

H.R. 4 – Pension Protection Act of 2006 (as passed House)
Pension and other Benefit Provisions

Title I. Reform of Funding Rules for Single Employer Defined Benefit Pension Plans.

Sections 101, 102, 111, 112. Minimum funding standards for single-employer defined benefit plans. Under current law, employers have considerable flexibility in choosing the assumptions and methods used to calculate minimum funding requirements. However, employers generally must fund plans that are not at least 90% funded on a more accelerated basis under the Deficit Reduction Contribution (DRC) requirements, using specified interest and mortality assumptions. If employers make contributions in excess of the minimum required, the excess is added to the plan's "credit balance." The credit balance is increased each year by earnings at the interest rate assumed by the plan. The accumulated credit balance can be applied toward future years' minimum contribution requirements.

Under the proposal, plan liabilities are determined using a 3-segment yield curve developed from a 24-month average of the yield on the top three grades of corporate bonds. Assets can be averaged over 24 months, but the result is limited to 90% to 110% of market value as of the plan's valuation date. As under the current law DRC rules, Treasury establishes the standard mortality table. However, the proposal permits large companies to develop and use plan-specific mortality tables for minimum contribution calculations.

A plan's credit balance under the old rules becomes the beginning balance of the "carryover" account under the new rules. Contributions in excess of the minimum required under the new rules are added to a new "prefunding" balance. Both the carryover and prefunding balances are credited with the plan's actual rate of return each year. The employer can elect to use the carryover and prefunding balances (carryover first) to reduce the minimum required contribution only if the plan's funding target attainment percentage is at least 80%. (For the 80% test, the funding target attainment percentage is determined by subtracting only the prefunding balance from plan assets.)

The liability for benefits earned under the plan in past years is the plan's "target liability." The liability for benefit accruals in the current year is the plan's "normal cost." The plan's minimum contribution requirement for a year is the normal cost plus amounts required to amortize any funding shortfall over seven years. For the first year under the new rules, the funding shortfall is the target liability minus assets. In subsequent years, a new shortfall amortization base is established to reflect gains or losses during the preceding year. Generally, both the carryover and prefunding balances are deducted from assets to calculate the funding shortfall.

Liabilities are increased if the plan is "at-risk." A plan is "at-risk" if the plan's funding target attainment percentage is both less than 80% without regard to at-risk liabilities and less than 70% counting at-risk liabilities. The funded percentage is determined by subtracting both the carryover and prefunding balances from assets. The 80% test is phased in at 65% in 2008, 70% in 2009, 75% in 2010 and 80% for 2011 and thereafter. The plan determines the at-risk liabilities by assuming that workers eligible to retire in the next ten years will retire as early as possible. (There is an exception for auto companies and suppliers that excludes anyone offered an early retirement in 2006.) The additional at-risk liability is phased in at 20% per year for each consecutive year the plan is at-risk.

If a plan is at-risk for the current year and two out of the previous four years, a load of 4% of liability plus \$700 per participant is added to the at-risk liability. Plans with 500 or fewer participants are not subject to at-risk liability.

The proposed rules apply to plan years beginning after 2007. There is no collective bargaining delay. The proposal's estimated outlay cost (for PBGC benefits) is \$53 million over 5 years and \$274 million over 10 years. The estimated revenue gain is \$4.739 billion over five years and the estimated revenue cost is \$2.456 billion over ten years.

Sections 103 and 113. Benefit limitations under single-employer plans. Under current law, employers in bankruptcy may not make a benefit increase effective until the employer reorganizes. Also, where a plan's new current liability funding percentage is less than 60%, an increase generally may not be effective until the employer has brought funding up to 60%. The proposal provides stronger limitations based on the plan's "adjusted funding target attainment percentage." The funding target attainment percentage is the ratio of assets (minus carryover and prefunding balances) to target liability (without regard to at-risk status). The adjusted percentage is determined by adding the amount of annuity purchases for non-highly compensated employees in the last two years to both assets and liabilities.

If the adjusted funding target attainment percentage is below 60% for a plan year, the proposal prohibits the plan from triggering shutdown benefits, prohibits accelerated payments (including lump sums) during the year, and freezes benefit accruals. If the percentage is below 80%, the plan may not have benefit increases. Between 60% and 80%, lump sum payments are limited to the lesser of the present value of the participant's PBGC guaranteed benefit and 50% of the lump sum the participant would otherwise receive. (The balance of the benefit would be payable in the form of an annuity.) The restrictions do not apply if the plan is 100% funded without reducing assets for credit balances. Collectively bargained plans must convert carryover and prefunding balances to assets if the conversion will eliminate a restriction. Special rules apply to new plans and to plans of employers in bankruptcy.

The benefit limitations are generally effective for plan years beginning in 2008. There is a special collective bargaining rule that delays the effective date until the earlier of the expiration of the contract or plan years beginning in 2010. The estimates are included in the section 101 estimates.

Sections 104, 105, 106 and 115. Special rules for multiple employer plans of certain cooperatives; Temporary relief for certain PBGC settlement plans; and special rules for plan certain government contractors; and Modification of transition rule to pension funding requirement.

The proposal delays the effective date of the funding and benefit limitation rules for rural electric, agricultural, and telephone multiple employer plans until 2017, defense contractors until the earlier of when the CAS Board allows recovery of the new contribution rates or 2011, and until 2014 plans of employers that took over sponsorship of the plan so that PBGC did not have to terminate the plan. In addition, the proposal modifies existing special rules for an urban bus company. The revenue estimates are included in the section 101 estimates. The estimated outlay cost is \$2 million over 5 years and \$8 million over 10 years.

Section 116. Restrictions on funding of nonqualified deferred compensation plans by employers maintaining underfunded or terminated single-employer plans.

Under current law, Employers may set aside or reserve money to pay nonqualified deferred compensation as long as the plan is not considered “funded.” The proposal amends Code section 409A to prevent such a set aside or reserve for certain executives if the employer or a member of its controlled group is bankrupt, has an “at-risk” plan (generally less than 80% funded) or a plan that has terminated without having sufficient assets to pay all benefits. The proposal also denies an employer a deduction for “gross ups” intended to cover penalties incurred by prohibited funding of nonqualified arrangements. These provisions apply as of date of enactment. The estimated revenue gain is \$33 million over five years and \$64 million over ten years.

Title II. Funding Rules for Multiemployer Defined Benefit Plans and Related Provisions.

Sections 201 and 211. Funding rules for multiemployer defined benefit plans. Under current law, multiemployer plans are subject to the same general funding rules as single employer plans. However, longer amortization periods apply to multiemployer plans than to single employer plans, and there is no DRC. Plans may apply for amortization extensions of up to 10 years. The interest rate for extensions is the Federal short-term rate. The proposal retains the funding-standard-account approach of current law but reduces longer amortization periods to 15 years and eliminates the shortfall method. A plan can get an automatic five-year amortization extension, and another five years with approval of IRS. The amortization extension interest rate is the funding rate but the old rate is grandfathered for extensions and modifications under applications filed before June 30, 2005. The section is effective for plan years beginning in 2008. The estimated revenue cost is \$72 million over five years and \$306 million over ten years.

Sections 202 and 212. Additional funding rules for multiemployer plans in endangered or critical status. The proposal adds new funding rules for multiemployer plans that are in endangered, seriously endangered, or critical status, including some relief from excise taxes for an accumulated funding deficiency. Status is generally based on current funding percentages and projected accumulated funding deficiencies. In general, a plan less than 80% funded is in endangered or seriously endangered status and a plan less than 65% funded is in critical status. Endangered (and seriously endangered) plans must develop funding improvement plans that will increase the plan’s funding percentage over 10 or 15 years. Endangered plans’ goals are an improvement of 1/3 of underfunding within 10 years (and no accumulated funding deficiency). Seriously endangered plans’ goals generally are an improvement of 1/5 of underfunding over 15 years.

A critical status plan must adopt a rehabilitation plan that sets goals for how the plan will get out of critical status within 10 years. A critical status plan may provide for benefit cutbacks (other than for normal retirement benefits) after notice and may impose a 5% surcharge on employer contributions. The trustees develop the funding improvement plan or rehabilitation plan and submit it to the collective bargaining parties for adoption. Failure to timely adopt the plan and meet other deadlines is subject to \$1,100 a day penalties under ERISA or an excise tax under the Code in certain cases.

The multiemployer provisions are effective generally for plan years beginning in 2008. The estimated cost is included in the section 201 estimate.

Sections 203 and 213. Measures to forestall insolvency of multiemployer plans. Under current law, multiemployer plans in reorganization must determine whether they will be insolvent within three years. The proposal expands the time to 5 years. The estimated cost is included in the section 201 estimate.

Section 204. Withdrawal liability reforms. Employers withdrawing from multiemployer pension plans are subject to withdrawal liability. The law contains various exceptions and special rules. The proposal repeals the limitation on the withdrawal liability of insolvent employers and updates the rules relating to limitations on withdrawal liability based on the company's net worth, effective for sales beginning in 2007. The proposal also addresses withdrawal liability if work is contracted out (effective for work after enactment), makes the "free look" employer participation rules available for building and construction trade plans, amends the "fresh start" option rules for calculating withdrawal liability (effective for withdrawals after 2006), and changes the withdrawal liability payment rules in cases where the plan alleges a transaction was undertaken to evade or avoid withdrawal liability (effective for withdrawal liability notices after enactment relating to transactions after 1998). The estimated cost is included in the section 201 estimate.

Section 205. Prohibition on retaliation against employers exercising their rights to petition the federal government. ERISA prohibits retaliation against participants for enforcing their ERISA rights. The proposal extends that prohibition to contributing employers of multiemployer plans (effective on enactment). The proposal has no revenue effect.

Section 206. Special rules for certain benefits funded under an agreement approved by the Pension Benefit Guaranty Corporation. The proposal provides an exception from the new multiemployer plan rules for benefit increases made pursuant to an agreement with the PBGC prior to June 30, 2005, as long as the increases are funded in accordance with the agreement. The estimated cost is included in the section 201 estimate.

Section 214. Exemption from excise taxes for certain multiemployer pension plans. Multiemployer plans that have an accumulated funding deficiency are subject to an excise tax. The proposal exempts a small, fishery-related multiemployer plan from any excise taxes that accumulate prior to the earlier of the plan adopting a rehabilitation plan or 2009. The estimated revenue cost is less than \$500,000 over both 5 years and 10 years.

Section 221. Sunset of additional funding rules. The endangered/critical status provisions and the automatic five-year extension for multiemployer plans sunset in 2014. However, any plan already in endangered or critical status continues to follow its plan. The estimated cost is included in the section 201 estimate.

Title III. Interest Rate Assumptions.

Section 301. Extension of replacement of 30-year Treasury rates. Current law requires the use of a 30-year Treasury rate for certain calculations. For 2004 and 2005, a long-term corporate bond

interest rate was substituted for the 30-year Treasury rate for plan funding and PBGC premiums. The proposal extends the 2004 and 2005 temporary rates to 2006 and 2007. No separate revenue estimate.

Section 302. Interest rate assumption for determination of lump sum distributions. A plan's lump sum payment to a participant or beneficiary must be no less than the present value of the annuity to which the participant or beneficiary would have been entitled. For this calculation, the plan must use specified interest and mortality assumptions. The interest rate is the rate on 30-year Treasury bonds. The proposal requires that the plan calculate lump sum values using the three-segment yield curve. The yield curve value is phased in over 5 years at 20% per year (the remainder is based on the existing methodology). The phase in starts in 2008 and the yield curve is fully phased-in in 2012. The yield curve is based on a monthly interest rate not the funding yield curve's 24-month average. The proposal is effective for 2008 plan years. The proposal has negligible revenue effect.

Section 303. Interest rate assumption for applying benefit limitations to lump sum distributions. The maximum benefit a participant may accrue and receive is stated in terms of an annuity. The Code specifies a minimum interest rate that may be used for conversion to other forms of payment. The permanent rate is the same as the rate for minimum lump sums. However, there is a temporary provision (through 2005) that allows the conversion at 5.5%. The proposal provides, starting for 2006 distributions, the rate cannot be less than the greatest of 5.5%, 105% of the minimum distribution interest rate, or the rate specified in the plan. The proposal has negligible revenue effect.

Title IV. PBGC Guarantee and Related Provisions.

Section 401. PBGC premiums. Single-employer plans that have unfunded vested benefits must pay the PBGC a variable rate premium (VRP) equal to \$9 per \$1,000 of unfunded vested benefits. The plan owes no VRP if the plan is at the full funding limit. For 2004 and 2005, the unfunded vested benefits were valued using 85% of a rate based on investment-grade corporate bonds. The proposal in section 301 specifies the extension of that methodology in 2006 and 2007. The Deficit Reduction Act of 2005 created a temporary (five year) termination premium. The proposal, starting in 2008, requires use of the yield curve's segment rates for the premium calculation. The yield curve is based on the monthly corporate rate applicable to the plan year. The proposal eliminates the full funding exception to the variable rate premium and makes the termination premium permanent. The proposal on variable rate premiums decreases outlays by \$1.846 billion over 5 years and \$4.976 billion over 10 years. The proposal on termination premiums decreases outlays by \$91 million over 5 years and \$1.846 billion over 10 years. Total outlays are decreased \$1.936 billion over 5 years and \$6.822 billion over 10 years.

Section 402. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.

The proposal includes relief for the airlines. Airlines can choose to amortize over 10 years rather than 7 years. Alternatively, for plans that freeze accruals they can use a 17-year amortization and an 8.85% amortization interest rate. In addition, the termination premium paid to the PBGC is doubled

to \$2,500 per participant for plans electing the 17 years. The proposal decreases outlays by \$115 million over 5 years and \$399 million over 10 years. The proposal has an estimated revenue gain of \$48 million over 5 years and an estimated revenue loss of \$104 million over 10 years.

Section 403. Limitation on PBGC guarantee of shutdown and other benefits. If a plan is amended to increase benefits, the PBGC guarantee of the increased benefits is phased in over five years from the date of the plan amendment. A shutdown benefit is generally based on a provision already in the plan, so the shutdown occurring does not trigger a phase-in period. The proposal treats a shutdown or other contingent event as an amendment that triggers the phase-in of guaranteed benefits, effective for events occurring after July 26, 2005. The proposal's outlay impact is included in the outlay impact under section 101.

Section 404. Rules relating to bankruptcy of employer. PBGC guarantees and asset allocations are tied to the date a plan terminates. Under the proposal, if a plan terminates after the employer goes into bankruptcy, the bankruptcy date is treated as the plan's termination date for purposes of (1) the determination of the applicable maximum guarantee and the five-year phase in of the guarantee and (2) the determination of who, and what benefit, is in asset allocation priority category 3 (those who retired or could have retired three years before the termination date). This provision is effective for bankruptcies initiated 30 days after enactment. The proposal's outlay impact is included in the outlay impact under section 101.

Section 405. PBGC premiums for small plans. Pension plans pay a variable rate premium to the PBGC equal to \$9 per \$1,000 of unfunded vested benefits. There is no special premium for small plans. The proposal provides that an employer with 25 or fewer employees pays a special reduced variable rate premium for each participant equal to \$5 times the number of participants in the plan. (The total variable premium therefore would be $\$5 \times [(the\ number\ of\ participants)\ squared]$.) The proposal is effective in 2007. The proposal increases outlays by \$5 million over 5 years and \$10 million over 10 years.

Section 406. Authorization for PBGC to pay interest on premium overpayment refunds. PBGC charges interest on underpayments but is not authorized to pay interest on overpayments. The proposal authorizes PBGC to pay interest on premium overpayments but only interest accruing for periods beginning after enactment. The estimated revenue cost is \$15 million over 5 years and \$31 million over 10 years.

Section 407. Rules for substantial owner benefits in terminated plans. Ten percent owners are designated as "substantial owners" and special rules apply to them with respect to guaranteed benefits. The proposal simplifies the rules by substituting majority owner rules (50% or more owners) for substantial owner rules and the applying the special guarantee limitation (now on majority owners) only to the plan's first 10 years. There is also a change in the allocation of assets rules relating to majority owners. The changes are effective for notices of intent to terminate or notices of determination given after 2005. The proposal's outlay impact is included in the outlay impact under section 101.

Section 408. Acceleration of PBGC computation of benefits attributable to recoveries from employers. PBGC shares recoveries from the employer with participants based on the proportional losses of the PBGC (unfunded guaranteed benefits) and the participants (unfunded non-guaranteed benefits). Smaller terminations use an average recovery ratio (the “SPARR”) to accelerate processing (i.e., rather than applying separate ratios for each plan, PBGC annually calculates an average ratio based on the last five years). Before doing the allocation PBGC must split the recovery between return of due and unpaid contributions (DUEC) and recovery of employer liabilities. The proposal changes the SPARR rules so that the most immediate two years are not counted in the five-year averaging period. In addition, a similar averaging ratio is created for DUEC. The proposal is effective for notices of intent to termination or notices of determination given at least 30 days after enactment. The proposal’s outlay impact is included in the outlay impact under section 101.

Section 409. Treatment of certain plans where cessation or change in membership of a controlled group. Where a plan spins off part of the plan, the allocation of assets and liabilities between the parties generally is done using the PBGC termination assumptions. The proposal provides a special rule allowing the plan’s interest rate to be used instead for certain corporate transactions involving fully-funded plans and investment-grade employers. The proposal is effective for transactions after enactment. The proposal’s outlay impact is included in the outlay impact under section 101.

Section 410. Missing participants. PBGC conducts a missing participant program for PBGC-covered terminating defined benefit plans. The proposal expands the PBGC program to cover terminating multiemployer plans, terminating defined benefit plans of small professional plans (which the PBGC does not cover for guarantee purposes), and terminating defined contribution plans. The proposal has negligible outlay effect.

Section 411. Director of the Pension Benefit Guaranty Corporation. The PBGC Executive Director is appointed by the Secretary of Labor. The position is not subject to Senate confirmation. The proposal make the PBGC Director’s position a presidential appointment subject to Senate confirmation by both the Finance Committee and the HELP Committee. The proposal has no revenue effect.

Section 412. Inclusion of information in the PBGC annual report. The proposal requires the PBGC annual report to include additional information on the PBGC’s microsimulation forecasting model (“Pension Insurance Modeling System”) including the specific parameters used for the PBGC forecast and the impact on the PBGC deficit or surplus if PBGC’s investments had earned during the year reported 60% of the average return on investment in the Standard and Poor’s 500 Index, plus 40% of the average return on investment for such year in the Lehman Aggregate Bond index (or similar fixed index). The proposal has no revenue effect.

Title V. Disclosure

Section 501. Defined benefit plan funding notice. Plan administrators must provide participants a summary of the annual report (SAR) 60 days after the annual report is filed. Plan administrators of certain underfunded single-employer defined benefit plans must send a funding notice to participants

and beneficiaries pursuant to section 4011 of ERISA at the same time as they send the SAR. All multiemployer defined benefit plans have to provide a notice under ERISA section 101(f) 60 days after the annual report. The proposal creates a new funding notice for multiemployer and single-employer defined benefit plans due 120 days after the beginning of the plan year. (For plans with 100 or fewer participants the notice is due with the filing of the annual report.) Plan administrator must send the notice to PBGC, participants, beneficiaries, unions, and, in the case of multiemployer plans, employers contributing to the plan. The notice must include detailed information on plan funding and a multiemployer must provide additional information including whether the plan is in endangered or critical status and information on how to get a copy of the funding improvement or rehabilitation plan. The notice under ERISA section 4011 and the SAR for defined benefit plans are eliminated. The proposal is generally effective for plan years beginning after 2007. The proposal has no revenue effect.

Section 502. Access to multiemployer plan information. The proposal expands the ability of participants, beneficiaries, unions, and contributing employers to get plan actuarial and financial information and estimates of potential withdrawal liability from multiemployer plans. The proposal is effective for plan years beginning after 2007. The proposal has no revenue effect.

Section 503. Additional annual reporting requirements. Pension plans file an annual report with schedules and attachments each year providing financial, actuarial and other information about the plan. The proposal requires limited additional information from single-employer defined benefit plans and extensive additional information from multiemployer defined benefit plans. A multiemployer plan must provide a summary of this information to contributing employers and to employee organizations within 30 days after the annual report is due. The proposal is effective for plan years beginning after 2007. The proposal has no revenue effect.

Section 504. Electronic display of annual report information. The proposal requires the Secretary of Labor to electronically display annual report information in electronic form within 90 days after receiving it. Employers with intranets must also display the information on their intranets. The proposal is effective for plan years beginning after 2007. The proposal has no revenue effect.

Section 505. Section 4010 filings with the PBGC.

Current Law. Employers with plans with aggregate underfunding of \$50 million or more must provide financial and actuarial information (as provided in regulations) to the PBGC annually. Section 4010 information is confidential and the PBGC may not make it public. A Congressional committee may request the information. The proposal eliminates the \$50 million in the aggregate filing requirement and substitutes a requirement that all plans that have a funding target attainment percentage less than 80% must file plan actuarial and employer financial information. In addition to the current requirement of actuarial and financial data, the provision specifies that the employer must provide additional funding information, including termination liabilities, and requires that the PBGC annually submit to the labor and tax committees of the House and Senate a summary report of the information submitted to the PBGC. The proposal is effective for filings for years beginning in 2008. The proposal has no revenue effect.

Section 506. Disclosure of termination information to plan participants. Participants in plans terminating in a distress termination or in an involuntary termination instituted by the PBGC do not receive copies of information the employer files with the PBGC. The proposal requires the plan administrator or plan sponsor in a distress or involuntary termination to provide to participants information provided to PBGC within 15 days of filing it with the PBGC. The bill also requires PBGC to make the administrative record of the involuntary termination decision available. The Act includes confidentiality limitations. The proposal is effective for notices of intent to terminate or notices of determinations after enactment. The proposal has no revenue effect.

Section 507. Notice of freedom to divest employer securities. The proposal adds a new requirement that the plan administrator provide a divestiture notice 30 days before the first date on which the individual could divest employer securities. The Secretary of Treasury is to issue a model notice within 180 days of enactment. The proposal is effective for plan years beginning in 2008. The proposal has no revenue effect.

Section 508. Periodic pension benefit statements. Participants are not required to be given benefit statements on a regular basis. The proposal sets out specific requirements for single and multiemployer plans to provide periodic benefit statements. Defined benefit plans must provide individual benefit notices every three years or upon request. The proposal allows the defined benefit requirement to be met in an alternative way by notifying participants annually how a participant can get the required detailed information. Defined contribution plans must provide individual benefit notices annually; however, where there is individual investment direction, the plan must provide the notice quarterly. Failure to give the notice is subject to a penalty under ERISA. The Secretary of Labor is to provide model notices within 180 days of enactment. The proposal generally applies to plan years beginning after 2006; there is a delay for collectively bargained plans that could delay the effective date until 2009. The proposal extends the period for correcting excess contributions to 6 months for a 401(k) plan using the automatic enrollment provisions. The proposal has no revenue effect.

Section 509. Notice to participants or beneficiaries of blackout periods. The Sarbanes-Oxley Act of 2002 required blackout notices if participants could not self direct investments for a period. The proposal removes the notice requirement for one person and partner-only (and spouses) plans retroactive to the original requirement date. The proposal has no revenue effect.

Title VI. Investment Advice, Prohibited Transactions, and Fiduciary Rules

Section 601. Investment Advice. Under current law, a fiduciary must act in a prudent manner and solely in the interest of participants and beneficiaries. Parties in interest are prohibited from dealing with the plan except pursuant to a statutory, class, or individual exemption. A party-in-interest may provide investment advice using an objective computer model of investment alternatives subject to certain limitations as discussed in the Department of Labor's Sun America opinion. The proposal would create a prohibited transaction exemption for investment advice provided to employer-sponsored retirement plans through a computer model that is certified by an independent party. An exemption for advice provided by an adviser whose compensation does not vary with the investments selected would be available to both employer-sponsored plans and IRAs.

The Department of Labor, in consultation with Treasury, would be directed to determine whether or not a computer model is available that would be appropriate for the broader range of investment options common to IRAs (stocks and bonds as well as mutual funds). The Department of Labor's determination must be made by the end of 2007. If the Department of Labor determines an appropriate model is available for IRAs, a certified computer model will be an option for providing investment advice to IRAs. If the Department of Labor determines that an appropriate model is not available, the Department of Labor will issue a prohibited transaction exemption that protects IRA account holders from biased advice without requiring fee-leveling or a computer model. This exemption will sunset on the later of two years after an appropriate IRA computer model becomes available, or three years after issuance of the exemption. The proposal has negligible revenue effect.

Section 611. Prohibited transaction rules relating to financial investments. Transactions between a plan and a party-in-interest are prohibited unless there is a statutory class, or individual exemption. The bill provides statutory prohibited transaction exemptions for certain transactions involving block trading (in blocks of at least 10,000 shares with a market value of at least \$200,000), regulated electronic communication networks, service providers who are not fiduciaries with respect to the assets involved, foreign exchange transactions, and cross trading (for plans with over \$100 million in assets). The proposal also provides relief from certain bonding requirements for broker-dealers subject to other bonding requirements and removes foreign and governmental plans from the numerator for purposes of determining whether more than 25% of a fund is from pension plan assets. The proposal is generally effective for transactions after enactment. The proposal has negligible revenue effect.

Section 612. Correction period for certain transactions involving securities and commodities. The proposal amends the correction period for prohibited transactions involving certain securities and commodities to 14 days after the party discovers or should have discovered that the transaction was prohibited. The proposal applies to any transaction where the party discovers or should have discovered the violation after enactment. The proposal has negligible revenue effect.

Section 621. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments. A plan fiduciary is protected from some liability in self-directed plans. The proposal eliminates the fiduciary's protection during blackout periods when a participant cannot self direct unless certain specified requirements regarding reasonable blackout periods are satisfied. The proposal is effective for plan years after 2007 (with a collective bargaining delay till as late as plan years beginning in 2010). The proposal has no revenue effect.

Section 622. Increase in maximum bond amount. Fiduciaries of plans and others who handle plan money must be bonded for at least \$500,000. The proposal increases the fiduciary bond requirement to \$1 million for plans that holds employer securities. The proposal is effective for plan years after 2007. The proposal has no revenue effect.

Section 623. Increase in penalties for coercive interference with exercise of ERISA rights. The Act increases penalties for coercive interference with ERISA rights from a \$10,000 fine and one year in prison to a \$100,000 fine and three years in prison. The proposal is effective upon enactment. The proposal has no revenue effect.

Section 624. Treatment of investment of assets by plan where participant fails to exercise investment election. Employers have some fiduciary protections where participants self direct their accounts. The proposal extends similar fiduciary protections in situations where the participant does not make an investment choice and the plan sponsor makes a default investment consistent with Department of Labor regulations (to be issued within six months of enactment). The proposal is effective for plan years beginning after 2006. The proposal has no revenue effect.

Section 625. Clarification of fiduciary rules. The Department of Labor has provided guidance that applies a “safest annuity available” standard to all annuity investments by a fiduciary. The proposal requires the Department of Labor to issue within one year of enactment regulations making clear that the “safest annuity available” requirement does not apply to annuities paid as an optional distribution from a defined contribution plan. The proposal is effective upon enactment. The proposal has negligible revenue effect.

Title VII. Benefit Accrual Standards

Section 701. Benefit accrual standards. Application of the age discrimination rules of the Code, ERISA and the ADEA to the design of hybrid defined benefit plans and to conversion of traditional final-pay plans into a hybrid plan have been the subject of much litigation. The amount of the minimum lump sum that a hybrid plan must pay has also been the subject of litigation. The proposal provides rules for testing defined benefit plans, including hybrid plans, for age discrimination under the Code, ERISA, and the ADEA. A hybrid plan must meet certain conditions for vesting and for investment credits. The “wearaway” of benefits the participant has earned at the time of conversion is prohibited in a conversion to a hybrid plan. These provisions are prospective only, with no inference for the past. Applicable defined benefit plans (basically hybrid plans) may treat the hypothetical account balance as the lump sum value for distributions after enactment. The proposal is generally effective for periods beginning on or after June 29, 2005, except the provision allowing distribution of the account balance is effective upon enactment. The vesting and interest credit requirements generally are effective for plan years beginning after 2007 (with a collective bargaining delay to as late as plan years beginning in 2010). The estimated cost is \$121 million over 5 years and the estimated gain is \$79 million over 10 years.

Section 702. Regulations relating to mergers and acquisitions. The proposal instructs the Secretary of the Treasury to issue regulations within 12 months to deal with situations where the conversion to a cash balance plan is made with respect to employees who become employees pursuant to a merger or acquisition. The estimated cost and gain is included in section 701.

Title VIII. Pension Related Revenue Provisions

Section 801. Increase in deduction limit for single-employer plans. Generally, employers can deduct contributions that fund defined benefit plans up to 100% of the plan’s current liability. Contributions in excess of the limit are subject to a 10% excise tax. Because the plan’s liability on termination is generally higher than its current liability, there is an exception that allows a deductible contribution equal to 100% of the plan’s termination liability, but only in the year of termination. The proposal increases the deductible limit for single-employer plans to the year’s normal cost

(generally the cost of benefits accrued in the year) plus the amount necessary to fully fund the funding target. In addition, employers can contribute and deduct a cushion. The cushion is 50% of the funding target plus additional amounts reflecting projections of the participants' compensation and the statutory compensation limits. (The proposal allows plans to contribute and deduct the maximum at risk liability for both target and normal if this is more.) The proposal is effective for contributions after 2007. For 2006 and 2007, the deduction limit is increased from 100% to 150% of the plan's current liability. The estimated cost is included in section 101

Section 802. Deduction limits for multiemployer plans. The proposal increases the deduction limit for multiemployer plans to 140% of the plan's current liability. The proposal is effective for contributions for years beginning in 2008. The estimated cost is included in section 201.

Section 803. Updating deduction rules for combination of plans. Employers that sponsor both defined benefit plans and defined contribution plans face a combined limit on deductible contributions. The limit is the greater of the amount of the required minimum contribution to the defined benefit plan or 25% of compensation paid or accrued to plan participants during the year. The proposal provides that contributions to a PBGC-covered defined benefit plan (single-employer plans in section 801 and multiemployer plans in this section) are deductible without affecting the combined limit. For other plans, only contributions in excess of 6% of compensation counts towards the combined limit. The proposal is effective for contributions for taxable years beginning after 2005 (after 2007 for single-employer plans pursuant to section 801). The estimated cost is included in sections 101 and 201.

Section 811. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent. The proposal makes the EGTRRA provisions affecting retirement plans and IRAs permanent by eliminating the 2010 sunset. The estimated cost is \$2.642 billion over 5 years and \$36.197 billion over 10 years.

Section 812. Saver's Credit. The proposal makes the EGTRRA provisions relating to the Saver's Credit permanent by eliminating the sunset after 2006. The estimated cost is \$ 4.329 billion over 5 years and \$10,076 billion over 10 years.

Section 821. Clarifications regarding purchase of permissive service credits. The Code has restrictions on the purchase of pension benefits for service with another employer. However, special rules allow qualified retirement plans of state and local governments to allow participants to make after-tax contributions to purchase service credit under the plan for certain periods for which no credit had been given, including service with prior government employers and for up to five years with non-government employers. Current law does not allow the purchase of additional credits for years in which service credit has been given. The rules also allow trustee-to-trustee transfers from 403(b) or 457 plans to purchase service credit, without tax consequences to the individual. The proposal allows purchase of additional service credits even for years when service credit was given and provides more flexibility on prior educational service (elementary or secondary education) that will be treated as permissive service for purposes of buying credit. The proposal also provides more flexibility on trustee-to-trustee transfers so that the participant is not liable for income tax if the transferee plan improperly allows service purchase and allows the transfer between plans of

unrelated employers. The provisions are retroactively effective as if they were enacted in the Taxpayer Relief Act of 1997 and EGTRRA 2001. The proposal has negligible revenue effect.

Section 822. Allow rollover of after-tax amounts in annuity contracts. An individual may not roll over after-tax amounts in 403(b) annuity contracts to a qualified plan. The proposal eliminates this restriction effective for taxable years beginning after 2006. The proposal has negligible revenue effect.

Section 823. Clarification of minimum distribution rules for governmental plans.

Governmental plans are subject to the same rules as nongovernmental plans for commencing minimum distributions at age 70-1/2. The proposal requires Treasury to issue regulations providing relief from the minimum distribution rules for governmental plans as long as the plan complies with a reasonable good faith interpretation of the statute. It is intended that the regulations apply retroactively. The proposal has no revenue effect.

Section 824. Allow direct rollovers from retirement plans to Roth IRAs. Individuals with AGI less than \$100,000 may roll over money from a traditional IRA to a Roth IRA. The money is subject to tax, but it is exempt from the 10% early withdrawal tax. Taxpayers who want to do such a rollover from a qualified plan, 403(b) annuity, or 457 plan must first roll the money to a traditional IRA, and then do a second rollover to the Roth IRA. The proposal allows such direct rollovers effective for distributions after 2007. The proposal has negligible revenue effect.

Section 825. Eligibility for participation in retirement plans. Certain individuals who received a prior distribution from a plan may not participate in an eligible deferred compensation plan under section 457. The proposal eliminates the prohibition on an individual participating in an eligible deferred compensation plan merely because of a distribution from the plan before SBJPA of 1996 was effective. The estimated revenue cost is \$5 million over 5 years and \$14 million over 10 years.

Section 826. Modification of rules governing hardships and unforeseen financial emergencies.

The current regulations on hardship distribution address hardship of the participant, spouse, or dependent. The proposal requires Treasury to issue regulations within 180 days after enactment to expand “hardship” to include hardship of a beneficiary under the plan (even if it is not a spouse or dependent). The proposal has a gain of under \$500,000. The estimated revenue gain is less than \$500,000 over both 5 and 10 years.

Section 827. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days. The Code section 72(t) 10% premature distribution tax applies to distributions from plans and IRAs before age 59-1/2, subject to specified exceptions. The proposal creates a new exception from the premature distribution tax for distributions to a reservist (called up between September 11, 2001 and before December 31, 2007 for more than 179 days). The proposal applies to distributions after September 11, 2001, and allows for the money to be paid back in within the later of two years after the end of active service or enactment of the proposal. The estimated revenue cost is \$5 million over 5 years and \$5 million over 10 years.

Section 828. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees. Generally, there is a 10% premature distribution tax

for distributions before age 59-1/2. There are several exceptions, including distributions on separation after age 55. The proposal allows public safety officers to avoid the early distribution penalty for distributions based on separation from service if the officer is at least 50 (rather than 55) effective on the date of enactment. The proposal is effective for distributions after enactment. The estimated revenue cost is \$23 million over 5 years and \$58 million over 10 years.

Section 829. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions. Generally, participants and surviving spouses may roll over amounts from qualified plans, 403(b) annuities, and IRAs to another plan or IRA. Nonspouse beneficiaries may not roll over inherited amounts. The proposal allows nonspouse beneficiaries to roll over to an IRA or other plan structured for that purpose amounts inherited as a designated beneficiary. Thus, if the nonspouse beneficiary is required by the plan to take an immediate distribution, the nonspouse beneficiary can delay immediate taxation through the rollover. The rules governing minimum distributions at age 70-1/2 for non-spouse beneficiaries are unchanged. The proposal is effective for distributions after 2006. The estimated revenue cost is \$157 million over 5 years and \$291 million over 10 years.

Section 830. Direct payment of refunds to individual retirement plans. The proposal requires the IRS to make available a form for a taxpayer to file with the IRS directing the IRS to send the refund directly to the taxpayer's IRA. The proposal requires IRS to provide the form for taxable years beginning after 2006. The proposal has no revenue effect.

Section 831. Allowance of additional IRA payments in certain bankruptcy cases. Individuals 50 and older may make catch-up IRA contributions. Contributions for a year must be made by April 15th of the following year. The proposal allows individuals who worked for a bankrupt employer whose officers were indicted and whose employer had a least a 50% match in the form of employer stock in its 401(k) plan to make an additional IRA catch-up contribution (three times the otherwise applicable catch-up amount). The contributions can be made for each of 2007, 2008, and 2009. The estimated revenue cost is \$26 million over 5 years and \$36 million over 10 years.

Section 832. Determination of average compensation for 415 limits. IRS has issued guidance that would allow only compensation earned while an individual is a participant in the plan to be counted towards the defined benefit plan benefit limits. The proposal provides that the relevant test is compensation while working for the employer, not only when a participant. The proposal is effective for plan years after 2005. The estimated revenue cost is \$19 million over 5 years and \$40 million over 10 years.

Section 833. Inflation indexing of gross income limitations on certain retirement savings incentives. The proposal provides for indexing the adjusted gross income levels for the Saver's Credit and IRAs for taxable years after 2006. The estimated revenue cost of the IRA indexing is \$504 million over 5 years and \$2.212 over 10 years; the estimated revenue cost of the Saver's Credit indexing is included in section 812.

Section 841. Use of excess pension assets for future retiree health benefits and collectively bargained retiree health benefits. Generally, pension assets must be kept in the pension trust to pay retirement benefits for participants and beneficiaries. Internal Revenue Code Section 420 provides an exception ("420 transfers") that allows "excess assets" to be transferred from an ongoing

defined benefit plan to a 401(h) health account (within the defined benefit plan) to be used for retiree health costs for retirees covered by the plan. Excess assets are equal to 125% of the plan's current liability minus the lesser of the market or actuarial value of assets. The transfer is limited to the lesser of excess assets or the cost of retiree health benefits for the year. The proposal allows a pension plan with assets in excess of 120% of the plan's current liability (or funding target) to transfer two or more years of estimated retiree medical costs to a health account under the plan. The maximum amount that can be transferred is the lesser of ten years of estimated retiree medical costs or assets in excess of 120% of current liability. For all years for which a transfer has been made, the employer must make contributions sufficient to maintain the plan's 120% funding level (or transfer assets back from the health to the pension account. There is also a cost maintenance requirement that applies throughout the transfer period and four years thereafter. For employers meeting certain criteria, the cost maintenance requirement for multiyear transfers made pursuant to a collective bargaining agreement may be modified through the collective bargaining agreement. The proposal is effective for transfers made in taxable years beginning after 2006. The estimated revenue cost is \$96 million over 5 years and the estimated gain is \$24 million over 10 years.

Section 842. Transfer of excess assets to multiemployer health plan. Single-employer pension plans may transfer excess assets from a pension plan to a related health plan under section 420 of the Code. The proposal expands the right to transfer excess assets to a health plan under section 420 of the Code to multiemployer pension plans. The proposal has negligible revenue effect.

Section 843. Allowance of reserve for medical benefits of plan sponsored by bona fide associations. The proposal allows a plan maintained by a bona fide association to accumulate reserves of up to 35% of annual costs for medical benefits (other than post-retirement medical benefits) under 419A. The proposal is effective for taxable years ending after 12/31/2005. The estimated revenue cost is \$148 million over 5 years and \$430 million over 10 years.

Section 844. Treatment of annuity and life insurance contracts with a long-term care insurance feature. Under current law, annuity contracts may not have a long-term care (LTC) rider. Life insurance contracts may have a LTC rider but LTC benefits cannot reduce the cash value of the LTC riders. Code section 1035 tax-free transfers are not available between contracts without riders and those with riders. The proposal permits LTC riders on annuity contracts and provides special tax treatment for the LTC component of a life insurance or annuity contract including allowing the cash value of such contracts to pay the LTC benefit, making LTC payments to a reduction in basis, allowing tax-free section 1035 transfers between annuity contracts even if one has a LTC rider (with similar rules for life insurance contracts), and providing special rules treating the LTC rider as a separate contract for certain purposes under Code section 7702. The proposal also sets forth new reporting requirements. The proposal is generally effective for contracts issued after 1996 but only with respect to taxable years beginning after 2009. It is effective for exchanges after 2009. The estimated revenue cost is \$289 million over 5 years and \$6.348 billion over 10 years.

Section 845. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers. Pretax contributions for health insurance are only permitted out of wages. The proposal allows public safety officers to elect to defer some of their retirement income to pay for health or long-term care benefits on a pretax basis. The limit is \$3,000 per year.

The proposal is effective for distributions in taxable years after 2006. The estimated revenue cost is \$1.429 billion over 5 years and \$3.419 billion over 5 years.

Section 851. Cost-of-living adjustments for Tax Court judicial survivor annuities. Currently, annuities paid to survivors of Federal employees, other than survivors of Tax Court judges, are adjusted based upon the cost-of-living. Annuities paid to survivors of Tax Court judges are subject to a method of indexing. The proposal requires annuities paid to survivors of Tax Court judges to be adjusted based upon the cost-of-living increases in benefits paid under the Civil Service Retirement System (CSRS). The proposal is effective for increases in CSRS benefits taking effect after enactment. The provision has negligible revenue effect. The Tax Court Modernization provisions (section 851 – 860) have an estimated revenue cost of less than \$500 million over 5 years and a revenue cost of \$1 billion over 10 years.

Section 852. Cost of life insurance coverage for Tax Court judges age 65 or over. The proposal authorizes the Tax Court to pay on behalf of Tax Court judges age 65 or over any increase in employee premiums under the Federal Employee Group Life Insurance (FEGLI) program that occurs after enactment. The provision has negligible revenue effect.

Section 853. Participation of Tax Court judges in the Thrift Savings Plan. Tax Court judges are not eligible to participate in the Thrift Savings Plan. The proposal allows Tax Court judges to participate in Thrift Savings Plan. The proposal is effective on enactment. The provision has negligible revenue effect.

Section 854. Annuities to surviving spouses and dependent children of Special Trial Judges of the Tax Court. The proposal allows special trial judges of the Tax Court to elect to participate in the survival annuity plan for Tax Court judges. The proposal is effective on enactment. The provision has negligible revenue effect.

Section 855. Jurisdiction of Tax Court over collection due process cases. Currently, if a taxpayer's underlying tax liability does not relate to income taxes or a type of tax over which the Tax Court normally has deficiency jurisdiction, there is no opportunity for Tax Court review and the taxpayer must file in a District Court to obtain review. The proposal modifies the jurisdiction of the Tax Court by providing that all appeals of collection due process are to be made in the Tax Court. The proposal applies to determinations 60 or more days after enactment. The provision has negligible revenue effect.

Section 856. Provisions for recall. The proposal provides rules under which a retired special trial judge may be recalled by the Chief Judge to perform services for up to 90 days a year. The proposal is effective on the date of enactment. The proposal has negligible revenue effect.

Section 857. Authority for special trial judges to hear and decide certain employment status cases. The proposal clarifies that the Tax Court may authorize its special trial judges to enter decisions in employment status cases that are subject to small case proceedings under section 7436(c). The proposal applies to any decisions that have not become final prior to enactment. The proposal has negligible revenue effect.

Section 858. Confirmation of authority of Tax Court to apply doctrine of equitable recoupment. The common-law principle of equitable recoupment permits a party to assert an otherwise time-barred claim to reduce or defeat an opponent's claim if both claims arise from the same transaction. This proposal confirms statutorily that the Tax Court may apply equitable recoupment principles to the same extent as District Courts and the Court of Federal Claims. The proposal applies to any decisions that have not become final prior to enactment. The proposal has negligible revenue effect.

Section 859. Tax Court filing fee in all cases commenced by filing petition. This provision clarifies, in keeping with current Tax Court procedure, that the Tax Court is authorized to impose a \$60 filing fee for all cases commenced by petition. The proposal eliminates the need to amend section 7451 each time the Tax Court is granted new jurisdiction. The proposal is effective on enactment. The proposal has negligible revenue effect.

Section 860. Expanded use of Tax Court practice fee for pro se taxpayers. The Tax Court is authorized to charge practitioners a fee of up to \$30 per year and to use these fees to pursue disciplinary matters. The proposal expands the use of these fees to provide services to *pro se* taxpayers that will assist such taxpayers in controversies before the Court. For example, fees could be used for programs to educate *pro se* taxpayers on the procedural requirements for contesting a tax deficiency before the Court. The proposal is effective on enactment. The proposal has no revenue effect.

Section 861. Extension to all governmental plans of current moratorium on application of certain nondiscrimination rules applicable to State and local plans. There is a moratorium on IRS disqualifying a government plan because of violation of the nondiscrimination rules. The proposal extends the moratorium on treating a government plan as nondiscriminatory under the Code to other government plans such as federal plans. The proposal is effective for any year after enactment. The estimated revenue cost is less than \$500 million over 5 years and is \$1 billion over 10 years.

Section 862. Elimination of aggregate limit for usage of excess funds from black lung disability trust fund. Coal employers make deductible contributions to tax-exempt black lung trusts. The trusts are used, among other things, to pay accident and health benefits (or premiums related to accident and health benefits). There is a yearly and aggregate cap on the amount of the trust that can be used for this purpose. The proposal eliminates the aggregate limit on transfers allowing companies to transfer more for accident and health benefits. The proposal is effective for taxable years after 2006. The estimated revenue gain is \$55 million over 5 years and \$59 million over 10 years.

Section 863. Treatment of death benefits from corporate-owned life insurance (COLI). Payments of life insurance after the covered party's death are generally not taxable to the recipient. The proposal requires businesses to treat proceeds from COLI as income unless the insured was an employee within 12 months of death, proceeds are paid to the insured's beneficiary used to buy back any equity interest owned by the insured at the time of death; or the insured was a "highly compensated employee". Highly compensated employees are more than 5% owners, directors and anyone else in the top 35% of employees ranked by pay. The COLI provision also includes notice

and consent requirements, and reporting requirements. The proposal is generally effective for contracts issued after enactment. The proposal has negligible revenue effect.

Section 864. Treatment of test room supervisors and proctors who assist in the administration of college entrance and placement exams. The proposal treats test room proctors as independent contractors for service performed and remuneration paid after 2006. The proposal has an estimated revenue cost of \$23 million over 5 years and \$45 million over 10 years.

Section 865. Grandfather rule for church plans which self-annuitize. The proposal provides that a church plan which self-annuitizes distributions does not fail the minimum distribution requirements as long as the plan satisfies the rules applicable to section 403(b) plans. The proposal is effective for plan years ending after April 17, 2002. The proposal has negligible revenue effect.

Section 866. Exemption for income from leveraged real estate held by church plans. Under current law, qualified retirement plans are generally exempt from unrelated business income tax (UBIT) for leveraged investment in real estate. The proposal extends the exemption to church annuity plans effective for taxable years after enactment. The estimated revenue cost is \$2 million over 5 years and \$5 million over 10 years.

Section 867. Church plan rule. The Code limits the maximum benefit that participants can receive from defined benefit plans to highest-three year average compensation. The proposal eliminates this limit for non-highly compensated employees covered by church plans. The proposal is effective for plan years beginning after 2006. The proposal has negligible revenue effect.

Section 868. Gratuitous transfer for benefits of employees. The Code contains specific rules addressing a gratuitous transfer to an ESOP. The proposal specifies the value that should be used for purposes of the allocation to the participants. The proposal is effective on enactment. The proposal has negligible revenue effect.

Title IX. Increase in Pension Plan Diversification and Participation and Other Pension Provisions.

Section 901. Defined contribution plans required to provide employees with freedom to invest their plan assets. Some plans allow participants to invest in employer stock, or receive employer contributions in the form of employer stock. Under current law, plans may restrict the ability of the participant to sell the stock. The proposal requires the plan to allow the participant to diversify immediately any employee contributions or elective contributions invested in employer securities. With respect to employer contributions, plans must allow participants to diversify out of employer stock at any time after the employee has been in the plan for three years. The diversification requirement applies to plans with publicly-traded employer securities. There is an exception for ESOPs that do not have elective, employee or matching contributions. Existing plans may phase the diversification in over three years. The proposal generally is effective for plan years beginning after 2006 (with a collective bargaining delay to as late as after 2008). The proposal has negligible revenue effect.

Section 902. Increasing participation through automatic contribution arrangements. Current law allows automatic enrollment (where the employer withholds contributions out of the participant's pay unless the participant opts out of the program), but employers have been discouraged from implementing automatic enrollment because of state garnishment laws and a concern about fiduciary liability. The proposal addresses the concerns and provides incentives for automatic enrollment. The proposal provides an ERISA exemption from state payroll withholding laws, fiduciary relief for investment of participant account balances in certain default investments, and 90 days from the initial payroll reduction for participants to opt out and receive penalty-free return of automatic elective contributions. Eligible automatic contribution arrangements would have 180 days after the end of the year to make corrective distributions instead of the current law 2 ½ months.

A special matching safe harbor for nondiscrimination testing will be available to qualified automatic contribution arrangements. To have a qualified automatic contribution arrangement:

- Any participant who has not made a written election in the past to participate or not to participate must be automatically enrolled in the arrangement. The required entry-level contribution is 3%, increasing in annual 1% increments to 6% of pay. Plans may provide for automatic increases in contributions up to 10% of pay. The plan must provide notice of the ability to opt out (of contributions or automatic increases).
- The employer must match 100% of the first 1% of pay contributed by the participant, plus 50% of the next five percent of pay, for a maximum match of 3-1/2% of compensation to each employee. (The alternative of non-elective contributions of 3% of pay for all eligible employees would also be available.)
- The employer non-elective and matching contributions safe harbor contributions must be 100% vested after two years of service.

The proposal is generally effective for plan years beginning after 2007. The estimated revenue cost is \$1.578 billion over 5 years and \$5.586 billion over 10 years.

Section 903. Treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements. A 401(k) arrangement may not be combined with a defined benefit plan. They must be structured as two separate plans, and the defined benefit accrual may not be conditioned on elective contributions to the 401(k) arrangement. The proposal allows a small employer (500 employees or fewer) to establish a combined defined benefit–401(k) plan. The plan is governed by one document and there is specific accounting for the defined benefit and defined contribution portions of the trust. In general, the defined benefit rules apply to the defined benefit portion of the plan and the defined contribution rules apply to the defined contribution portions of the plan. The defined benefit component has to satisfy minimum accrual requirements. If the defined benefit component is a cash balance plan, the accrual must be in the form of minimum pay credits. The 401(k) component must have automatic enrollment and must meet minimum matching contribution requirements. The proposal is effective for plan years beginning after 2009. The estimated revenue cost is \$110 million over 5 years and \$1.189 billion over 10 years.

Section 904. Faster vesting of employer nonelective contributions. Plans generally must vest participant's benefits no later than 100% after five years or 20% a year starting with year three. There is accelerated vesting in defined contribution plans but only for matching employer contributions. They must be vested 100% after three years or 20% a year starting with year two. (Employee contributions are always 100% vested.) The proposal applies the accelerated three-year cliff or two-to-six year phased vesting to all employer contributions in a defined contribution plan (non-elective employer contributions as well as matching contributions). The proposal is effective for plan years beginning after 2006 with a delay for ongoing collective bargained plans to as late as after 2008. There is a special exception for S Corp ESOPs that delays the effective date until ESOP loans are repaid. The estimated cost is \$31 million over 5 years and \$71 million over 10 years.

Section 905. Distributions during working retirement. Defined benefit plans are prohibited from allowing in-service distributions prior to normal retirement age. The proposal allows in-service distributions once the participant is age 62. The proposal is effective for distributions in plan years beginning after 2006. The estimated gain is \$91 million over 5 years and \$255 million over 10 years.

Section 906. Treatment of certain pension plans of Indian tribal governments. The pension law includes exceptions for plans of state and local governments. For this purpose, plans of Indian tribal governments are not included. The proposal would treat the defined benefit and defined contribution plans of Indian tribal governments as governmental plans for plans covering workers doing governmental functions. The proposal has negligible revenue effect.

Title X. Provisions Relating to Spousal Pension Protection

Section 1001. Regulations on time and order of issuance of domestic relations orders. The proposal requires the Department of Labor to issue regulations within one year of enactment providing that a domestic relations order shall not be treated as not being a QDRO merely because it is issued after, or revises, another order, or because of the time it is issued. The proposal has negligible revenue effect.

Section 1002. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee. The proposal provides for entitlement of a divorced spouse to railroad retirement annuities independent of the actual entitlement of the employee. The proposal is effective one year after enactment. The proposal has negligible revenue effect.

Section 1003. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorces agreements. The proposal provides that the surviving spouse's annuity under tier II railroad retirement benefits, which he or she is receiving pursuant to a divorce decree, shall not be terminated because of the death of the participant (unless the divorce order so provides). The proposal is effective one year after enactment. The proposal is estimated to increase outlays by \$2 million over 5 years and \$12 over 10 years. The estimated revenue cost is \$2 million over 5 years and \$12 million over 10 years.

Section 1004. Requirement for additional survivor annuity options. Many pension plans are required to provide benefits in the form of a qualified joint and survivor annuity. The monthly survivor benefit must be at least 50% of the joint benefit. The proposal requires plans that are

required to offer the qualified joint and survivor annuity to offer as an option a joint and survivor benefit that provides at least a 75% survivor benefit. The proposal is effective for plan years beginning after 2007, with a delay for collectively bargained plans until as late as after 2008. The proposal has negligible revenue effect.

Title XI. Administrative Provisions

Section 1101. Employee plans compliance resolution system. The proposal gives IRS authority to design and modify, and waive income or excise taxes, with respect to the Employee Plans Compliance Resolution System (EPCRS) or any successor program. The proposal has negligible revenue effect.

Section 1102. Notice and consent period regarding distributions. Generally, an election of a form other than a joint and survivor annuity must be made no earlier than 90 days before the benefit's annuity starting date. The proposal changes the consent period for joint and survivor notices and consents from "no earlier than 90 days" to "no earlier than 180 days" before the benefit's annuity starting date. The proposal is generally effective for plan years beginning after 2006. The proposal has negligible revenue effect.

Section 1103. Reporting Simplification. Plans must annually file a Form 5500 providing Labor, IRS and PBGC with plan information. One-person plans may file a Form 5500-EZ, which is a one-page form, and if plan assets are under a specified amount (set by IRS guidance as not more than \$100,000) they do not have to file any form. In addition, there is reduced reporting for plans with no more than 100 participants. The proposal requires Treasury to eliminate annual reporting requirement (Form 5500) for one person plans with less than \$250,000 in assets. It requires Labor and Treasury to provide simplified reporting for plans with fewer than 25 participants. The proposal is generally effective for plan years beginning after 2006. The proposal has no revenue effect.

Section 1104. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities. Some educational agencies provide voluntary early retirement incentive plans and employment retention plans that are taxable to the employee because of the way the benefit is paid. These payments would not be immediately taxable if paid under a 457 plan or a defined benefit plan. They also would benefit from the exemption from the ADEA. Severance plans can be either welfare or pension benefits under ERISA depending on their composition. Welfare plans are subject mainly to reporting requirements. The proposal provides that certain voluntary early retirement incentive plans and employment retention plans of educational agencies shall be exempt from immediate taxation as if they were in qualified defined benefit plans but shall be treated as severance plans subject to ERISA's welfare plan rules. The proposal is effective on enactment, with no inference for prior actions. The estimated revenue cost is \$29 million over 5 years and \$87 million over 10 years.

Section 1105. No reduction in unemployment compensation as a result of pension rollovers. The proposal prohibits states from reducing unemployment compensation for pension distributions that were rolled over and thus are not taxable. The proposal is effective on enactment. The proposal is estimated to increase outlays by \$156 million over 5 years and \$391 million over 10 years. The estimated cost is \$100 million over 5 years and \$107 million over 10 years.

Section 1106. Revised multiemployer elections. The Multiemployer Pension Plan Amendments Act of 1980 expanded the definition of multiemployer plan. Certain pre-ERISA plans that would have been multiemployer plans under that new definition were allowed to elect to continue to be treated as single employer plans. The proposal would allow pre-ERISA plans that could have met the definition of multiemployer plan for the three years before enactment of this proposal to make a one-time election to be treated as multiemployer plans in the future if certain conditions are met and notice is given. The proposal is effective on enactment. No revenue estimate is available.

Section 1107. Provisions relating to plan amendments. The proposal provides plans with protection from the anti-cutback rules for amendments to comply with the proposal and related regulations if the amendment is made before the end of the first plan years beginning on or after January 1, 2009. The estimates are included in the proposals to which the change relates.