Leading Proposals Affecting Defined Contribution and Other Retirement Arrangements (Other Than Pension Funding and Hybrid Plan Proposals)

[Note: Includes discussion of H.R. 1000, which passed the House in 2003 and included Enron-inspired changes to the treatment of company stock (and related diversification rights) that are comparable to changes included in S. 1783.]

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
PERMANENCE				
RETIREMENT PLANS	The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") made numerous changes affecting retirement plans and IRAs. These provisions sunset (*i.e.*, expire) after 2010.	Makes permanent the provisions of EGTRRA that relate to retirement plans and IRAs.	No provision.	The provisions affected by the EGTRRA sunset include changes that expanded the contribution limits for IRAs and retirement plans and created catch-up contributions for those age 50 and older. The EGTRRA sunset also affects a host of other important provisions, including creating Roth 401(k) plans, providing incentives for small businesses to offer pension plans, and facilitating state government plans.
SAVER'S CREDIT	The Saver's Credit is a non-refundable tax credit available to eligible taxpayers that satisfy certain AGI limits and make contributions to a defined contribution plan or IRA. The Saver's Credit is scheduled to expire at the end of 2006.	Makes the Saver's Credit permanent. Provides that the Saver's Credit may be paid at an individual's election to a tax-favored retirement arrangement (*e.g.*, qualified plan or IRA) designated by the taxpayer.	No provision. [The Saver's Credit would be extended through 2009 under the Senate-passed tax budget reconciliation bill (S. 2020).]	H.R. 2830 does not make the Saver's Credit refundable generally. Instead, H.R. 2830 allows an individual to choose to contribute the Saver's Credit to a plan or IRA. The character of amounts paid to a plan or IRA is not entirely clear. Under an earlier version (H.R. 1961), the Saver's Credit would

[1] H.R. 2830, The Pension Protection Act of 2005, was approved by the full House on December 15, 2005. The final House-passed language was a managers' amendment (the "Managers' Amendment") that merged and amended versions of the bill previously reported by the Education & Workforce Committee in June 2005 and the Ways & Means Committee in November 2005.

[2] S. 1783, The Pension Security and Transparency Act of 2005, was approved by the full Senate on November 16, 2005.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		[The Saver's Credit would also be extended through 2008 under the Ways and Means reported tax budget reconciliation bill (H.R. 4297).]		be treated as a Roth contribution and such amounts (including earnings) would be entirely non-taxable if paid as part of a qualifying Roth distribution.
AUTOMATIC ENROLLMENT				
OVERVIEW	Automatic enrollment -- whereby an employee is treated as having elected to make salary reduction contributions at a stated level unless the employee affirmatively elects otherwise – has a powerful effect on participation, particularly among lower and moderate-income workers. To date, however, relatively few employers have implemented automatic enrollment programs because there are few incentives to establish these programs and because of uncertainty surrounding the effect of ERISA and state garnishment laws.	Clarifies that ERISA preempts state garnishment laws. Clarifies the scope of fiduciary responsibility for default investment selections. Provides for a nondiscrimination safe harbor for 401(k) plans (and 403(b) plans, discussed below) with an automatic enrollment feature that meet certain requirements, as discussed below. Permits plans with an automatic enrollment feature to make corrective distributions of small amounts if a participant chooses to opt out shortly after automatic deferrals have started.	Like H.R. 2830, clarifies that ERISA preempts state garnishment laws. Like H.R. 2830, clarifies the scope of fiduciary responsibility for default investment selections. Like H.R. 2830, provides a new nondiscrimination safe harbor for 401(k) plans (and apparently 403(b) plans, discussed below) with an automatic enrollment feature that meet certain requirements. Like H.R. 2830, permits plans with an automatic enrollment feature to make corrective distributions.	The preemption and default investment provisions of H.R. 2830 were added as part of the Managers' Amendment approved by the full House on December 15.
ERISA PREEMPTION	Some have expressed concern that automatic enrollment may violate state garnishment laws because employees' wages are withheld without the affirmative consent of the employee.	Preempts any state law that would prohibit or restrict the inclusion of an automatic enrollment feature, provided that the plan provides notice to affected employees within a reasonable period before each year, including an explanation of (1) an employee's right to opt out of the automatic enrollment feature and (2) how contributions made under the arrangement will be invested. Grants the Secretary of Labor authority to issue regulations establishing minimum standards that automatic enrollment arrangements must satisfy in order to enjoy state law preemption.	Similar to H.R. 2830.	Preemption of state garnishment laws under both bills is limited to plans that are covered by ERISA. As a result, plans maintained by state and local governments and non-ERISA 403(b) arrangements may continue to face potential issues under state garnishment laws.
DEFAULT	ERISA section 404(c) provides that	Directs the Secretary of Labor to issue	Similar to H.R. 2830. Directs the	The Department of Labor is currently

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
INVESTMENTS	where a participant or beneficiary exercises control over the assets in their individual account, no person who is otherwise a fiduciary shall be liable for any loss or breach resulting from the participant or beneficiary's exercise of control. Department of Labor regulations condition "404(c) relief" upon satisfaction of a number of regulatory requirements, including notice and disclosure requirements. Section 404(c) does not provide relief from fiduciary responsibility for the selection (and ongoing monitoring) of investment choices made available under a plan but only from the direct results of investment decisions.	regulations that provide guidance on the appropriateness of default investments that include "asset classes which the Secretary considers consistent with long-term capital appreciation," and the designation of other default investments. Provides that a participant shall be treated as having elected to have the plan sponsor exercise control over assets in his or her individual account until the participant specifically elects to exercise control, where contributions are invested in accordance with prescribed regulations if each participant (1) receives, within a reasonable period of time before each plan year, a notice explaining the employee's right under the plan to make investment elections, (2) has a reasonable period after the receipt of notice and before the beginning of the year to make an election, and (3) receives a notification explaining how contributions made under the arrangement will be invested.	Secretary of Labor to issue final regulations no later than 6 months after the date of enactment, which provide safe harbor guidance on the appropriateness of designating default investments that include "a mix of asset classes consistent with capital preservation, long-term capital appreciation, or a blend of both." Same relief as H.R. 2830.	working on default investment guidance generally along the lines provided in H.R. 2830 and S. 1783. One question that has arisen in connection with this guidance project is whether the relief for default investments will be conditioned upon satisfaction of all of the regulatory requirements applicable under 404(c). In this regard, both H.R. 2830 and S. 1783 add the default investment relief to section 404(c) of ERISA and some have expressed concern that this suggests that the relief would be contingent on satisfaction of all of section 404(c)'s requirements. However, nothing in the statute explicitly addresses this issue and it is difficult to see a policy reason for so conditioning the relief. Plans maintained by state and local governments (and other arrangements exempt from ERISA) would continue to be covered by applicable state law governing default investments.
CORRECTIVE DISTRIBUTIONS	With limited exceptions, current law rules prohibit in-service distributions from 401(k) plans and 403(b) arrangements for amounts attributable to elective deferrals. In addition, a 10% penalty tax applies to certain early distributions.	Plans with an automatic enrollment feature may allow employees to elect a corrective distribution in an amount equal to the lesser of (i) $500 or (ii) the automatic elective contributions made during the first 3 months after the start of automatic contributions. Corrective distributions must be made by April 15 following the year in which the deferrals are made and corrective distributions are exempt from the 10% penalty tax. Applies to 401(k) and 403(b) plans, and governmental 457(b) plans.	Generally the same as H.R. 2830. However, the withdrawal must be made within 60 days after the start of automatic contributions and the amount must equal all amounts attributable to elective deferrals made between the start of automatic contributions and the date an election is made requesting a corrective distribution. Corrective distributions must be made within 6 months after the end of the plan year and are exempt from the 10% penalty tax. Applies to 401(k), 403(b) and governmental 457(b) plans.	The corrective distribution rules allow plans to pay out small amounts (at the election of an employee) that were contributed in connection with an automatic enrollment arrangement before the employee took advantage of the opportunity to opt out. There are a number of technical questions about the corrective distribution provisions, including, for example, whether corrective distributions are taken into account in the ADP test. The Managers' Amendment extended

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
				the corrective distribution provisions of H.R. 2830 to governmental 457(b) plans. One technical glitch in H.R. 2830 was addressed by the addition of an exception to the prohibition against in-service withdrawals as part of the Managers' Amendment.
SAFE HARBOR – **IN GENERAL**	401(k) plans generally must satisfy the ADP test, which compares the actual deferral percentages of highly compensated employees ("HCEs") to the deferral percentages of non-highly compensated employees ("NHCEs"). In addition, 401(k) plans that provide for matching or after-tax employee contributions must satisfy the ACP test, which compares the rate at which HCEs receive matching contributions (and make after-tax employee contributions) to the rate at which NHCEs receive matching contributions. 401(k) plans are also subject to certain requirements that ensure that owners and key employees do not disproportionately benefit under the plan, called "top-heavy rules." A 401(k) plan that satisfies certain contribution, notice and vesting requirements (a "safe harbor plan") is deemed to satisfy these requirements (other than with respect to after-tax employee contributions).	Provides an additional nondiscrimination safe harbor for plans with an automatic enrollment feature. Plans that satisfy the automatic enrollment safe harbor (1) would be deemed to satisfy the ADP and ACP tests (with respect to matching contributions), and (2) would not be subject to the top-heavy plan rules.	Same as H.R. 2830.	The existing safe harbor would continue to be available to plans. Both bills would simply add a new safe harbor for plans with an automatic enrollment feature. In general, the new safe harbor for plans with automatic enrollment features is more flexible than the current safe harbor in terms of the contribution and vesting requirements that such a plan must satisfy, as discussed below.
SAFE HARBOR -- **403(b) ARRANGEMENTS**	403(b) arrangements are not subject to the ADP test but are subject to the ACP test (unless a governmental plan). Nothing in the current law safe harbor explicitly addresses 403(b) arrangements. However, the IRS has indicated that 403(b) arrangements are eligible to rely on the ACP safe harbor with respect to matching contributions.	Does not directly address 403(b) arrangements but creates an ACP safe harbor for matching contributions that would appear to be available to 403(b) arrangements.	Directly addresses 403(b) arrangements but only in the context of blessing the use of the current law safe harbor for 403(b) arrangements.	The current law safe harbor does not explicitly address 403(b) arrangements. Instead, these arrangements are covered by the safe harbor indirectly. H.R. 2830 follows this approach in extending the new automatic enrollment safe harbor to 403(b) arrangements.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
				S. 1783 explicitly blesses the use of the current law safe harbor on a prospective basis, but is silent on the new automatic enrollment safe harbor. This could suggest that the current law safe harbor was unavailable in the past and that the automatic enrollment safe harbor will be unavailable for 403(b) arrangements. However, this approach seems very odd and it is possible (even likely) that this was inadvertent.
SAFE HARBOR – **AUTOMATIC ELECTIVE DEFERRAL REQUIREMENTS**	The existing 401(k) safe harbor does not require an automatic enrollment feature.	Requires that unless an employee elects otherwise, the employee is treated as making an election to defer equal to a percentage of compensation not in excess of 10%. The default rate must be at least equal to the following percentages of compensation: 3% -- first year of participation 4% -- second year 5% -- third year 6% -- fourth year and thereafter. *Treatment of Existing Employees*. Current employees on the date the arrangement is implemented would be exempt from the automatic enrollment requirements.	Like H.R. 2830, except that it does not have a maximum percentage and the minimum percentages are as follows: 3% -- first year of participation 4% -- second year 5% -- third year 6% -- fourth year 7% -- fifth year 8% -- sixth year 9% -- seventh year 10% -- eighth year and thereafter. *Treatment of Existing Employees*. Current employees on the date the arrangement is implemented would be subject to automatic enrollment if their existing deferral percentage is less than the applicable percentage. This deemed election for current employees would occur 1 year after the automatic enrollment arrangement is effective generally.	It appears that under S. 1783 the annual automatic 1% increase in deferrals applies to current employees who are not subject initially to the minimum deferral percentage because their existing elections exceed the minimum applicable percentage under the proposal. As a result, for example, an employee whose deferral percentage is 5% on the date the program is implemented would increase to 6% in the fourth year of the program. The safe harbor is limited to plans that use a 414(s) definition of compensation as the basis for determining the amount of elective deferrals. This would mean that the automatic enrollment safe harbor is entirely unavailable for many plans, including plans that use base pay in determining elective deferrals. The automatic enrollment requirements of both bills would apply to highly compensated employees as well as non-highly compensated employees. Although highly compensated employees can opt out, in some circumstances, the high deferral percentages could cause highly compensated employees to lose out on employer matching contributions.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
				Although existing employees would be exempt under the House bill, a plan could elect to apply a new automatic enrollment program to such employees.
SAFE HARBOR -- PARTICIPATION REQUIREMENT	401(k) plans must satisfy certain minimum participation and minimum coverage tests. However, safe harbor plans are not subject to any additional coverage or minimum participation requirements.	The plan must provide that elective deferrals are made on behalf of at least 70% of NHCEs during the current or preceding year (employees that were eligible to participate in the 401(k) plan prior to the effective date of the automatic enrollment feature may be disregarded). Plans are deemed to satisfy this requirement for the first year in which the feature is in effect.	Provides that each employee eligible to participate (determined without regard to minimum service requirements) commences participation on the 1st day of the 1st calendar quarter following eligibility.	In some circumstances, the 70% test under the House bill could be difficult to satisfy. In others, the fact that employees are automatically enrolled could make the test easier to satisfy than might appear at first blush. Note that under H.R. 2830 an NHCE would be counted as participating for this purpose if he or she makes any deferral. S. 1783 would override minimum service requirements and mandate participation at an early date. Employers would continue to be able to exclude categories of employees based on business criteria.
SAFE HARBOR -- CONTRIBUTION REQUIREMENT	To satisfy the current safe harbor, a plan generally must either (1) make a nonelective contribution of at least 3% of compensation on behalf of all eligible NHCEs, or (2) make a match on behalf of all NHCEs that is equal to 100% of an employee's elective deferrals up to 3% of compensation and 50% of elective deferrals from 3 to 5% of compensation (or an equivalent, *e.g.*, 100% of 4% of compensation).	To satisfy the terms of the automatic enrollment safe harbor, an employer generally must make either: 1. A nonelective contribution of at least 2% of compensation on behalf of all eligible NHCEs, or 2. A 50% match on non-HCE elective contributions up to 6% of compensation (or a permitted equivalent).	To satisfy the terms of the automatic enrollment safe harbor, an employer must make either: 1. A nonelective contribution of at least 3% of compensation on behalf of all eligible NHCEs, or 2. A 50% match on non-HCE elective contributions up to 7% of compensation (or a permitted equivalent).	Under current law and the two bills, the rate of match with respect to elective contributions for HCEs cannot be higher than the rate of match for NHCEs. The IRS has construed this as prohibiting requirements that condition a match on a specified number of hours of service or service on the last day of the year.
SAFE HARBOR -- VESTING	To satisfy the current safe harbor, employer contributions taken into account for purposes of the safe harbor must be fully vested.	Vesting schedules are permitted, provided that employer contributions taken into account for purposes of the safe harbor are vested within 2 years.	Same as H.R. 2830.	
SAFE HARBOR -- NOTICE REQUIREMENTS	To satisfy the current safe harbor, a plan must provide notice to each eligible employee of his rights and obligations under the plan at least 30 days, and no more than 90 days, before	Generally the same as current law, but the notice must also explain (1) an employee's right to opt out of the automatic enrollment feature, and (2) how contributions under the	Same as H.R. 2830.	

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
	the start of each plan year.	arrangement will be invested.		
EFFECTIVE DATE FOR ALL AUTOMATIC ENROLLMENT PROVISIONS	Not applicable.	Effective for plan years beginning after December 31, 2005.	Effective for 401(k) plans for plan years beginning after December 31, 2005. Effective for 403(b) plans for plan years ending after the date of enactment.	As discussed above, the 403(b) provision in S. 1783 technically applies to the current law safe harbor, not the automatic enrollment safe harbor.
DIVERSIFICATION RIGHTS				
INVESTMENT RIGHTS	The Internal Revenue Code (the "Code") and ERISA impose few restrictions on the investment of defined contribution plan assets in employer securities. The Code does not impose any restrictions on plans other than employee stock ownership plans ("ESOPs"), which must permit participants who have attained age 55 and have 10 years of participation in the plan to diversify the investment of a portion of their accounts in assets other than employer securities. ERISA limits the ability of defined contribution plans to require that more than 10% of elective deferrals be invested in employer stock. However, a number of exceptions apply to the 10% limitation, including an exception for a plan that is an ESOP. In addition, contributions other than elective deferrals are not subject to any restrictions.	**[No provision in H.R. 2830. From H.R. 1000 (as it passed the House in 2003)]** *Matching and Nonelective Contributions.* With respect to amounts attributable to matching and nonelective contributions, participants must be allowed to divest themselves of any employer securities (1) upon the completion of 3 years of service, or (2) if the employer chooses, 3 years after an employee receives such stock (i.e., a 3-year rolling diversification option). The 3-year rolling diversification requirement would apply on an annual, plan-year basis so that all employer stock allocated during any plan year would be subject to diversification 3 years after the end of such plan year. *Elective Deferrals.* Diversification rights must be immediate with respect to employee contributions and elective deferrals. *Alternative Investments.* Where diversification rights are required to be available, the plan must offer at least 3 diversified investment options to which the participant may direct the proceeds from the divestment of employer	*Matching and Nonelective Contributions.* Participants must be permitted to direct the investment of amounts attributable to matching and nonelective contributions upon the completion of 3 years of service. The 3-year rolling diversification option would not apply. *Elective Deferrals.* Similar to H.R. 1000. *Alternative Investments.* Similar to H.R. 1000. *Exception for Privately-Held Companies.* In general, the diversification requirements would not apply to plans maintained by employers that do not issue publicly-traded stock (and that do not have affiliates that issue publicly-traded stock). A detailed exception to this rule is included to address the concerns noted in the description of H.R. 1000. Treasury has the authority to create additional exceptions. *Exception for Stand-Alone ESOPs.* The diversification requirement would not apply to a stand-alone ESOP that is separate from any other qualified retirement plan of the employer. *Employer real property.* Unlike H.R. 1000,	The 3-year rolling diversification rule in H.R. 1000 would ensure that all 3-year old contributions may be diversified. In contrast, the Senate bill does not offer plans the option of using 3-year rolling diversification. Instead, under the Senate bill, all participants with 3 years of service would have the ability to divest themselves of company stock. Some have questioned whether the Senate approach would cause companies to reduce the level of matching contributions they provide given the complete inability to require that contributions remain invested in company stock for any minimum period. H.R. 1000 does not have an exception for restrictions on sales of employer securities imposed by reason of the securities laws. The Senate bill has only a very limited exception for restrictions on diversification imposed by reason of the securities laws. In this regard, the Senate bill does not encompass restrictions that may be slightly broader than those technically required by the securities laws, which companies often impose for administrative ease and to err on the side of conservatism.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		securities. *Exception for Privately Held Companies.* Plans maintained by employers that do not issue publicly-traded stock (and that do not have affiliates that issue publicly-traded stock) would be exempt from these requirements (and the Treasury Department and Department of Labor (DOL) would be given joint authority to exempt others under regulations). *Exception for Stand-Alone ESOPs.* ESOPs that do not contain elective deferrals, employer matching contributions, or employee contributions (stand-alone ESOPs) also would be exempt. Effective Date: Subject to a special effective date for collectively bargained plans, the proposal would be effective for plan years beginning after the date that is one year after the date of enactment, and with respect to employer securities allocated to accounts before, on, or after the date of enactment. The changes would not apply to employer securities held by an ESOP which were acquired before January 1, 1987. For existing amounts held in employer stock, the diversification requirements would generally be phased-in over 5 years in 20 percent increments with respect to amounts attributable to both employer and employee contributions.	the diversification rules apply to employer real property in addition to employer securities. *Restrictions on diversification.* Provides that a plan cannot impose restrictions on diversification of company stock that do not apply to other investment options under the plan, except that certain restrictions required under applicable securities law are permitted. Effective Date: Subject to a special effective date for collectively bargained plans, the proposal generally would be effective for plan years beginning in 2006. For existing amounts held in employer stock, other than amounts held in employer stock by individuals aged 55 or over with at least 3 years of service, the diversification requirements would be phased-in ratably over 3 years (*i.e.*, 33% first year, 66% second year, 100% third year).	There are situations where a private company may have a relatively minor publicly traded affiliate. The regulatory exemption power in the two bills would appear to encompass this fact pattern. However, some have questioned whether the regulatory exemption power will function properly given the challenges of joint DOL/Treasury regulatory projects and the absence of any deadline for issuing guidance. Neither bill has a transition rule for a non-public company that goes public. Under both bills, the diversification rules would suddenly apply in full. A natural approach would be to apply the same phase-in (5 years under H.R. 1000; 3 years under S. 1783) that applies when a plan first becomes subject to these rules. Unlike H.R. 1000, the Senate bill does not preserve the Tax Reform Act of 1986 grandfather rule for employer securities held by an ESOP that were acquired before January 1, 1987. Under the Senate bill, the 3-year transition rule applicable to existing amounts invested in employer stock does not apply to amounts attributable to employee contributions or elective deferrals, which would be problematic for a number of plans. Both bills would apply to individual account plans without regard to whether they provide for participant investment direction. These provisions could be particularly problematic for multiemployer plans. Many

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
				multiemployer defined contribution plans do not permit participant investment direction, but provide instead for a trustee to manage the assets and each participant to benefit from a proportionate share of the trust assets. The investments of the trust often include shares of publicly traded stock and it makes little sense to give participants the right to diversify in this context.
NOTICE OF RIGHT TO DIVERSIFY	Individual account plans are generally exempt from the diversification requirements of ERISA as they relate to employer securities. Moreover, there are no specific requirements to disclose to plan participants the risks of a non-diversified portfolio of investments, including the risks of a heavy concentration of investment in company stock. There are, of course, numerous disclosure rules designed to inform participants of their rights under their employer's plans.	No provision.	The plan administrator must notify participants of their diversification rights and the importance of diversifying account assets no later than 30 days before the first date on which an individual is eligible to exercise his or her divestment rights. Directs the Secretary of Labor to prescribe a model notice within 180 days of enactment. Provides that the Secretary may assess a civil penalty against the plan administrator of up to $100/day per person for a failure to provide the requisite notice. Effective Date: The proposal generally applies to plan years beginning in 2006.	Plans that do not have investments in employer securities subject to the diversification rule described above would not be subject to the notice requirement. The 30-day notice rule does not include an exception under which a notice provided within a reasonable period after commencement of employment will be deemed to satisfy the rule. As a result, plans that permit immediate participation generally will not be able to comply with the rule.
INVESTMENT EDUCATION REQUIREMENTS	Under existing law, plan sponsors are not required to give participants investment guidelines relating to retirement savings.	No provision.	At least once a year, plan administrators must provide a notice to participants and beneficiaries relating to basic investment guidelines. The Secretary of Labor would develop a model with basic investment guidelines, including (1) information on the benefits of diversification; (2) information on the essential differences, in terms of risk and return, of stocks, bonds, mutual funds and money market investments; (3) information on how an individual's	Plans that are exempt from Title I of ERISA, *e.g.*, governmental and church plans, would be exempt from the investment education requirements. The proposal states that the model form must also include addresses for Internet sites, and a worksheet, that a participant or beneficiary may use to calculate: the retirement age value of the individual's vested benefits under the plan (expressed as an annuity amount and determined by reference to varied historical annual rates of return

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
			investment allocations may differ depending on the individual's age and years to retirement as well as other factors determined by the Secretary; (4) sources of information where individuals may learn more about pension rights, investing, and investment advice; and (5) such other information related to individual investing as the Secretary determines appropriate. Provides that the Secretary of Labor may assess a penalty of up to $100/day per participant for a failure to provide the requisite model form. Effective Date: Subject to a delayed effective date for collectively bargained plans, the proposal applies to plan years beginning in 2007.	and annuity interest rates) and other important amounts relating to retirement savings, including the amount that an individual must save annually in order to provide a retirement income equal to various percentages of his or her current salary. The proposal requires the Secretary of Labor to develop an Internet site to be used by an individual for purposes of making the above planning calculations. The effective date of the provision needs to be coordinated with the development of the model form and Internet site.
PERIODIC BENEFIT STATEMENTS	Plan administrators must furnish a benefit statement to any participant or beneficiary who makes a written request. A plan administrator is only required to provide one statement to a participant or beneficiary within a single 12-month period. A benefit statement must indicate the following: ▪ The total accrued benefit; and ▪ The vested accrued benefit or the earliest date on which the accrued benefit will become vested.	**[No provision in H.R. 2830. From H.R. 1000 (as it passed the House in 2003)]** Participants in DC plans (other than stand-alone ESOPs or one participant plans) subject to ERISA who have the right to direct their investments would be required to be given quarterly benefits statements. In particular, the statement would have to inform participants of (1) total benefits accrued and (2) the nonforfeitable accrued benefit, or if none has become nonforfeitable, the earliest date on which benefits will become nonforfeitable. In addition, the statement would be required to provide the value of assets held in each investment, including the value of assets held in the form of employer securities, and an explanation of any restrictions	Similar to H.R. 1000 with the following differences. First, with respect to the quarterly benefit statement requirement, the exemption for stand-alone ESOPs would not apply. Second, the following additional information would be required in the benefit statement: (i)an explanation of a floor-offset or permitted disparity that may be applied; and (ii) a notice that investments may not be appropriately diversified if any investment exceeds more than 20% of the total FMV of all the investments in the account. Also, administrators would be permitted to (a) update vesting information annually or (b) provide a separate statement that enables participants to determine their own vested status. The Secretary of Labor may assess a civil penalty against the plan	H.R. 1000 would require companies to provide updated vesting information on a quarterly basis, which could be burdensome. In contrast, S. 1783 would permit annual updating of vesting information. It is not clear under the bills whether the periodic benefit statement requires merely a description of restrictions imposed by the plan, or also requires a description of restrictions imposed by the issuer of the investment. The latter restrictions are described at length in the prospectuses and other investment materials and could be difficult to incorporate into the benefit statement. There appears to be a glitch in the quarterly statement requirement in the Senate bill to the extent that it requires a notice that investments that exceed

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		on the right to direct an investment. As part of the statement, participants also would be provided with a discussion of the risk of holding more than 25 percent of a portfolio in the security of any single entity. In the case of stand-alone ESOPs and non-participant directed DC plans subject to ERISA, the benefits statement would be required to be given annually. In the case of defined benefit plans, the statement would be required to be given every 3 years (and upon request), with an alternative option to provide annual notice of the availability of a benefits statement in lieu of providing it every 3 years. Defined benefit plans may base the information provided in the statement on reasonable estimates determined under regulations prescribed by the DOL. All benefits statements could be provided in electronic or other appropriate form that is reasonably accessible to the participant. The ERISA penalty for violations of these rules is up to $1,000 per day. In addition, investment education notices that include information regarding principles of risk management and diversification would have to be given to participants upon enrollment in the plan and annually thereafter. The investment education notices would be required under the Code, but only for plans not subject to ERISA (e.g., governmental section 457(b) plans)	administrator of up to $100/day per person for failure to provide the requisite benefit statement, with a total $500,000 per year limit. There is no requirement under the Code to provide investment education notices. There is no deadline for the issuance of guidance by the Secretary of Labor. Effective Date: Subject to a delayed effective date for collectively bargained plans, applies to plan years beginning in 2007.	20% of the total FMV may not be appropriately diversified even if those investments are adequately diversified, *e.g.*, an investment of 50% of the total FMV of an account in a balanced fund. Both bills would require affirmative delivery of the benefit statements and would not permit, for example, updating of company websites to substitute for certain required disclosures. For small companies, the penalty for failure to provide the benefit statement seems excessive. Even for large companies, there should be a limit, such as $500,000, for inadvertent violations.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		which permit a participant to direct investments or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant. The investment education notices also would not have to be provided in the case of one-participant retirement plans. The investment education notices could be provided in electronic or other appropriate form that is reasonably accessible to the participant. The Secretary of Labor is directed to issue a model benefits statements within 180 days after the date of enactment. The Secretary of Labor is also required to provide "interim" guidance within 75 days after the date of enactment and "initial" guidance within 180 days after the date of enactment. Effective Date: Plan years beginning on or after the date that is one year after the date of enactment, except that a special collective bargaining rule would apply.		
INFORMATIONAL AND EDUCATIONAL SUPPORT FOR PLAN FIDUCIARIES	No provision.	**[From H.R. 1000 (as it passed the House in 2003)]** DOL would be directed to establish a program under which information and educational resources would be available on an ongoing basis to persons serving as fiduciaries under employee benefit plans. The program would be designed to assist fiduciaries in carrying out their fiduciary duties, and would provide information concerning prudent investment procedures for plan fiduciaries. Information under the program would address relevant	No provision.	

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		investment considerations for defined contribution and defined benefit plans, including investment in employer securities by such plans. In developing the program, DOL would be directed to solicit information from the public, including investment education professionals.		
STUDIES	No provision.	**[From H.R. 1000 (as it passed the House in 2003)]** The following studies would be directed: • DOL would be directed to conduct a study regarding the impact on retirement savings of requiring consultants to advise plan fiduciaries of individual account plans. • The DOL would be directed (in consultation with the Treasury Department) to conduct a study regarding potential designs and effects of a model small employer group plan. • The DOL would be directed to report on the effect of the proposals included herein and the proposals included in EGTRRA on pension plan coverage, including any change in low- and middle-income worker coverage, the levels of pension benefits generally, the quality of coverage, access and participation in retirement plans, and retirement security.	No provision.	
PORTABILITY				
FASTER VESTING OF EMPLOYER NONELECTIVE	*Nonelective Contributions*: Present law requires that participants have a nonforfeitable right to 100% of their	No provision.	Applies the present-law vesting schedule for matching contributions to all employer contributions to DC plans.	The accelerated vesting schedule for employer contributions would not apply to "old money." The provision

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
CONTRIBUTIONS	accrued benefit according to either a 5 or 7 year vesting schedule (100% after 5 years or 20% for each year of service after 3 years of service). *Matching Contributions*: Present law rules require that a participant have a nonforfeitable right to 100% of employer matching contributions after 3 years of service or a nonforfeitable right to 20% of employer matching contributions for each year of service beginning with the participant's second year of service and ending with 100% after 6 years of service.		Effective Date: Generally effective for plan years beginning in 2006. Note: There is a separate effective date for collectively bargained plans. Note also: The proposal does not apply to an employee until he or she has at least one hour of service following the effective date. However, in applying the new vesting schedule, service before the effective date is considered.	would only apply to contributions for plan years beginning after the effective date.
ROLLOVER OF AFTER-TAX AMOUNTS IN 403(b) ARRANGEMENTS	A 403(b) arrangement may accept rollovers of pre-tax amounts from a qualified plan, a 403(b) plan or a governmental 457(b) plan. However, it appears that a 403(b) plan may accept rollovers of amounts attributable to employee after-tax contributions only from another 403(b) plan.	No provision.	Permits the rollover of after-tax contributions between a qualified retirement plan and a 403(b) plan. Effective Date: Effective for taxable years beginning after December 31, 2005.	
ROLLOVERS BY NONSPOUSE BENEFICIARIES	When a retirement plan participant dies, employer sponsored retirement plans typically provide that remaining plan benefits must be distributed promptly in a lump sum. Surviving spouses are eligible to roll that distribution into an IRA or other eligible retirement plan. Non-spouse beneficiaries, however, are not permitted to roll over such distributions and can be forced to receive plan benefits immediately and incur an immediate tax liability. This problem does not exist if retirement assets are held in an IRA at the time of death because IRA beneficiaries may maintain the inherited IRA and receive distributions in accordance with the minimum distribution rules (generally within 5 years or over the life	Provides that the benefits received by a non-spouse beneficiary from a retirement plan may be directly transferred to an IRA. The IRA is then treated as an inherited IRA and benefits must be distributed in accordance with the minimum distribution rules that apply to inherited IRAs. The provision applies to amounts payable to a nonspouse beneficiary under a qualified retirement plan, governmental section 457 plan, or a 403(b) annuity. Effective Date: The proposal is effective for distributions made after the date of enactment.	Same as H.R. 2830.	This provision effectively provides for parity between retirement benefits inherited by a non-spouse through a retirement plan and through an IRA.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
	expectancy of the beneficiary).			
DIRECT ROLLOVERS FROM RETIREMENT PLANS TO ROTH IRAS	Distributions from qualified retirement plans, 403(b) plans, and governmental section 457 plans may be rolled over into a traditional IRA but may not be rolled over directly into a Roth IRA. Taxpayers with a modified AGI of no more than $100,000 may subsequently convert their traditional IRA into a Roth IRA. Such amounts are includible in income but exempt from the 10% tax on early withdrawals.	No provision.	S. 1783 allows rollovers from a qualified retirement plan, 403(b) plan or governmental section 457 plan directly into a Roth IRA. The present law rules that apply to rollovers from a traditional IRA to a Roth IRA would apply, including the limitation on individuals with an AGI of more than $100,000. Effective Date: The proposal is effective for distributions made after 2005.	The primary benefit of this provision is to simplify the administrative process. Rollovers of plan money to a Roth IRA can be accomplished currently but it formally requires a rollover to a traditional IRA followed by a conversion to a Roth IRA.
HARDSHIP DISTRIBUTIONS	Current hardship distribution rules permit a plan to allow hardship distributions from a 401(k) or 403(b) plan in the event of a qualifying hardship by the participant's spouse or dependent. Similarly, the rules under Code sections 409A and 457 permit distributions to participants where there arises an unforeseen financial emergency with respect to a spouse or dependent.	No provision.	Directs the Secretary of Treasury, within 180 days of enactment, to modify the current law rules to allow for distributions to participants in the event a beneficiary designated under the terms of the plan experiences a qualifying hardship or unforeseen financial emergency.	For example, the provision would permit a participant to elect a hardship withdrawal from his or her 401(k) plan because of an immediate and heavy financial need experienced by his or her designated beneficiary even if the designated beneficiary is not a dependent or spouse.
EXPANDED NOTICE AND CONSENT PERIOD	Under current law, a plan generally may not distribute benefits that exceed $5,000 without the written consent of the participant. The plan must provide a distribution notice containing various required information no less than 30 days and no more than 90 days before the date of distribution.	**From H.R. 1000 (as it passed the House in 2003):** Same as S. 1783.	Expands the period during which a plan must provide a distribution notice to no less than 30 days and no more than 180 days before the date the distribution commences. Effective Date: The proposal is generally effective for plan years beginning in 2006.	
TRANSFERS OF INVOLUNTARY DISTRIBUTIONS TO THE PBGC	A plan is generally required to make an automatic rollover of an involuntary distribution which exceeds $1,000 into an IRA, unless the participant affirmatively elects to receive the distribution directly or have the distribution transferred to an IRA or qualified plan.	No provision.	Provides that a plan may provide for the transfer of an involuntary distribution that exceeds $1,000 to the PBGC, instead of to an IRA. Effective Date: The proposal is generally effective as if included in the amendments made by section 657 of EGTRRA (*i.e.*, February 28, 2004).	It is not entirely clear when this provision would take effect, although the express language of S. 1783 appears to provide for a retroactive effective date back to February 28, 2004.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
IRA CHANGES				
DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS	Under current IRS procedures, a taxpayer may direct that his or her tax refund be deposited into a checking or savings account with a bank or other financial institution (such as a mutual fund, brokerage firm, or credit union) rather than having the refund sent to the taxpayer in the form of a check.	Directs the Secretary of Treasury to develop forms under which all or a portion of a taxpayer's refund may be deposited into the taxpayer's IRA (or the IRA of the taxpayer's spouse in the case of a joint return). Effective Date: The form required by the proposal is to be available for taxable years beginning in 2007.	No provision.	H.R. 2830 does not modify the rules relating to IRAs, including the rules relating to the timing of contributions. As a result, it appears that tax refund contributions would not relate to the year for which the return was filed but would relate to the year in which received by the IRA. Additionally, it appears that tax refund contributions would be counted towards an individual's IRA contribution limit under Code section 219.
ADDITIONAL IRA PAYMENTS IN CERTAIN BANKRUPTCY CASES	An individual may generally make contributions to an IRA for a taxable year up to the lesser of a certain prescribed dollar amount or the individual's compensation. For years 2005 through 2007, the maximum annual dollar limit on IRA contributions is $4,000. For 2008, the maximum annual dollar limit increases to $5,000, with indexing thereafter. Present law permits individuals that attain age 50 to make "catch-up" IRA contributions ($500 in 2005; $1,000 thereafter). Present law also provides a temporary non-refundable tax credit to certain taxpayers for qualified retirement savings contributions (the "Saver's Credit").	No provision.	For eligible individuals affected by an employer's bankruptcy, they would be permitted to make additional contributions to an IRA up to $1,500 in 2005, and $3,000 per year in 2006-2009. The provision would sunset after 2009. To be eligible to make these additional contributions: (1) an individual must have been a participant in a 401(k) plan with at least 50% matching contributions made in employer stock; (2) the employer or any other person must have been subject to an indictment or conviction resulting from business transactions related to a bankruptcy; and (3) the individual must have been a participant in the 401(k) plan six months prior to the date the employer filed for bankruptcy. *Saver's Credit*: The proposal provides for a modified credit equal to 50% of any additional contributions made by an eligible individual, without regard to adjusted gross income. The modified credit is not taken into consideration in	This special IRA rule was driven by the collapse of Enron and affects employees of only a small subset of companies.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
			determining an individual's overall Saver's Credit limit under the Code. Effective Date: The proposal is generally effective beginning in 2005.	
IRA DEDUCTION LIMITS FOR THE DISABLED	An individual may contribute to an IRA up to the lesser of (1) the statutorily prescribed limit (*e.g.*, $4,000 for 2005), or (2) the individual's compensation includible in gross income for the taxable year.	Subject to certain limits, would disregard the compensation limit for purposes of determining a disabled individual's IRA contribution limit.	No provision.	
COMBAT ZONE COMPENSATION CONSIDERED FOR IRA CONTRIBUTIONS	Combat pay received by members of the Armed Forces is not includible in compensation for income tax purposes and for purposes of determining an individual's IRA contribution limit.	Provides that, for purposes of applying the limit on IRA contributions, gross income includes combat pay. Effective Date: The proposal is generally effective for tax years beginning in 2006.	No provision.	
EARLY WITHDRAWAL TAX ON CERTAIN SIMPLE IRA DISTRIBUTIONS	A 25% penalty for early withdrawals from a SIMPLE IRA applies during a participant's first 2 years of participation.	No provision.	Provides that all early withdrawals from a SIMPLE IRA will be subject to the standard 10% penalty. Effective Date: The proposal is effective beginning in 2006.	
SIMPLE IRA PORTABILITY	During the first 2 years of participation in a SIMPLE IRA, an individual can only rollover amounts into another SIMPLE IRA. Rollovers are not permitted from a plan to a SIMPLE IRA.	No provision.	Eliminates the 2-year restriction on rollovers. Permits rollovers into SIMPLE IRAs under general IRA rules. Effective Date: The proposal is effective beginning in 2006.	
GOVERNMENTAL PLANS				
401(K) PLANS	Except for certain plans grandfathered in 1986, state and local governments are not allowed to maintain 401(k) plans.	No provision.	Permits state and local governments to maintain a 401(k) plan. Provides for coordination of contribution limits with governmental 457 plans. Effective Date: The proposal is effective for plan years beginning after 2005. Pre-1986 grandfathered plans are excepted from the new	The current law rules, which do not coordinate elective deferrals to a 457(b) plan and a 403(b) plan, would continue to apply. However, S. 1783 would coordinate 401(k) and 457(b) plan contribution limits. As a result, for state and local schools, it may make sense to continue to offer a 403(b) and a 457 to enjoy the higher cumulative

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
			coordination rules.	deferral limit. The 401(k) and 457(b) plan contribution rules would be coordinated by providing that any amount contributed to a 457(b) plan would reduce a participant's 401(k) elective deferral limit. Thus, for example, an employer contribution to a 457(b) plan would reduce a participant's elective deferral limit under the 401(k) plan. Correspondingly, however, it appears that an employer contribution to a 401(k) plan would not have any effect on a participant's 457(b) plan limit. S. 1783 would not affect 457(b) plans maintained by non-governmental tax-exempt entities.
TRIBAL PLANS	Under current law, there has been some uncertainty regarding whether plans sponsored by Indian tribal governments are governmental plans. In particular, the treatment of tribal plans under section 457 has been unclear.	No provision.	Expands the definition of a governmental plan to explicitly include plans maintained by (1) an Indian tribal government, (2) an agency or instrumentality of such government, or (3) an entity established under Federal, state, or tribal law which is wholly owned or controlled by an Indian tribal government or entity thereof. Effective Date: The proposal applies on both a retroactive and prospective basis "to any year beginning before, on, or after the date of the enactment of this Act."	This provision will exempt tribal plans from a number of the requirements that apply to tax-qualified plans. The provision does not address whether nonqualified deferred compensation arrangements maintained by Indian tribal governments are covered by section 457. The provision does, however, make it somewhat more difficult to argue that such plans are in fact covered by section 457.
MISCELLANEOUS TAX CHANGES				
COMBINED PLAN DEDUCTION LIMITS	An employer that maintains both a defined contribution plan and a defined benefit plan may only make deductible contributions to the two plans up to the greatest of the following: (i) 25% of	Employer contributions to a defined contribution plan would be disregarded for purposes of the combined plan limit to the extent those contributions did not exceed 6% of participants'	For 2006, the combined plan limit applies only to the extent that contributions by an employer to one or more defined contribution plans exceed 6% of compensation paid or	The combined limit would continue to apply to multiemployer plans. This seems odd since multiemployer plans are collectively bargained and do not present the potential for abuse that the

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
	participants' compensation; (ii) the minimum funding requirement with respect to the defined benefit plan; or (iii) if the DRC rules apply, the amount needed to bring the plan to 100% of current liability. In general, elective contributions are disregarded for this purpose.	compensation. Effective Date: This change would be effective for plan years beginning after 2006.	accrued to the beneficiaries under the plan. Effective Date: For plan years beginning after 2006, the limits would no longer apply to single employer plans covered by the PBGC insurance program. Special rules apply to plans not covered by the program.	combined limit was designed to address. In addition, the combined limit is particularly burdensome for multiemployer plans because compensation data is frequently difficult to obtain.
DB/K PLANS	No special rules.	No provision.	A combination defined benefit plan and section 401(k) plan that meets certain requirements (a "DB/K") (1) would be exempt from the top-heavy rules; (2) would be deemed to satisfy the ADP test for elective contributions and ACP test for matching contributions; (3) may be funded through a single trust; and (4) may file a single Form 5500. The DB portion of the DB/K would have to: (i) provide a minimum benefit of 1% of final average compensation per year of service up to 20 years and (ii) provide for full vesting after 3 years. The 401(k) would have to: (i) provide matching contributions of 50% up to at least 4% of pay; (ii) provide immediate vesting of matching contributions and satisfy other present-law rules for safe harbor contributions; and (iii) institute automatic enrollment up to 4% of pay. In lieu of a final average pay formula, a DB/K could provide a cash balance benefit that provides certain minimum benefits that depend on the age of a participant. A DB/K would only be available to plans with fewer than 500 employees. Effective Date: The proposal is effective for plan years commencing	

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
			after 2008.	
QUALIFIED RETIREMENT PLANNING SERVICES	Certain employer-provided fringe benefits, including qualified retirement planning services provided to an employee and his or her spouse by an employer maintaining a qualified employer plan, are excludible from gross income and wages for employment tax purposes. However, where an employer provides a choice between cash and retirement planning services, employees who elect qualified retirement planning services are nonetheless taxable.	**[From H.R. 1000 (as it passed the House in 2003)]** Employees would be able to pay for qualified retirement planning services provided by a qualified investment advisor on a pre-tax basis through a payroll deduction arrangement. Such a program would have to be available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's retirement plan. Effective Date: Taxable years beginning after December 31, 2003.	Allows employers to provide employees with a choice between cash and eligible qualified retirement planning services provided by most investment advisers (up to $1,000 per individual, per year). Provides that no amount is includible in income merely because the employee is offered cash in lieu of eligible qualified retirement planning services. Only applies to HCEs if the choice is available on substantially similar terms to each member of the group of employees normally provided education and information regarding the employer's qualified plan. Effective Date: Effective beginning in 2006 through 2010.	
QUALIFIED RESERVIST DISTRIBUTIONS	A participant or beneficiary who receives an early distribution from a tax-favored retirement plan (*i.e.*, generally prior to age 59½, death, or disability) is generally subject to a 10-percent early withdrawal tax on the amount includible in income.	Provides that the 10% penalty does not apply to a distribution (1) from an IRA or attributable to elective deferrals from a 401(k) or similar plan, (2) made to a reservist who is ordered or called to active duty for a period of at least 179 days or an indefinite period, and (3) that is made during the period beginning on the date of such order or call to duty and ending on the close of the active duty period (a "qualified reservist distribution"). *Recontributions*. During the 2-year period beginning on the day after the end of the active duty period, an individual may make contributions to an IRA which in the aggregate do not exceed the amount of any qualified reservist distribution. *Eligible Individuals*: Persons ordered or	No provision.	IRA contribution limits do not apply to recontributed amounts. Correspondingly, no deduction is allowed for recontributed amounts. However, it appears that the provision would allow affected individuals to file amended returns excluding prior distributions attributable to recontributed amounts from income and therefore to claim a refund or credit. The 2-year recontribution period does not end before the date that is 2 years after the enactment of H.R. 2830. This provision would apply to distributions made after September 11, 2001 and allow individuals who make a recontribution to file a refund claim for amounts included in income in prior years. If a refund or credit of any

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		called to active duty after September 11, 2001 and before September 12, 2007.		overpayment of tax resulting from the proposal would be prevented at any time before the close of the one-year period beginning on the date of the enactment, such refund or credit may nevertheless be made or allowed if a claim is filed before the close of the one-year period.
EXCESS CONTRIBUTIONS	Unless excess contributions are distributed from a qualified cash or deferred arrangement within 2½ months after the end of the plan year, the employer will be subject to a 10% excise tax. Excess contributions are includible in income in the year of the excess and income attributable to excess contributions generally must be distributed with the excess contribution.	No provision.	Amends the 2 ½ month rule to provide that (i) in the case of automatic contribution arrangements, excess contributions may be distributed within 6 months after the end of the plan year, (ii) excess contributions are includible in income in the year of distribution, and (iii) gap period income need not be distributed.	
FORM 5500 SIMPLIFICATION	Retirement plans, including plans covering only business owners, are required to file the Form 5500 annual return. A simplified return exists for one-participant retirement plans (generally plans covering only business owners and their spouses).	**[From H.R. 1000 as it passed the House in 2003]** Same as S. 1783.	Generally exempts one-participant retirement plans with assets of no more than $250,000 from the Form 5500 annual return requirement and directs Treasury and Labor to provide for simplified filing for plans that cover fewer than 25 participants.	
INVESTMENT ADVICE				
OVERVIEW	ERISA and the Code contain sweeping provisions that identify certain "prohibited transactions" between retirement plans and parties in interest. Parties in interest include, among others, any person providing services to the plan. The prohibited transaction ("PT") provisions have made it difficult for parties in interest to provide investment advice to plan participants.	A new prohibited transaction exemption would be added to facilitate investment advice to participants in employer-provided retirement plans that provide for participant investment direction. The fiduciary responsibilities in connection with arranging for the provision of investment advice also would be clarified.	No specific relief from the prohibited transaction rules would be provided. Would provide a limited safe harbor from ERISA's fiduciary rules in connection with the provision of investment advice to plan participants. In general, the safe harbor would be available only with respect to unaffiliated advice.	S. 1783 includes very modest changes to the rules governing the arrangement of investment advice under current law. In contrast, H.R. 2830 includes more fundamental changes to the rules governing investment advice. Both sets of provisions were developed before managed account programs became prevalent. Managed account programs allow plan fiduciaries to provide investment advice through the use of an independent third party and

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
				were first explicitly blessed by the Department of Labor in Advisory Opinion 2001-09A.
FIDUCIARY RESPONSIBILITY OF PLAN SPONSOR	Current fiduciary rules require that a plan sponsor act prudently in the selection of a provider of investment advice. Plan sponsors must also monitor and otherwise engage in a periodic review of the provider.	A plan fiduciary (usually the plan sponsor) would not be treated as failing to meet the fiduciary duty requirements of ERISA by arranging for the provision of investment advice if (1) the advice is provided by a "fiduciary adviser"; (2) the terms of the arrangement require the fiduciary adviser to comply with the requirements applicable to the investment advice exemption, discussed below; and (3) the terms of the arrangement require the adviser to specifically acknowledge in writing that it is a fiduciary of the plan with respect to the provision of the advice. The plan sponsor (or other plan fiduciary) would continue to be subject to general requirements in the fiduciary rules with respect to the prudent selection and periodic review of a fiduciary adviser. The plan sponsor would not, however, have a duty to monitor the specific advice given by the fiduciary adviser to any particular recipient of the advice.	A safe harbor from ERISA's fiduciary rules would be provided to plan sponsors or other fiduciaries who designate and monitor a qualified investment adviser. To qualify for the safe harbor, the plan sponsor or other fiduciary must: 1. Receive written verification that the investment adviser (i) is a qualified investment adviser, (ii) acknowledges it is a fiduciary with respect to the plan and is solely responsible for its investment advice, (iii) has reviewed the plan documents (including investment options) and has determined that its relationship with the plan will not violate ERISA's section 406 prohibited transaction rules, (iv) will, in providing investment advice to any participant or beneficiary, consider any employer securities or real property allocated to participant accounts, and (v) has the necessary insurance coverage (as determined by the DOL) for any claim by a participant or beneficiary. 2. Determine that there is no material reason not to enter into an arrangement for the provision of advice after reviewing the disclosure documents required to be provided by the adviser (see above). 3. Within 30 days of having information brought to its attention that the investment adviser is no longer qualified or that a substantial number of plan participants or beneficiaries have raised concerns about the services	

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
			being provided by the investment adviser, investigate such information and concerns, and determine that there is no material reason not to continue the designation of the adviser as a qualified investment adviser. If the safe harbor is applicable, then the plan fiduciary (i) would be deemed to have satisfied ERISA's requirements for the prudent designation and periodic review of an investment adviser, (ii) would not be liable for loss due to a breach of fiduciary duty with respect to the investment advice, and (iii) would not be liable for any co-fiduciary liability under ERISA section 405 with respect to investment advice.	
EXEMPTION FOR INVESTMENT ADVICE	No provision.	The new statutory exemption would apply to: 1. The provision of investment advice to a plan, its participants, and beneficiaries; 2. The sale, acquisition, or holding of assets pursuant to such investment advice; and 3. The direct or indirect receipt of fees or other compensation in connection with providing the advice.	No provision.	
ENTITIES ELIGIBLE TO PROVIDE INVESTMENT ADVICE	Not applicable.	The advice would have to be provided by a permitted investment adviser, which includes, among others, a registered broker-dealer or investment adviser, a bank or similar financial institution, or an insurance company.	Generally the same as H.R. 2830.	Under both bills, in addition to ERISA protections, plan participants would have recourse under Federal securities laws, banking laws and State insurance laws governing the behavior of regulated entities.
DISCLOSURE REQUIREMENTS	Full disclosure of fees and other arrangements is generally required in connection with the rendering of services to an ERISA plan.	The fiduciary adviser would be required to provide the plan participants and beneficiaries with detailed disclosure at a time "reasonably contemporaneous with the initial provision of advice," and in currently accurate form at least annually, upon request by the recipient,	No disclosure would be required to be provided to plan participants or beneficiaries. However, the "qualified investment adviser" would be required to provide the plan sponsor or other fiduciary who designates the adviser with: (1) the contract with the plan	H.R. 2830 addresses concerns about conflicts of interest among parties in interest by ensuring a robust disclosure to participants of any conflicts of interest. The exemption under H.R. 2830 is only

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		and whenever there is a material change in the information. The following information would be required: 1. All fees or compensation that the fiduciary adviser is to receive in connection with the advice; 2. Any material affiliation of the adviser in any affected security; 3. Any limitation on the scope of the investment advice; 4. The types of services offered by the adviser in connection with the investment advice; 5. That the fiduciary adviser is acting as a fiduciary of the plan in connection with the provision of advice; and 6. That a recipient of the advice may separately arrange for the provision of advice by another adviser that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property. *Model Form:* Directs the Department of Labor to issue a model disclosure form.	sponsor or other fiduciary for the services to be provided; (2) a disclosure as to fees or other compensation received by the adviser for the provision of the advice or that will be received as a result of a participant's investment election; and (3) the "Uniform Application for Investment Adviser Registration" as filed with the SEC.	available if the fiduciary adviser also provides appropriate disclosure required under all applicable securities laws.
REASONABLE COMPENSATION REQUIREMENTS	ERISA contains a statutory exemption to the prohibited transaction rules for the "contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefore." The Department of Labor construes this exemption narrowly so that it does not apply to acts potentially involving conflicts of interest by fiduciaries.	Compensation paid to the adviser in connection with any transaction must be reasonable, and the terms of any transaction must at least be as favorable to a plan as an "arm's length" transaction.	No provision, but as described above, the plan sponsor is required to review fees paid to a qualified investment adviser and to receive written verification that the investment advice provided, including any fees or other compensation, will not violate ERISA's prohibited transaction rules.	H.R. 2830 would confirm that plan assets may be used to pay reasonable expenses in providing investment advice permitted under the ERISA statutory exemption.
EFFECTIVE DATE	Not applicable.	The changes would apply to investment advice provided on or after January 1,	The changes would apply with respect to investment advisers designated after	

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		2006.	the date of enactment.	
PROHIBITED TRANSACTION REFORMS				
GENERALLY	In some circumstances, the prohibited transaction (PT) rules prevent plans from engaging in otherwise favorable financial transactions.	Would provide for a number of new exemptions from ERISA and/or the Code's PT rules for specified financial transactions.	Same as H.R. 2830.	While prior versions of H.R. 2830 only provided for exemptions from ERISA's PT rules, the Managers' Amendment approved by the full House on December 15 included exemptions from the Code's PT rules for certain specified financial transactions.
PLAN ASSET VEHICLE	Department of Labor regulations provide that when a plan has an equity interest in another entity, the plan's assets generally include the underlying assets of the other entity unless an exception applies. There are a number of different exceptions including exceptions for publicly offered securities and for entities where ownership by benefit plan investors is not significant. The exception where benefit plan investors are not "significant" generally applies if such investors own less than 25% of the value of each class of equity interest in the entity. For this purpose, the term "benefit plan investor" is defined broadly to include, among others, governmental plans, church plans, foreign plans and Keogh plans covering only self-employed individuals.	Expands the exception where benefit plan investors are not significant to exclude any entity if less than 50% of all of the equity interests are held by benefit plan investors. Modifies the definition of "benefit plan investor" to include only an employee benefit plan covered by ERISA. Also provides that an entity is considered to hold plan assets only to the extent of the percentage of the equity interest owned by benefit plan investors.	No provision.	
SELF-CORRECTION PERIOD	ERISA and the Code do not provide for a self-correction period during which fiduciaries who become aware of a PT may self-correct and thus avoid a violation of the PT rules. Therefore, if a fiduciary or party in interest engages in a PT, they generally cannot "undo" the PT after the fact and thus remain subject to fiduciary liability and penalty	Adds a new self-correction provision to ERISA and the Code that would permit certain transactions in connection with the acquisition, holding or disposition of any security or commodity to be corrected within a given period of time, generally 14 days after the fiduciary or party in interest discovered or reasonably should have	Same as H.R. 2830.	

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
	taxes.	discovered the error, and avoid a violation of the PT rules. The self-correction period does not apply to transactions involving the acquisition or sale of employer securities or employer real property. Also, self-correction is not available to fiduciaries or parties in interest that have knowledge that a transaction is a PT.		
DEFINITION OF AMOUNT INVOLVED	Section 502(i) of ERISA provides that the Secretary of Labor may assess a civil penalty against a party in interest that engages in a PT. The amount of the civil penalty is generally capped at 5% of the "amount involved" in each PT for each year. Where a transaction remains uncorrected for more than 90 days upon notice from the Secretary, however, the civil penalty may be increased up to 100% of the "amount involved." The term "amount involved" generally means the amount of money and the fair market value of the other property given or received.	Provides the following exceptions to the general definition of "amount involved": 1. Where the PT involves a violation of ERISA section 408(b)(2) pertaining to the contracting or making reasonable arrangements with a party in interest for materials or services necessary to the operation of the plan, "amount involved" means only the amount of excess compensation. 2. In the case of principal transactions involving securities or commodities, the "amount involved" means only the amount received by the disqualified person in excess of the amount such person would have received in an arm's length transaction.	No provision.	
BLOCK TRADING	Block trades are trades where more than one party joins together to trade in a "block" to secure lower transaction fees and a volume price.	Transactions involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary with investment discretion over the assets involved) would be exempt from ERISA and the Code's PT rules if (1) the transaction is a block trade, (2) at the time of the transaction, the plan's interest does not exceed 10% of the aggregate size of the block trade, and (3) the terms of the transaction are at least as favorable as an arm's length	Same as H.R. 2830 except also requires that the compensation paid, in addition to the price, not be greater than an arm's length transaction with an unrelated party, and defines a block trade to be a trade of at least 10,000 shares or $200,000 that will be allocated across two or more client accounts of the fiduciary.	

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		transaction.		
BONDING RELIEF	ERISA requires that every non-corporate fiduciary (*e.g.*, a broker-dealer) of an employee benefit plan that handles funds be bonded up to a maximum of $500,000.	Exempts broker-dealers (and affiliates), investment advisers, and firms that are subject to certain federal securities laws and which are subject to bonding requirements imposed by self-regulatory agencies (*e.g.,* a national exchange).	Same as H.R. 2830 except does not specifically address whether affiliates are eligible for the relief.	
ELECTRONIC NETWORKS	Broker-dealers and financial institutions sometimes have an ownership interest in electronic trading systems that "blindly" match buy and sell orders at specified prices. Plans are frequently provided services through these systems, sometimes called "electronic communications networks" or "ECNs."	Exempts from ERISA's PT rules transactions involving the purchase and sale of securities or other property between a plan and a fiduciary or a party in interest if (1) the transaction is executed through a national exchange, an ECN, alternative trading system, trading venue, or similar approved system, (2) neither the system nor the parties to the transaction take into account the identity of the parties in the execution of trades, (3) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the system, (4) the price and compensation associated with the purchase and sale are not greater than an arm's length transaction, (5) the system or venue has been authorized under the plan for transactions, if the fiduciary or party in interest has an ownership in the system or venue, and (6) not less than 30 days prior to transactions commencing, the plan administrator is provided with written notice.	Generally similar to H.R. 2830. However, unlike H.R. 2830, S. 1783 requires that a plan fiduciary authorize transactions on a trading system annually if the fiduciary directing the transaction has an ownership interest in the trading system.	The fifth and sixth requirements in H.R. 2830 were added after the bill was reported by the Ways & Means Committee as part of the Chairman's substitute, which was approved by the full House on December 15, 2005.
FOREIGN EXCHANGE TRANSACTIONS	The extension of money or credit is incidental to and a necessary component of many foreign exchange transactions.	Exempts foreign exchange transactions between a bank or a broker-dealer (or an affiliate of either) and a plan with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest if (1) the transaction involves the purchase, holding or sale of securities, (2) the terms of the transaction are no less	Same as H.R. 2830.	As reported by the Education & Workforce Committee, the exemption would be unavailable if the bank or broker-dealer has investment discretion or provides investment advice with respect to the securities transaction. This limitation was dropped as part of the Managers' Amendment.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		favorable than an arm's length transaction between unrelated parties, and (3) the transaction satisfies certain exchange rate requirements.		
EFFECTIVE DATE	Not applicable.	Generally effective after the date of enactment.	Same as H.R. 2830.	
MISCELLANEOUS ERISA REFORMS				
ANNUITY STANDARD	DOL Interpretive Bulletin 95-1 could be construed as requiring defined contribution plan sponsors that offer an annuity as an optional form of distribution to select the "safest available annuity." Concerns about how to comply with this standard have led many sponsors not to provide for an annuitized optional form of benefit.	Directs the Secretary of Labor, within 1 year after date of enactment, to issue final regulations clarifying that the selection of an annuity contract as an optional form of distribution from a defined contribution plan is not subject to the safest available annuity standard, but remains subject to otherwise applicable fiduciary requirements.	Same as H.R. 2830.	This clarification was added to the House bill as part of the Managers' Amendment.
MAXIMUM BOND AMOUNT	Every plan fiduciary or person who handles plan assets (*e.g.*, a directed trustee) must be bonded up to a maximum of $500,000.	No provision.	Increases the maximum bond amount to $1,000,000. Effective Date: The proposal is effective for plan years beginning after 2005.	
FIDUCIARY RELIEF IN CONNECTION WITH INVESTMENT OPTION CHANGES	ERISA section 404(c) provides that where a participant or beneficiary exercises control over the assets in their individual account, no person who is otherwise a fiduciary shall be liable for any loss or breach resulting from the participant or beneficiary's exercise of control.	Makes clear that the 404(c) safe harbor for plan fiduciaries applies to a "qualified change in investment options," whereby a participant's account is reallocated by the plan among one or more new investment options which are similar in characteristics, including risk and rate of return of the prior options, so long as the following requirements are met: 1. At least 60 days prior to the change, notice is provided to participants and beneficiaries, including information about the new investment options and an explanation that absent affirmative instructions to the contrary, the participant's account will be invested in the new options;	Similar to H.R. 1000. Effective Date: Subject to a delayed rule for collectively bargained plans, the proposal is generally effective for plan years beginning after 2005.	H.R. 2830 provides a general fiduciary safe harbor for mapping of investment options. H.R. 1000 and S. 1783 provide a fiduciary safe harbor for investment changes in connection with a blackout period. The bills also have provisions addressing default investments. Coordination between these provisions would be helpful. H.R. 2830 generally requires that each option under the old menu be mapped to a comparable new option under the new menu. However, there are many situations where a type of investment is not being replaced. For example, the employer stock fund of an acquired company may be eliminated by the buyer, but the buyer may not maintain

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		2. The participant has not provided to the plan administrator an affirmative instruction to the contrary; and 3. The investment options chosen by the participant or beneficiary prior to the planned change are the product of the participant or beneficiary's control over the account assets. Effective Date: Applies to changes in investment options taking effect on or after January 1, 2006. **[From H.R. 1000 (as it passed the House in 2003)]** ERISA section 404(c) protections for plan sponsors would apply during a blackout period only if the person authorizing the blackout meets his or her fiduciary duties and notice obligations in connection with such authorization. Matters to be considered in determining whether a person has satisfied ERISA's requirements include whether such person (1) has considered the reasonableness of the expected period of the blackout, (2) has provided the required blackout notice, and (3) has acted in accordance with the fiduciary obligations imposed by ERISA (e.g., acting solely in the interest of participants and beneficiaries) in authorizing the blackout. In the case of blackout periods arising in connection with a change in investment options under the plan, ERISA section 404(c) protections would be deemed to apply if reasonable notice of the blackout is given and assets are		a comparable fund to replace it. H.R. 2830 requires notice 60 days before a change. This is earlier than the 30-days notice required under the blackout period rule, and the same exceptions (*e.g.,* regarding unforeseeability) that apply under the blackout period rules should be considered. In both bills, it may make sense to define the term "blackout period" without regard to the "three-day" requirement; otherwise, the blackout period rules under section 404(c) would be tougher for shorter blackout periods than for longer periods.

ITEM	CURRENT LAW	HOUSE (H.R. 2830)[1]	SENATE (S. 1783)[2]	COMMENTS
		transferred either (1) to investment options in accordance with the affirmative election of the participant, or (2) absent such election, in the manner set forth in the notice given prior to the blackout (i.e., mapping would be permitted). The DOL would be directed to issue interim final regulations, prior to December 31, 2004, providing guidance on how plan sponsors or other fiduciaries can satisfy their fiduciary responsibilities during any blackout period. Effective Date: Plan years beginning on or after the date that is one year after the date of enactment, except that a special collective bargaining rule would apply.		

IRS CIRCULAR 230 NOTICE: Any tax advice contained in this document was not intended or written by Davis & Harman LLP to be used, and cannot be used by the recipient or any other person, for the purpose of avoiding any Internal Revenue Code penalties that may be imposed on such person. Recipients of this document should seek advice based on their particular circumstances from an independent tax advisor.