

Key Provisions of the Pension Protection Act Effective for 2007 and 2008

The Employee Benefit Plan Audit Quality Center has prepared this summary to help plan auditors understand key provisions of the Pension Protection Act of 2006 that will come into effect during 2007 and 2008. This summary was prepared from information included in the Joint Committee on Taxation, Technical Explanation of H.R. 4, the “Pension Protection Act of 2006,” as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006 (JCX-38-06), August 3, 2006.

The Pension Protection Act will require many plans to change how they are designed and administered and, depending on plan type and current plan provisions, may require amendments to plan documents, increases in plan funding, and additional plan disclosures in regulatory filings and to plan participants. Readers should refer to the Pension Protection Act and the related DOL, IRS and PBGC regulations in their entirety to obtain a complete understanding of the law and applicable regulations.

Effective After December 31, 2006:

Default Investment Guidance

- DOL issued guidance on default investments on October 24, 2007
 - [Final Rule](#)
 - [Fact Sheet](#)
- Defines qualified default investment alternative, “QDIA”
- Participants and beneficiaries must be given the opportunity to provide investment direction but have not done so.
- Does not absolve fiduciaries of the duty to prudently select and monitor QDIAs.

Investment Advice

- Effective for any investment advice provided after December 31, 2006
- The exemptions provided under the provision apply in connection with the provision of investment advice by a fiduciary adviser under an eligible investment advice arrangement.
- An eligible investment advice arrangement is an arrangement meeting certain requirements (discussed below) and which either (a) provides that any fees (including any commission or compensation) received by the fiduciary adviser for investment advice or with respect to an investment transaction with respect to plan assets do not vary depending on the basis of any investment option selected, or (b) uses a computer model under an investment advice program as described below in connection with the provision of investment advice to a participant or beneficiary.

- In the case of an eligible investment advice arrangement with respect to a defined contribution plan, the arrangement must be expressly authorized by a plan fiduciary other than (1) the person offering the investment advice program, (2) any person providing investment options under the plan, or (3) any affiliate of (1) or (2).
- An eligible investment arrangement
 - Must be subject to an annual audit of compliance
 - Before the initial provision of investment advice, the fiduciary adviser must provide written notice (which may be in electronic form) containing various information to the recipient of the advice, including information relating to:
 - the role of any related party in the development of the investment advice program or the selection of investment options under the plan;
 - past performance and rates of return for each investment option offered under the plan;
 - any fees or other compensation to be received by the fiduciary adviser or affiliate;
 - any material affiliation or contractual relationship of the fiduciary adviser or affiliates in the security or other property involved in the investment transaction;
 - the manner and under what circumstances any participant or beneficiary information will be used or disclosed;
 - the types of services provided by the fiduciary adviser in connection with the provision of investment advice;
 - the adviser's status as a fiduciary of the plan in connection with the provision of the advice; and
 - the ability of the recipient of the advice separately to arrange for the provision of advice by another adviser that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property. This information must be maintained in accurate form and must be provided to the recipient of the investment advice, without charge, on an annual basis, on request, or in the case of any material change.

Vesting Change

- Vesting schedule of all employer contributions must vest as least as rapidly as one of the following two alternatives:
 - Participant vests 100% upon completion of three years of service, or
 - Participant vests 20% for each year of service beginning with the participant's second year of service and ending with 100% after six years of service.

Freedom to Divest Employer Securities in Applicable Defined Contribution Plans

- Generally, a defined contribution plan holding publicly-traded employer securities are subject to the diversification requirements.
- For employee elective deferrals and after-tax contributions, any applicable individual must be permitted to direct that such investments be invested in alternative investments.
- For other contributions, i.e., nonelective employer contributions and employer matching contributions, an applicable individual after three years of service must be permitted to direct that such amounts be invested in alternative investments.
- A transition rule applies to amounts attributable to these other contributions that are invested in employer securities acquired before the first plan year for which the new diversification requirements apply.
- The plan is required to give applicable individuals a choice of at least three investment options, other than employer securities, each of which is diversified and has materially different risk and return characteristics.
- The plan does not fail to meet the diversification requirements merely because the plan limits the times when divestment and reinvestment can be made to periodic, reasonable opportunities that occur at least quarterly.
- Requires a new notice in connection with the right of an applicable individual to divest his or her account under an applicable defined contribution plan of the provision relating to diversification rights with respect to amounts invested in employer securities.
- Not later than 30 days before the first date on which an applicable individual is eligible to exercise such right with respect to any type of contribution, the administrator of the plan must provide the individual with a notice setting forth such right and describing the importance of diversifying the investment of retirement account assets.

Periodic Pension Benefit Statements

- A benefit statement is required to indicate, on the latest available information:
 - Total benefits accrued
 - Vested accrued benefit or the earliest date on which the accrued benefit will become vested
 - Explanation of any permitted disparity or floor-offset arrangement that may be applied in determining accrued benefits under the plan
- The administrator of a defined contribution plan is required to provide a benefit statement to:
 - A participant or beneficiary who has the right to direct the investment of the assets in his or her account at least quarterly
 - Any other participant or other beneficiary who has his or her own account under the plan, at least annually, and
 - Other beneficiaries, upon written request, but limited to one request during any 12-month period.
- The administrator of a defined benefit plan is required either to:
 - Furnish a benefit statement at least once every three years to each participant who has a vested accrued benefit under the plan and who is

employed by the employer at the time the benefit statements are furnished to participants, or

- Furnish at least annually to each such participant notice of the availability of a benefit statement and the manner in which the participant can obtain it.

Distributions During Working Retirement

- Allows distributions to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

Effective After December 31, 2007:

Automatic Enrollment Arrangements

- A 401(k) plan that contains an automatic enrollment feature that satisfies certain requirements (a “qualified automatic enrollment feature”) is treated as meeting the ADP test with respect to elective deferrals and the ACP test with respect to matching contributions. In addition, a plan consisting solely of contributions made pursuant to a qualified enrollment feature is not subject to the top-heavy rules.
- A qualified enrollment feature must meet the following requirements:
 - Must provide that, unless an employee elects otherwise, the employee is treated as making an election to make elective deferrals equal to a stated percentage of compensation not in excess of 10 percent and at least equal to: three percent of compensation for the first year the deemed election applies to the participant; four percent during the second year; five percent during the third year; and six percent during the fourth year and thereafter.
 - Employer either satisfies a matching contribution requirement (as provided by the Act) or makes a nonelective contribution (as prescribed by the Act) to a defined contribution plan.
 - Any matching or other employer contributions must vest at least as rapidly as under two-year cliff vesting.
 - Each employee eligible to participate must receive notice (containing information prescribed by the Act) of the arrangement which is sufficiently accurate and comprehensive to be understood by the average employee to whom the arrangement applies.
 - Erroneous automatic contributions may be distributed from the plan no later than 90 days after the date of the first elective contribution with respect to the employee under the arrangement.
 - The excise tax on excess contributions does not apply to any excess contributions or excess contributions which, together with income allocable to the contributions, are distributed or forfeited (if forfeitable) within six months after the close of the plan year.

- The provision preempts any State law that would directly or indirectly prohibit or restrict the inclusion in a plan.

Increase in Maximum Bond Amount

- The provision raises the maximum bond amount to \$1 million in the case of a plan that holds employer securities.

Minimum Funding Rules

- In the case of single-employer defined benefit plans, the provision repeals the present-law funding rules (including the requirement that a funding standard account be maintained) and provides a new set of rules for determining minimum required contributions.
- Changes the definition of “at-risk” plans and provides special rules for funding and distributions.