SUMMARY OF DEFINED CONTRIBUTION PLAN PROVISIONS OF THE PENSION PROTECTION ACT OF 2006

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PERMANENCE OF RETIREMENT SAVINGS INCENTIVES			
RETIREMENT PLANS	The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") made numerous changes affecting retirement plans. These provisions sunset (*i.e.*, expire) after 2010. 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 permanence of the Roth option for 401(k) plans and 403(b) arrangements.	Makes permanent the provisions of EGTRRA that relate to retirement plans and IRAs.	
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 was scheduled to expire at the end of 2006.	Makes the Saver's Credit permanent. Effective after 2006, the PPA also indexes the Saver's Credit AGI limits for inflation in $500 increments.	
ERISA CHANGES AFFECTING AUTOMATIC ENROLLMENT AND DEFAULT INVESTMENTS			
DEFAULT INVESTMENTS	ERISA section 404(c) provides that where a participant or beneficiary exercises control over the assets in his or her 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. DOL regulations condition "404(c) relief" upon satisfaction of a number of regulatory requirements, including notice and disclosure	Directs the 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 or long-term capital appreciation, or a blend of both." Provides that a participant shall be treated as	In September, 2006, DOL issued proposed regulations (71 Fed. Reg. 56806) that would create a safe harbor for three "qualified default investment alternatives" (QDIAs), if certain requirements are satisfied. The three listed QDIAs are: (1) target retirement funds, (2) balanced funds, and (3) managed accounts. Other options may be prudent defaults. However, only the three listed QDIAs would have 404(c) relief

[1] The Pension Protection Act of 2006 ("PPA"), Public Law No. 109-280, was signed into law on August 17, 2006. This chart is based on a review of the Act's language , the Technical Explanation prepared by the Joint Committee on Taxation (August 3, 2006, JCX-38-06), other applicable legislative history, and interpretive guidance issued by the Department of Labor (DOL) and Internal Revenue Service (IRS).

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	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.	having elected to exercise control over assets in his or her individual account (*i.e.*, provides 404(c) relief) where contributions are invested in accordance with prescribed regulations and 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 in the absence of an election. *Effective Date*: Plan years beginning after 2006.	and many commentators have asked that other types of investments, particularly stable value funds, be added as additional QDIAs. To be a QDIA, an investment option must be: (1) managed by an "investment manager" or (2) registered as an investment company. An "investment manager" is generally a registered investment adviser, insurance company, or bank that agrees it is a fiduciary with respect to the plan. This requirement has proven controversial because some employers put together target retirement funds or managed account options with the advice of an expert that is not a fiduciary. The proposed regulations do not directly address how existing default investments can fit within the fiduciary safe harbor. A number of commentators have asked for appropriate transition rules. The proposed regulations require notice 30 days before contributions are invested, which could make it difficult for plans that provide for immediate enrollment to satisfy the regulation. The proposed regulations do not condition the fiduciary relief upon satisfaction of the regulatory requirements applicable under 404(c). As a result, a misstep with respect to any of the numerous 404(c) requirements will not cause a plan to lose the benefit of the safe harbor. The proposed regulations are not specific to automatic enrollment arrangements and generally extend safe harbor fiduciary relief to a replacement investment with respect to an eliminated investment option (if all of the other conditions of the regulation are satisfied).

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			The regulations cannot be relied upon until 60 days after final regulations are issued. Although the PPA provides that final regulations are due by February 17, 2007, DOL officials have informally indicated that it is unlikely that final regulations will be issued by the statutory deadline. Plans maintained by state and local governments (and other arrangements exempt from ERISA) continue to be covered by applicable state law.
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.	Amends ERISA to preempt 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. Requires that contributions be invested pursuant to the Department of Labor's default investment guidance, discussed below. *Effective Date*: Date of enactment. No reference with respect to the law in effect prior to the date of enactment.	The DOL's proposed regulation on default investment alternatives would condition ERISA preemption upon use of a QDIA and satisfaction of its notice requirements (including the 30-day advance notice rule). As a result, plans that use defaults that do not fall within the four corners of the proposed default investment regulation, e.g., stable value defaults, would not get the benefit of ERISA preemption. This would place enormous pressure on plans to use QDIAs. DOL, however, has informally signaled a willingness to reconsider the narrow scope of preemption under its proposed regulation. Although technically effective as of the date of enactment, preemption depends on investing contributions according to the to-be-issued final DOL regulations.
QUALIFIED PLAN INCENTIVES FOR AUTOMATIC ENROLLMENT ARRANGEMENTS			
OVERVIEW	Prior law did not distinguish between plans that provide for automatic enrollment and plans that do not. As a result, there were no direct incentives for plans to maintain automatic enrollment arrangements.	The PPA includes three new incentives for sponsors of tax-preferenced retirement plans to include an automatic enrollment feature: (1) liberalized corrective distribution rules; (2) an in-service distribution option; and (3) a slightly more favorable nondiscrimination testing safe harbor. *Effective Date*: All of the changes are for plan years beginning after 2007.	The IRS has not yet issued guidance on the new automatic enrollment incentives, primarily because the new rules are not effective until 2008. Guidance is, however, expected later this year.

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IN-SERVICE 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.	Plans with an automatic enrollment feature that (1) provide an annual notice describing the feature, and (2) invest default contributions in accordance with Department of Labor regulations, discussed above, may allow employees to elect during the first 3 months after the start of automatic contributions to receive a corrective distribution in an amount equal to the automatic elective contributions (plus earnings). Corrective distributions are (1) taxed in the year paid, (2) disregarded in applying the ADP test for the year of deferral, (3) not eligible for rollover treatment, and (4) exempt from the 10% penalty tax on early distributions. Applies to 401(k) and 403(b) plans, and governmental 457(b) plans.	The in-service 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 focused on or otherwise took advantage of the opportunity to opt out. A plan may choose not to offer a corrective distribution feature. It is entirely optional. Note that a corrective distribution may result in forfeiture of any related employer matching contributions. The Act does not make clear the date by which the corrective distributions must be paid. Query whether the 3-month clock starts when amounts are withheld from the employee's paycheck or contributed to the trust. The JCT explanation states that corrective distributions "are generally treated as a payment of compensation, rather than as a contribution to and then a distribution from the plan." Presumably, the IRS will provide for 1099 reporting of such distributions similar to what is required currently for excess contributions.
EXCESS CONTRIBUTIONS	Excess contributions and excess aggregate contributions are generally amounts that are paid from a 401(k) plan to correct an actual deferral percentage ("ADP") test failure or an average contribution percentage ("ACP") test failure, respectively. Unless excess contributions and excess aggregate contributions are distributed from a qualified cash or deferred arrangement within 2½ months after the end of the plan year, the employer is subject to a 10% excise tax.	Provides that excess contributions and excess aggregate contributions to a plan with a qualifying automatic enrollment feature (meeting certain notice and default investment requirements) may be distributed within 6 months after the end of the plan year.	The PPA makes other changes to the treatment of excess contributions and excess aggregate contributions that apply to all 401(k) plans, discussed below.

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SAFE HARBOR – **OVERVIEW**	401(k) plans generally must satisfy nondiscrimination tests that compare the ADP of highly compensated employees ("HCEs") to the ADP 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 or make such contributions. Section 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 automatic enrollment and automatic deferral increase features (whereby an employee is treated as having elected to make salary reduction contributions at a stated level unless the employee affirmatively elects otherwise) that meet certain other design requirements (see below). 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.	The current-law safe harbor would continue to be available. Although not referenced explicitly, existing cross-references make clear that section 403(b) plans would be eligible for the new safe harbor with respect to matching contributions, as is the case with the current law safe harbor.
SAFE HARBOR – **AUTOMATIC ELECTIVE DEFERRAL REQUIREMENTS**	Not required under the current law safe harbor.	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 <u>at least</u> equal to the following percentages of compensation: 3% -- until end of first full year of participation ("first year") 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 if they have made a deferral election	The automatic enrollment requirements apply to all employees, including HCEs. Employees may continue to make affirmative elections to defer any amount, subject to generally applicable limits. The exemption for existing employees has only limited utility. It appears that the exemption does not apply to non-participating employees unless they made an affirmative election not to participate. As a result, the primary benefit of the rule is to exempt employees from an increase in their deferral percentages to the extent they have elected to contribute less than the required automatic enrollment percentage.

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		(including an election not to participate).	
SAFE HARBOR – **EMPLOYER CONTRIBUTIONS**	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).	*Matching or Nonelective Contributions.* To satisfy the terms of the automatic enrollment safe harbor, an employer generally must make either: 1. A nonelective contribution of at least 3% of compensation on behalf of all eligible NHCEs, or 2. A matching contribution equal to the sum of (a) a 100% match on NHCE elective contributions up to 1%, plus (b) a 50% match on NHCE elective contributions between 1% and 6% of compensation (or a permitted equivalent).	The automatic enrollment safe harbor is not significantly different than the current law safe harbor in terms of required employer contributions. The nonelective contribution requirements are the same; the matching contribution requirements are only slightly less costly (a maximum of 3½% versus 4% under the current law safe harbor).
SAFE HARBOR – **VESTING REQUIREMENT**	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.	
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 within a reasonable period before each plan year; this timing rule is deemed satisfied if the notice is provided at least 30 days, and no more than 90 days, before the start of each plan year.	Generally similar to 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 arrangement will be invested.	
INVESTMENT ADVICE			
OVERVIEW	Employment-based plans are generally subject to provisions that preclude a "prohibited transaction" ("PT") between the plan and parties in interest. These provisions generally prohibit an entity from providing investment advice to a plan participant or beneficiary if such advice could cause the adviser or any affiliate to receive additional compensation as a result of the participant's selection of a particular plan investment option. There are a number of statutory exemptions for	Two new PT exemptions – (1) a compensation-based exemption, and (2) a computer model-based exemption – would be provided under ERISA and the Code for the provision of investment advice and the acquisition or sale of securities in connection with such advice. All current-law exemptions for investment advice continue to be applicable. In addition, the Act provides explicit guidance on the fiduciary responsibilities of the fiduciary	As discussed below, there are a number of questions about the scope of the two new PT exemptions for investment advice provided to participants in individual account plans. As discussed below, on February 2, 2007, the DOL issued Field Assistance Bulletin 2007-01 ("FAB 2007-01"), which (i) addresses the scope of the compensation-based exemption, (ii) confirms the ongoing viability of investment advice programs modeled on the SunAmerica Opinion, and (iii) addresses a plan sponsor's fiduciary responsibility in selecting an investment advice arrangement

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	various transactions that would otherwise be considered PTs. For example, PTE 77-4 provides relief for advice recommending investment in a fund to which the adviser is also a fund-level investment adviser.	(usually the plan sponsor) selecting the investment adviser. *Effective Date*: Generally applies to investment advice provided after 2006.	outside of the PT exemptions. In addition, DOL has issued a Request for Information (RFI) on a variety of technical questions related to the computer model-based exemption. Similar exemptions apply in the IRA context. However, the computer model-based exemption, discussed below, would be available for IRAs only after study and approval by the DOL. DOL has issued a Request for Information (RFI) on whether and, if so, how the computer model-based exemption would apply to IRAs.
COMPUTER MODEL-BASED EXEMPTION	Under current law, investment advice may be provided through the use of computer programs developed by an independent third party. These programs were first explicitly blessed by the DOL in Advisory Opinion 2001-09A (the "SunAmerica Opinion") and have been widely implemented.	Subject to the general requirements and limitations on permitted fiduciary advisers, discussed below, an exemption would be available for specific investment advice based on a computer model. The exemption would cover the provision of investment advice and the acquisition or sale of securities in connection with such advice. In order to fall within the exemption, very generally, (1) the computer model must satisfy certain parameters, including taking into account all investment options under the plan, applying generally accepted investment theories, and taking into account relevant information about the participant, which may include the participant's age, life expectancy, risk tolerance, and other assets; (2) the computer model must not be biased in favor of investments offered by the adviser or its affiliates; (3) an independent investment expert certifies in advance that the model is appropriate; and (4) the only investment advice provided under the program is provided by the computer model. The Act indicates that an arrangement does not fail to satisfy the exemption merely because a participant may ask for advice beyond that	The new exemption would permit a financial institution that is or may be an existing plan fiduciary to develop the computer programs, subject to certification and audit by an independent third-party. Currently, the approach approved in the SunAmerica Opinion requires that an independent third-party develop the computer program. Unlike the SunAmerica Opinion, the new exemption would explicitly depend on the model taking into account all investment options that are available under the plan, including the options of unaffiliated entities and company stock. Presumably, a computer program would not have to take into account any open brokerage window, although the Act is silent on this issue. Another question is whether plan loans would have to be taken into account. It is not entirely clear what relevant information needs to be taken into account under the computer model. The statutory language states that information about the participant's other assets *may* be relevant, which suggests that this information could be optional. The views on this

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		provided by the computer model, provided the adviser does not solicit such a request.	question of the independent investment expert that must certify the model could be relevant. If information concerning the participant's outside assets is required, this would be a change from the standards applicable under SunAmerica Opinion Another issue is the extent to which the computer model-based exemption will exempt advice provided where an individual has more than a mere ministerial role in producing the advice, *e.g.*, where the financial adviser suggests changes to the computer inputs and rerunning the computer program. The meaning of the provision allowing for advice outside the computer program where the participant solicits such advice is not clear. Some
COMPENSATION-BASED EXEMPTION	DOL has indicated that, in general, there is no PT if the investment adviser offsets any investment management and any shareholder services fees received from affiliated funds as well as the 12b-1 fees received from unaffiliated funds against the fee paid for the investment advice program.	Subject to the general requirements and the limitations on permitted fiduciary advisers, discussed below, this exemption would require that the direct or indirect receipt of compensation by the adviser not vary based on any investment decision pursuant to the investment advice.	The statute leave open numerous questions about the scope and application of the compensation-based exemption. FAB 2007-1 addresses a key question. Under the FAB, the "level compensation" requirement does not apply to an affiliate of the fiduciary adviser unless the affiliate is providing investment advice to the plan participants. The FAB also provides that when individual acts as an employee or agent of an entity engaged to provide investment advice to a plan, that individual, as well as the entity, must be treated as the fiduciary adviser, and both are subject to the level compensation requirement.
GENERAL REQUIREMENTS FOR NEW PT EXEMPTION		The same general requirements apply to both exemptions as follows: 1. The fiduciary of an employment-based plan would have to select and approve the investment adviser. 2. The fiduciary adviser would be required to	Under FAB 2007-1, the level compensation rule applies to all "fees or other compensation (including salary, bonuses, awards, promotions, or any other thing of value) received, directly or indirectly, from an employer, affiliate, or other party, by a fiduciary adviser (or used for the adviser's benefit)".

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		undergo independent audits on an annual basis to ensure compliance with the PT exemptions. 3. The fiduciary adviser would have to make certain detailed disclosures to the advisee, including disclosure that the adviser is acting as a fiduciary, disclosure of all parties who have a role in developing the advice, and disclosure of all parties' compensation in connection with the advice or the sale and purchase of securities in connection with the advice. 4. The adviser would be required to provide all required disclosures in a format designed to be reasonably understood by the average investor (subject to a DOL-provided model format), update the advice for no additional charge upon a material change, and update the advice at least annually. 5. All compensation for any purchase or sale in connection with the advice would have to meet a "reasonable compensation" standard and be rendered under terms that are at least as favorable as any other arms length transaction in which the adviser or an affiliate is compensated for similar purchases or sales of securities.	It appears that the disclosure would include disclosure of all indirect fees that the adviser and its affiliates may receive, including 12b-1 and investment management fees.
PERMITTED FIDUCIARY ADVISER		To qualify for either of the new PT exemptions, the advice would have to be provided by a "fiduciary adviser." In general, a fiduciary adviser is a plan fiduciary that also falls within certain categories, such as (1) a registered broker-dealer or investment adviser, a bank or similar financial institution, or an insurance company, (2) any affiliate of the foregoing, and (3) a qualified employee or agent of the foregoing	
FIDUCIARY RESPONSIBILITY IN	Current law fiduciary rules require that a plan sponsor act prudently in the selection of a	A plan fiduciary (usually the plan sponsor) would not be treated as failing to meet the fiduciary duty	The statutory language makes clear that the plan sponsor (or other plan fiduciary) would still be

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SELECTING AN INVESTMENT ADVISER	provider of investment advice, and continue to monitor and otherwise engage in periodic review of the provider.	requirements of ERISA by arranging for the provision of investment advice if (1) the advice is provided by a permitted fiduciary adviser (as defined for purposes of the investment advice exemption); (2) the terms of the arrangement require the fiduciary adviser to comply with the requirements applicable to the investment advice exemption, discussed above; 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.	subject to general fiduciary requirements on 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. FAB-2007-1 makes it clear that these same rules apply to plan sponsors (or other plan fiduciaries) that select a program of investment advice services outside the PPA exemption.
IMPACT ON SUNAMERICA OPINION		Senator Mike Enzi (R-WY), chairman of the Senate Heath, Education, Labor and Pensions Committee (which has ERISA jurisdiction) and chair of the pension conference, stated during the Senate floor debate that the SunAmerica Opinion would be intact and would not be affected by the new computer-based exemption.	FAB 2007-1 confirms that the new PPA exemption does not invalidate or otherwise affect prior guidance, such as the SunAmerica opinion or Interpretive Bulletin 96-1 (regarding investment education).
EFFECTIVE DATE		*Effective Date*: Applies to investment advice provided after 2006.	
DIVERSIFICATION RIGHTS			
INVESTMENT RIGHTS	The Internal Revenue 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 into 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	*Elective Deferrals*. Diversification rights must be immediate with respect to employee after-tax contributions and elective deferrals. *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 upon completion of 3 years of service. *Alternative Investments*. Where diversification rights are required to be available, the plan must offer at least 3 investment options to affected participants each of which is diversified and has materially different risk and return characteristics.	Under the Act, the 3-year transition rule applicable to existing amounts invested in employer stock does not apply to either (i) amounts attributable to employee after-tax contributions or elective deferrals or (ii) participants aged 55 or over with 3 years of service as of December 31, 2005. Given that the provision has a 2007 effective date, this change could be jarring. The PPA generally provides that an employer cannot impose a restriction on a company stock fund that is more onerous than any restriction on any other plan investment option. The IRS has provided limited transition relief on this rule. *See* IRS Notice 2006-107. First, the IRS has indicated

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	plan that is an ESOP. In addition, contributions other than elective deferrals are not subject to any restrictions.	*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 restrictions imposed by reason of applicable securities law are permitted. It would be permissible to impose reasonable restrictions on trading, provided that such restrictions are not specific to amounts attributable to employer securities and permit trading no less frequently than quarterly. *Private Company Exception*. An exception is provided for plans that do not hold publicly-traded securities (*i.e.*, plans of privately held companies). Special rules apply, however, if the employer or any affiliate has issued publicly-traded securities but the plan holds non-public employer securities. *Stand-Alone ESOP Exception*. Another exception applies to ESOPs that are separate from any other qualified retirement plan of the employer and that do not hold employee after-tax contributions, elective deferrals, or matching contributions *One-Participant Plan Exception*. Excepts one- participant plans (generally plans covering a small business owner and his or her spouse). *Effective Date*: Subject to a special effective date for collectively bargained plans, the proposal generally would be effective for plan years beginning in 2007. *Phase-In*. For existing amounts attributable to nonelective and matching contributions, other than amounts held in employer stock by individuals who have attained age 55 and 3 years	that this rule will not apply until March 31, 2007. Second, the IRS has indicated that certain restrictions may be ignored during 2007, including, among others, an absence of restrictions on sales of stable value funds or on investments that are not generally available. More generally, IRS guidance further illuminates the scope of the prohibition against special restrictions on company stock funds, including the scope of the securities law exemption and the extent to which company stock funds may be frozen.

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		of service by December 31, 2005, the diversification requirements would be phased in ratably over 3 years (*i.e.*, 33% first year, 66% second year, 100% third year).	
NOTICE OF RIGHT TO DIVERSIFY	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.	A notice indicating the statutory right to diversify and the importance of diversifying retirement account assets would be required no later than 30 days before the first date an individual is eligible to diversify. Directs the Secretary of Treasury 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*: Generally effective after 2006, but no sooner than 90 days after enactment.	The PPA could have been interpreted to provide that calendar year plans are required to provide the diversification notice on December 1, 2006 given the 2007 effective date of the diversification rights provision. DOL, however, has indicated that January 1, 2007 is the earliest date notice is required. *See* IRS Notice 2006-107. For plans that already permit diversification to the extent required by the PPA (i.e., for plans that did not need to make changes to comply with the PPA), DOL has indicated that a separate diversification notice will not be required with respect to existing participants, provided that the plan satisfies the periodic benefit statement requirement, discussed below, including its warning about the importance of diversification. *See* DOL FAB 2006-03. It is not clear how the 30-day advance notice rule applies to a plan that permits immediate participation. Plans that do not have investments in employer securities subject to the diversification rule described above would not be subject to the notice requirement.
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 total accrued benefit and the vested	Participants in defined contribution plans subject to ERISA (other than a "one-participant retirement plan") who have the right to direct their investments would have to be given quarterly benefit statements. Participants who do not have the right to direct their investments would have to be given the benefit statement	The PPA requires affirmative delivery of the new quarterly benefit statements under DOL standards for delivery. Currently, those standards do not treat access through company or financial institution websites as equivalent to delivery. DOL, however, has indicated that, until final regulations are issued, posting benefit statements

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	accrued benefit or the earliest date on which the accrued benefit will become vested.	annually. In addition to the information required under current law, 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. In the case of participants who have the right to direct investments, the statement must include an explanation of any restrictions on the right to direct an investment. As part of the statement, participants also would be provided with an explanation of the benefits of diversification and the risk of holding more than 20 percent of a portfolio in the security of any single entity. Note that defined benefit plan administrators would be subject, generally, to provide benefit statements every three years or, alternatively, by providing an annual notice of the availability of such statement and how to obtain it. The Secretary of Labor is directed to issue a model benefit statements within 1 year of the date of enactment. *Effective Date*: Plan years beginning in 2007, subject to a delay for collectively bargained plans.	on a secure website will be considered good faith compliance, provided that a notice is delivered annually that explains the availability of the statements and notifies participants that they may request paper copies free of charge. For purposes of delivering the notice of availability (or quarterly benefit statements), a plan may rely on existing DOL or IRS electronic delivery standards. DOL has indicated that the benefit statements needs to be provided within 45 days of the end of the applicable period (calendar quarter or calendar year). Until further guidance is issued, DOL has indicated that restrictions on investments that must be disclosed by the plan only include restrictions imposed by the plan (so, for example, restrictions imposed by an investment fund need not be disclosed in the benefit statement). DOL has expressed concern about plans that satisfy the benefit statement requirement through multiple statements, but has indicated that using multiple statements, e.g., brokerage statements and statements from a plan's main recordkeeper, is permissible pending future guidance to the contrary.
PORTABILITY			
FASTER VESTING OF EMPLOYER NONELECTIVE CONTRIBUTIONS	*Nonelective Contributions*: A participant must have a nonforfeitable right to 100% of their 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*: A participant must have a nonforfeitable right to 100% of employer	Participants would have a nonforfeitable right to employer nonelective contributions to a defined contribution plan after 3 years of service or a nonforfeitable right to 20% of employer nonelective contributions for each year of service beginning with the participant's second year of service and ending after 6 years of service.	Conforms rule for nonelective contributions to the vesting rule in effect for matching contributions. The accelerated vesting schedule for employer contributions would not apply to "old money." The provision would only apply to contributions for plan years beginning after the effective date.

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	matching contributions after 3 years of service or a nonforfeitable right to 20% of such contributions for each year of service beginning with the second year of service and ending with 100% after 6 years of service.	*Effective Date*: Subject to a special effective date for collectively bargained plans, the proposal generally would be effective for contributions made in plan years beginning after 2006 for employees with at least 1 hour of service after such effective date.	Nonetheless, many plan sponsors are likely not to bifurcate the treatment of old and new money and instead apply the new schedule to all nonelective contributions. Note that accelerated vesting would not be effective for contributions made after the end of the 2006 plan year on account of the 2006 plan year.
ROLLOVER OF AFTER-TAX AMOUNTS FROM A QUALIFIED PLAN INTO A 403(b) ARRANGEMENT	After-tax contributions can be rolled over from a qualified trust into a defined contribution plan, so long as the plan provides for separate accounting of after-tax contributions. Such contributions, however, cannot be rolled over into a defined benefit plan or a 403(b) arrangement. IRS guidance provides that after-tax amounts in a 403(b) arrangement can be rolled over to another 403(b) arrangement, but apparently not to a qualified trust(regardless of whether the trust provides for separate accounting of after-tax amounts).	Permits the rollover of after-tax contributions from a qualified trust to another qualified trust (including a defined benefit plan) or to a 403(b) arrangement, so long as the plan or contract provides for separating accounting of after-tax contributions. *Effective Date*: Tax years beginning after 2006.	It is not entirely clear whether under PPA, after-tax contributions from a 403(b) arrangement may be rolled over to a qualified trust (versus the other way around, from a qualified trust to a 403(b) arrangement, which is clearly allowed for under the PPA). However, it appears such rollovers may be permitted in light of an existing Code provision, which generally makes applicable to 403(b) arrangements the rollover rules applicable to qualified trusts.
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 non-spouse beneficiaries may maintain the inherited IRA and receive distributions in accordance with the minimum distribution rules (generally within 5 years or over the life expectancy of the beneficiary).	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 non-spouse beneficiary under a qualified retirement plan, governmental section 457(b) plan, or a 403(b) annuity. *Effective Date*: Distributions after 2006.	This provision effectively provides for parity between retirement benefits inherited by a non-spouse through a retirement plan and an IRA. It also should encourage beneficiaries to keep amounts within the retirement system by providing an alternative to an immediate lump sum (as is provided under many employer plans). IRS guidance indicates that a plan does not have to offer a non-spousal rollover right. Rather, it is a permissive plan feature. *See* Notice 2007-7. The IRS has clarified that a nonspouse beneficiary rollover is exempt from income tax withholding while a nonspouse beneficiary payment (i.e., a death benefit payment that is not directly rolled over) is subject to the elective withholding rules,

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			rather than the mandatory 20% withholding rules that apply to other eligible rollover distributions that are not directly rolled over. IRS guidance indicates that a nonspouse beneficiary generally must use the plan's method of satisfying the minimum required distribution rules in the IRA to which the rollover happens. However, under a special rule, a nonspouse beneficiary that rolls a distribution over before the end of the year following the year of the participant's death may choose his or her method of satisfying the minimum required distribution rules. (In response to concerns raised, the IRS has informally confirmed the applicability of this special rule.)
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.	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*: Distributions after 2007.	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. Under the Tax Increase Prevention and Reconciliation Act, enacted in May 2006, the income limitations on Roth IRA conversions will end in 2010. From that point forward, taxpayers at all income levels will be eligible for this direct rollover opportunity.
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. Plans may use a "safe harbor" list of permissible events or may use a general facts-and-circumstances approach to determining whether an event is a qualifying hardship.	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 (even if not a spouse or dependent) experiences a qualifying hardship or unforeseen financial emergency. Applies to 401(k) plans, 403(b) plans, 457(b)	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 (such as a sibling, parent, or domestic partner) even if the designated beneficiary is not a dependent or spouse.

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	Similarly, the rules under Code sections 409A and 457 permit distributions to participants where there arises an unforeseen financial emergency.	plans, and nonqualified deferred compensation plans subject to 409A.	IRS guidance states that this new rule applies to plans that use the IRS safe harbor. *See* IRS Notice 2007-7. However, it appears that, under general hardship principles, a plan could permit a hardship withdrawal for expenses attributable to a nonspouse beneficiary.
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. Generally, 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.	Expands the period during which a plan must provide certain notices related to distributions to no less than 30 days and no more than 180 days before the date the distribution commences. Affected notices include the QJSA notice, the notice of the right to defer, and the 402(f) notice. Directs Treasury to modify the regulations under sections 402(f) (required explanation for eligible rollover distributions), 411(a)(11) (the notice of the right to defer,) and 417(e) (consent requirements for distributions subject to QJSA). Modifications to the 411(a)(11) regulations are to require an explanation not only of the right to defer payment but also the consequences of consenting to a current distribution rather than deferring payment. *Effective Date*: Years beginning after 2006. The statute provides for a "reasonable" compliance standard for 90 days after Treasury issues modifications to the regulations regarding the consequences of consenting to a distribution under 411(a)(11).	IRS guidance clarifies that the modest changes made by the PPA to required distribution notices apply to notices distributed after 2006. *See* IRS Notice 2007-7. Pending future guidance, the guidance also provides that a plan will be deemed to satisfy the new rules if it makes a "reasonable attempt" to comply and provides some guidance on what constitutes a reasonable attempt to comply. The IRS is drafting a revised model 402(f) notice reflecting the new 180-day time period and consent rules as well as the new PPA distribution rules.
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 qualified reservist distribution from an IRA or from amounts attributable to elective deferrals under a 401(k) or 403(b) plan. To qualify, the distribution (1) must be made to a reservist who is ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and (2) must occur during the period beginning on the	Under the provision, any distribution of elective deferrals from an employment-based plan will not violate any distribution restriction otherwise applicable to such a plan. There is, however, no requirement that such a plan permit qualified reservist distributions. "Recontributions" are not deductible, but will not be subject to the dollar limitations generally applicable to IRA

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		date of such order or call to duty and ending on the close of the active duty period. *Eligible Individuals*: Persons ordered or called to active duty after September 11, 2001 and before December 31, 2007. During the 2-year period beginning on the day after the end of the active duty period (but in no event ending earlier than August 17, 2008), an individual may make "recontributions" to an IRA which in the aggregate do not exceed the amount of any qualified reservist distribution. Recontributions cannot be made into a 401(k) or 403(b) plan. *Effective Date*: Distributions after September 11, 2001. Reservists who have already received qualified reservist distributions may qualify for refunds and any applicable statute of limitations is waived for refund claims filed within one year of date of enactment (i.e., before August 17, 2007).	contributions (including, it appears, the maximum annual IRA contribution amount). Presumably, these recontributions will not otherwise reduce permitted IRA contributions in the year, although regulatory clarification on that point would be helpful. Recontributions must be made to an IRA, including a Roth IRA. In most cases, the Roth IRA recontribution would appear more advantageous than a traditional IRA since no deduction would be foregone and distributions would be tax-free. Otherwise applicable Roth IRA income eligibility limits would not apply to these recontributions.
EXPANDING COVERAGE			
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.	Expands the definition of a governmental plan to explicitly include plans maintained by an Indian tribal government or an agency or instrumentality of such government, provided that substantially all of the participants are employees who perform services in essential governmental functions and not in the performance of commercial activities (whether or not a governmental function). *Effective Date*: Any year beginning on or after the date of the enactment.	The governmental function requirement is likely to raise a number of difficult questions about what constitutes a governmental function and to significantly restrict the universe of tribal plans that qualify as governmental plans. Indeed, the tribal plan community has indicated that they will seek modification of this requirement, and if unsuccessful, will seek repeal of the provision. The IRS has provided limited transition relief for tribal plans, indicating that a tribal plan will satisfy the new PPA provisions for governmental plan status if it complies with a reasonable and good-faith interpretation of the new provisions. *See* IRS

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			Notice 2006-89. It is not, however, a reasonable and good-faith interpretation if employees who are employed by a hotel, casino, service station, convenience store, or marina are treated as governmental employees. For existing tribal plans that cover both commercial and governmental employees, the IRS guidance provides that an employer generally has until September 30, 2007 to establish separate plans for the two classes of employees. The provision does not address whether nonqualified deferred compensation arrangements maintained by Indian tribal governments are covered by section 457.
DB/K PLANS	No special rules.	A combination defined benefit plan and 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% of up to 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 at 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	To some extent, this provision addresses the inequity in the current safe harbor 401(k) plan rules that ignore whether the employer is maintaining a defined benefit plan and look solely to the level of employer contributions to the 401(k) plan. In this regard, it allows an employer to satisfy a portion of the contribution requirement through its defined benefit plan. The benefits of the new design, however, relative to the costs of the new design are primarily the use of the single trust and the right to file a single Form 5500 (and, for plans subject to the audit requirement, to have only 1 audit performed).

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		of a participant. A DB/k would only be available to employers with fewer than 500 employees when it is established. *Effective Date*: Plan years beginning in 2010.	
PAYMENT OF HEALTH AND LTC PREMIUMS WITH GOVERNMENTAL PLAN ASSETS	Subject to certain exceptions (such as distributions from Code section 401(h) accounts), distributions from qualified retirement plans are generally includible in the participant's income for the year distributed. In addition, with limited exceptions, a distribution from a qualified retirement or annuity plan received before age 59½, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income.	Provides that certain pension distributions from an eligible governmental retirement or annuity plan (*i.e.*, 403(b), 457, or grandfathered 401(k) plan) that are used to pay for qualified health insurance or long-term care ("LTC") premiums are excludable from income. Specifically, provides that an eligible retired public safety officer may, after separation from service as a result of disability or attainment of normal retirement age, elect to have amounts not yet distributed from a qualified governmental plan distributed directly to an insurer to pay for qualifying health care or LTC coverage. *Exclusion Limits*: Up to $3,000 annually of the amount distributed is excludable from income to the extent it is used to purchase qualifying health care or LTC coverage. *Effective Date*: The proposal is effective for distributions after 2006.	See IRS Notice 2007-7 for guidance regarding the application of this provision.
SIMPLIFICATION			
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 participants' compensation; (ii) the minimum funding requirement with respect to the defined benefit plan; or (iii), the amount needed to bring the defined benefit plan to	Effective in 2008, any plan covered by PBGC insurance would not be taken into account in applying the combined plan limit. For 2006 and 2007, the combined plan limit would not apply to the extent that contributions by an employer to one or more defined contribution plans would not be taken into account to the extent that such contributions do not exceed 6% of compensation	Generally, for large employers, the Act would effectively repeal the combined plan limit since the defined benefit plans of large employers are typically covered by the PBGC insurance program. The IRS is expected to issue guidance in 2007 that addresses the changes to the combined plan limit

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	100% of current liability. In general, elective contributions to the defined benefit plan are disregarded for this purpose.	paid or accrued to the beneficiaries under the plan.	in effect during 2006 and 2007.
EXCESS CONTRIBUTIONS	Unless excess contributions and excess aggregate 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. Subject to a de minimis exception, excess contributions and excess aggregate contributions that are distributed by the 2½ month deadline are includible in income in the year of the excess. Also, except to the extent of basis, earnings attributable to excess contributions, and excess aggregate contributions, including earnings during the year of distribution ("gap period income"),generally must be distributed with the excess contribution or excess aggregate contribution.	Amends the current law rule to provide that (i) excess contributions and excess aggregate contributions are includible in income in the year of distribution (except to the extent of basis), and (ii) gap period earnings need not be distributed. For automatic enrollment arrangements, provides that excess contributions and excess aggregate contributions that are distributed within 6 months after the end of the plan year are not subject to the excise tax. *Effective Date*: Plan years beginning after 2007.	These changes are included in the section of the Act that addresses automatic enrollment arrangements. However, the changes in the year of inclusion and the treatment of gap period earnings apply to all 401(k) plans. Only the 6-month rule is limited to automatic enrollment arrangements. The change to eliminate the gap period income requirement (which was part of the recently finalized 401(k) regulations) applies on its face to excess contributions and excess aggregate contributions that are distributed before the end of the following plan year, not merely to excess contributions and excess aggregate contributions that are distributed before the 2 ½ or 6-month window and are, therefore, exempt from the 10% excise tax. The JCT's technical explanation, however, indicates that the gap period income is limited to distributions within the applicable window.
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) and if such plans have no more than $100,000 of assets, no return is required.	Generally exempts one-participant retirement plans with assets of no more than $250,000 from the Form 5500 annual return requirement. *Effective Date*: Plan years beginning after 2006. Directs the Treasury and Labor to provide for simplified filing for plans that cover fewer than 25 participants for years after 2007.	
ERISA REFORMS			
MAPPING INVESTMENT OPTIONS	ERISA section 404(c) provides that where a participant or beneficiary exercises control over the assets in his or her individual account, no	Makes clear that the 404(c) safe harbor for plan fiduciaries applies to a "qualified change in investment options," whereby a participant's	Significantly, the new provision allows for mapping to both new and existing investment options.

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	person who is otherwise a fiduciary shall be liable for any loss or breach resulting from the participant or beneficiary's exercise of control.	account is reallocated by the plan among one or more remaining or new investment options which are reasonably similar in characteristics, including risk and rate of return of the prior options, so long as the following requirements are met: 1. At least 30 days and no more than 60 days prior to the change, notice is provided to participants and beneficiaries, including information about the existing and new investment options and an explanation of how, absent affirmative instruction to the contrary, the participant's account will be invested; 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 plan years beginning in 2008, subject to a delay for collectively bargained plans.	One apparent limitation in the provision is that it generally requires that each option under the old menu be mapped to a new option under the new menu that is reasonably similar in terms of risk and return characteristics. However, there are many situations where the specific 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 a comparable fund to replace it. In such cases, the preamble to the DOL's proposed default investment regulations indicates that the default investment safe harbors may be used.
SAFEST AVAILABLE ANNUITY REQUIREMENT	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.	The JCT technical explanation indicates that the Department of Labor regulations should not merely restate the factors to be considered as set forth in IB 95-1. The DOL is expected to issue guidance early in 2007.

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