Summary and Comparison of Defined Contribution Provisions in Pension Reform Bills

Issue	Current Law	The Defined Benefit Security and Transparency Act (S. 1783)	Ways and Means Version Pension Protection Act of 2005 (H.R. 2830)	Comments
EGTRRA permanence	The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) made several changes affecting retirement plans and IRAs, including increasing contribution limits. These provisions are generally scheduled to expire after 2010. Saver's credit (a credit of up to 50 percent of the first $2,000 contributed to a retirement plan or IRA by lower income participants) is scheduled to expire after 2006.	No provision.	The bill would make the EGTRRA retirement plan and IRA changes permanent, including Saver's credit.	
Automatic enrollment	Plans that provide for automatic enrollment (automatic employee contributions unless the employee opts out) are permitted but there have been concerns about the effect of state wage withholding restrictions (garnishment laws) and concerns about fiduciary liability for default investments. There are no special rules for plans that provide for automatic enrollment.	Provides a nondiscrimination safe harbor for plans with an automatic enrollment feature that meets certain requirements including 50 percent match of first 7 percent contributed by employee (or 3 percent non-elective contribution) and 100 percent vesting after 2 years. Employees must be allowed to participate in the plan no later than first of quarter following employment. Automatic enrollment under safe harbor would be required for current employees and new hires. Would preempt state wage withholding restriction laws and direct DOL to provide fiduciary safe harbor for	Provides nondiscrimination safe harbor for plans with an automatic enrollment feature that meets certain requirements including 50 percent match of first 6 percent contributed by employee (or 2 percent non-elective contribution) and 100 percent vesting after 2 years. Less stringent safe harbor than the Senate bill in that no special eligibility requirements and automatic enrollment would only be required for new hires. Ways & Means passed bill does not contain provisions preempting state wage withholding restriction laws	Although both bills contain provisions intended to allow distributions of small amounts when the participant belatedly notices the deferrals and does not want to participate, the House provisions only alleviates the 10 percent premature distribution penalty but does not address the need for statutory authorization of the distribution.

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		default investments.	and directions to the DOL on providing a fiduciary safe harbor for default investments but these provisions are expected to be added as bill moves through House.	
Rollovers by non-spouse beneficiaries	Generally, a distribution from a qualified plan, a tax-deferred annuity, 457 plan or an IRA is included in income in the year distributed. However, eligible rollover distributions may be rolled over tax-free within 60 days to another plan, annuity, or IRA. Eligible rollover distributions generally include any distribution to the participant (or IRA owner) other than certain periodic distributions, minimum required distributions, and distributions made on account of hardship. Similar distributions are permitted in the case of a distribution to the surviving spouse of the participant or IRA owner, but not to other persons.	Bill would permit direct transfers by non-spouse beneficiaries from a qualified plan, tax-deferred annuity, or 457 plan to an IRA, which is treated as an inherited IRA (i.e., not an IRA of the non-spouse beneficiary) for purposes of the minimum distribution rules.	Bill includes amendment by Rep. Ben Cardin (D-MD) that permits non-spouse rollovers under provisions similar to the Senate bill.	
Employer security diversification rights	Employer matching and non-elective contributions may be made in a variety of forms, including in the form of employer stock. In addition, some companies require that contributions in employer stock continue to be held as employer stock for some period of	Effective January 1, 2006[1], would allow participants to diversify out of employer stock purchased through employee elective deferrals and would allow participants with 3 or more years of service to diversify out of other employer stock. Allows 3-year transition	No provision.	

[1] References to an effective date of January 1, 2006 (or another January 1) indicates requirement applies to plan years beginning after the last day of the preceding calendar year.

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	time (e.g., until the participant attains a certain age and/or has a certain number of years of service). With respect to employee elective deferrals, applicable rules generally limit the ability of plans to require that more than 10 percent of elective deferrals be invested in employer stock, although a number of exceptions apply. ESOPs have special rules that require plan amounts to be invested primarily in employer securities although limited diversification is permitted in the case of participants who have attained age 55 and have 10 years of service.	period for employer stock held on December 31, 2005. Would prohibit any plan from imposing restrictions and conditions (such as holding periods) on investments in employer stock that it does not impose on other investment options in the plan. Would require plans to offer at least 3 investment options. The diversification requirements would not apply to ESOPs that do not hold employee deferrals or matching contributions.		
Notice of divestiture rights	No requirement.	Effective January 1, 2006, (but no notice required prior to 90 days after enactment), requires plan administrator to provide notice to participants and beneficiaries at least 30 days before they are eligible to diversify out of employer stock. Notice must spell out the rights and describe the importance of diversifying the investment of retirement account assets. If the individual is first eligible to exercise diversification rights at different times, separate notices are required. DOL is to provide model notice within 180 days of enactment. An excise tax of $100 per day per participant or beneficiary may be imposed for each violation.	No provision.	It would be difficult to provide 30 days prior notice of the right to diversify employer stock purchased with employee deferrals if the employee is immediately eligible to participate and invest in employer stock.

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Quarterly benefit statements	Plan administrator must furnish a benefit statement to any participant or beneficiary who makes a written request for it. Common practice for DC plans is to provide a quarterly statement.	Effective January 1, 2007, plan administrator generally must provide (1) quarterly statements to participants and beneficiaries in DC plans who have the right to direct investments, and (2) annual statements for other DC plans. Statements for all plans must include total accrued benefits (including an explanation of any offset or adjustment for permitted disparity) and total vested benefits (or the earliest date at which vesting will occur). Alternatively, the vesting information can be provided through a separate statement that provides the information necessary to enable the participant or beneficiary to determine their vested benefits. Statements for DC plans must include the value of each investment held by the individual, including employer stock, an explanation of any limitations or restrictions on any right of the individual to direct an investment, and a notice that investments may not be adequately diversified if the value of any investment in the account exceeds 20 percent of the fair market value of all investments in the account. DOL is to provide one or more model benefit statements within 180 days of enactment. An excise tax of $100 per day per participant or	No provision.	Requirement that statement include a warning that the participant may not be adequately diversified if the value of any investment exceeds 20 percent of the fair market value of the account is too broadly written – it would apply if, for example, the participant invested 100 percent of the account in a Lifecycle or Balanced fund. It would also apply if the participant invested 50 percent in a stock index fund and 50 percent in a bond index fund.

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		beneficiary may be imposed for each violation.		
Investment education	No requirement.	Effective January 1, 2007, requires plan administrators to provide at least once per year a model form relating to basic investment guidelines to each participant or beneficiary who has the right to direct investments in their account under the plan. Treasury and DOL are to develop and make a model available. An excise tax of $100 per day per participant or beneficiary may be imposed for each violation.	No provision.	
Investment advice	ERISA establishes general standards of fiduciary responsibility. In addition to these general fiduciary standards, ERISA and the Code contain sweeping provisions that identify certain "prohibited transactions" between retirement plans and parties in interest, and then provide a series of exemptions from those sweeping prohibitions if specified conditions are met. As a result of the rigid application of the prohibited transaction rules, employers and plan sponsors have encountered significant barriers in arranging for the delivery of investment advice needed by plan participants and beneficiaries to make prudent decisions regarding their retirement plan assets. However, some employers are providing independent, third-party advice	Effective as of the date of enactment, neither the employer nor other plan fiduciary of a participant-directed DC plan would be liable under the general ERISA fiduciary rules with regard to investment advice provided by a "qualified investment adviser," so long as certain safe harbor requirements are satisfied in selecting the investment adviser and the investment adviser meets certain disclosure requirements. Does not provide relief from the prohibited transaction rules under the Code and ERISA.	A new statutory exemption from the prohibited transaction rules would be created in order to facilitate the provision of investment advice to participants. The exemption would be available only for investment advice provided by a "fiduciary adviser" that meets a series of requirements. In order to qualify for the exemption, a number of specific requirements and participant protections would have to be satisfied. First, all of ERISA's fiduciary obligations would apply to the provision of investment advice under the new exemption. In addition, any compensation received by an adviser in connection with advice rendered under the exemption would have to be	

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	under guidance issued by the Department of Labor in what has become known as the "Sun America letter."		reasonable. In addition, the fiduciary adviser would be required, at a time "reasonably contemporaneous with the initial provision of advice", to provide the recipient with certain information including the amount of any fees or compensation received as well as information on the adviser's services and relationships with other parties.	
Qualified retirement planning services	Employers can provide certain fringe benefits, including qualified retirement planning services, which are excludable from gross income and wages for employment tax purposes. The exclusion does not apply to highly compensated employees unless available on substantially the same terms generally to all employees covered by the employer's qualified retirement plan.	Employers would be allowed to offer employees a choice between cash compensation and qualified retirement planning services provided by an "eligible investment adviser" on a pre-tax basis (capped at $1,000 per participant per year). Provision would be effective for taxable years beginning after December 31, 2005, and before January 1, 2011.	No provision.	
Study of spousal consent for DC plans	Defined benefit pension plans and money purchase pension plans (MPPP) are generally required to provide benefits in the form of a qualified joint and survivor annuity (QJSA) unless the participant and his or her spouse consent to another form of benefit. A QJSA is an annuity for the life of the participant, with a survivor annuity for the life of the spouse that is not less than 50 percent of the amount of the annuity payable during the	Provision from Finance Committee bill that directed DOL and Treasury to conduct a joint study to examine the feasibility of imposing spousal consent requirements, similar to the QJSA and QPSA rules, on all DC plans was dropped.	No provision.	

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	joint lives of the participant and his or her spouse. In addition, if a married participant dies before commencing retirement benefits, the surviving spouse must be provided with a preretirement survivor annuity (QPSA) at least as much as the survivor portion of the QJSA. Both the QJSA and QPSA can be waived if certain notice and consent requirements are satisfied. The QJSA and QPSA requirements generally do not apply to DC plans, other than a MPPP.			
Clarification of QDRO rules	Benefits provided under a qualified retirement plan may not be assigned or alienated to creditors of the participant, except in very limited circumstances. One exception is a qualified domestic relations order (QDRO), which is a domestic relations order that creates or recognizes a right of an alternate payee, including a former spouse, to any plan benefit payable with respect to a participant, and that meets certain content and procedural requirements.	DOL is directed to issue, not later than one year after the date of enactment, regulations to clarify the status of certain domestic relations orders, including that a QDRO will not fail to be a QDRO solely because it is issued after or modifies a previous domestic relations order or QDRO, or because of the time at which it is issued.	No provision.	
Modification of QJSA requirements	See description under study of spousal consent for DC plans	Effective January 1, 2006, participants would be allowed to elect a new "qualified optional survivor annuity (QOSA)," defined as an annuity for the life of the participant with a survivor annuity for the life of the spouse that is either 50 or 75 percent of the annuity payable during the joint	No provision.	

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		lives of the participant and spouse, depending on the percentage survivor annuity under a plan's QJSA. If the survivor annuity of the QJSA is less than 75 percent, the QOSA is 75 percent. If the survivor annuity of the QJSA is 75 percent or greater, the QOSA is 50 percent.		
Faster vesting	Generally, employees must vest in employer contributions under one of two minimum vesting schedules. Under the first schedule, the participant acquires a nonforfeitable right to 100 percent of employer contributions plus earnings upon completion of five years of service. Under the second schedule, a participant has to have a nonforfeitable right to at least 20 percent after 3 years of service, and increase by 20 percent per year until the participant is 100 percent vested after 7 years of service. Employer matching contributions have faster vesting schedules: 100 percent after 3 years or 20 percent after 2 years, increasing by 20 percent per year.	Effective January 1, 2006, bill would apply the present-law vesting schedule for matching contributions to all employer contributions to DC plans.	No provision.	
Rollovers to Roth IRAs	If certain requirements are met, a participant in a tax-qualified retirement plan, a tax-shelter annuity or a 457 plan may roll over distributions from a plan or annuity into a traditional IRA (see rollovers by non-spouse beneficiaries for basic description of rollover rules). Distributions from such plans may not be rolled over into a Roth IRA.	Effective January 1, 2006, distributions from tax-qualified retirement plans, tax-shelter annuities and 457 plans could be rolled over directly from such plans into a Roth IRA, subject to the present law rules that apply to rollovers from a traditional IRA into a Roth IRA.	No provision.	

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	Taxpayers with modified AGI of $100,000 or less generally may roll over amounts in a traditional IRA into a Roth IRA. The amount rolled over is includible in income as if a withdrawal had been made, except that the 10 percent early withdrawal tax does not apply. Amounts that have been distributed from a tax-qualified plan, tax-sheltered annuity or 457 plan may be rolled over into a traditional IRA, and then rolled over from the traditional IRA into a Roth IRA.			
Benefit transfers to the PBGC (expansion of PBGC's missing participant program).	If a participant ceases to be employed by the plan sponsor, a plan may distribute the participant's nonforfeitable accrued benefit without the consent of the participant and, if applicable, the participant's spouse, if the present value of the benefit does not exceed $5,000. If the involuntary distribution exceeds $1,000 and is an eligible rollover distribution, the plan administrator must roll over the distribution to an IRA, unless the participant elects to have the distribution transferred to a different IRA, or a qualified plan or to receive it directly. If the plan administrator of a terminating DB plan cannot locate a participant after a diligent search, the plan administrator can transfer the participant's benefit to the PBGC which holds the benefit of the	Bill would provide an alternative to the automatic rollover to an IRA of an involuntary distribution that exceeds $1,000 by allowing transfer of the benefit to the PBGC under an expanded version of the PBGC's missing participant program. The bill would also apply the missing participant program to defined contribution and multiemployer plans.	No provision.	

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	missing participant until the PBGC finds the participant and distributes the benefit. The PBGC missing participant program is not available to multiemployer and DC plans.			
Notice and consent period for distributions	If the present value of the participant's vested accrued benefit exceeds $5,000, the plan may not distribute the participant's benefit without the written consent of the participant. The consent is not valid unless the participant has received a notice that meets certain requirements. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.	The notice and consent rules would be modified to extend the maximum time period for providing certain distribution notices from 90 days to 180 days before the distribution date.	No provision.	
Reporting simplification for small plans	Plan administrators are required to file an annual report for each plan year containing certain information with respect to the qualification, financial condition, and operation of the plan. The plan administrator of a "one-participant plan" can file a simplified version of the annual report if the plan assets does not exceed $100,000 (and have not exceeded $100,000 as of any plan year beginning on or after January 1, 1994).	Treasury and the DOL would be directed to simplify the annual reporting rules (Form 5500) for plans with fewer than 25 employees and to exempt one-participant plans with less than $250,000 from filing an annual report.	No provision.	
DB/K Plan	No special rules	Provides rules for DB/K plans, which are a combination of a defined benefit plan and a section 401(k) plan. The defined benefit and 401(k) components of the DB/K plan are subject to the	No provision.	The DB/K proposal provides incentives and a simplified reporting requirement for small businesses establishing DB/K plans.

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		present-law rules for defined benefit plans and 401(k) plans. But a DB/K plan that meets certain requirements enjoys certain advantages discussed below. The defined benefit component of a DB/K is required to provide a minimum benefit of 1 percent of final average compensation per year of service up to 20 years (if a cash balance plan is used, minimum contributions are based on the age of the participant). Benefits under the defined benefit component must be fully vested after 3 years. The 401(k) component must provide matching contributions of at least 50 percent up to 4 percent of compensation. The matching contributions must be fully vested and satisfy other present-law rules for safe harbor contributions. In addition, the 401(k) component must provide for automatic enrollment up to 4 percent of pay. A DB/K that satisfies these requirements (1) is exempt from the top-heavy rules; (2) deemed to satisfy the ADP test for elective contributions; (3) may be funded through a single trust; and (4) may file a single Form 5500 annual return (and a single SAR).		

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		The proposal would be effective for plan years beginning after December 31, 2006.		
Excess contributions	Section 401(k) plans are required to pass certain non-discrimination tests on an annual basis. When plans fail this test, a common method used to fix the problem is to distribute enough "excess contributions" to highly compensated employees so that the plan passes the test. These excess contributions must be distributed within 2-1/2 months following the end of the plan year and these distributions are taxed to the employee in the year in which they were contributed to the plan (generally, the year preceding the distribution).	Provision would allow distribution within 6 months after the end of a plan year and distribution would be taxable to the employee in the year distributed.	No provision.	
Penalty-free distributions if called up to military	Under current law, a participant who receives a distribution from a qualified retirement plan prior to age 59-1/2, death or disability general is subject to a 10 percent premature distribution penalty on the amount includible in income, unless an exception to the tax applies. In addition, certain amounts held in a 401(k) or 403(b) plan may not be distributed before severance from employment, age 59-1/2, death, disability, or financial hardship of the participant.	No provision.	The 10 percent premature distribution penalty does not apply to a "qualified reservist" distribution to an individual who is called to active duty for a period in excess of 179 days or for an indefinite period. Such a distribution will not violate the distribution rules applicable to 401(k) and 403(b) plans. The individual may make one or more contributions to an IRA of the amount distributed during the two-year period beginning on the day after the end of the active duty period (but not ending before	

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			two years after enactment). Effective for individuals ordered or called to active duty after September 11, 2001, and before September 12, 2007.	
Safest available annuity standard	The Department of Labor previously issued Interpretive Bulletin 95-1 which subjects plan fiduciaries to the safest available annuity standard when selecting an annuity provider to pay plan benefits. Although the interpretative bulletin was issued in connection with issues arising for defined benefit plans, plan sponsors may be concerned that the safest available annuity standard applies to the selection of an annuity contract as an optional form of benefit under a defined contribution plan.	Bill contains a provision that directs the Department of Labor, not later than one year after enactment, to issue final regulations clarifying that the selection of an annuity contract as an optional form of benefit under a defined contribution plan is not subject to the safest available annuity standard. The provision would be effective on the date of enactment.	No provision.	