SUMMARY OF PROVISIONS OF THE PENSION PROTECTION ACT OF 2006 AFFECTING DEFINED BENEFIT PLAN FUNDING AND HYBRID PLANS

ISSUE	PRIOR LAW	PENSION PROTECTION ACT[1]	COMMENTS
SINGLE-EMPLOYER PENSION FUNDING			
IN GENERAL	Requires minimum contributions to single-employer defined benefit plans equal to the greater of (a) the contributions required under the deficit reduction contribution ("DRC") rules, or (b) the contributions required under the plan's funding standard account (the "ERISA funding rules"). If the DRC rules apply, sponsors generally must contribute a specified percentage of the plan's unfunded liabilities. DRC contribution percentages currently range from 18% to just over 30% of the difference between the value of plan assets and 100% of liabilities, as defined using special DRC interest rate and mortality assumptions ("current liability").	Starting with plan years beginning in 2008, the current two-tiered system is replaced with a single funding regime. The minimum required funding for any plan year under this regime is the sum of (i) the plan's normal cost for the plan year and (ii) the "shortfall contribution" necessary to amortize the difference between assets and 100% of liabilities over 7 years. A shortfall contribution is required for the current year and each of the next 6 years (unless the plan became 100% funded at an earlier date). Normal cost refers to all benefits that a plan expects to pay in the future that accrue during the year (including increases in benefits earned in prior years where the increase is attributable to compensation increases).	By way of example, in very simple terms, ignoring normal cost and assuming a zero interest-rate environment, the Act provides that if a plan has liabilities of $100 and assets of $86, the sponsor has a minimum contribution of $2 in each of the next 7 years.
TRANSITION FOR 2006 AND 2007	For plan years beginning during 2004 and 2005, a temporary corporate bond interest rate was used for certain purposes.	The current funding rules, including an extension of the temporary corporate bond rate, remain in effect for plan years beginning in 2006 and 2007.	
FUNDING TARGET	DRC contributions are required only if a plan falls below 90% funded on a current liability basis, or 80% for plans that have been 90% funded in two consecutive years out of the last three years.	Contributions are required for a plan year if the sum of (i) the plan's normal cost for the year and (ii) 100% of the plan's liability on the valuation date, is more than the value of the plan's assets.	
PHASE-IN OF FUNDING TARGET		The 100% funding target does not apply until 2011 for plans that are funded up to 92% in 2008; 94% in 2009; and 96% in 2010. Plans subject to the DRC for plan years beginning in 2007 do not qualify for this transition rule. Eligibility for the phase-in of the 100% target (*i.e.*, funding to 92% in 2008 etc.) is significant because plans that reach these thresholds are not required to subtract	This "ladder" phase-in is not a traditional phase-in. As a result, many plans (including non-DRC plans) will either have to immediately fund up to the applicable threshold (92% in 2008) or immediately move from a 90% funding target to a 100% funding target in 2008.

[1] The Pension Protection Act of 2006 ("PPA" or "Act"), Public Law No. 109-280, was approved by the full House on July 28, 2006 and the Senate on August 3, 2006. President Bush signed the measure into law on August 17, 2006. The PPA is the package of retirement reforms agreed upon by House and Senate conferees that worked to reconcile different versions of the legislation (originally H.R. 2830 and S. 1783). This chart is based on a review of the Act's language and certain descriptive materials, including the Technical Explanation prepared by the Joint Committee on Taxation (August 3, 2006, JCX-38-06).

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		credit balances in determining their shortfall contributions. Such plans are also exempt from the benefit restriction rules (but not the at-risk rules) even if the subtraction of credit balances would otherwise trigger the restrictions, as discussed below.	
INTEREST RATE FOR VALUING LIABILITIES	Liabilities of all durations are valued using a single interest rate. Prior to 2004, the interest rate used to determine liability for DRC purposes was based on the 30-year Treasury bond. For plan years beginning in 2004 and 2005, the interest rate is based on a mix of long-term corporate bonds that are AAA, AA and A rated. After 2005, the interest rate is scheduled to revert to the rate on the 30-year Treasury bond.	Liabilities will be valued using a yield curve comprised of AAA, AA and A rated corporate bonds of varying maturities. Separate interest rates will be established for each of three maturity "segments" – liabilities due (1) in 5 or fewer years, (2) between 5 and 20 years and (3) those longer than 20 years. In lieu of using the segment rates, a plan can elect to value liabilities for purposes of determining minimum contributions without regard to the segment rates (*i.e.*, by applying a true yield curve). This election also requires liability to be determined without interest rate smoothing, discussed below. Such an election may be changed only with the consent of Treasury. *Transition*. The change in liability attributable to the new interest rate, yield curve, and interest rate smoothing rules (discussed below) will be phased in during 2008 and 2009. During 2008, liability is one-third new liability and two-thirds liability under the rules in effect during 2007 (including extension of the temporary corporate bond rate). Those ratios will be flipped during 2009.	There are a number of unanswered questions regarding the construction of the yield curve, including how the different classes of bonds will be weighted. These issues presumably will be addressed by Treasury in constructing the yield curve. The election to use a spot rate yield curve without regard to segments was not in either the House or Senate bills. Presumably it was added to facilitate liability driven investing strategies. The election to use a spot rate yield curve only applies for purposes of determining minimum required contributions. It should apply for purposes of the at-risk rules, discussed below, and presumably for certain credit balance purposes. However, it is not entirely clear whether it applies, for example, for benefit restriction purposes, measuring liability for deduction purposes or calculating liability for 420 transfer purposes.
INTEREST RATE SMOOTHING	The interest rate used to value liabilities is the weighted average of the interest rate for the previous 4 years (weighted 40%, 30%, 20% and 10%, starting with the most recent year in the four-year period).	Interest rates are smoothed over 24 months with no weighting. As mentioned above, a plan can elect to determine the interest rate on a non-smoothed and non-segmented basis. Such an election may be changed only with the consent of Treasury.	Reflects a compromise between the Senate's 12-month smoothing and the House's 3-year smoothing.
ASSET SMOOTHING	A plan can use the actual fair market value on the valuation date or the prescribed average value. Treasury regulations allow for the actuarial smoothing of asset values within a prescribed corridor (generally no less than 80% and no more than 120% of fair market value).	To the extent provided by Treasury, asset values may be averaged over a period that may not exceed 24 months. The statutory language refers to "averaging," but the intent appears to be permit "smoothing". Prescribed corridor is narrowed to 90% to 110%.	The Act provides Treasury with authority to prescribe permitted and non-permitted averaging methods. There are issues regarding the rate of return benchmark used for smoothing purposes. In other words, smoothing only applies to the extent a plan's rate of return varies from a

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			prescribed benchmark. Under current law, that benchmark is a plan's reasonably expected rate of return.
MORTALITY TABLE FOR VALUING LIABILITIES	The Secretary of Treasury prescribes the mortality tables used in determining a plan's current liability. On December 1, 2005, Treasury issued proposed regulations that would replace the current table, GAM 1983, with RP-2000.	Directs Treasury to prescribe a mortality table. *Substitute Mortality Table*. Allows a plan to use a substitute mortality table if the Secretary of Treasury determines that (i) the table reflects the actual experience of the plan and projected trends in experience and (ii) the plan has sufficient experience on which to base the substitute table, provided that each plan maintained by the employer and its affiliates uses its own substitute mortality table. *Effective Date*: RP-2000 will be effective as provided in to-be-issued final regulations. The substitute mortality table provisions are effective starting for plan years beginning in 2008.	Presumably Treasury will prescribe a mortality table that tracks its recently proposed regulation. The requirement that each plan maintained by an employer and its affiliates use a substitute mortality table if any plan uses one is designed to prevent "cherry picking" of plans with substandard mortality, *e.g.*, to prevent using a substitute mortality table for an hourly plan with substandard mortality while using the standard table for a salaried plan with above average mortality experience. Many issues arise with respect to the use of a substitute mortality table. For example, what happens if a company using a substitute mortality table acquires a company with a plan not using a substitute mortality table? Will Treasury guidance permit a grace period to adjust to the acquisition? What happens if a company with very big plans also has a very small plan with insufficient experience? Will Treasury guidance permit a de minimis exception? What will the rule be for using and constructing a substitute mortality table? What will be considered sufficient experience? Will the substitute mortality table have to be constructed from scratch or can it be based on adjustments of the Treasury table?
OPTIONAL FORMS OF DISTRIBUTION	An assumption regarding the probability that lump sums and other optional forms of distribution will be paid is not required (or permitted) under the DRC rules.	Probability that lump sums and other optional forms of distribution will be paid are taken into account, and any difference in value must be reflected in liability.	
TREATMENT OF GAINS AND LOSSES	The ERISA funding rules, but not the DRC rules, provide for amortization of gains or losses.	Losses (actuarial and investment) are recognized immediately and amortized over 7 years. Gains are also amortized over 7 years and netted against loss amortization schedules.	Immediate recognition of gains was not an element of either House or Senate bill, but was added as part of the conference and will materially reduce contributions in certain situations. Arguably, amortization of gains is not permitted where a plan's assets (without subtraction of pre-effective date credit balances) equal or exceed the

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			plan's funding target. This is inconsistent with the apparent intent and could be clarified by Treasury guidance or a technical correction.
TREATMENT OF CREDIT BALANCES	If a sponsor makes a contribution in excess of the minimum required contribution in any year, the excess plus interest is maintained as a "credit balance" that can be credited against future required contributions. Generally, under the DRC rules, the credit balances are not subtracted from assets for purposes of determining whether a shortfall contribution is required, but they are subtracted for purposes of determining the amount of the shortfall contribution. Credit balances are not subtracted for any other purpose. Credit balances are increased based on the plan's expected rate of return on assets.	The following changes in the treatment of credit balances are made: - Credit balances must be subtracted from assets for determining the amount of the shortfall contribution for plans funded below the phased-in funding target. (In determining if a plan is at the phased-in funding target, existing credit balances are not subtracted.) Note: Credit balances that cannot be used to satisfy a contribution obligation as a result of an agreement with the PBGC need not be subtracted from assets for this purpose. - Credit balances cannot be used to offset minimum contributions for plans that were below 80% funded for the preceding year. For this purpose, existing credit balances as of the end of plan years beginning in 2007 are not subtracted from assets, but new credit balances are subtracted, and Treasury will prescribe methods of estimating funded percentages for 2007 (to determine whether the restriction applies in 2008). - Credit balances cannot be created by any contribution to the extent that the contribution is required in order to avoid any of the benefit limitations discussed below. In effect, contributions that bring a plan up to a benefit limitation threshold will be treated as required contributions. - Beginning in 2008, credit balances will be marked to market based on the plan's actual rate of return. - As described further below, credit balances will also be subtracted from assets for purposes of determining whether a plan is "at risk" and, in the case of a plan that is funded below the phased-in funding target, whether the benefit restrictions apply. The at-risk rules and the "presumption" rules applicable to benefit restrictions apply based on funding status in the preceding year. As	The subtraction of credit balances for purposes of determining the amount of minimum contributions is different from pre-PPA law in that, under pre-PPA law, credit balances are only subtracted from assets in plans that fall into the DRC and only for purposes of minimum funding. The Act greatly expands the situations in which credit balances are subtracted from assets and puts enormous pressure on plan sponsors to waive some or all of their credit balances in many situations (such as to avoid at-risk status).

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		above, Treasury will prescribe methods of estimating funded percentages for 2007 (for purposes of 2008). - Credit balances are also subtracted for other purposes, such as reporting under ERISA section 4010, determination of excess assets under Code section 420, and certain disclosure rules. The plan sponsor may "waive" or "burn" all or part of its credit balance - - i.e., permanently give up the right to use its credit balance to offset minimum required contributions. In some circumstances relating to benefit restrictions, such a waiver is required. The effect of the waiver is to avoid the subtraction of the waived credit balances for the various purposes described above. Because of the lookback rules - - which make 2007 funded status relevant - - wavier rules may be needed for 2007.	
SPECIAL RULES FOR AT-RISK PLANS	Not applicable.	Plans that are defined as "at-risk" will be subject to accelerated funding requirements. At-risk plans will be required to (i) assume that during the current year and the next 10 years all participants will retire upon reaching the earliest retirement age; (ii) assume that benefits will be paid in lump sums (or in whatever form results in the largest liability for the plan); and (iii) in the case of a plan that has been at-risk for 2 out of the preceding 4 years, apply a "loading factor" equal to $700 per participant plus 4% of the otherwise applicable funding target for the plan year. *Definition of At-Risk*. Defines a plan as at-risk for a year if for the preceding plan year, the plan's assets were (1) less than 70% of its liabilities calculated assuming that the plan is at-risk but disregarding the loading factor and (2) less than 80% of its liabilities calculated using non-at-risk assumptions. For this purpose, credit balances will be subtracted from assets. Also, the 80% prong will be phased in as follows: 65% in 2008; 70% in 2009, 75% in 2010; 80% in 2011 and thereafter. *Phase-In*. Once a plan becomes at-risk, the difference between standard liability and at-risk liability will be phased in 20% per year.	The subtraction of credit balances means that plans that are well-funded on an economic basis may be considered at-risk by virtue of credit balances. These plans could waive their credit balances or could simply accept the consequences of at-risk status. Note that, under PPA, shortfall amortization schedules established while the plan was considered at-risk continue to be applicable after a plan ceases to be at-risk. The result is that once a plan ceases to be at-risk, the 20% phase-in of at-risk liability ceases, but the amortization schedule with respect to the already phased-in at–risk liability continues until the plan is funded to 100% of non-at risk liability (subtracting all credit balances). However, because the Act includes a provision allowing amortization of actuarial gains, a plan that ceases to be at-risk will have an actuarial gain that is amortized over 7 years and netted against the outstanding amortization bases. This has the effect of mitigating the consequences of the accelerated funding requirements once a plan ceases to be at risk.

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		Small Plan Exception. Plans with 500 or fewer participants will be exempt from the at-risk rules. For this purposes, all plans in the controlled group (other than multiemployer plans) are aggregated. *Automobile Manufacturers Exception.* The at-risk rules (other than the loading factor) will not apply to liabilities attributable to employees who work for automobile manufacturers (and certain auto parts suppliers) and who were offered but chose not to accept an early retirement package during 2006. *Effective Date*: Plan years beginning in 2008. Directs Treasury to prescribe estimation methodologies for determining funded percentages for 2007 (to determine whether a plan is at risk in 2008). Years prior to 2008 are not taken into account in determining the extent of the 20% phase in.	
RESTRICTIONS ON BENEFITS	There are restrictions on lump sum payments and benefit increases for certain plans that are severely underfunded or have liquidity problems.	*Less than 80% funded.* Benefit increases are prohibited unless immediately paid for or the plan is funded to the extent necessary to bring it to at least 80% funded. Exception permits increases in flat dollar plans that do not exceed rate of pay increases. *Between 60% and 80% funded.* Only partial lump sums (or other "prohibited payments") (generally no more than the lesser or (i) 50% of a participant's accrued benefit or (ii) the present value of the maximum PBGC guarantee with respect to the participant) are permitted. *Less than 60% funded.* The plan will have to be frozen, plant shutdown benefits cannot be triggered (unless immediately paid for or the plan is funded to the extent necessary to bring it to at least 60% funded), and lump sums (or other "prohibited payments") are prohibited. *Bankruptcy Reorganization.* Unless 100% funded, lump sums are prohibited. *Subtraction of Credit Balances.* Subject to the exception set forth below, for these purposes, all credit balances have to be subtracted from assets in determining a plan's funded percentage.	Involuntary cash-outs should not be subject to the restrictions on lump sums, but that is not clear. Under the new rules, participants are not required to be notified of the application of these restrictions until after the restriction applies. However, for example, in the case of the lump sum restrictions, there may well be a fiduciary duty to alert participants beforehand in some cases. There are a number of timing problems under these rules. For example, despite the presumption rules, plans may not know until late in the year that a benefit restriction applied as of the beginning of the year. On the other hand, well-funded plans - - such as a plan that was 89% funded in the preceding year and 100% funded in the current year - - could be subject to, for example, a restriction on lump sums for a period of time until a certification is prepared. There are also questions about the nature of such certifications, such as the extent to which projections may be used. It is unclear whether the mandatory waiver of

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		Mandatory Waiver of Credit Balances. All plans, including non-collectively bargained plans, generally have to immediately waive credit balances to avoid triggering restrictions on lump sums and other accelerated payout forms. Collectively-bargained plans generally have to immediately waive credit balances to avoid triggering any other benefit restrictions. It appears, though not clearly, that no waiver is required except to the extent that a benefit restriction would have an effect, such as prohibiting a benefit increase that has been agreed to. *Exception for Fully-Funded Plans*. The benefit restrictions do not apply to a plan that is funded up to 92% in 2008; 94% in 2009; 96% in 2010; and 100% thereafter, determined without subtracting credit balances from assets. *Presumption rules*. There are a series of presumptions that apply for purposes the benefit restrictions. First, a plan subject to a restriction in the preceding year is treated as subject to the restriction until the plan's actuary certifies the plan's current year funding status. Second, if the plan's actuary has not certified the plan's funded status by the first day of the fourth month of the plan year, the plan is, as of such day, treated as 10 percent points less well funded than in the prior year and such treatment continues until the certification occurs. Finally, a plan is conclusively presumed to be less than 60% funded if its funded status is not certified by the first day of the 10th month of the plan year. *Effective Date*: Plan years beginning in 2008, subject to a delay for collectively bargained plans.	credit balances applies for purpose of avoiding the presumption rules.
COMMERCIAL AIRLINES	Very generally, during 2004 and 2005, a commercial passenger airline may elect an alternate DRC contribution. The alternate DRC contribution is equal to the greater of (i) 20% of the amount that would otherwise be required and (ii) the expected increase in liability due to benefits accruing during the plan year. Restrictions on benefit increases apply if the	Provides special funding rules for commercial passenger airlines. Any commercial passenger airline may elect to apply the new funding rules modified to provide for 10-year (rather than 7-year) amortization of any funding shortfalls. Instead, a plan of a commercial passenger airline that is frozen is eligible for an alternative funding system.	

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	alternate DRC election is made.	Under the alternative funding system, (i) the required contribution for a year is the amount necessary to amortize the unfunded liability over 17 years, (ii) the plan must use a statutorily-prescribed interest rate to value liabilities, (iii) the plan may use a mortality table based on its own experience, (iv) and assets must be determined on a fair market value basis (*i.e.*, no actuarial smoothing). If a plan terminates while the alternative funding system applies, the PBGC guarantee is frozen as of the first date the alternative system applied. *Effective Date:* Plan years ending after the date of enactment.	
SPECIAL RULES	Not applicable.	Delays the effective date of the funding and benefit restriction rules for certain large defense contractors, certain plans rescued from distress termination through a PBGC settlement and multiple employer plans of rural agricultural, electric, and telephone cooperatives.	
OTHER PENSION FUNDING-RELATED CHANGES			
DEDUCTION LIMITS	An employer may generally deduct plan contributions that increase the plan's funding level to 100% of current definition of liability. This limit does not allow plans to create a funding cushion to help satisfy future liabilities. If a sponsor makes contributions in excess of the deduction limits, the contributions are nondeductible and subject to a 10% excise tax. *Combined Plan Limit.* 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) if the DRC rules apply, the amount needed to bring the plan to 100% of current liability. In general, elective contributions are	For 2006 and 2007, the limit on deductible contributions to single-employer plans is increased to the excess of 150% of current liability over plan assets. Thereafter, employers can generally make deductible contributions equal to the excess of target liability, target normal cost, and the "cushion amount" over the value of plan assets. In any event, however, employers may make deductible contributions to bring the plan to full funding using at-risk liability assumptions (even if the plan is not considered at-risk). *Cushion Amount.* The cushion amount is the sum of (1) 50% of target liability and (2) the amount target liability would increase if projected compensation increases were taken into account or, if the plan does not base benefits on compensation, benefit increases expected in succeeding plan years based on benefit increases in the preceding six years.	After 2007, the Act repeals the combined plan limit for PBGC-covered plans. During 2006 and 2007, for many large employers, the Act effectively repeals the combined plan limit. In this regard, it appears - - though not clearly - - that the combined plan limit is entirely inapplicable if the employer contributions to the defined contribution plan do not exceed 6%. The Act, however, appears to have a cliff effect in that the combined plan limit is triggered when and if employer contributions to the defined contribution plan exceed 6% of compensation.

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	disregarded for this purpose.	*Combined Plan Limit*. Effective in 2008, any plan covered by PBGC insurance is not taken into account in applying the combined plan limit. For 2006 and 2007, the combined plan limit does not apply to the extent that contributions by an employer to one or more defined contribution plans do not exceed 6% of the compensation paid or accrued with respect to the participants under the plan.	
VARIABLE RATE PBGC PREMIUMS	Very generally, certain underfunded single-employer pension plans pay an additional variable-rate premium of $9 per $1,000 of unfunded vested benefits.	No rate change in variable rate premium, but the full funding limit exemption is repealed. Liability for purposes of the variable rate premium is the same as liability for purposes of the funding rules except that the interest rate is a spot rate (*i.e.*, not smoothed over 24 months), assets are valued at fair market value, only vested liabilities are taken into account, and credit balances are not subtracted from assets in determining underfunding. The $1,250 per participant termination premium enacted earlier this year is made permanent. *Effective Date*: Plan years beginning in 2008.	The elimination of the full funding limit exemption could result in plans that have not previously paid a variable rate premium having to pay such premiums. Also, it appears that the changes in the liability definition, including application of at-risk rules, will lead to increased variable premiums.
DISCLOSURE TO PARTICIPANTS	Multiemployer defined benefit plans, but not single employer plans, must provide an annual plan funding notice to each plan participant and beneficiary, each labor organization representing participants and beneficiaries, to each contributing employer, and to the PBGC.	New plan funding notice due 120 days after end of the plan year for single employer plans with more than 100 participants. Disclosure of a lengthy list of items is required, including the funding target attainment percentage (for which purpose credit balances are subtracted), beginning of the year liability and assets as determined for funding purposes, and year-end assets and year-end liabilities as determined for variable rate premium purposes (*i.e.*, fair market value of assets and liabilities determined using a spot interest rate). A plan is also required to disclose whether a PBGC 4010 filing was made. *Effective Date*: Plan years beginning in 2008.	Concerns have been raised regarding the fact that employees will receive funded status information calculated on different bases. Beginning of the year information reflects asset and interest rate smoothing; end of the year information does not. The funding target attainment percentage reflects credit balance subtraction; the end of the year information does not; beginning of the year asset and liability information requires credit balances to be separately stated. To what extent will employers be entitled - - or required - - to explain this inconsistent data?
PBGC 4010 INFORMATION	Section 4010 of ERISA generally requires companies sponsoring defined benefit plans with more than $50 million of underfunding to provide the PBGC with confidential corporate information and a statement of the plan's funded	Companies are required to provide the PBGC with the information currently required under section 4010 if the funding percentage of a plan (or any affiliate's plan) was less than 80% for the preceding year. For this purpose, credit balances are subtracted from assets.	PPA does not require disclosure to participants of information provided to the PBGC under section 4010. PBGC has the authority to exempt small plans

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	status (*i.e.*, termination liability calculated using PBGC specified assumptions, which generally result in a substantially greater liability than under current liability).	*Effective Date*: Plan years beginning in 2008.	from section 4010 filings.
LUMP SUMS	Statutory assumptions must be used in determining the minimum value of certain optional forms of payments, including lump sums. The applicable interest rate is the annual interest rate on 30-year Treasury securities. The applicable mortality table is a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1994 Group Annuity Reserving Table.	The minimum value (*i.e.*, the amount) of lump sums and certain other optional forms of payments have to be calculated using interest rates derived from the modified yield curve (*i.e.*, the segment rates). However, the interest rate used for this purpose is a spot rate, not the smoothed rate used to measure liability. The mortality table will be developed by Treasury and based on the mortality table applicable for funding purposes (which would presumably be the table described in recently issued IRS proposed regulations). However, for this purpose, any substitute mortality table used by a plan will be inapplicable. Also, for this purpose, the mortality table will be a unisex table. *Effective Date*: The new interest rate will be phased in 20% per year over a 5-year period beginning in 2008. There is no phase in of the mortality table.	Except as provided by Treasury, section 1107 of the bill provides relief from the anti-cutback rules for plan amendments adopted pursuant to this provision.
NQDC RESTRICTIONS	There are no specific restrictions on the establishment or funding of executive compensation under the DRC Rules or ERISA Rules. Income tax provisions under Code section 409A impose immediate taxation and a 20-percent penalty on an employee or independent contractor who benefits under a deferred compensation plan that does not meet specific statutory rules.	Amends Code section 409A to provide for immediate taxation and the 20-percent penalty if any asset is set aside in a trust (or other arrangement as determined by Treasury) for purposes of paying nonqualified deferred compensation ("NQDC") to any "covered employee" of a publicly-held company during a restricted period, i.e., (i) while any pension plan of the employer or an affiliate is considered at-risk, (ii) while any employer in the controlled group that sponsors a defined benefit plan is bankrupt, or (iii) during the 12-month period starting six months prior to termination of any underfunded pension plan of the employer or an affiliate. The prohibited set aside of assets includes transfers of vested benefits to a rabbi trust. *Covered Employees.* The Code section 409A taxation and penalty applies for any prohibited transfers for a current or former employee who is or has been (i) one of the "top five" officers for purposes of Code section 162(m) whose compensation was reported on the employer's	Unlike the House and Senate bill, PPA clarifies that the restrictions do not apply to amounts contributed to a rabbi trust prior to the date that one of the three listed "triggers" occurs. It appears, though not clearly, that the at-risk trigger does not apply until the at-risk rules apply. PPA also defines covered employee narrowly to include only senior executives and insiders in contrast to the House bill, which applied the restrictions to all employees who had an NQDC benefit. Many issue arise under this provision. For example, if a company acquires a company with a plan in a restricted period, is the acquirer immediately subject to these restrictions or does a grace period apply? Do the restrictions apply if, for example, an at-risk plan is de minimis compared to the size of the controlled group? Do

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		proxy statement or (ii) one of the Rule 16 officers (*i.e.*, insiders whose equity compensation is subject to short-swing profit rules.) *Tax Gross-Ups*. The income inclusion and 20-percent penalty also applies to any gross-up payment attributable to taxes and penalties assessed as a result of the NQDC restriction, and employers are denied a deduction for such gross-up payment. *Effective Date*: Applies to transfers made after the date of enactment. Note, however, that a plan cannot be considered at-risk prior to plan years beginning in 2008. So it appears, though not clearly, that the at-risk trigger does not apply until 2028.	the rules apply to CEO's of private companies? The law can arguably be read to suggest that they do.
MULTIEMPLOYER PENSION FUNDING	Very generally, multiemployer plans are subject to funding rules that are analogous to the ERISA funding rules that apply to single-employer plans. In this regard, liabilities are amortized over a variety of periods and the plan's actuary generally determines the applicable actuarial assumptions. Additional contributions may be required if a multiemployer plan is in reorganization status or is insolvent.	Preserves the basic funding methodology that applies to multiemployer plans, but shortens the amortization periods for certain liabilities. Requires the adoption of a funding improvement plan in the case of a multiemployer plan in "endangered status" and a rehabilitation plan in the case of a multiemployer plan in "critical status." Endangered or critical status depends on various funding thresholds and the solvency of the plan. Very generally, endangered or critical status results in increased contributions, but, in the case of a plan in critical status, may also involve reductions to previously earned non-core benefits. Also makes changes in the deduction limits applicable to multiemployer plans. *Effective Date*: Plan years beginning in 2008. Certain provisions sunset at the end of 2014.	
TRANSFERS OF EXCESS PENSION ASSETS FOR RETIREE HEALTH	Defined benefit plan assets generally may not revert to an employer prior to termination of the plan. However, a plan may make a qualified transfer of excess assets to a separate account that is part of the plan to provide medical benefits to currently retired employees. In order to be a qualified transfer, the transfer must meet certain requirements, including a requirement that the retiree medical plan meet certain minimum cost requirements. Excess assets generally means the excess, if any, of the value of plan assets over	Continues to permit a qualified transfer of excess amounts to a separate account in a pension plan to provide medical benefits to retired employees. For this purpose, excess assets generally means the excess, if any, of the value of plan assets (reduced by credit balances) over 125% of the sum of the plan's liability plus normal cost for the year. In valuing plan assets for this purpose, the lesser of fair market value or the smoothed value used for funding must be used. The legislation does not specify an effective date for this provision.	

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	125% of the plan's current liability.	In addition, creates new retiree health transfer options for "qualified future transfers" and "collectively bargained transfers" to provide medical benefits to future retired employees. Qualified future transfers can be made for a period of up to 10 years ("transfer period"). Each new type of transfer is subject to a series of requirements and allows transfers at a reduced 120% threshold. This 120% threshold applies in the same way as the 125% threshold. However, if the plan's funded status subsequently falls below 120%, either the employer must make contributions to bring the plan back to 120% funded or the assets in the account must be transferred back to the general assets of the plan to do the same. It appears, though not clearly, that any amounts left in the account at the end of the transfer period must be transferred back to the plan's general assets, subject to a reversion tax. Special minimum cost requirements apply. *Effective Date:* Transfers after the date of enactment except as noted above. *Multiemployer Plans*. Retiree health transfers are also allowed for multiemployer plans after 2006.	
HYBRID PLANS			
BASIC DESIGN	The Internal Revenue Code (the "Code"), Employee Retirement Income Security Act ("ERISA") and the Age Discrimination in Employment Act ("ADEA") provide that a defined benefit plan is age discriminatory if the rate of a participant's benefit accrual declines on account of age.	Amends the Code, ERISA and the ADEA to provide that defined benefit plans are not age discriminatory if, as of any date, a participant's accrued benefit, determined under plan terms, is at least equal to the accrued benefit of any similarly situated, younger individual. As a result, cash balance plans are not age discriminatory so long as pay and annual interest credits for older workers are not less than pay and annual interest credits for younger workers. Also, this provision does not apply unless (i) interest credits are not greater than a market rate of return and (ii) cumulative interest credits are not negative, as discussed further below.	Because PPA applies to all defined benefit plans, its age discrimination clarification applies to cash balance plans, pension equity plans ("PEPs"), and other hybrid plans. The application to hybrid plans is made explicit in PPA's definition of "accrued benefit," which makes specific reference to "the balance of a hypothetical account" (cash balance) and "the current value of the accumulated percentage of the employee's final average compensation" (pension equity). Except as provided by Treasury, section 1107 of the bill provides relief from the anti-cutback rules for amendments adopted to conform to these rules, such as an amendment to lower an above-

ISSUE	PRIOR LAW	PENSION PROTECTION ACT[1]	COMMENTS
		Effective Date: Effective for periods on or after June 29, 2005. However, for plans in existence on June 29, 2005, the new interest crediting rules do not apply until plan years beginning after 2007, unless the employer elects to have those rules apply as of June 29, 2005. There is also a delayed effective date for collectively bargained plans with respect to the new interest crediting rules.	market crediting rate. It is unclear why an employer would want to elect early application of the new interest crediting rules, except possibly to take advantage of the anti-cutback relief as of an earlier date. While crediting interest at no more than a market rate is a requirement to obtain the age discrimination protection, it may be some time before Treasury issues guidance on what constitutes a market rate.
BEYOND HYBRIDS	Some have suggested that, for the same reasons hybrid plans have been found by a limited number of federal courts to violate the pension age discrimination rules, certain other plan designs that incorporate a time value of money feature could also be judged to run afoul of the age discrimination rules. In this regard, for example, questions have arisen about the legality of certain floor offset plans, plans with pre-retirement indexing of benefits, and contributory plans.	Provides that age discrimination cannot be caused solely by reason of any offset permitted under the tax laws or any offset for permitted disparity. Also indicates that indexing accrued benefits cannot be age discriminatory, provided that the indexing cannot result in a loss of accrued benefits (except in the case of a benefit provided in the form of a variable annuity). PPA makes clear that benefits are to be measured on an "accrued to date" basis (rather than an annual basis). *Effective Date*: Effective for periods on or after June 29, 2005.	
TREATMENT OF EXISTING PLANS	Over the past 20 years, numerous companies have converted their traditional defined benefit plans to hybrid plans. According to the PBGC, there are more than 1,500 of these plans as of 2003 providing benefits to more than 8 million participants. Although hybrid plans have been repeatedly blessed by the Treasury Department and the IRS and were affirmed as lawful by courts on numerous occasions, a limited number of federal courts have found such plans to run afoul of the age discrimination rules. For example, in *Cooper v. IBM*, a federal district court in 2003 held that the cash balance plan design was age discriminatory because pay credits to younger participants' accounts had more years to earn interest. In August 2006, in a very significant development, the Seventh Circuit reversed the lower court's determination, finding that the cash	Provides that the changes discussed above (see "Basic Design" above) should not be construed to create an inference with respect to the treatment of hybrid plans under the law prior to June 29, 2005.	For existing hybrid plans, PPA's prospective provision does act as a cap on any potential age discrimination liability since future accruals will be judged (and validated) under the PPA provision.

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	balance design was not age discriminatory and that time value of money features do not cause defined benefit plans to violate the age discrimination rules.		
LUMP SUMS & WHIPSAW	The amount of a lump sum benefit paid from a defined benefit plan must be no less than the actuarial equivalent of the normal retirement benefit determined using the statutorily prescribed interest rate and mortality assumptions. In Notice 96-8, the IRS stated that in calculating the amount of a single sum distribution under a cash balance plan, the balance of the participant's hypothetical account must be projected to normal retirement age using the plan's interest crediting rate (if interest credits do not depend on continued employment) and then discounted back to present value using the statutorily prescribed rate. If the rate used by a plan to project forward exceeds the statutory discount rate, the present value of the accrued benefit will exceed the participant's account balance. If the plan pays only the account balance, some courts have concluded that this is an impermissible forfeiture. This is often referred to as "whipsaw." Most courts, but not all, have followed the approach in Notice 96-8 with respect to the whipsaw issues.	Permissible to pay account balances as participants' accrued benefits. *Effective Date*: Applies to distributions after the date of enactment. Provides that the changes should not be construed to create an inference with respect to whipsaw under the law prior to enactment.	Significantly, the Act applies to distributions, and not merely benefits accrued, after the date of enactment. The whipsaw provision itself does not contain any regulation of interest crediting rates but the basic age discrimination provision requires that interest crediting be at no more than a market rate of return. It appears, unless Treasury provides otherwise, that a plan that reflected whipsaw benefits under its terms can be amended to remove such benefits under bill section 1107, which provides anti-cutback relief for amendments pursuant to the Act.
INTEREST CREDITS	The whipsaw rules for lump sums generally limit interest crediting rates. In addition, there have been questions about interest crediting rates that may fall below zero.	As mentioned above, the Act conditions the age discrimination rules for cash balance plans on crediting interest at a market rate. Under the Act, it appears that a variable market crediting rate that is a market rate will not fail to be treated as a market rate by reason of the existence of a reasonable minimum guaranteed rate of return. Interest rates that cause a decline in the accrued benefit are prohibited. Directs Treasury to address issues related to the market interest rate requirement. *Effective Date*: Described above under "Basic Design".	The statute is not explicit about the period of time over which interest rates cannot cause a decline in the accrued benefit. The intent appears to have been for this to be a cumulative requirement measured at benefit commencement rather than an annual requirement. This intent is indicated in a colloquy during Senate debate between Senators Enzi (R-WY) and Burr (R-NC). This issue and intent apply to the "no loss of accrued benefit" rule under "Beyond Hybrid'" above. The prohibition against declines in accrued benefits due to indexing makes it more difficult for cash balance plans to offer equity rates of return.

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VESTING	An employee must have a nonforfeitable right to his accrued benefit under a defined benefit plan equal to either (i) 100% of his accrued benefit after five years of service or (ii) 20% of his accrued benefit after three years of service, with such percentage increasing by 20% for each additional year of service up to 100% after 7 years of service.	Requires vesting for cash balance plans and pension equity plans after 3 years. No option of graded vesting. *Effective Date*: Same as the effective date of the new interest crediting rules described above under "Basic Design".	The new vesting rules should be limited to employees who have an hour of service on or after the effective date, but technically the law does not include a restriction. There are a number of questions about the impact of the new vesting rule where a plan has both hybrid and non-hybrid elements including, for example, where a plan provides participants with a choice between a traditional defined benefit and a hybrid plan benefit. Logically, the vesting rule should only apply to hybrid benefits but the language can be read more broadly to apply to the entire plan rather than just to hybrid benefits.
CONVERSIONS AND MANDATES	Although conversions are done in a variety of ways, a typical conversion involves assigning a participant an account balance under the new cash balance plan based on the value of the participant's benefit under the traditional pension plan. On a going forward basis, participants in the cash balance plan receive pay credits and earn interest on their entire account. Some participants in certain conversions, typically older or longer-service participants, have expressed concern that they will receive a pension benefit that is less than they expected under the traditional defined benefit plan formula. Pre-PPA law does not protect employee expectations but does provide participants with two protections. First, ERISA section 204(h), which was strengthened in the 2001 tax act, requires comprehensive advance notice of a reduction in the rate of benefit accrual. Second, both ERISA and the Code provide that a participant's accrued benefit for services already performed may not be reduced.	To protect against wear-away, the accrued benefit as of the date of the conversion cannot be less valuable than the sum of the accrued benefit under the pre-conversion plan terms plus the accrued benefit under the new hybrid formula. *Pop-Up*. Any early retirement subsidy under the pre-conversion formula must be credited to the new account balance if a participant terminates and qualifies for the subsidy. *Effective Date*: Effective for conversions adopted after, and taking effect after, June 29, 2005. Provides that no inference should be made as to conversions prior to the effective date.	The anti-wear-away requirements are strictly limited to conversions to cash balance and pension equity plans. This is not a blanket prohibition against wear-away. The earlier House bill (H.R. 2830) included a parenthetical that appeared to bless the inclusion of transition credits as a permanent part of opening account balances to reflect all or a part of the value of early retirement subsidies. This parenthetical was not included in PPA, raising questions about whether such a practice could be considered age discriminatory.
RULES FOR TERMINATING HYBRID PLANS	There are no unique rules regarding the termination of a hybrid plan.	Provides rules for making determinations of benefits upon termination. Specifically provides that, upon plan termination, a plan must provide the following: (1) if the interest credit rate (or equivalent amount)	

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		under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan is equal to the average of the rates of interest used under the plan during the five-year period ending on the termination date, and (2) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age is the rate and table specified under the plan for such purposes as of the termination date. Note: For purposes of (2), if the rate of interest is a variable rate, then the rate is the average of such rates during the five-year period ending on the termination date.	

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