

OVERVIEW OF CHANGES MADE BY THE SMALL BUSINESS PENSION PROMOTION ACT OF 2011 (H.R. 3561)

INTRODUCED ON DECEMBER 5, 2011, BY RON KIND (D-WI). CO-SPONSORED BY JIM GERLACH (R-PA) AND RICHARD NEAL (D-MA).

ADDRESSING MINIMUM DISTRIBUTIONS IN DECLINING MARKETS (§2)	CURRENT LAW	BILL PROVISION	COMMENTS
ADDRESSING MINIMUM DISTRIBUTIONS IN DECLINING MARKETS (§2)	Current law provides that in determining a required minimum distribution (“RMD”) for a year, the account balance is generally determined as of December 31 of the prior calendar year.	The bill would authorize Treasury to allow taxpayers to use a later valuation date where there has been a significant and broadly applicable decrease in the value of investment assets held by DC plans and IRAs. Treasury may also allow taxpayers additional time to make the distribution and may provide other appropriate relief.	The RMD for a non-annuitized account is calculated based on a percentage of the account balance, and for administrative convenience the prior year’s end account balance is used. When the market dropped precipitously in 2008, it became apparent that participants in DC plans and IRAs could find themselves having to make disproportionately large RMDs. Congress provided temporary relief in 2009. This provision is an attempt to address the structural problem.
LEVEL PLAYING FIELD FOR SELF-EMPLOYMENT TAXES AND PAYROLL TAXES FOR PLAN CONTRIBUTIONS (§3)	An individual subject to the self-employment tax (the tax equivalent to payroll taxes for employees) pays the tax on his or her “net earnings from self-employment,” defined in Code section 1402. The IRS takes the position that this amount does not back out any contributions the self-employed individual makes to a qualified plan. Thus, all contributions to qualified plans on behalf of self-employed individuals are subject to the self-employment tax. In contrast, an employee’s wages for payroll tax purposes would not include contributions the employer makes to the plan.	The bill amends the computation of “net earnings from self-employment” under Code section 1402(a) to allow a deduction for deductible contributions to a qualified plan other than elective deferrals. This provision is effective for taxable years beginning after December 31, 2011.	This would correct a longstanding inconsistency between the treatment of employer contributions for self-employment tax and payroll tax purposes. For both employees and self-employed individuals, any amount treated as an elective deferral would continue to be subject to self-employment/payroll taxes. Many self-employed individuals have compensation in excess of the Social Security limit; for those individuals this affects only Medicare taxes.

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FUNDING-BASED RESTRICTIONS (E.G., LUMP SUMS, SHUT-DOWN BENEFITS) DETERMINED USING ACTUAL PLAN ASSETS (§4)	Underfunded DB plans are subject to a variety of funding-based “benefit restrictions” under Code section 436. For plans that are less than 100% funded, the funding percentage that triggers the restrictions is determined by reducing the plan’s assets by the amount of any credit balances (called prefunding balance and funding standard carryover balance), which generally reflects past contributions in excess of the amount required.	The bill would provide that for purposes of the benefit restrictions in Code section 436, the plan’s assets are determined without regard to the reduction for credit balances. A conforming change would be made to ERISA. The provision would apply to plan years beginning after December 31, 2011.	There is no policy rationale for reducing plan assets by credit balances for purposes of the benefit restrictions because those rules should apply based on the total assets that are actually in the plan.
REPEAL OF TAX ON NONDEDUCTIBLE CONTRIBUTIONS TO QUALIFIED EMPLOYER PLANS TO ENCOURAGE PLAN FUNDING (§5)	Code section 4972 imposes on an employer a 10% excise tax for nondeductible contributions to plans qualified under Code section 401(a), annuity plans under section 403(a), simplified employee pensions under section 408(k), and SIMPLE retirement accounts under 408(p).	The bill repeals Code section 4972 in its entirety for taxable years beginning after December 31, 2011.	Repeal of the excise tax on nondeductible contributions might encourage employers to contribute additional amounts into pension plans in profitable years.
EASE COMPLIANCE WITH RULES GOVERNING AMENDMENTS TO QUALIFIED PLANS (§6)	Revenue Procedure 2007-44 establishes a system of cyclical remedial amendment periods under Code section 401(b) for individually designed and pre-approved qualified plans. The procedures allow plans to submit their plan documents for a determination letter every five years while maintaining protection against disqualification. The IRS requires, however, that plans adopt “interim” amendments for changes in the law and operational changes in between filings.	The bill requires the Treasury to revise the administrative rules governing interim amendments of qualified plans (<i>i.e.</i> , Revenue Procedure 2007-44) no later than two years from enactment to allow for greater flexibility and reduced burdens on plan sponsors.	While the staggered remedial amendment period has been a welcome process, these “interim” amendments are considered burdensome. Because the law changes frequently, many plans need to be amended every year. An administrative solution is also being considered. The IRS’s Advisory Committee on Tax Exempt and Government Entities recommended changes in 2010, and IRS officials announced earlier this year they are considering these ideas, including a “notice” procedure in which employers would not amend their plans but would notify employees of plan changes each year.

	CURRENT LAW	BILL PROVISION	COMMENTS
<p>PROTECTING EXISTING PRIVATE AND GOVERNMENT PLAN PROVISIONS THAT USE SERVICE-BASED NORMAL RETIREMENT DATES</p> <p>(§7)</p>	<p>In regulations adopted in 2007, Treasury set forth a series of rules for determining what a plan may use as its normal retirement age (“NRA”). As a general rule, the NRA must be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. The rules state, among other things, that if a plan’s NRA is between the ages of 55 and 62, the determination of whether the age is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry is based on all of the relevant facts and circumstances. The IRS has twice extended the application of the new NRA rules for governmental plans (Notices 2008-98 and 2009-86).</p> <p>In Notice 2007-69, Treasury and the IRS stated that it “expects” that a plan under which NRA is the <i>earlier</i> of an age or attainment of a stated years of service will violate the vesting and accrual rules in Code section 411.</p> <p>Also in Notice 2007-69, Treasury sought comments on whether governmental plans may have an NRA based on years of service. Although government plans are not subject to the vesting rules in Code section 411, Treasury suggested a service-based NRA might violate the “definitely determinable” requirement and the pre-ERISA vesting rules, which do apply to governmental plans.</p>	<p>The bill provides that a plan that, on December 5, 2011, bases NRA on the attainment of an age between 60 and 65 or the completion of 30 or more years of benefit accrual service will not fail to be qualified by reason of such NRA. The plan may have such an NRA that applies only to certain participants or employers participating in the plan, and the plan may extend such an NRA to other participants or participating employers. The bill provides that such plans will not fail to have a uniform NRA for purposes of the Code.</p> <p>The bill would also provide that a governmental plan would not be treated as failing any qualification requirement solely because the plan expresses NRA based on years of service or a combination of years of service and age or expresses its normal retirement benefit as a benefit payable without actuarial reduction upon attainment of an age, years of service, or a combination of age and years of service.</p> <p>Conforming changes are made to ERISA section 204 (other than the changes related to government plans, which are not subject to ERISA).</p> <p>These amendments are effective before, on, and after enactment.</p>	<p>Many of the plans that were arguably jeopardized by the new NRA rules, and that would be grandfathered by the bill, had received favorable determination letters.</p> <p>Government plans commonly use service-based NRAs. Until Notice 2007-69 was issued, this was not thought to be a problem because governments are not subject to the generally applicable vesting rules.</p> <p>The reference to ensuring plans will be treated as having a uniform NRA is to ensure such plans can continue to be considered “safe harbor” plans under the Code section 401(a)(4) nondiscrimination regulations; the safe harbors generally require that the plan has a uniform NRA.</p>

PREPARED BY MICHAEL HADLEY AND ARIANA WALLIZADA