

Hilites of the Pension Protection Act of 2006

■ Effective Immediately:

- EGTRRA higher benefit / contribution limits, repeal of 401(k)/(m) multiple use test, and Roth 401(k) made permanent.
- Federal law on "automatic enrollments" now trumps state law. This opens the door to automatic enrollments in states such as California whose own laws prohibit 401(k) deductions from paychecks without written authorization. IRS calls these "Automatic Contribution Arrangements" or ACA's. ACA must comply with yet-to-be issued DOL regulations, including rules on default investments to be used in absence of the participant's investment instructions if the plan has participant-directed accounts. New notice requirements must be satisfied.

■ Effective for plan years beginning in 2006:

- For employers who sponsor both a DB and a DC, the combined deductible contributions are increase to the greater of (1) 25% of participant compensation or (2) the DB minimum contribution plus up to 6% of participant compensation to the DC plan.
- New rules for determining minimum lump sum distributions from DB plans (may require IRS relief on distributions made prior to enactment).
- DB deduction limit increased to 150% of current liability.
- DB plan may count compensation earned prior to plan participation for purposes of the Section 415 limits (conforms with prior IRS interpretation that IRS sought to reverse).
- PFEA rates extended thru 2006 and 2007 plan years for DB current liability calculation.
- Wear away of pre-conversion accrued benefits prohibited if conversion from traditional DB to cash balance or other "hybrid" plan made after 6/29/05.
- Lump sum distribution after 8/17/06 from cash balance plan may be equal to hypothetical account balance (eliminates whipsaw effect).
- Blackout notices not required for plans that cover only owner (or owner and spouse) or that cover only partners in a partnership.
- For willful acts of coercive interference with ERISA rights occurring after 8/17/06, penalties increased to \$100,000 and ten years imprisonment.

■ Effective in 2007:

- Distributions to non-spouse beneficiaries may be rolled into "inherited IRA" for purposes of satisfying minimum distribution rules.
- Expanded portability of after-tax amounts between plans.
- Fiduciary Advisor (e.g. Bank, Insurance Co., Broker, RIA, etc.) may charge fees to Plan Participants if certain conditions are met.

■ Effective for plan years beginning in 2007:

- Accelerated vesting for DC plans: 100% after 3 years of service (previously was 5 years) or 6-year graded vesting "2/20" (previously was 7-year graded "3/20") for all new contributions (not just matching contributions as under EGTRRA). Applies only to participants with at least one hour of service after effective date.

- Right to diversify out of publicly-traded employer securities with required 30-day advance notice of right.
- New benefit statement requirements:
 - ❖ Quarterly for participant-directed DC plans
 - ❖ Annually for other DC plans
 - ❖ Every 3 years for DB plans
- 5500-EZ filing not required if assets never exceeded \$250,000 (instead of \$100,000).
- Simplified 5500 for plans with less than 25 participants.
- New DOL fiduciary safe harbor for default investments in participant-directed accounts when participant fails to give instruction.

■ Effective for plan years beginning in 2008:

- ACA's become "Eligible Automatic Contribution Arrangements" or EACA's. EACA has the option to return elective deferrals (and earnings thereon) to the participant within 90 days after the first automatic payroll deduction if the employee states they did not intend to make contributions.
- "Qualified Automatic Contribution Arrangement", or QACA. Safe Harbor arrangement for EACA's to bypass ADP and ACP tests. In order to qualify, EACA must provide that the automatic enrollment percentage be at least 3% for the first plan year of participation, 4% for the second plan year, 5% for the third plan year, and 6% for the fourth and subsequent plan years, but never more than 10%. Employer must make 3% nonelective safe harbor contribution or reduced safe harbor match: 100% on first 1% deferred plus 50% of next 5% deferred. Safe harbor contributions may vest after two (2) years of service rather than immediately. Plan deemed not Top Heavy.
- New DB funding rules and standards. Distribution limitation on "underfunded" DB plans; less than 80% funded cannot improve benefits without making additional contributions; above 60% but less than 80% may make limited payouts above annual annuity; less than 60% funded may only pay annuities, may not pay any lump sums and must cease all benefit accruals. Notice to employees on these restrictions required within 30 days following plan restriction applicability.
- Minimum DB lump sums: phase-in of new interest rates, replacing 30-year Treasury Rate, begins at 20% per year (for 2008-20012).
- Cash balance plans deemed not to be age discriminatory if certain conditions met. Must provide 100% vesting at 3 years of service.
- Direct rollovers to Roth IRA's subject to current tax; limited to taxpayers within current Roth deduction rules (e.g. \$100,000 AGI).
- Bonding requirement for plans holding employer securities increased to \$1 million.
- Fiduciary relief for "mapping" of plan assets.

■ Effective in 2010:

- Single plan allowed with both DB and 401(k) provisions.