion applies to coverage under an accident or health plan (rather than accident or health insurance). That is, the exclusion applies to self-insured plans as well as to insurance issued by an insurance company.

[3] 2007-5 I.R.B. 395.

Under the provision, when determining the portion of a distribution that would otherwise be includible in income, the otherwise includible amount is determined as if all amounts to the credit of the eligible public safety officer in all eligible retirement plans were distributed during the taxable year. The provision also clarifies that the income exclusion only applies with respect to distributions from the plan (or plans) maintained by the employer from which the individual retired as a public safety officer.

D. United States Tax Court Modernization (Act secs. 854 and 856)

1. Annuities to surviving spouses and dependent children of special trial judges (Act sec. 854, Code sec. 3121(b)(5)(E), and Social Security Act sec. 210(a)(5)(E))

Under the Act, participation in the survivor annuity program for survivors of judges of the United States Tax Court is extended to special trial judges of the United States Tax Court, and conforming changes are made to various provisions of the Code. One of the conforming changes is to specify that employment for purposes of the Federal Insurance Contributions Act ("FICA") includes service performed as a special trial judge of the United States Tax Court. Under the provision, this conforming amendment is repealed. Thus, the provision provides that employment as a special trial judge of the United States Tax Court is covered employment for purposes of FICA under the rules that otherwise apply to Federal employees.

2. Provisions for recall (Act sec. 856 and Code Sec. 7443B)

The Act provides for rules regarding the temporary recall to judicial duties of retired special trial judges of the United States Tax Court and the compensation of such judges during the period of recall. The provision repeals these rules.

IX. AMENDMENTS RELATING TO TITLE IX OF THE ACT: INCREASE IN PENSION PLAN DIVERSIFICATION AND PARTICIPATION AND OTHER PENSION PROVISIONS

A. Defined Contribution Plans Required to Provide Employees with Freedom to Invest Their Plan Assets (Act sec. 901 and Code sec. 401(a)(35)(E))

Under the Act, the diversification requirements do not apply with respect to a one-participant retirement plan. The provision conforms the Code's definition of the term "one-participant retirement plan" to the definition of the term under ERISA.

B. Increasing Participation through Automatic Contribution Arrangements (Act sec. 902 and Code sec. 414(w))

The Act provides rules permitting an employee to withdraw certain amounts (referred to as "permissible withdrawals") in the case of an eligible automatic contribution arrangement under an applicable employer plan. The provision repeals the requirement that an eligible automatic contribution arrangement satisfy, in the absence of a participant investment election, the requirements of ERISA section 404(c)(5) (which generally authorizes the Secretary of Labor to issue regulations under which a participant is treated as exercising control over the assets in the participant's account under a plan with respect to default investments). The provision also extends the permissible withdrawal rules to SIMPLE IRAs (Code sec. 408(p)) and SARSEPs (Code sec. 408(k)(6)). The provision also provides that a permissive withdrawal is disregarded for purposes of applying the annual limitation on elective deferrals that applies to a taxpayer under Code section 402(g)(1).

The Act also provides that, in the case of a distribution of an excess contribution and income allocable to such contribution in order to satisfy the rules relating to a qualified cash or deferral arrangement under Code section 401(k) (or the similar distribution rules under Code section 401(m) in the case of excess aggregate contributions relating to matching contributions or employee contributions), the income that must be distributed is the income allocable to the excess contribution (or excess aggregate contribution) through the end of the year for which the distribution is made. The provision applies this limit on the amount of income that must be distributed to the rules that apply to the distribution of excess deferrals and allocable income under Code section 402(g).

C. Treatment of Eligible Combined Defined Benefit Plans and Qualified Cash or Deferred Arrangements (Act sec. 903, Code sec. 414(x)(1), and ERISA sec. 210(e))

Under the Act, a qualified employer may establish a combined plan that consists of a defined benefit plan and a qualified cash or deferral arrangement described in Code section 401(k), provided that certain requirements are satisfied. The Act also provides that the rules of ERISA are applied to the defined benefit component and the individual account component of a combined plan in the same manner as if each component were not part of the combined plan. Thus, for example, the defined benefit component of the combined plan may be subject to the insurance program in Title IV of ERISA, while the individual account component is not. The provision provides that in the case of a termination of a combined plan, the individual account and defined benefit components must be terminated separately.

X. AMENDMENTS RELATING TO TITLE X OF THE ACT: SPOUSAL PENSION PROTECTION PROVISIONS

A. Extension of Tier II Railroad Retirement Benefits to Surviving Former Spouses (Act sec. 1003)

The Act provides rules relating to the survivor benefits payable under the Railroad Retirement Act. The provision clarifies that a former spouse has an independent entitlement to immediate commencement of benefits if three conditions are satisfied. First, the employee must have completed 10 years of service in the railroad industry (or five years of service after December 31, 1995); second, the spouse or former spouse must have attained age 62; and third, the employee must have attained age 62. In addition, the provision provides that a former spouse's Tier II benefits under the Railroad Retirement Act continue after the death of the employee. The provision is effective for payments due for months after August, 2007.

XI. AMENDMENTS RELATING TO TITLE XI OF THE ACT: ADMINISTRATIVE PROVISIONS

A. No Reduction in Unemployment Compensation as a Result of Pension Rollovers (Act sec. 1105)

Under present law, unemployment compensation payable by a State to an individual generally is reduced by the amount of retirement benefits received by the individual. Under the Act, rollover contributions are not included in retirement payments for which States are required to reduce unemployment compensation under Federal law, however, States are not prohibited from reducing unemployment compensation by such rollover contributions. Under the provision, unemployment compensation payable by a State to an individual may not be reduced by the amount of a rollover contribution.

XII. OTHER PROVISIONS

A. Determination of Value of Plan Assets under Averaging Method (Act secs. 102 and 112, ERISA sec. 303(g)(3)(B), and Code sec. 430(g)(3)(B))

Present Law

In the case of a single-employer defined benefit pension plan, the Act provides new rules for determining minimum required contributions that must be made to fund the plan. In general, the minimum required contribution to a single-employer defined benefit pension plan for a plan year depends on a comparison of the value of the plan's assets with the plan's funding target and target normal cost for the plan year. These rules are generally effective for plan years beginning after December 31, 2007.

A plan's target normal cost for a plan year is the present value of all benefits expected to accrue or be earned under the plan during the plan year. A plan's funding target for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year. The Act specifies the interest rates that must be used in determining a plan's target normal cost and funding target. Under the Act, present value is determined using three interest rates ("segment" rates), each of which applies to benefit payments expected to be made from the plan during a certain period. The first segment rate applies to benefits reasonably determined to be payable during the five-year period beginning on the first day of the plan year; the second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial five-year period; and the third segment rate applies to benefits reasonably determined to be payable the end of the 15-year period. Each segment rate is a single interest rate determined monthly by the Secretary of the Treasury on the basis of a corporate bond yield curve, taking into account only the portion of the yield curve based on corporate bonds maturing during the particular segment rate period.

Under the Act, the value of plan assets is generally fair market value. However, the value of plan assets may be determined on the basis of the averaging of fair market values, but only if such method: (1) is permitted under regulations; (2) does not provide for averaging of fair market values over more than the period beginning on the last day of the 25th month preceding the month in which the plan's valuation date occurs and ending on the valuation date (or similar period in the case of a valuation date that is not the first day of a month); and (3) does not result in a determination of the value of plan assets that at any time is less than 90 percent or more than 110 percent of the fair market value of the assets at that time. Any averaging must be adjusted for contributions and distributions as provided by the Secretary of the Treasury.

Explanation of Provision

The provision provides that, in determining the value of a plan's assets under the averaging method, such averaging will be adjusted for expected earnings as specified by the Secretary of the Treasury. Such an adjustment is in addition to the present law adjustments for contributions and distributions. Expected earnings are to be determined by a plan's actuary on the basis of an assumed earnings rate for the plan that is specified by the actuary. The assumed earnings rate specified by the actuary cannot exceed the applicable third segment rate.

Effective Date

The provision is effective as if included in the Act.

B. Modification of Interest Rate Assumption Required with Respect to Certain Small Employer Plans (Act sec. 303 and Code sec. 415(b)(2)(E))

Present Law

Annual benefits payable under a defined benefit pension plan generally may not exceed the lesser of (1) 100 percent of average compensation, or (2) $185,000 (for 2008). The dollar limit generally applies to a benefit payable in the form of a straight life annuity. If the benefit is not in the form of a straight life annuity (e.g., a lump sum), the benefit generally is adjusted to an equivalent straight life annuity. For purposes of adjusting a benefit in a form that is subject to the minimum value rules, such as a lump-sum benefit, the interest rate used generally must be not less than the greater of: (1) 5.5 percent; (2) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the rate (or rates) applicable in determining minimum lump sums were used; or (3) the interest rate specified in the plan.

Explanation of Provision

Under the provision, in the case of a plan maintained by an eligible employer, the interest rate used in adjusting a benefit in a form that is subject to the minimum value rules generally must be not less than the greater of: (1) 5.5 percent; or (2) the interest rate specified in the plan. The term eligible employer is defined in the same manner as under section 408(p) (describing an employer which is eligible to sponsor a SIMPLE plan). Thus, for any year, the term means an employer which had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding year. An eligible employer who maintains a defined benefit pension plan for one or more years and who fails to be an eligible employer in a subsequent year is treated as an eligible employer for the two years following the last year the employer was an eligible employer (provided that the reason for failure to qualify is not due to an acquisition, disposition, or similar transaction involving the eligible employer).

Effective Date

The provision is effective for years beginning after December 31, 2007.

C. Determination of Market Rate of Return for Governmental Plans (Act sec. 701 and ADEA sec. 4(i))

Present Law

The Act amended the Code, ERISA, and ADEA, to provide for parallel age discrimination rules in the case of an applicable defined benefit plan. Included among the rules is a requirement relating to interest credits provided under such a plan. Under the Act, an applicable defined benefit plan is a defined benefit pension plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation. The Act also provides that the Secretary of the Treasury is to provide rules which include in the definition of an applicable defined benefit plan any defined benefit plan (or portion of such a plan) which has an effect similar to an applicable defined benefit plan.

Under the parallel Code, ERISA, and ADEA rules, an applicable defined benefit plan satisfies the interest credit requirement if the terms of the plan provide that any interest credit (or equivalent amount) for any plan year is at a rate that is not less than zero and is not greater than a market rate of return. The Act provides that the Secretary of the Treasury may provide rules governing the calculation of a market rate of return and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return that meet the requirements of the provision. The Code and ERISA rules do not apply in the case of an applicable defined benefit plan that is a governmental plan. A governmental plan is generally defined for this purpose as a plan that is 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 an agency or instrumentality of any of the foregoing.

In the case of a plan in existence on June 29, 2005, the interest credit requirements for an applicable defined benefit plan generally apply to years beginning after December 31, 2007. In the case of a plan maintained pursuant to one or more collective bargaining agreements, a delayed effective date applies.

Explanation of Provision

Under the provision, ADEA is amended to provide that, in the case of a governmental plan, a rate of return or method of crediting interest that is established pursuant to any provision of Federal, State, or local law (including any administrative rule or policy adopted in accordance with any such law) is generally treated as a market rate of return and as a permissible method of crediting interest for purposes of the Act's interest credit requirement. This special treatment does not apply, however, if the rate of return or method of crediting interest violates another requirement of ADEA (other than the interest credit requirement).

Effective Date

The provision is effective as if included in the Act.

D. Treatment of Certain Reimbursements from Governmental Plans for Medical Care (Code sec. 105)

Present Law

The gross income of an employee generally does not include employer-provided coverage under an accident or health plan. With respect to amounts received under such a plan, section 105(a) provides that such amounts are includible in gross income to the extent (1) such amounts are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer. Notwithstanding this general inclusion rule, section 105(b) provides that gross income does not include amounts received if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for medical care expenses of the taxpayer, the taxpayer's spouse, or the taxpayer's dependents.[4]

In Revenue Ruling 2006-36,[5] the Internal Revenue Service held that amounts paid to an employee under a medical expense reimbursement plan are not excludible from an employee's gross income if the plan permits amounts to be paid as medical benefits to a designated beneficiary, other than the employee's spouse or dependents. Thus, under the ruling, none of the amounts paid by such a plan to any person, including reimbursements of medical expenses of the employee, the employee's spouse, or the employee's dependents, are excludible.

Explanation of Provision

The provision provides that, for purposes of section 105(b), amounts paid (directly or indirectly) to a taxpayer from a specified health plan shall not fail to be excluded from gross income solely because the plan provides for reimbursements of health care expenses of a deceased plan participant's beneficiary. In order for the provision to apply, the plan must have provided for reimbursement of a deceased participant's beneficiary on or before January 1, 2008. A specified plan is an accident or health plan that is funded by a medical trust that is established in connection with a public retirement system if such trust (1) has been authorized by a State legislature; or (2) has received a favorable ruling from the Internal Revenue Service that the trust's income is not includible in gross income under section 115 (providing an exclusion from gross income for States and their political subdivisions).

Effective Date

The provision is effective with respect to payments made before, on, or after enactment.

E. Rollover of Amounts Received in Airline Carrier Bankruptcy to Roth IRAs

Present Law

The Code provides for two types of individual retirement arrangements ("IRAs"): traditional IRAs and Roth IRAs.[6] In general, contributions (other than a rollover contribution) to a traditional IRA may be deductible, and distributions from a traditional IRA are includible in gross income to the extent not attributable to a return of nondeductible contributions. In contrast, contributions to a Roth IRA are not deductible, and qualified distributions from a Roth IRA are excludable from gross income. Distributions from a Roth IRA that are not qualified distributions

[4] As defined in section 152, but determined without regard to sections (b)(1), (b)(2), and (d)(1)(B).

[5] 2006-2 C.B. 353. The ruling is effective for plan years beginning after December 31, 2008, in the case of plans including certain reimbursement provisions on or before August 14, 2006.

[6] Traditional IRAs are described in Code section 408, and Roth IRAs are described in Code section 408A.

are includible in gross income to the extent attributable to earnings. In general, a qualified distribution is a distribution that is made on or after the individual attains age 59-½, death, or disability or which is a qualified special purpose distribution.

The total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount ($5,000 for 2008); or (2) the amount of the individual's compensation that is includible in gross income for the year. As under the rules relating to traditional IRAs, a contribution of up to the dollar limit for each spouse may be made to a Roth IRA provided the combined compensation of the spouses is at least equal to the contributed amount. The maximum annual contribution that can be made to a Roth IRA is phased out for taxpayers with adjusted gross income for the taxable year over certain indexed levels. The adjusted gross income phase-out ranges for 2008 are: (1) for single taxpayers, $101,000 to $116,000; (2) for married taxpayers filing joint returns, $159,000 to $169,000; and (3) for married taxpayers filing separate returns, $0 to $10,000.

The foregoing contribution limitations for IRAs do not apply in the case of a rollover contribution to an IRA. If certain requirements are satisfied, a participant in an employer-sponsored qualified plan (which includes a tax-qualified retirement plan described in section 401(a), an employee retirement annuity described in section 403(a), a tax-sheltered annuity described in section 403(b), and a governmental section 457(b) plan) or a traditional IRA may roll over distributions from the plan, annuity or IRA into another plan, annuity or IRA. For distributions after December 31, 2007, certain taxpayers also are permitted to make rollover contributions into a Roth IRA (subject to inclusion in gross income of any amount that would be includible were it not part of the rollover contribution).

Explanation of Provision

Under the provision, a qualified airline employee may transfer any portion of an airline payment amount to a Roth IRA within 180 days of receipt of such amount (or, if later, within 180 days of enactment of the provision). Such a transfer is treated as a qualified rollover contribution to the Roth IRA. Thus, the portion of the airline payment amount transferred to the Roth IRA is includible in gross income to the extent that such payment would be includible were it not part of the rollover contribution.

Under the provision, an airline payment amount is defined as any payment of any money or other property payable by a commercial passenger airline to a qualified airline employee: (1) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007; and (2) in respect of the qualified airline employee's interest in a bankruptcy claim against the airline carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount. In determining the amount that may be transferred to a Roth IRA under the provision, any reduction in the airline payment amount on account of employment tax withholding is disregarded. A qualified airline employee is an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which (1) is qualified under section 401(a) and (2) was terminated or became subject to the benefit accrual and other restrictions applicable to plans maintained by commercial passenger airlines pursuant to paragraphs 402(b)(2) and (3) of the Act.

Effective Date

The proposal is effective with respect to transfers to a Roth IRA made after enactment with respect to airline payment amounts paid before, on, or after such date.

F. Increase in Penalty for Failure to File Partnership Returns (Code sec. 6698)

Present Law

A partnership generally is treated as a pass-through entity. Income earned by a partnership, whether distributed or not, is taxed to the partners. Distributions from the partnership generally are tax-free. The items of income, gain, loss, deduction or credit of a partnership generally are taken into account by a partner as allocated under the terms of the partnership agreement. If the agreement does not provide for an allocation, or the agreed allocation does not have substantial economic effect, then the items are to be allocated in accordance with the partners' interests in the partnership. To prevent double taxation of these items, a partner's basis in its interest is increased by its share of partnership income (including tax-exempt income), and is decreased by its share of any losses (including nondeductible losses).

Under present law, a partnership is required to file a tax return for each taxable year. The partnership's tax return is required to include the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual. In addition to applicable criminal penalties, present law imposes a civil penalty for the failure to timely file a partnership return. The penalty generally is $86 per partner (for a taxable year beginning in 2008) for each month (or fraction of a month) that the failure continues, up to a maximum of 12 months.

Explanation of Provision

Under the provision, the penalty for failure to file partnership returns is increased by $4 per partner.

Effective Date

The provision applies to returns required to be filed after December 31, 2008.

G. Penalty for Failure to File S Corporation Returns (Code sec. 6699)

Present Law

In general, an S corporation is not subject to corporate-level income tax on its items of income and loss. Instead, an S corporation passes through its items of income and loss to its shareholders. The shareholders take into account separately their shares of these items on their individual income tax returns.

Under present law, S corporations are required to file a tax return for each taxable year. The S corporation's tax return is required to include the following: the names and addresses of all persons owning stock in the corporation at any time during the taxable year; the number of shares of stock owned by each shareholder at all times during the taxable year; the amount of money and other property distributed by the corporation during the taxable year to each shareholder and the date of such distribution; each shareholder's pro rata share of each item of the corporation for the taxable year; and such other information as the Secretary may require.

Present law imposes a monthly penalty for any failure to timely file an S corporation return or any failure to provide the information required to be shown on such a return. The penalty is $85 times the number of shareholders in the S corporation during any part of the taxable year for which the return was required, for each month (or a fraction of a month) during which the failure continues, up to a maximum of 12 months.

Explanation of Provision

Under the provision, the penalty for failure to file S corporation returns is increased by $4 per shareholder.

Effective Date

The provision applies to returns required to be filed after December 31, 2008.