VI. PENSION AND INDIVIDUAL RETIREMENT ARRANGEMENT PROVISIONS

A. INDIVIDUAL RETIREMENT ARRANGEMENTS ("IRAs") (sec. 101 of the House bill, secs. 601-603 of the Senate amendment and secs. 219, 408, and 408A of the Code)

PRESENT LAW

In general

There are two general types of individual retirement arrangements ("IRAs") under present law: traditional IRAs, to which both deductible and nondeductible contributions may be made, and Roth IRAs. The Federal income tax rules regarding each type of IRA (and IRA contribution) differ.

Traditional IRAs

Under present law, an individual may make deductible contributions to an IRA up to the lesser of $2,000 or the individual’s compensation if neither the individual nor the individual’s spouse is an active participant in an employer-sponsored retirement plan. In the case of a married couple, deductible IRA contributions of up to $2,000 can be made for each spouse (including, for example, a homemaker who does not work outside the home), if the combined compensation of both spouses is at least equal to the contributed amount. If the individual (or the individual’s spouse) is an active participant in an employer-sponsored retirement plan, the $2,000 deduction limit is phased out for taxpayers with adjusted gross income ("AGI") over certain levels for the taxable year.

The AGI phase-out limits for taxpayers who are active participants in employer-sponsored plans are as follows.

Single Taxpayers

<table>
<thead>
<tr>
<th>Taxable years beginning</th>
<th>Phase-out range</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>$33,000–43,000</td>
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<tr>
<td>2002</td>
<td>34,000–44,000</td>
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<tr>
<td>2003</td>
<td>40,000–50,000</td>
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<tr>
<td>2004</td>
<td>45,000–55,000</td>
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<tr>
<td>2005 and thereafter</td>
<td>50,000–60,000</td>
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</table>

Joint Returns

<table>
<thead>
<tr>
<th>Taxable years beginning</th>
<th>Phase-out range</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>$53,000–63,000</td>
</tr>
<tr>
<td>2002</td>
<td>54,000–64,000</td>
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<tr>
<td>2003</td>
<td>60,000–70,000</td>
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<tr>
<td>2004</td>
<td>65,000–75,000</td>
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<tr>
<td>2005</td>
<td>70,000–80,000</td>
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<tr>
<td>2006</td>
<td>75,000–85,000</td>
</tr>
<tr>
<td>2007 and thereafter</td>
<td>80,000–100,000</td>
</tr>
</tbody>
</table>

The AGI phase-out range for married taxpayers filing a separate return is $0 to $10,000.

If the individual is not an active participant in an employer-sponsored retirement plan, but the individual’s spouse is, the $2,000 deduction limit is phased out for taxpayers with AGI between $150,000 and $160,000.

To the extent an individual cannot or does not make deductible contributions to an IRA or contributions to a Roth IRA, the individual may make nondeductible contributions to a traditional IRA.

Amounts held in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal is a return of nondeductible contributions). Includible amounts withdrawn prior to attainment of age 59½ are subject to an additional 10-percent early withdrawal tax, unless the withdrawal is due to death or disability, is made in the form of certain periodic payments, is used to pay medical expenses in excess of 7.5 percent of AGI, is used to purchase health insurance of an unemployed individual, is used for education expenses, or is used for first-time homebuyer expenses of up to $10,000.

Roth IRAs

Individuals with AGI below certain levels may make nondeductible contributions to a Roth IRA. The maximum annual contribution that may be made to a Roth IRA is the lesser of $2,000 or the individual’s compensation for the year. The contribution limit is reduced to the extent an individual makes contributions to any other IRA for the same taxable year. As under the rules relating to IRAs generally, a contribution of up to $2,000 for each spouse may be made to a Roth IRA provided the combined compensation of the spouses is at least equal to the contributed amount. The maximum annual contribution that can be made to a Roth IRA is phased out for single individuals with AGI between

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55 The provisions of the bill as passed by the House did not contain provisions relating to pensions and individual retirement arrangements. Provisions described under the House bill refer to the provisions of H.R. 10, the "Comprehensive Retirement Security and Pension Reform Act of 2001," as passed by the House.
Taxpayers with modified AGI of $100,000 or less generally may convert a traditional IRA into a Roth IRA. The amount converted is includible in income as if a withdrawal had been made, except that the 10-percent early withdrawal tax does not apply and, if the conversion occurs after December 31, the IRA conversion may be spread ratably over four years. Married taxpayers who file separate returns cannot convert a traditional IRA into a Roth IRA.

Amounts held in a Roth IRA that are withdrawn as a qualified distribution are not includible in income, subject to the additional 10-percent early withdrawal tax, and subject to the 10-percent early withdrawal tax (unless an exception applies). The same exceptions to the early withdrawal tax that apply to Roth IRAs apply to Roth conversion IRAs.


taxation of charitable contributions

Generally, a taxpayer who itemizes deductions may deduct cash contributions to charity, as well as the fair market value of contributions of property. The amount of the deduction otherwise allowable for the taxable year with respect to a charitable contribution may be reduced, depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer. For contributions of cash by individuals, deductible contributions to public charities may not exceed 50 percent of a taxpayer's adjusted gross income ("AGI") for a taxable year. To the extent a taxpayer has not exceeded the 50-percent limitation, contributions of cash to private foundations and certain other nonprofit organizations and contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's AGI. If a taxpayer makes a contribution in one year that exceeds the AGI limitation but is within the 30-percent limitation, the excess amount of the contribution may be carried over and deducted during the next five taxable years.

In addition, percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income in excess of a threshold amount, which is adjusted annually for inflation. The threshold amount for 2003 is $150,000, and for 2004, $160,000.

The House bill accelerates the increase of the IRA maximum annual dollar contribution limit for individuals who have attained age 50 before the end of the taxable year. The maximum dollar contribution limit (before application of the AGI phase-out limits) for such an individual was increased to $4,000 in 2002 and, thereafter, the general limit applies to all individuals.

Deemed IRAs under qualified plans

No provision.

Tax-free IRA withdrawals for charitable purposes

No provision.

Effective date

The provision is effective for taxable years beginning after December 31, 2001.

SENATE AMENDMENT

Increase in annual contribution limits

The Senate amendment increases the maximum annual dollar contribution limit for IRA contributions from $2,000 to $2,500 for 2002 through 2005, $3,000 for 2006 and 2007, $3,500 for 2008 and 2009, $4,000 for 2010, and $5,000 for 2011 and thereafter. After 2011, the limit is adjusted annually for inflation in $500 increments.

Additional catch-up contributions

The Senate amendment provides that individuals who have attained age 50 may make additional catch-up IRA contributions. The otherwise maximum contribution limit (before application of the AGI phase-out limits) for an individual who has attained age 50 before the end of the taxable year is increased by $500 for 2002 through 2005, $1,000 for 2006 through 2009, $1,500 for 2010, and $2,000 for 2011 and thereafter.

Deemed IRAs under employer plans

The Senate amendment provides that, if an eligible retirement plan permits employees to make voluntary employee contributions to a separate account or annuity that (1) is established under the plan, and (2) meets the requirements applicable to either traditional IRAs or Roth IRAs, then the separate account or annuity is deemed a traditional IRA or a Roth IRA, as applicable, for all purposes. The deemed IRA, and contributions thereto, are not subject to the Code rules pertaining to the eligible retirement plan. In addition, the deemed IRA, and contributions thereto, are not taken into account in applying such rules to any other contributions under the plan. The deemed IRA, and contributions thereto, are subject to the exclusive benefit and fiduciary rules of ERISA to the extent applicable, and are not subject to the ERISA reporting and disclosure, participation, vesting, funding, and enforcement requirements applicable to the eligible retirement plan. An eligible retirement plan is a qualified plan (sec. 401(a)), and tax-sheltered annuity plan (sec. 403(b)), or a governmental section 457 plan.

Tax-free IRA withdrawals for charitable purposes

The Senate amendment provides an exclusion from gross income for qualified charitable distributions from an IRA: (1) to a charitable organization that is described in section 170(c)(1), (2) to a charitable remainder unitrust or charitable remainder annuity trust or charitable remainder unitrust if (3) to a pooled income fund (as defined in section 4947(a)(5)); or (4) for the use or distribution of a charitable gift annuity. The exclusion applies with respect to any contributions described in (2), (3), or (4) only if no person holds an income interest in the trust, fund, or annuity attributable to such distributions, other than the IRA owner, his or her spouse, or a charitable organization.

In determining the character of distributions from a charitable remainder annuity trust or charitable remainder unitrust to which a qualified charitable distribution from an IRA is made, the charitable remainder trust is required to treat as ordinary income the portion of the distribution from the IRA to the trust which would have been includible in income but for the Senate amendment, and as corpus any remaining portion of the distribution. Similarly, in determining the amount includible in gross income by reason of a payment from a charitable gift annuity purchased with a qualified charitable distribution from an IRA, the taxpayer is not permitted to treat the portion of the distribution from the IRA that would have been taxable but for the Senate amendment, that is used to fund an annuity as an investment in the annuity contract.

A qualified charitable distribution is any distribution from an IRA that is made after age 70½, that qualifies as a charitable contribution (within the meaning of sec. 170(c)), and that is made directly to the charitable organization or to a charitable remainder trust, charitable remainder unitrust, pooled income fund, or charitable gift annuity (as described above). A taxpayer is not permitted to claim a charitable contribution deduction for amounts transferred from his or her IRA to a charity or to a trust, fund, or annuity that, because of the Senate amendment, are excluded from the taxpayer’s income. Conversely, if amounts transferred are otherwise non-taxable, e.g., a qualified distribution from a Roth IRA, the regularly applicable deduction rules apply.

Effective date

The Senate amendment is generally effective for taxable years beginning after December 31, 2001. The provision relating to deemed IRAs under employer plans is effective for plan years beginning after December 31, 2002. The provision relating to tax-free IRA withdrawals for charitable purposes is effective for taxable years beginning after December 31, 2009.

CONFERENCE AGREEMENT

Increase in annual contribution limits

The conference agreement increases the maximum annual dollar contribution limit for IRA contributions from $2,000 to $3,000 for 2002 through 2004, $4,000 for 2005 through 2007, and $5,000 for 2008. After 2008, the limit is adjusted annually for inflation in $500 increments.

Additional catch-up contributions

The conference agreement provides that individuals who have attained age 50 may make additional catch-up IRA contributions. The otherwise maximum contribution limit (before application of the AGI phase-out limits) for such an individual is increased by $500 for 2002 through 2005, $1,000 for 2006 and 2007, $1,500 for 2008 and 2009, and $2,000 for 2010 and thereafter.

The Senate amendment does not specify the treatment of deemed IRAs for purposes other than the Code and ERISA.

Footnotes:

1. The Senate amendment does not specify the treatment of deemed IRAs for purposes other than the Code and ERISA.

2. Early distribution of converted amounts may also accelerate income inclusion of converted amounts and are not includible under the four-year rule applicable to 1998 conversions.
Deemed IRAs under employer plans

The conference agreement follows the Senate amendment.

Tax-free IRA withdrawals for charitable purposes

The conference agreement does not include the Senate amendment.

Effective date

The conference agreement is generally effective for taxable years beginning after December 31, 2001. The provision relating to deemed IRAs under employer plans is effective for plan years beginning after December 31, 2002.

B. PENSION PROVISIONS

1. Expanding Coverage

(a) Increase in benefit and contribution limits (secs. 201 and 209 of the House bill, sec. 611 of the Senate amendment, and secs. 401(a)(17), 401(c)(2), 402(g), 408(p), 415 and 457 of the Code)

Present law

In general

Present law imposes limits on contributions and benefits under qualified plans (sec. 415), the amount of compensation that may be taken into account under a plan for determining contributions and benefits under a plan, the amount of elective deferrals that an individual may make to a qualified cash or deferred arrangement (a "section 401(k) plan"), a tax-sheltered annuity ("section 403(b) annuity") or a salary reduction simplified employee pension plan ("SEP") (sec. 415). The maximum amount of elective deferrals that an individual may make to a SIMPLE plan is $6,500 (for 2001). These limits are indexed for inflation in $500 increments.

Section 457 plans

The maximum annual deferral under a deferred compensation plan of a State or local government or a tax-exempt organization (a "section 457 plan") is the lesser of (1) $5,000 (for 2001) and (2) $10,500 (for 2001). The maximum annual amount of elective deferrals that an individual may make to a SIMPLE plan is $6,500 (for 2001). These limits are indexed for inflation in $500 increments.

Inflation in $500 increments. In 2003 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $15,000 in 2006, with indexing in $500 increments thereafter. The House bill increases the maximum annual elective deferrals that may be made to a SIMPLE plan to $7,000 in 2002. In 2003 and thereafter, the SIMPLE plan deferral limit is increased in $1,000 annual increments until the limit reaches $19,000 in 2006. Beginning after 2005, the $10,000 dollar limit is indexed in $500 increments.

Section 457 plans

The House bill increases the dollar limit on annual elective deferrals under section 401(k) plans, section 403(b) annuities and salary reduction SEPs to $11,000 in 2002. In 2003 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $15,000 in 2006, with indexing in $500 increments thereafter. The House bill increases the maximum annual elective deferrals that may be made to a SIMPLE plan to $7,000 for 2002 and 2003, indexed in $500 increments. In 2004 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $19,000 in 2006. The House bill also increases the dollar limit on annual elective deferrals under section 403(b) annuities to $15,000 in 2003, $20,000 in 2004 and 2005, and $25,000 in 2006.

Elective deferral limitations

The House bill increases the dollar limit on annual elective deferrals under section 401(k) plans, section 403(b) annuities and salary reduction SEPs to $11,000 in 2002. In 2003 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $15,000 in 2006, with indexing in $500 increments thereafter. The House bill increases the maximum annual elective deferrals that may be made to a SIMPLE plan to $7,000 for 2002 and 2003, indexed in $500 increments. In 2004 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $19,000 in 2006. The House bill also increases the dollar limit on annual elective deferrals under section 403(b) annuities to $15,000 in 2003, $20,000 in 2004 and 2005, and $25,000 in 2006.

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Elective deferral limitations

The House bill increases the dollar limit on annual elective deferrals under section 401(k) plans, section 403(b) annuities and salary reduction SEPs to $11,000 in 2002. In 2003 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $15,000 in 2006, with indexing in $500 increments thereafter. The House bill increases the maximum annual elective deferrals that may be made to a SIMPLE plan to $7,000 for 2002 and 2003, indexed in $500 increments. In 2004 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $19,000 in 2006. The House bill also increases the dollar limit on annual elective deferrals under section 403(b) annuities to $15,000 in 2003, $20,000 in 2004 and 2005, and $25,000 in 2006.

Elective deferral limitations

The House bill increases the dollar limit on annual elective deferrals under section 401(k) plans, section 403(b) annuities and salary reduction SEPs to $11,000 in 2002. In 2003 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $15,000 in 2006, with indexing in $500 increments thereafter. The House bill increases the maximum annual elective deferrals that may be made to a SIMPLE plan to $7,000 for 2002 and 2003, indexed in $500 increments. In 2004 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $19,000 in 2006. The House bill also increases the dollar limit on annual elective deferrals under section 403(b) annuities to $15,000 in 2003, $20,000 in 2004 and 2005, and $25,000 in 2006.
$8,000 for 2004 and 2005, $9,000 for 2006 and 2007, and $10,000 for 2008. After 2008, the $10,000 dollar limit is adjusted annually for inflation in $500 increments.

Section 457 plans

The dollar limit on deannuities under a section 457 plan is increased to $9,000 in 2002, and is increased in $500 annual increments thereafter until the limit reaches $11,000 in 2010, at which time the limit is increased in $1,000 annual increments until it reaches $15,000 in 2010. After 2010, the limit is adjusted annually for inflation thereafter in $500 increments. The limit is twice the otherwise applicable dollar limit in the three years prior to retirement.63

Effective date

The Senate amendment is effective for years beginning after December 31, 2001.

CONFERENCE AGREEMENT

Limits on contributions and benefits

The conference agreement follows the House bill.

Compensation limitation

The conference agreement follows the House bill.

Elective deferral limitations

The conference agreement follows the House bill.

Section 457 plans

The conference agreement follows the House bill.

Effective date

The conference agreement generally is effective for years beginning after December 31, 2001. The provisions relating to defined benefit plans are effective for years ending after December 31, 2001.

(b) Plan loans for S corporation shareholders, partners, and sole proprietors (sec. 202 of the House bill, sec. 612 of the Senate amendment, and sec. 4975 of the Code)

PRESENT LAW

The Internal Revenue Code prohibits certain transactions ("prohibited transactions") between a qualified plan and a disqualified person in order to prevent persons with a prohibited relationship to the qualified plan from using that relationship to the detriment of plan participants and beneficiaries. Certain types of transactions are exempted from the prohibited transaction rules, including loans from the plan to plan participants, if certain requirements are satisfied. Under the Internal Revenue Code, a two-tier excise tax is imposed on disqualified persons who engage in a prohibited transaction. The first level tax is equal to 15 percent of the amount involved in the transaction. The second level tax is imposed if the prohibited transaction is not corrected within a certain period, and is equal to 100 percent of the amount involved.

HOUSE BILL

The House bill generally eliminates the special present-law rules relating to plan loans made to owner-employees (other than the owner of an IRA). Thus, the general statutory exemption applies to such transactions. Present law continues to apply with respect to IRAs.

Effective date.—The House bill is effective with respect to years beginning after December 31, 2001.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

In general

Under present law, additional qualification requirements apply to plans that primarily benefit an employer's key employees ("top-heavy plans"). These additional requirements provide (1) more rapid vesting for plan participants who are nonkey employees ("top-heavy plans"). These additional requirements provide (1) more rapid vesting for plan participants who are nonkey employees ("top-heavy plans"), (2) minimum integrated employer contributions for plan participants who are non-key employees.

Definition of key employee

A key employee is an employee who, during any plan year, is an owner-employee or (other than the owner of an IRA) a five percent owner of the outstanding stock of the corporation, or (4) one of the 10 employees earning more than the defined contribution plan dollar limit ($35,000 for 2001) with the largest ownership interests in the employer. A family ownership attribution rule applies to the determination of one-percent owner status, five-percent owner status, and largest ownership interest. Under this attribution rule, an individual is treated as owning stock owned by the individual's spouse, children, grandchildren, or parents.

Minimum benefit for non-key employees

A minimum benefit generally must be provided to all non-key employees in a top-heavy plan. In general, a top-heavy defined benefit plan must provide a minimum benefit equal to the lesser of (1) two percent of compensation multiplied by the employee's years of service, or (2) 20 percent of compensation. A top-heavy defined contribution plan must provide a minimum benefit equal to the lesser of (1) three percent of compensation, or (2) the percentage of compensation at which contributions were made for key employees (including employee elective contributions made by key employees and employer matching contributions).

For purposes of the minimum benefit rules, one or more of the contributions (other than amounts employees have elected to defer) to the plan are taken into account, and an employee's social security benefits (as determined thereunder) are disregarded. Employer matching contributions may be used to satisfy the minimum contribution requirement; however, contributions that are not treated as matching contributions for purposes of applying the special nondiscrimination requirements applicable to employee elective contributions and matching contributions under sections 401(k) and (m). Thus, such contributions would not meet the general nondiscrimination test of section 401(a)(4).

62Another provision increases the 33% percentage of compensation limit to 100 percent.

64Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), also contains prohibited transaction rules. The Code and ERISA provisions are substantially similar, although not identical.

63Certain transactions involving a plan and 8 corporation shareholders are permitted.

65ERISA Reg. sec. 1.416-1 Q&A-M.19.
Top-heavy vesting

Benefits under a top-heavy plan must vest at least as rapidly as under one of the following schedules: (1) three-year cliff vesting, which provides for 100 percent vesting after three years; or (2) five-year graduated vesting, which provides for 20 percent vesting after two years of service, and 20 percent more each year thereafter so that a participant is fully vested after six years of service.68

Qualified cash or deferred arrangements

Under a qualified cash or deferred arrangement (a “section 401(k) plan”), an employer may provide the employee make payments as contributions to a qualified plan on behalf of the employee, or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals. A special nondiscrimination test applies to elective deferrals under cash or deferred arrangements, which compares the elective deferrals of highly compensated employees with elective deferrals of nonhighly compensated employees. (This test is called the actual deferral percentage test or the “ACP test.”)

Under a design-based safe harbor, a cash or deferred arrangement is deemed to satisfy the ADP test if the plan satisfies one of the following:

1. Matching contributions that satisfy the safe harbor rule for such contributions are used to satisfy the minimum benefit requirement applicable to top-heavy plans.

In determining whether a plan is top-heavy, distributions during the year ending within 12 months of the date the matching contributions are made are taken into account. The present-law five-year rule applies with respect to in-service distributions. Similarly, the Senate amendment requires that an individual’s aggregated deferrals and matching contributions balance is not taken into account if the individual has not performed services for the employer during the one-year period ending on the date the top-heavy determination is being made.

Definition of key employee

The House bill (1) provides that an employee is not considered a key employee by reason of the plan if the employee earns more than $150,000 and (2) repeals the top-10 owner key employee category. The House bill repeals the four-year lookback rule for determining key employee status and provides that an employee is a key employee only if he or she is a key employee during the preceding plan year.

Thus, under the House bill, an employee is considered a key employee if, during the prior year, the employee was (1) an officer with compensation in excess of $150,000, (2) a five-percent owner, or (3) a one-percent owner with compensation in excess of $150,000. The present-law limits on the number of individuals treated as key employees under (1) continue to apply.

The family ownership attribution rule no longer applies in determining whether an individual is a five-percent owner or a one-percent owner for purposes of the top-heavy rules only.

Minimum benefit for nonkey employees

Under the House bill, matching contributions are taken into account in determining whether the minimum benefit requirement has been satisfied.69

The House bill provides that, in determining the minimum benefit required under a defined benefit plan, a year of service during which the employee was a key employee for the current plan year.

Effective date

The House bill is effective for years beginning after December 31, 2001.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, with the following modifications.

Under the Senate amendment, an employee is considered a key employee if, during the prior year, the employee was (1) an officer with compensation in excess of $150,000 (for 2001), (2) a five-percent owner, or (3) a one-percent owner with compensation in excess of $150,000. The present-law limits on the number of officers treated as key employees under (1) continue to apply.

The Senate amendment follows the conference agreement, with the following modifications.

Effective date

The Senate amendment is effective for years beginning after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications.

Under the conference agreement, an employer is considered a key employee if, during the prior year, the employee was (1) an officer with compensation in excess of $130,000 (adjusted for inflation in $5,000 increments), (2) a five-percent owner, or (3) a one-percent owner with compensation in excess of $150,000. The present-law limits on the number of officers treated as key employees under (1) continue to apply.

Under the conference agreement, the family ownership attribution rule continues to apply in determining whether an individual is a five-percent owner for purposes of the top-heavy rules only.

Effective date

The conference agreement is effective for years beginning after December 31, 2001.

(d) Elective deferrals not taken into account for purposes of deduction limits (sec. 204 of the House bill, sec. 614 of the Senate amendment, and sec. 404 of the Code)

PRESIDENT LAW

Employer contributions to one or more qualified retirement plans are deductible subject to certain limits. In general, the deduction limit depends on the kind of plan.

In the case of a defined benefit pension plan or a money purchase pension plan, the maximum amount deductible is at least equal to the plan’s unfunded current liabilities. In the case of a profit-sharing or stock bonus plan, the employer may deduct an amount equal to 15 percent of compensation of the employees covered by the plan.

For purposes of the deduction limits, employee elective deferral contributions to a section 401(k) plan are treated as employer contributions and are subject to the generally applicable deduction limits.

Subject to certain exceptions, nondeductible contributions are subject to a 10-percent excise tax.

HOUSE BILL

Under the House bill, elective deferral contributions are not subject to the deduction...

66 Benefits under a plan that is not top heavy must vest at least as rapidly as under one of the following schedules: (1) five-year cliff vesting; and (2) three-seven year graded vesting, which provides for 20 percent vesting after three years and 20 percent more each year thereafter so that a participant is fully vested after seven years of service.

68 This provision is intended to preclude the use of nonelective contributions that are used to satisfy the safe harbor rules from being used to satisfy other nondiscrimination plan nondiscrimination rules, including those involving cross-testing.

69 Thus, this provision overrides the provision in the Senate amendment that if matching contributions are used to satisfy the minimum benefit requirement, then they are not treated as matching contributions for purposes of the section 401(m) nondiscrimination rules.
The Senate amendment is the same as the House bill, with the following modifications. An eligible employer is not required to pay a user fee for a ruling letter, determination letter, or similar request with respect to the qualified status of a new retirement plan that the employer maintains with respect to which it has not previously made a request. An employer is eligible under the Senate amendment if (1) the employer has no more than 100 employees, (2) the employer has at least one non-highly compensated employee who is participating in the plan, and (3) during the three-taxable year period immediately preceding the three-taxable year period in which the request is made, neither the employer nor a related employer established or maintained a qualified plan with respect to which contributions were made or benefits were accrued for substantially the same employees covered under the plan with respect to which the request is made.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modification. An employer is eligible under the conference agreement if the employer has no more than 100 employees and has at least one non-highly compensated employee who is participating in the plan.

Employer contributions to one or more qualified retirement plans are deductible up to the lesser of (1) $8,500 (in 2001) or (2) 33 1⁄3 percent of compensation. The $8,500 limit (as modified under the House bill, sec. 615 of the Senate amendment, and sec. 457 of the Code) is not includible in gross income until paid or made available. In general, the maximum permitted annual deferral under such a plan is the lesser of (1) $8,500 (in 2001) or (2) 33 percent of compensation. The $8,500 limit is increased for inflation in $500 increments. If an employer maintains a special catch-up rule, a section 457 plan may provide that, for one or more of the participant’s last three years before retirement, the otherwise applicable limit is increased to the lesser of (1) $15,000 or (2) the sum of the otherwise applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

The $8,500 limit (as modified under the catch-up rule) applies to all deferrals under all plans in which the individual participates. In addition, in applying the $8,500 limit, contributions under a tax-sheltered annuity ("section 403(b) annuity"), elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan"), salary reduction contributions under a simplified employee pension plan ("SEP"), and contributions under a SIMPLE plan are taken into account. Further, the amount deferred under a section 457 plan is taken into account in applying a special catch-up rule for section 401(b) annuities.

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The conference agreement follows the House bill.

(f) Eliminate IRS user fees for certain determination letter requests regarding employer plans (sec. 206 of the House bill and sec. 621 of the Senate amendment).

PRESENT LAW

An employer that maintains a retirement plan for the benefit of its employees may request from the IRS a determination as to whether the form of the plan satisfies the requirements applicable to tax-qualified plans (sec. 401(a)). In order to obtain from the IRS a determination letter on the qualified status of the plan, the employer must pay a user fee. The user fee is applicable for various types of requests, subject to statutory minimum requirements for a determination letter, on the category of the request. The user fee ranges from $125 to $1,250, depending upon the scope of the request and the type and format of the plan. Present law provides that plans that do not meet the qualification requirements will be treated as meeting such requirements if appropriate retroactive plan amendments are made during the remedial amendment period provided in general. The amendment period ends on the due date for the employer’s tax return (including extensions) for the taxable year in which giving rise to the disqualifying provision occurred (e.g., a plan amendment or a change in the law). The Secretary may provide for general extensions of the remedial amendment period or for extensions in certain cases. For example, the remedial amendment period with respect to amendments relating to the qualification requirements affected by the General Agreement on Tariffs and Trade, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act, and the Taxpayer Relief Act of 1997, and the Internal Revenue Service Restructuring and Reform Act of 1998 generally ends the last day of the first plan year beginning on or after January 1, 2001.

A small employer (100 or fewer employees) is not required to pay a user fee for a determination letter request with respect to the qualified status of a retirement plan that the employer maintains if the request is made before the later of (1) the last day of the fifth plan year of the plan or (2) the end of any applicable remedial amendment period with respect to the plan before the end of the fifth plan year of the plan. In addition, determination letter requests for which user fees are not required under the House bill are not taken into account in determining average user fees. The House bill applies only to requests by employers for determination letters concerning the qualified status of a retirement plan that the employer is the sponsor of a prototype plan is required to pay a user fee for a request for a notification letter, opinion letter, or similar ruling. A small employee stock ownership plan ("ESOP") is the qualified status of a new plan (see plan that has more than 100 participants).

If an employer sponsors both a defined benefit pension plan and a defined contribution plan, the amount necessary to satisfy the minimum funding cost of the plan for the year. If a defined benefit pension plan has more than 100 participants, the maximum amount deductible is at least equal to the plan’s unfunded current liabilities.

In some cases, the amount of deductible contributions is limited. In the case of a profit-sharing or stock bonus plan, the employer generally may deduct an amount equal to 15 percent of compensation of employees covered by the plan for the year.

If an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees (or a money purchase pension plan and another kind of defined contribution plan), the total deductible amount for a plan year generally is limited to the lesser of (1) 25 percent of compensation or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year (or the plan’s unfunded current liabilities, in the case of a plan with more than 100 participants).

In the case of an employee stock ownership plan ("ESOP"), principal payments on a loan used to acquire qualifying employer securities are deductible up to 25 percent of compensation.

For purposes of the deduction limits, employee elective deferral contributions to a qualified cash or deferred arrangement ("section 401(k) plan") are treated as employer contributions and, thus, are subject to the generally applicable deduction limits.

The limits on deferrals under a section 401(k) plan are modified under other provisions of the House bill.

112 Another provision of the House bill provides that elective deferrals are not subject to the deduction limits.

110 Authorization for the user fees was originally enacted in section 407 of the Revenue Act of 1978 (Pub. L. No. 95-605, December 22, 1978). The authorization was extended through September 30, 2001, by section 407 of the Taxpayer Relief Act of 1997 (Pub. L. No. 105-34). The Act to provide that members of the Armed Forces performing services for the peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes (March 19, 1996).

For purposes of the deduction limits, compensation means the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the plan, and the beneficiaries under the profit-sharing or stock bonus plan are the employees who benefit under the plan with respect to the employer’s contribution. An employee who is eligible to make elective deferrals under a section 401(k) plan is treated as benefiting under the arrangement even if the employee elects not to defer.

For purposes of the deduction rules, compensation generally includes only taxable compensation, and thus does not include salary reduction amounts, such as elective deferrals under a section 401(k) plan or a tax-sheltered annuity ("section 403(b) annuity"), elective contributions under a deferred compensation plan of a tax-exempt organization or a State or local government ("section 403(b) plan"), and salary reduction contributions under a section 125 cafeteria plan. For purposes of the contribution limits under section 415, compensation does include such salary reduction amounts.

HOUSE BILL

Under the House bill, the definition of compensation for purposes of the deduction rules includes salary reduction amounts treated as compensation under section 415. In addition, the annual limitation on the amount of deductible contributions to a profit-sharing or stock bonus plan is increased from 15 percent to 20 percent of compensation of the employees covered by the plan for the year.

Effective date.—The House bill is effective for years beginning after December 31, 2001.

SENATE AMENDMENT

Under the Senate amendment, the definition of compensation for purposes of the deduction rules includes salary reduction amounts treated as compensation under section 415. In addition, the annual limitation on the amount of deductible contributions to a profit-sharing or stock bonus plan is increased from 15 percent to 20 percent of compensation of the employees covered by the plan for the year. Also, except to the extent provided in regulations, a money purchase pension plan is treated like a profit-sharing or stock bonus plan for purposes of the deduction rules.

Effective date.—The Senate amendment is effective for years beginning after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

(b) Option to treat elective deferrals as after-tax contributions (sec. 208 of the bill, sec. 617 of the Senate amendment, and new sec. 402A of the Code)

PRESENT LAW

A qualified cash or deferred arrangement ("section 401(k) plan") or a tax-sheltered annuity ("section 403(b) annuity") may permit a participant to elect to have the employer make contributions to the participant’s account that are not distributed or paid to the participant directly in cash. Contributions made to the plan at the election of a participant are elective deferrals. Elective deferrals must be nonforfeitable and are subject to the annual dollar limitation (sec. 402(g)) and distribution restrictions. In addition, elective deferrals under a section 401(k) plan are subject to special nondiscrimination rules. Elective deferrals (and earnings attributable thereto) are not includable in a participant’s gross income until distributed from the plan.

E elective deferrals for a taxable year that exceed the annual dollar limitation ("excess deferrals") are includable in gross income for the taxable year. If an employee makes elective deferrals for a taxable year that exceed the annual dollar limitation ("excess deferrals"); then the plan may provide for the distribution of the excess deferrals by the end of the second taxable year after the year in which the deferral was made and in the year the participant receives a distribution of the excess deferral.

Individuals with adjusted gross income below certain levels generally may make nondeductible contributions to a Roth IRA ("Roth contributions") and may convert nondeductible IRA into a Roth IRA. Amounts held in a Roth IRA that are withdrawn as a qualified distribution are not includable in income, nor is the amount of distribution on early withdrawals. A qualified distribution is a distribution that (1) is made after the five-taxable year period beginning with the taxable year the deferral was made and in the year the participant receives a distribution of the excess deferral, and (2) is made after attainment of age 59½, is made on account of death or disability, or is a qualified special purpose distribution (i.e., for first-time homebuyer expenses of up to $10,000). A distribution from a Roth IRA that is not a qualified distribution is includable in income to the extent attributable to earnings, and is subject to the 10-percent tax on early withdrawals (unless an exception applies).

HOUSE BILL

A section 401(k) plan or a section 403(b) annuity is permitted to include a "qualified plus contribution program" that permits a participant to elect to have or a portion of the participant’s elective deferrals under the plan treated as designated plus contributions. Designated plus contributions are elective deferrals that the participant designates (at such time and in such manner as the Secretary may prescribe) as not includable in the participant’s gross income.

The annual dollar limitation on a participant’s designated plus contributions is the section 402(g) annual limit on elective deferrals or a tax-sheltered annuity, whichever is less, plus contributions account. A distribution from a designated plus contributions account is not includable in income in the year made and again when distributed from the plan.

salary reduction contributions to the annuity (except that designated plus contributions are includable in income).

Contribution limits are included.

A qualified special purpose distribution, as defined under the rules relating to Roth IRAs, does not qualify as a tax-free distribution from a designated plus contributions account.
A participant is permitted to roll over a distribution from a designated plus contributions account only to another designated plus contributions account or a Roth IRA of the participant.

The Secretary of the Treasury is directed to require the plan administrator of each section 401(k) plan or section 403(b) annuity that permits participants to make designated plus contributions to make such returns and reports regarding designated plus contributions to the Secretary, plan participants and beneficiaries, and other persons that the Secretary may designate.

Effective date.—The House bill is effective for taxable years beginning after December 31, 2001.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment refers to designated plus contributions as “Roth contributions.”

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with a modification of the effective date.

Effective date.—The conference agreement is effective for taxable years beginning after December 31, 2003.

(i) Certain nonresident aliens excluded in applying minimum coverage requirements (sec. 210 of the House bill, sec. 622 of the Senate amendment, and secs. 410(b)(3) and 861(a)(3) of the Code)

PRESENT LAW

Under the minimum coverage requirements (sec. 410(b)), a qualified plan must benefit a minimum number of the employer’s nonbiological nonresident alien employees and nonresident alien employees otherwise engaged in transportation between the United States and a foreign country or a possession of the United States. As a result, this special rule does not apply for purposes of qualified retirement plans, employer-provided group-term life insurance, and employer-provided accident and health plans. Therefore, such compensation is not treated as U.S. source income for any purpose under such plans, including the application of the qualified retirement plan minimum coverage and nondiscrimination requirements.

Effective date.—The Senate amendment is effective with respect to plan years beginning after December 31, 2001.

The conference agreement follows the Senate amendment.

SECTION 401(k) PLANS

The conference agreement follows the Senate amendment.

(j) Nonrefundable credit to certain individuals for elective deferrals and IRA contributions (sec. 21 of the Senate amendment, and now sec. 25B of the Code)

PRESENT LAW

Present law provides favorable tax treatment for a variety of retirement savings vehicles, including employer-sponsored retirement plans and individual retirement arrangements (“IRAs”).

Several different types of tax-favored employer-sponsored retirement plans exist, such as section 401(a) qualified plans (including plans with a section 401(k) qualified cash-or-deferred arrangement), section 403(a) qualified annuity plans, section 403(b) annuity contracts, section 408(k) simplified employee pension plans (“SEPs”), section 408(p) SIMPLE retirement arrangements, and section 408(j) plan simple retirement accounts.

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Effective date.—The Senate amendment is effective with respect to plan years beginning after December 31, 2001.

The conference agreement follows the Senate amendment.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2001.

The Senate amendment provides a temporary nonrefundable tax credit for contributions made by eligible taxpayers to a qualified retirement plan.

The amount of any contribution eligible for the credit is reduced by taxable distributions received by the taxpayer or her spouse from any savings arrangement described above or any other qualified retirement plan in the same taxable year in which the credit is claimed, and during the period after the end of the taxable year and prior to the due date for filing the taxpayer’s return for the year. In the case of a distribution from a Roth IRA, this rule applies to any such distributions, whether or not taxable.

The credit bases on AGI are as follows:

<table>
<thead>
<tr>
<th>Joint filers</th>
<th>Heads of household</th>
<th>Single filers</th>
<th>All other filers</th>
<th>Credit rate</th>
</tr>
</thead>
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<tr>
<td>$0–$30,000</td>
<td>$0–$22,500</td>
<td>$0–$15,000</td>
<td>$0–$15,000</td>
<td>10 percent</td>
</tr>
<tr>
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<td>$22,500–$37,500</td>
<td>$15,001–$22,500</td>
<td>$15,001–$22,500</td>
<td>20 percent</td>
</tr>
<tr>
<td>$50,001–$75,000</td>
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<td>$22,501–$37,500</td>
<td>$22,501–$37,500</td>
<td>25 percent</td>
</tr>
<tr>
<td>$75,001–$100,000</td>
<td>$56,250–$75,000</td>
<td>$37,501–$56,250</td>
<td>$37,501–$56,250</td>
<td>25 percent</td>
</tr>
<tr>
<td>Over $100,000</td>
<td>Over $75,000</td>
<td>Over $56,250</td>
<td>Over $56,250</td>
<td>35 percent</td>
</tr>
</tbody>
</table>

The Senate amendment directs the Secretary of the Treasury to report annually to the Senate Finance Committee and the House Committee on Ways and Means regarding the number of individuals who claim the credit.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2001, and before January 1, 2007.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.
(k) Small business tax credit for qualified retirement plan contributions (sec. 619 of the Senate amendment and new sec. 45F of the Code)

The timing of an employer’s deduction for compensation paid to an employee generally corresponds to the employee’s recognition of the compensation. However, an employer that contributes to a qualified retirement plan may elect to make a deduction (with certain limits) for the employer’s contribution to the plan on behalf of an employee even though the employee does not recognize income with respect to the contribution until the amount is distributed to the employee.

No provision.  

SENATE AMENDMENT

The Senate amendment provides a non-refundable income tax credit for small employers equal to 50 percent of certain qualifying employer contributions made to qualified retirement plans on behalf of nonhighly compensated employees. The credit is not available with respect to contributions to a SIMPLE IRA or SEP. For purposes of the Senate amendment, a small employer means an employer with less than 20 employees who received at least $5,000 of earnings in the preceding year. A nonhighly compensated employee is defined as an employee who neither is the owner nor the owner’s spouse of the employer at any time during the current year or the preceding year, or (2) for the preceding year, had compensation in excess of $50,000 (adjusted annually for inflation; this amount is $85,000 for 2001). The credit is available for the first three plan years of the plan.82

The Senate amendment requires a small employer to make nonelective contributions equal to at least one percent of compensation to qualify for the credit. The credit applies to both qualifying nonelective employer contributions and qualifying employer matching contributions, but only up to a total of three percent of the nonhighly compensated employee’s compensation. The credit is available for 50 percent of qualifying benefit accruals under a nonintegrated defined benefit plan if the benefits are equivalent, as defined in regulations, to a three percent nonelective contribution to a defined benefit plan.

To qualify for the credit, the nonelective and matching contributions to a defined contribution plan are required to vest at least as rapidly as under either a three-year cliff vesting schedule or a graded schedule that provides 20 percent vesting per year for the first five years. In order to qualify for the credit, contributions to plans other than pension plans must be subject to the same distribution restrictions applicable to such plans. The Senate amendment also provides that contributions must be reallocated for substantially the same employees if half or more of the employees for whom contributions or accruals were made under the new plan are employees for whom contributions or accruals were made under a prior plan.

82The top paid group election, which under present law permits one employer to classify an employee as a nonhighly compensated employee if the employee had compensation in excess of $80,000 (adjusted annually for inflation; this amount is $85,000 for 2001). The credit is available for the first three plan years of the plan.

Forfeited nonvested qualifying contributions or accruals for which the credit was claimed generally result in recapture of the credit at a rate of 35 percent. However, recapture does not apply to the extent that forfeitures of contributions are reallocated to nonhighly compensated employees or applied to future contributions on behalf of nonhighly compensated employees. The Secretary of the Treasury is authorized to issue regulations to simplify or facilitate claiming and recapturing the credit.

The credit is a general business credit.83 The 50 percent of qualifying contributions that are effectively offset by the tax credit are not deductible; the other 50 percent of the qualifying contributions (and other contributions) are deductible to the extent permitted under present law.

Effective date. —The Senate amendment is effective with respect to contributions paid in or incurred in taxable years beginning after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

(1) Small business tax credit for new retirement plan expenses (sec. 620 of the Senate amendment and new sec. 45F of the Code)  

PRESENT LAW

The costs incurred by an employer related to the establishment or maintenance of a retirement plan (e.g., payroll system changes, investment vehicle set-up fees, consulting fees) generally are deductible by the employer as ordinary and necessary expenses in carrying on a trade or business.

No provision.  

SENATE AMENDMENT

The Senate amendment provides a non-refundable income tax credit for 50 percent of the administrative and retirement-education expenses for any small business that adopts a new qualified defined benefit or defined contribution plan (including a section 401(k) plan), SIMPLE plan, or simplified employer retirement plan ("SEP"). The credit applies to 50 percent of the first $1,000 in administrative and retirement-education expenses for any small business for the plan for each of the first three years of the plan.

The credit is available to an employer that did not make any contribution in the preceding year, more than 100 employees with compensation in excess of $5,000. In order for an employer to be eligible for the credit, the plan must cover at least one nonhighly compensated employee. In addition, if the credit is for the cost of a payroll deduction IRA arrangement, the arrangement must be made available to all employees who have worked with the employer for at least three months.

The credit is a general business credit.84 The 50 percent of qualifying expenses that are effectively offset by the tax credit are not deductible; the other 50 percent of the qualifying expenses (and other expenses) are deductible to the extent permitted under present law.

Effective date. —The Senate amendment is effective with respect to costs paid or incurred in taxable years beginning after December 31, 2001, with respect to plans established after such date.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Enhancing Fairness for Women  

(a) Additional salary reduction catch-up contributions (sec. 301 of the House bill, sec. 631 of the Senate amendment, and sec. 414 of the Code)  

PRESENT LAW

Elective deferral limitations

Under present law, after certain salary reduction arrangements, an employee may elect to have the employer make payments as contributions to a plan on behalf of the employee or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals. The maximum annual amount of elective deferrals that an individual may make to a qualified cash or deferred arrangement (a ‘401(k) plan’), a tax-sheltered annuity (‘sec. 403(b) annuity’) or a salary reduction SEP is $10,500 (for 2001). The maximum annual amount of elective deferrals that an individual may make to a SIMPLE plan is $6,500 (for 2001). These limits are indexed for inflation in $500 increments.

Section 401 plans

The maximum annual deferral under a qualified cash or deferred compensation plan of a State or local government or a tax-exempt organization (a ‘section 403(b) plan’) is the lesser of (1) $8,500 (for 2001) or (2) 33.3 percent of compensation. The $8,500 dollar limit is increased for individuals who have attained age 50 by the end of the year.85 Another provision of the House bill increases the otherwise applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

HOUSE BILL

The House bill provides that the otherwise applicable dollar limit on elective deferrals under a section 401(k) plan, section 403(b) annuity, or section 403(b) SEP or SIMPLE plan is $11,500 (for 2001). Under a section 403(b) annuity, section 403(b) SEP or SIMPLE plan are increased for individuals who have attained age 50 by the end of the year.86 Additional contributions are permitted for individuals who have attained age 50 before the end of the plan year and with respect to whom no other elective deferrals may otherwise be made to the plan for the year because of the applicable dollar limitation of the Code (e.g., the annual limit on elective deferrals) or of the plan. Under the House bill, the additional amount of elective

84The credit cannot be carried back to years before the effective date.

85Another provision of the House bill increases the dollar limit on elective deferrals under such arrangements.

The rules relating to distribution upon separation from service are modified under another provision of the Senate amendment.

The credit cannot be carried back to years before the effective date.
contributions that are permitted to be made by an eligible individual participating in such a plan is the lesser of (1) $5,000, or (2) the participant’s compensation for the year reduced by any other elective deferrals of the participant for the year. This $5,000 amount is indexed for inflation in $500 increments in 2007 and thereafter.88

Catch-up contributions made under the House bill are not subject to any other contribution limits and are not taken into account in applying other contribution limits. Such contributions are subject to the normally applicable nondiscrimination rules. Although catch-up contributions are subject to applicable nondiscrimination rules, a plan does not fail to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features if the plan allows all eligible individuals participating in such a plan to participate in the plan to make the same election with respect to catch-up contributions. For purposes of this rule, all plans of related employers are treated as a single plan. An employer is permitted to make matching contributions with respect to catch-up contributions. Any such matching contributions are subject to the normally applicable rules.

Effective date.—The House bill is effective for taxable years beginning after December 31, 2001.

SENATE AMENDMENT

The Senate amendment provides that the otherwise applicable dollar limit on elective deferrals under a section 401(k) plan, section 403(b) annuity, SEP, or SIMPLE, or deferrals under a section 403(b) plan is increased for individuals who have attained age 50 by the end of the year.89 Additional contributions could be made by an individual who has attained age 50 before the end of the plan year and with respect to whom no other elective deferrals may otherwise be made to the plan for the year because of the application of any limitation of the Code (e.g., the annual limit on elective deferrals) or of the plan. Under the Senate amendment, the additional amount of elective contributions that could be made by an eligible individual participating in such a plan is the lesser of (1) the applicable dollar amount or (2) the participant’s compensation for the year reduced by any other elective deferrals of the participant for the year.90 The applicable dollar amount is $500 for 2002 through 2004, $1,000 for 2005 and 2006, $2,000 for 2007, $3,000 for 2008, $4,000 for 2009, and $7,500 for 2010 and thereafter.

Catch-up contributions made under the Senate amendment are not subject to any other contribution limits and are not taken into account in applying other contribution limits. In addition, such contributions are not subject to applicable nondiscrimination rules. An employer is permitted to make matching contributions with respect to catch-up contributions. Any such matching contributions are subject to the normally applicable rules.

The following examples illustrate the application of the Senate amendment, after the catch-up is fully phased-in.

Example 1: Employee A is a highly compensated employee who is over 50 and who participates in a section 401(k) plan sponsored by A’s employer. The maximum annual deferral under the provision is $15,000. After application of the special nondiscrimination rules applicable to section 401(k) plans, the maximum elective deferral A can make for the year is $8,000. Under the provision, A is able to make additional catch-up salary reduction contributions of $7,500.

Example 2: Employee B, who is over 50, is a participant in a section 401(k) plan. B’s compensation for the year is $10,000. The maximum annual deferral limit (without regard to the provision) is $15,000. Under application of the special nondiscrimination rules applicable to section 401(k) plans, the maximum elective deferral A can make for the year is $8,000. Under the provision, A is able to make additional catch-up salary reduction contributions of $5,000.

Example 3: Employee C, who is over 50, is a participant in a section 401(k) plan. C’s compensation for the year is $9,000. The maximum annual deferral limit (without regard to the provision) is $15,000. Under the terms of the plan, the maximum permitted deferral is 10 percent of compensation or, in B’s case, $3,000. Under the provision, B can contribute up to $1,500 under the normal operation of the plan, and an additional $750 under the provision. Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement provides that the otherwise applicable dollar limit on elective deferrals under a section 401(k) plan, section 403(b) annuity, SEP, or SIMPLE, or deferrals under a section 403(b) plan is increased for individuals who have attained age 50 by the end of the year.91 The catch-up contribution provision does not apply to after-tax employee contributions. Additional contributions may be made by an individual who has attained age 50 before the end of the plan year and with respect to whom no other elective deferrals may otherwise be made to the plan for the year because of the application of any limitation of the Code (e.g., the annual limit on elective deferrals) or of the plan. Under the conference agreement, the additional amount of contributions that may be made by an eligible individual participating in such a plan is the lesser of (1) the applicable dollar amount or (2) the participant’s compensation for the year reduced by any other elective deferrals of the participant for the year.92 The applicable dollar amount under a section 401(k) plan, section 403(b) annuity, SEP, or SIMPLE, or deferrals under a section 403(b) plan is $1,000 for 2002, $2,000 for 2003, $3,000 for 2004, $4,000 for 2005, and $5,000 for 2006 and thereafter. The applicable dollar amount under a section 403(b) plan is $1,500 for 2004, $2,000 for 2005, and $2,500 for 2006 and thereafter. The $5,000 and $2,500 amounts are adjusted for inflation in $500 increments in 2007 and thereafter.

Catch-up contributions made under the conference agreement are not subject to any other contribution limits and are not taken into account in applying other contribution limits. In addition, such contributions are not subject to applicable nondiscrimination rules. However, a plan fails to meet the application of section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all eligible individuals participating in the plan to make the same election with respect to catch-up contributions. For purposes of this rule, all plans of related employers are treated as a single plan. An employer is permitted to make matching contributions with respect to catch-up contributions. Any such matching contributions are subject to the normally applicable rules.

Effective date.—The conference agreement is effective for taxable years beginning after December 31, 2001.

PRESENT LAW

Present law imposes limits on the contributions that may be made to tax-favored retirement plans.

Defined contribution plans

In the case of a tax-qualified defined contribution plan, the limit on annual additions that can be made to the plan on behalf of an employee is the lesser of $35,000 (for 2001) or 25 percent of the employee’s compensation (sec. 415(c)). Annual additions include employer contributions, including contributions made at the election of the employee (i.e., employee elective deferrals), after-tax employee contributions, and any forfeitures allocated to the employee. For this purpose, compensation means taxable compensation (i.e., employee elective deferrals), after-tax employee contributions, and any forfeitures allocated to the employee. For purposes of this section, compensation includes any employee elective deferrals under a defined contribution plan, or any contributions by or on behalf of the employee to a defined contribution plan, and any qualified elective deferrals under a nonqualified deferred compensation plan. For years before January 1, 2000, an overall limit applied if an employee was a participant in both a defined contribution plan and a defined benefit plan of the same employer.

In the case of a tax-sheltered annuity (a “section 403(b) annuity”), the annual contribution generally cannot exceed the lesser of the employee’s includable compensation for the taxable year reduced by any other contributions to the plan, and the maximum elective deferral under section 415(c) defined contribution limit. The exclusion allowance for a year is equal to 20 percent of the employee’s includable compensation for the year, minus includable contributions to other nonqualified retirement plans and similar salary reduction contributions. A separate limit applies to benefits under a defined benefit plan.

For years before January 1, 2000, an overall limit applied if an employee was a participant in both a defined contribution plan and a defined benefit plan of the same employer.

In the case of a section 403(b) annuity, the maximum elective deferral under section 415(c) generally cannot exceed the lesser of the employee’s includable compensation for the taxable year reduced by any other contributions to the plan, and the maximum elective deferral under section 415(c) defined contribution limit. The exclusion allowance for a year is equal to 20 percent of the employee’s includable compensation for the year, minus includable contributions to other nonqualified retirement plans and similar salary reduction contributions. A separate limit applies to benefits under a defined benefit plan.
Under one special rule, in the year the employee separates from service, the employee may elect to contribute up to the exclusion allowance, without regard to the 25 percent of compensation limitation under section 415. Under this rule, the exclusion allowance is determined by taking into account no more than 50 years of service.

Under a second special rule, the employee may contribute up to the lesser of: (1) the exclusion allowance; (2) 25 percent of the participant’s includible compensation; or (3) $15,000.

Under a third special rule, the employee may elect to contribute up to the section 415(c) limit, without regard to the exclusion allowance. If this option is elected, then contributions to other plans of the employer are also taken into account in applying the limit.

For purposes of determining the contribution limits applicable to section 403(b) annuities, includible compensation means the amount of compensation received from the employer for the most recent period which may be counted as a year of service under the exclusion allowance. In addition, includible compensation includes elective deferrals and similar salary reduction amounts.

Treasury regulations include provisions regarding application of the exclusion allowance in cases where the employee participates in a defined benefit plan. The Taxpayer Relief Act of 1997 directed the Secretary of the Treasury to revise these regulations, effective for years beginning after December 31, 1999, to reflect the repeal of the overall limit on contributions and benefits.

Section 457 plans

Compensation deferred under an eligible deferred compensation plan of a tax-exempt and State and local government employer (a "section 457 plan") is not includible in gross income until paid or made available. In general, the maximum permitted annual deferral under such a plan is the lesser of (1) $8,500 (in 2001) or (2) 33 1/3 percent of compensation. The $8,500 limit is increased for inflation in $500 increments.

HOUSE BILL

Increase in defined contribution plan limit

The House bill increases the 25 percent of compensation limitation on annual additions under the defined contribution plan dollar limit.

Conforming limits on tax-sheltered annuities

The House bill repeals the exclusion allowance applicable to contributions to tax-sheltered annuities. Thus, such annuities are subject to the limits applicable to tax-qualified plans.

The House bill also directs the Secretary of the Treasury to revise the regulations relating to the exclusion allowance under section 403(b) to render void the requirement that contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance. The regulatory provisions regarding the exclusion allowance are to be applied as if such reallocated contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance.

Effective date—The Senate amendment generally is effective for years beginning after December 31, 2001. The provision regarding the reduction of the section 403(b) limit is effective on the date of enactment.

The provision regarding the return of the exclusion allowance applicable to tax-sheltered annuities for years beginning after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications. With respect to the increase in the defined contribution plan limit, the conference intends that the Secretary of the Treasury will use the Secretary’s existing authority to address situations where qualified nonelective contributions are made to plans in which the employee participates with lower compensation in order to increase the average deferral percentage of non-highly compensated employees.

For taxable years beginning after December 31, 1999, a plan may disregard the requirement that contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance. The provision regarding the return of the exclusion allowance applicable to tax-sheltered annuities for years beginning after December 31, 2001.

(c) Faster vesting of employer matching contributions (sec. 303 of the House bill, sec. 633 of the Senate amendment, and sec. 401(a)(9) of the Code)

PRESENT LAW

Under present law, a plan is not a qualified plan unless a participant’s employer-provided benefit vests at least as rapidly as under one of two alternative minimum vesting schedules. A plan satisfies the first schedule if a participant acquires a nonforfeitable right to 100 percent of the participant’s accrued benefit derived from employer contributions upon the completion of five years of service. A plan satisfies the second schedule if a participant has a nonforfeitable right to at least 20 percent of the participant’s accrued benefit derived from employer contributions after three years of service, 40 percent after four years of service, 60 percent after five years of service, 80 percent after six years of service, and 100 percent after seven years of service.

HOUSE BILL

The House bill applies faster vesting schedules to employer matching contributions. Under the House bill, employer matching contributions are required to vest at least as rapidly as under one of the following two alternative minimum vesting schedules.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, with the following modifications.

The Senate amendment increases the 25 percent of compensation limitation on annual additions under a defined contribution plan to 50 percent for 2002 through 2010, and 100 percent in 2011 and thereafter.67 The Senate amendment increases the 33 1/3 percent of compensation limitation on deferrals under a section 457 plan to 50 percent for 2002 through 2010, and 100 percent for 2011 and thereafter.

With respect to the direction to the Secretary of the Treasury to review the regulations relating to the exclusion allowance under section 403(b) to render void the requirement that contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance, the regulatory provisions regarding the exclusion allowance are to be applied as if such reallocated contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance were void for taxable years beginning after December 31, 1999.

Effective date—The House bill is effective for contributions for plans years beginning after December 31, 2001, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement. The House bill does not apply to any employee until the employee has an hour of service after the effective date. Effective date: Applying the new vesting schedule, service before the effective date is taken into account.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

(d) Modifications to minimum distribution rules (sec. 304 of the House bill, sec. 634 of the Senate amendment, and sec. 401(a)(9) of the Code)

PRESENT LAW

In general

Minimum distribution rules apply to all types of tax-favored retirement vehicles, including qualified plans, individual retirement arrangements ("IRAs"), tax-sheltered annuities ("section 403(b) annuities"), and eligible deferred compensation plans of tax-exempt and State and local government employers ("section 457 plans"). In general, under these rules, distribution of minimum benefits must begin no later than the required beginning date. In addition, the distribution rules also apply to benefits payable with respect to a plan participant who has died. Failure to comply with the minimum distribution rules results in a 50 percent excise tax imposed on the individual plan participant equal to 50 percent of the required minimum distribution not distributed for the year. The excise tax may be waived if the individual establishes to the satisfaction of the Commissioner that the shortfall in the amount distributed was due to reasonable error and reasonable steps are being taken to remedy the shortfall. Under certain circumstances following the death of a participant, the excise tax may be waived under proposed Treasury regulations.

Distributions prior to the death of the individual

In the case of distributions prior to the death of the plan participant, the minimum distribution rules provide that (1) the participant’s entire interest in the plan is distributed by the required beginning date, or (2) the participant’s interest in the plan is to be distributed in (accordance with regulations), beginning not later than the required beginning date, over a permissible period. The permissible periods are (1) the life of the participant...
participant, (2) the lives of the participant and a designated beneficiary, (3) the life expectancy of the participant, or (4) the joint life and last survivor expectancy of the participant and a designated beneficiary. In calculating minimum required distributions, life expectancies of the participant and the participant’s spouse may be recomputed annually.

In the case of qualified plans, tax-sheltered annuities, and section 457 plans, the required beginning date is the April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70 1/2 or (2) the calendar year in which the employee retires. However, in the case of a five-percent owner of the employer, distributions are required to begin no later than the April 1 of the calendar year following the year in which the five-percent owner attains age 70 1/2. If commencement of benefits is delayed beyond age 70 1/2 from a defined benefit plan, then the accrued benefit of the employee must be actuarially increased to take into account the period after age 70 1/2 in which the employee was not receiving benefits under the plan. In the case of distributions from an IRA other than a Roth IRA, the required beginning date is the April 1 of the calendar year following the year in which the IRA owner attains age 70 1/2. The pre-death minimum distribution rules do not apply to Roth IRAs.

In general, under the proposed Treasury regulations, in order to satisfy the minimum distribution rules, annuity payments under a defined benefit plan must be paid in periodic payments made at intervals not longer than one year over a permissible period, and must be nonincreasing, or increase only as a result of a cost-of-living adjustment; (2) cash refunds of employee contributions; (3) benefit increases under the plan; or (4) an adjustment due to death of the employee. If the employee dies before the date of distribution under the plan, the minimum required distribution is determined by dividing the employer’s benefit by an amount from the uniform table provided in the proposed regulations.

**Distributions after the death of the plan participant**

The minimum distribution rules also apply to distributions to beneficiaries of deceased participants. In general, if the participant dies after minimum distributions have begun, the remaining interest must be distributed, and if death occurs before the end of the calendar year in which distribution was to begin—under the minimum distribution method being used as of the date of death. If the participant dies before minimum distributions have begun, then the entire remaining interest must generally be distributed within five years of the participant’s death. The five-year rule does not apply if distributions begin within one year of the participant’s death and are adjustable over the life of a designated beneficiary or over the life expectancy of a designated beneficiary. A surviving spouse beneficiary is not subject to the five-year rule and the date the deceased participant would have attained age 70 1/2.

**HOUSE BILL**

**Modification of post-death distribution rules**

The House bill applies the present-law rules applicable if the participant dies before distribution of minimum benefits has begun to all post-death distributions. Thus, in general, if the employee dies before his or her entire interest has been distributed, distribution of the remaining interest is required to be made within five years of the date of death, or begin within one year of the date of death and paid over the life or life expectancy of a designated beneficiary. In the case of a surviving spouse, distributions are not required to begin on April 1 of the calendar year following the calendar year in which the surviving spouse attains age 70 1/2. The House bill includes a transition rule with respect to distributions provided that the required beginning date in the case of a surviving spouse is no later than the April 1 of the calendar year following the calendar year in which the surviving spouse attains age 70 1/2. In the case of an individual who died before the date of enactment and prior to his or her required beginning date and whose benefit is not a qualified pension, minimum distributions to the surviving spouse are not required to begin earlier than the date distributions would have been required to begin under present law.

**Reduction in excise tax**

The House bill reduces the excise tax on failures to satisfy the minimum distribution rules to 10 percent of the amount that was required to be distributed but was not distributed.

**Treasury regulations**

The Treasury is directed to revise the life expectancy tables under the applicable regulations to reflect current life expectancy.

**Effective date**

In general, the House bill is effective for years beginning after December 31, 2001.

**CONFERENCE AGREEMENT**

The conference agreement directs the Treasury to revise the life expectancy tables under the applicable regulations to reflect current life expectancy.

**Effective date**

The conference agreement is effective on the date of enactment.

**Clarification of tax treatment of division of section 401(k) plan benefits**

Under present law, benefits provided under a qualified retirement plan for a participant may not be assigned or alienated to creditors of the participant, except in very limited circumstances. One exception to the prohibition on assignment or alienation rule is a qualified domestic relations order (“QDRO”). A QDRO is a domestic relations order that creates or recognizes a right of an alternate payee to any plan benefit payable with respect to a participant, and that meets certain procedural requirements. Under present law, a distribution from a governmental plan or a church plan is treated as made pursuant to a QDRO if it is made pursuant to a domestic relations order that creates or recognizes a right of an alternate payee to any plan benefit payable with respect to a participant. Such distributions are not required to meet the procedural requirements that apply to distributions from qualified plans.

Under present law, amounts distributed from a qualified plan generally are taxable to the participant and subject to the excise tax on failures to satisfy the minimum distribution rules. However, if amounts are distributed to the spouse (or former spouse) of the participant by reason of a QDRO, the benefits are taxable to the spouse (or former spouse). Amounts distributed pursuant to a QDRO to an alternate payee other than the spouse (or former spouse) are taxable to the plan participant.

Section 457 of the Internal Revenue Code provides rules for deferral of compensation for individuals participating in an eligible deferred compensation plan ("section 457 plan") of a tax-exempt or State and local government employer. The QDRO rules do not apply to section 457 plans.

**HOUSE BILL**

The House bill applies the taxation rules for qualified plan distributions pursuant to a QDRO to distributions made pursuant to a domestic relations order under a section 457 plan. In addition, a section 457 plan does not violate the restrictions on distributions from such plans due to payments to an alternate payee under a QDRO. The special rule applicable to governmental plans and church plans applies for purposes of determining whether a distribution is pursuant to a QDRO.

**Effective date**

The House bill is effective for transfers, distributions, and payments made after December 31, 2001.

**SENATE AMENDMENT**

The Senate amendment is the same as the House bill, with a modification of the effective date.

**Effective date**

The provision of the Senate amendment relating to distributions made pursuant to a domestic relations order from a section 457 plan is effective for transfers, distributions, and payments made after December 31, 2001. The provisions of the Senate amendment relating to the waiver of restrictions on distributions and the application of the special rule for determining whether a distribution is pursuant to a QDRO are effective on January 1, 2002, except that in the case of a domestic relations order entered before January 1, 2002, the administrator is permitted to treat such order as a QDRO if the administrator is paying benefits pursuant to such order on January 1, 2002, and (2) is permitted to treat any other such order entered before January 1, 2002, as a QDRO even if such order does not meet the relevant requirements of the provision.

**CONFERENCE AGREEMENT**

The conference agreement follows the House bill.

(f) Provisions relating to hardship withdrawals (sec. 306 of the House bill, sec. 635 of the Senate amendment, and secs. 414(p) and 457 of the Code)

Under present law, benefits provided under a qualified retirement plan for a participant may not be assigned or alienated to creditors of the participant, except in very limited circumstances. One exception to the prohibition on assignment or alienation rule is a qualified domestic relations order (“QDRO”). A QDRO is a domestic relations order that creates or recognizes a right of an alternate payee to any plan benefit payable with respect to a participant, and that meets certain procedural requirements. Under present law, a distribution from a governmental plan or a church plan is treated as made pursuant to a QDRO if it is made pursuant to a domestic relations order that creates or recognizes a right of an alternate payee to any plan benefit payable with respect to a participant. Such distributions are not required to meet the procedural requirements that apply to distributions from qualified plans.

Under present law, amounts distributed from a qualified plan generally are taxable to the participant and subject to the excise tax on failures to satisfy the minimum distribution rules. However, if amounts are distributed to the spouse (or former spouse) of the participant by reason of a QDRO, the benefits are taxable to the spouse (or former spouse). Amounts distributed pursuant to a QDRO to an alternate payee other than the spouse (or former spouse) are taxable to the plan participant.

**Effect of conference agreement**

The conference agreement is effective on the date of enactment.

**Elective deferrals under a qualified cash or deferred arrangement (a “section 401(k) plan”)**

Elective deferrals under a qualified cash or deferred arrangement (a “section 401(k) plan”) may not be distributable prior to the occurrence of one or more specified events. One event upon which distribution is permitted is the financial hardship of the employee. Applicable Treasury regulations provide that a distribution is made on account of hardship only if the distribution is made on account of an immediate and heavy financial need of the employee and is necessary to satisfy the heavy need. The Treasury regulations provide a safe harbor under which a distribution may be deemed necessary to satisfy an immediate and heavy financial need. One requirement of this safe harbor is that the employee be prohibited from making elective contributions to the qualified retirement plan. Under present law, hardship withdrawals of elec
not eligible rollover distributions. Other types of hardship distributions, e.g., employer matching contributions distributed on account of hardship, are eligible rollover distributions. Different withholding rules apply to distributions that are eligible rollover distributions and to distributions that are not eligible rollover distributions. Eligible rollover distributions that are not directly rolled over are subject to withholding at a flat rate of 20-percent. Distributions that are not eligible rollover distributions are subject to withholding. Hardship distributions are subject to withholding as if they were wages; nonperiodic distributions are subject to withholding at a rate equal to the withholding percentage that would be applied to an individual’s entire pay if the individual may elect not to have withholding apply.

HOUSE BILL

The Secretary of the Treasury is directed to issue transitional guidance with respect to the provision that hardship distributions are not eligible rollover distributions to provide sufficient time for plans to implement the new rule.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

(g) Pension coverage for domestic and similar workers (section 401(k)(2)(B)(i)(IV)).

PRESENT LAW

Under present law, within limits, employers may make deductible contributions to qualified retirement plans for employees. Subject to certain exceptions, a 10-percent excise tax applies to nondeductible contributions to such plans.

Employers of household workers may establish a pension plan for their employees. Contributions to such plans are not deductible because they are not made in connection with a trade or business of the employer.

HOUSE BILL

The 10-percent excise tax on nondeductible contributions does not apply to contributions to a SIMPLE plan or to those treated as hardship distributions under any profit-sharing or stock bonus plan. The House bill does not modify the rules under which hardship distributions may be made. For example, as under present law, hardship distributions of qualified employer matching contributions are only permitted under the rules applicable to elective deferrals.

The House bill is intended to clarify that all assets distributed as a hardship withdrawal, including assets attributable to employee elective deferrals and those attributable to employer matching or nonelective contributions, are ineligible for rollover. This rule is intended to apply to all hardship distributions from any tax-qualified plan, including those made pursuant to standards set forth in section 41(k)(3)(B)(i)(IV) which are applicable to section 401(k) plans and section 403(b) annuities, and to those treated as hardship distributions under any profit-sharing or stock bonus plan (other than those treated as hardship distributions under any profit-sharing or stock bonus plan which are subject to the standards set forth in section 401(k)(3)(B)(i)(IV)). For this purpose, a distribution that could be made either under the hardship provisions of a plan or under other provisions of the plan (such as provisions permitting in-service withdrawal of assets attributable to employer matching or nonelective contributions, which are subject to the standards set forth in section 401(k)(3)(B)(i)(IV)) is considered to be attributable to both elective deferrals (in circumstances where those assets could be distributed only upon hardship) and employer matching or nonelective contributions (which could be distributed in nonhardship circumstances under the plan), the plan is permitted to treat the distribution in its entirety as made upon hardship of the employee.

Effective date.—The provision of the House bill directing the Secretary to revise the rules by which hardship distributions are effective for distributions made after December 31, 2001. The Secretary has the authority to issue transitional guidance with respect to the provision that hardship distributions are not eligible rollover distributions to provide sufficient time for plans to implement the new rule.

3. Increasing Portability for Participants

(a) Rollovers of retirement plan and IRA distributions (secs. 401–403 and 409 of the House bill, secs. 641–643 and 649 of the Senate amendment, and secs. 401, 402, 403(b), 408, 409, and 4036 of the Code)

PRESENT LAW

In general

Present law permits the rollover of funds from a tax-favored retirement plan to another tax-favored retirement plan. The rules that apply depend on the type of plan involved. Similarly, the rules regarding the tax treatment of amounts that are not rolled over depend on the type of plan involved.

Distributions from qualified plans

Under present law, an “eligible rollover distribution” from a tax-qualified employer-sponsored retirement plan may be rolled over tax free to a traditional individual retirement arrangement (‘‘IRA’’). An “eligible rollover distribution” means any distribution to an employee of all or any portion of the balance in the account of the employee in a qualified plan, except the term does not include (i) any distribution which is one of a series of substantially equal periodic payments made (A) for the life (or life expectancy) of the employee or the joint lives of the employee and the employee’s designated beneficiary, or (B) for a specified period of not less than 10 years or more; (ii) any distribution to the extent such distribution is required under the minimum distribution rules, and (iii) certain hardship distributions. To the extent an amount rolled over is the amount of the distribution includible in income, i.e., after-tax employee contributions cannot be rolled over. Qualified plans are not required to accept rollovers.

Distributions from tax-sheltered annuities

Eligible rollover distributions from a tax-sheltered annuity (“section 403(b) annuity”) may be rolled over into another section 403(b) annuity. Distributions from a section 403(b) annuity cannot be rolled over into a tax-qualified plan. Section 403(b) annuities are not required to accept rollovers. IRA distributions

Distributions from a traditional IRA, other than minimum required distributions, can be rolled over into another IRA. In general, distributions from an IRA that are rolled over are not eligible rollover distributions and are not taxable. As a result, amounts can be rolled over from a qualified plan into an IRA and then subsequently rolled back to another qualified plan if the amounts in the IRA are attributable solely to rollovers from a qualified plan. Similarly, an amount may be rolled over from a section 403(b) annuity to an IRA and subsequently rolled back into a section 403(b) annuity if the amounts in the IRA are attributable solely to rollovers from a section 403(b) annuity.

Distributions from section 457 plans

A “section 457 plan” is an eligible deferred compensation plan of a State or local government or tax-exempt employer that meets certain requirements. In some cases, different rules apply under section 457 to govern rollovers and plans for tax-exempt employers. For example, government section

101 An eligible rollover distribution may either be (A) a distribution from a section 403(b) annuity that is rolled over into an IRA or another qualified plan, or (B) a distribution from a qualified plan to an IRA or another qualified plan, except the term does not include (i) any distribution which is one of a series of substantially equal periodic payments made (A) for the life (or life expectancy) of the employee or the joint lives of the employee and the employee’s designated beneficiary, or (B) for a specified period of not less than 10 years or more; (ii) any distribution to the extent such distribution is required under the minimum distribution rules, and (iii) certain hardship distributions. To the extent an amount rolled over is the amount of the distribution includible in income, i.e., after-tax employee contributions cannot be rolled over. Qualified plans are not required to accept rollovers.

102 A traditional’’ IRA refers to IRAs other than Roth IRAs or SIMPLE IRAs. All references to IRAs are only to traditional IRAs or more. An eligible rollover distribution may either be rolled over by the distributee within 60 days of the date of the distribution or, as described below, directly rolled over by the distributing plan.
Under present law, amounts received from an IRA or qualified plan may be rolled over tax free if the rollover is made within 60 days of the distribution. The rollover does not have the authority to waive the 60-day requirement, except during military service in a combat zone or by reason of a Presidentially declared disaster. The Secretary has issued regulations postponing the 60-day rule in such cases.

**HOUSE BILL**

The House bill provides that the Secretary may waive the 60-day rollover period if the failure to waive such requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. For example, the Secretary may issue guidance that provides objective standards for a waiver of the 60-day rollover period, such as waiving the rule due to military service in a combat zone or during a Presidentially declared disaster.

**Effective date**

The conference agreement provides that the Secretary may waive the 60-day rollover period if the failure to waive such requirement would be contrary to the public interest, or if the Secretary may issue guidance that includes objective standards for a waiver of the 60-day rollover period, such as written requests from the participant due to military service, a national emergency, or other events beyond the reasonable control of the participant or beneficiary. The Secretary may issue guidance that includes objective standards for a waiver of the 60-day rollover period, such as written requests from the participant due to military service, a national emergency, or other events beyond the reasonable control of the participant or beneficiary.

The conference agreement applies to distributions made after December 31, 2001.

(c) Treatment of forms of distribution (sec. 405 of the House bill, sec. 445 of the Senate amendment, and sec. 411(d)(6) of the Code)

PRESENT LAW

An amendment of a qualified retirement plan may not decrease the accrued benefit of a plan participant. An amendment is treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) except as provided by Treasury regulations, eliminating an optional form of benefit (sec. 411(d)(6)).

Under regulations recently issued by the Secretary, the elimination of an optional form of benefit does not apply in the case of a voluntary transfer between defined contribution plans, subject to the requirements that a transfer from one defined contribution plan that offers a lump sum at the same time as the form being eliminated if the participant receives at least 90 days advance notice of the elimination, or (2) a voluntary transfer between defined contribution plans under the joint and survivor rules (sec. 411(d)(6)).

Under regulations recently issued by the Secretary, this prohibition against the elimination of an optional form of benefit does not apply in the case of a voluntary transfer between defined contribution plans, subject to the requirements that a transfer from one defined contribution plan that offers a lump sum at the same time as the form being eliminated if the participant receives at least 90 days advance notice of the elimination, or (2) a voluntary transfer between defined contribution plans under the joint and survivor rules (sec. 411(d)(6)).

HOUf BILL

A defined contribution plan to which benefits are to be transferred is not treated as reducing a participant’s or beneficiary’s accrued benefit even though it does not provide all of the forms of distribution previously available (sec. 411(d)(6)).

Under regulations recently issued by the Secretary, the elimination of an optional form of benefit does not apply in the case of a voluntary transfer between defined contribution plans, subject to the requirements that a transfer from one defined contribution plan that offers a lump sum at the same time as the form being eliminated if the participant receives at least 90 days advance notice of the elimination, or (2) a voluntary transfer between defined contribution plans under the joint and survivor rules (sec. 411(d)(6)).

SENATE AMENDMENT

A defined contribution plan to which benefits are to be transferred is not treated as reducing a participant’s or beneficiary’s accrued benefit even though it does not provide all of the forms of distribution previously available (sec. 411(d)(6)).

Under regulations recently issued by the Secretary, the elimination of an optional form of benefit does not apply in the case of a voluntary transfer between defined contribution plans, subject to the requirements that a transfer from one defined contribution plan that offers a lump sum at the same time as the form being eliminated if the participant receives at least 90 days advance notice of the elimination, or (2) a voluntary transfer between defined contribution plans under the joint and survivor rules (sec. 411(d)(6)).

For example, assume the following. Employer A acquires employer B and merges B’s defined benefit plan into A’s defined benefit plan. The benefits maintained by B before the merger provides an early retirement subsidy for individuals age 55 with a specified number of years of service. E1 and E2 are unequivocal with respect to the merger. E1 is 55 years old, and E2 is age 59 years old and has compensation of $60,000. The early retirement subsidy under B’s plan is $75. E2 is 50 years old and also has compensation of $45,000. The present value of E2’s early retirement subsidy is $10,000. Assume that A’s plan has an early retirement subsidy for individuals who have attained age 50 with a specified number of years of service, but the subsidy is not the same as under B’s plan. Under A’s plan, the present value of E2’s early retirement subsidy is $20,000. Maintaining the subsidies of a plan subject to the joint and survivor rules is also subject to those rules. Except to the extent provided by the Secretary, under the conference agreement, a defined contribution plan is not treated as reducing a participant’s or beneficiary’s accrued benefit if (1) a plan amendment does not apply to plan amendments that eliminate or reduce early retirement benefits, retirement-type subsidies, or optional forms of benefit that create significant new burdens and complexities for a plan and its participants, and (2) the terms of both the transferor plan and the transferee plan authorize the transfer, (3) the transfer occurs pursuant to a voluntary election by the participant or beneficiary that is made after the plan merger, (4) the number of years before the plan amendment is effective is less than three years, and (5) the number of years before the plan amendment is effective is less than three years.

This provision of the House bill does not affect the rules relating to involuntary cash out provisions (sec. 411(d)(6)).

It is intended that the factors to be considered in determining whether an amendment has more than a de minimis adverse effect on any participant will include (1) all of the participant’s early retirement benefits, retirement-type subsidies, and optional forms of benefit that are eliminated or reduced by the amendment, (2) the extent to which early retirement benefits, retirement-type subsidies, and optional forms of benefit in effect under the participant’s benefit under the transference plan are modified or eliminated under the amendment effective date provide rights that are comparable to the rights that are reduced or eliminated by the plan amendment, (3) the number of years before the plan amendment is effective, and (4) the number of years before the plan amendment is effective.

Furthermore, the House bill directs the Secretary to the Treasury to provide by regulation that the definitions of significant new burdens and complexities and de minimis adverse effect are provided by the conference agreement.
under the plan (or early retirement age, as applicable), (4) the size of the participant’s benefit that is affected by the plan amendment, in relation to the amount of the participant’s benefit, and (5) the number of years before the plan amendment is effective.

The Secretary is directed to issue, not later than December 31, 2002, final regulations under section 411(d)(6), including regulations required under the Senate amendment.

**Effective date.**—The provision is effective for years beginning after December 31, 2001, except that the direction to the Secretary is effective for plan years.

**CONFERENCE AGREEMENT**

The conference agreement follows the House bill.

(d) Rationalization of restrictions on distributions (sec. 406 of the House bill, sec. 646 of the Senate amendment, and secs. 401(k), 403(b), and 457 of the Code)

**PRESENT LAW**

Elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan"), tax-sheltered annuity ("section 403(b) annuity"), or an eligible deferred compensation plan of a tax-exempt organization or State or local government ("section 457 plan"), may not be distributable prior to the occurrence of one or more specified events. These permissible distributable events include:

- A separation from service occurs only upon a participant’s death, retirement, resignation or discharge, and not when the employee continues on the same job for a different employer as a result of the liquidation, merger, consolidation or other similar corporate transaction. A severance from employment occurs when a participant ceases to be employed by the employer that maintains the plan. Under a so-called “same desk rule,” a severance from employment does not necessarily result in a separation from service.

- In addition to separation from service and other events, a section 401(k) plan that is maintained by a corporation may permit distributions to certain employees who experience a severance from employment with the corporation but retain the plan. The plan may distribute amounts that are not a distributable event if it would not have constituted a “separation from service” under the law in effect prior to a specified date. Also, if a plan describes distributable events by reference to section 401(k)(2), the plan may be amended to restrict distributable events to fewer than all events that constitute a severance from employment. Thus, for example, if a plan sponsor had employees who experienced a severance from employment in the past that the “same desk rule” prevents from being a distributable event, the plan sponsor would have the option of providing in the plan that such severance from employment would, or would not, be treated as a distributable event under the plan.

- The conference agreement follows, as under current law, if there is a transfer of plan assets from one plan to another plan, there is a transfer of an employee’s benefit under a plan of the employee’s former employer to a plan being maintained or created by the employee’s new employer (other than a rollover or elective transfer), then that employee has not experienced a severance from employment with the employer maintaining the plan that covers the employee.

- The conference agreement follows, as under current law, that a participant may roll over an involuntary distribution from a qualified plan to an IRA or to another qualified plan.

**HOUSE BILL**

A participant in a State or local governmental plan is not required to include in gross income a direct trustee-to-trustee transfer to a governmental defined benefit plan from a section 401(k) plan. For purposes of cash-out rules (sec. 408 of the House bill, sec. 648 of the Senate amendment, and sec. 411(a)(1) of the Code)

**PRESENT LAW**

If a qualified retirement plan participant ceases to be employed by the employer that maintains the plan, the plan may distribute the participant’s nonforfeitable accrued benefit without the consent of the participant and, if applicable, the participant’s spouse, if the present value of the benefit does not exceed $5,000. If such an involuntary distribution occurs and the participant subsequently returns to employment covered by the plan, then the participant may take into account in computing benefits payable under the plan after the return need not include service with respect to which a benefit was involuntarily distributed unless the employee repays the benefit.

Generally, a participant may roll over an involuntary distribution from a qualified plan to an IRA or to another qualified plan.

**CONFERENCE AGREEMENT**

The conference agreement follows the House bill and the Senate amendment.

(f) Employers may disregard rollovers for purposes of cash-out rules (sec. 408 of the House bill, sec. 648 of the Senate amendment, and sec. 411(a)(1) of the Code)

**PRESENT LAW**

For purposes of the cash-out rule, a plan is permitted to provide that the present value of a participant’s nonforfeitable accrued benefit is involuntarily distributed to a participant the portation of such benefit that is attributable to rollover contributions (and any earnings allocable thereto).

**Effective date.**—The House bill is effective for distributions after December 31, 2001.

**SENIOR AMENDMENT**

The Senate amendment is the same as the House bill.

**CONFERENCE AGREEMENT**

The conference agreement follows the House bill and the Senate amendment.

(g) Minimum distribution and inclusion requirements for section 457 plans (sec. 409 of the House bill, sec. 649 of the Senate amendment, and sec. 457 of the Code)

**PRESENT LAW**

A “section 457 plan” is an eligible deferred compensation plan of a State or local government or tax-exempt employer that meets certain requirements. For example, amounts deferred under a section 457 plan cannot exceed certain limits. Amounts deferred under a section 457 plan that exceed limits are includable in income when paid or made available.

109 Other provisions expand the kinds of plans to which benefits may be rolled over.
Amounts deferred under a plan of deferred compensation of a State or local government or tax-exempt employer that does not meet the requirements of section 457 are includible in the amounts are not subject to a substantial risk of forfeiture, regardless of whether the amounts have been paid or made available.112 Section 457 plans are subject to the minimum distribution rules applicable to tax-qualified pension plans. In addition, such plans are subject to additional minimum distribution rules (see sec. 457). HOUSE BILL

The House bill provides that amounts deferred under a section 457 plan of a State or local government are includible in income when the plan terminates. The bill also repeals the special minimum distribution rules applicable to section 457 plans. Thus, such plans are subject to the minimum distribution rules applicable to qualified plans.

Effective date.—The House bill is effective for distributions after December 31, 2001.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, with the following modification. The Senate amendment also modifies the transition rule adopted in the 1986 Act relating to qualified contributions plans of tax-exempt employers. Under the Senate amendment, the transition rule applies to agreements providing cost-of-living adjustments to amend the annual grandfathered amount by the Consumer Price Index. Thus, in 2004 and thereafter, the full funding limit is the excess, if any, of (1) the accrued liability under the plan (including normal cost), over (2) the value of the plan’s assets.

Deduction for contributions to fund termination liability

The special rule allowing a deduction for unfunded current liability generally is extended to all defined benefit pension plans, i.e., the Senate amendment applies to multi-employer plans and plans with less than 100 participants. The special rule does not apply to plans not covered by the PBGC termination insurance program.116

The Senate amendment also modifies the rule providing that the deduction is for up to 100 percent of unfunded termination liability, determined as if the plan terminated at the end of the plan year. In the case of a plan with less than 25 participants for the plan year, termination liability does not include the liability attributable to benefit increases for highly compensated employees resulting from a plan amendment which was made or became effective, whichever is later, within the last two years.

Effective date

The Senate amendment is effective for plan years beginning after December 31, 2001.

CONFERENCEx AGREEMENT

The conference agreement follows the Senate amendment, with modifications.

The conference agreement gradually increases and then repeals the current liability full funding limit. Under the Senate amendment, the current liability full funding limit is 160 percent of current liability for plan years beginning in 2003, and 170 percent for plan years beginning in 2004. The current liability full funding limit is repealed for plan years beginning in 2005 and thereafter. Thus, in 2005 and thereafter, the full funding limit is the excess, if any, of (1) the accrued liability under the plan (including normal cost), over (2) the value of the plan’s assets.

Deduction for contributions to fund termination liability

The special rule allowing a deduction for unfunded current liability generally is extended to all defined benefit pension plans, i.e., the Senate amendment applies to multi-employer plans and plans with less than 100 participants. The special rule does not apply to plans not covered by the PBGC termination insurance program.116

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Effective date

The Senate amendment is effective for plan years beginning after December 31, 2001.

CONFERENCEx AGREEMENT

The conference agreement follows the Senate amendment, with modifications.

The conference agreement gradually increases and then repeals the current liability full funding limit. Under the Senate amendment, the current liability full funding limit is 160 percent of current liability for plan years beginning in 2003, and 170 percent for plan years beginning in 2004. The current liability full funding limit is repealed for plan years beginning in 2005 and thereafter. Thus, in 2005 and thereafter, the full funding limit is the excess, if any, of (1) the accrued liability under the plan (including normal cost), over (2) the value of the plan’s assets.

Deduction for contributions to fund termination liability

The special rule allowing a deduction for unfunded current liability generally is extended to all defined benefit pension plans, i.e., the Senate amendment applies to multi-employer plans and plans with less than 100 participants. The special rule does not apply to plans not covered by the PBGC termination insurance program.116

The Senate amendment also modifies the rule providing that the deduction is for up to 100 percent of unfunded termination liability, determined as if the plan terminated at the end of the plan year. In the case of a plan with less than 25 participants for the plan year, termination liability does not include the liability attributable to benefit increases for highly compensated employees resulting from a plan amendment which was made or became effective, whichever is later, within the last two years.

Effective date

The Senate amendment is effective for plan years beginning after December 31, 2001.

CONFERENCEx AGREEMENT

The conference agreement follows the Senate amendment, with modifications.
May 25, 2001

H2796

(b) Excise tax relief for sound pension funding (sec. 563 of the House bill, sec. 653 of the Senate amendment, and sec. 4972 of the Code)

PRESENT LAW

Under present law, defined benefit pension plans are subject to minimum funding requirements designed to ensure that pension plans have sufficient assets to pay benefits. A defined benefit plan is funded using one of a number of acceptable actuarial cost methods.

No contributions required under the minimum funding rules in excess of the full funding limit. The full funding limit is generally defined as the excess, if any, of (1) the lesser of (a) the current liability under the plan (including normal cost) or (b) 160 percent of the plan’s current liability, over (2) the value of the plan’s assets (sec. 412(c)(7)). In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability full funding limit is based on projected benefits. The current liability full funding limit is scheduled to increase as follows: 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2001.117 In no event is a plan’s full funding limit less than 90 percent of the plan’s current liability over the value of the plan’s assets.

An employer sponsoring a defined benefit pension plan generally may deduct amounts contributed to satisfy the minimum funding standard for the plan year. Contributions in excess of the full funding limit generally are not deductible. Under a special rule, an employer that sponsors a defined benefit pension plan (other than a multiemployer plan) which has more than 100 participants for the plan year may deduct amounts contributed of up to 100 percent of the plan’s unfunded current liability.

Present law also provides that contributions to defined contribution plans are deductible, subject to certain limitations.

Subject to certain exceptions, an employer that makes nondeductible contributions to a plan is subject to an excise tax equal to 10 percent of the amount of the nondeductible contributions for the year. The 10 percent excise tax does not apply to contributions to certain terminating defined benefit plans. The 10-percent excise tax also does not apply to contributions to certain defined contribution plans.

In determining the amount of nondeductible contributions, the employer is permitted to elect not to take into account contributions to a defined benefit pension plan except to the extent they exceed the accrued liability full funding limit. Thus, if an employer elects, contributions in excess of the current liability full funding limit are not treated as nondeductible contributions. An employer making such an election for a year is not permitted to take advantage of the excise tax nondeductibility provisions for certain terminating plans and certain contributions to defined contribution plans. The House bill applies to terminated plans as well as ongoing plans.

Effective date.—The House bill is effective for years beginning after December 31, 2001.

117 As originally enacted in the Pension Protection Act of 1997, the current liability full funding limit was 150 percent of current liability. The Taxpayer Relief Act of 1997 increased the current liability full funding limit from 150 to 165 percent in 1999 and to 170 percent in 2001 and 2002, and adopted the schedule increase described in the text. Another provision would require increases and then repeal the current liability full funding limit.

the effects of conversions of traditional defined benefit plans to cash balance or hybrid formula plans. Such study is to examine the effects of different formulas and to make recommendations regarding their effects. The study shall not be required to provide for a significant reduction in the rate of future benefit accrual in the event of a failure to meet the notice requirement due to the failure existed and exercised reasonable diligence to meet the notice requirement. In addition, no excise tax is imposed on any period during which any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement and such person knew, or exercising reasonable diligence would have known, that the failure existed. Also, if the person subject to liability for the excise tax exercised reasonable diligence to meet the notice requirement, the total excise tax imposed during a taxable year of the employer will not exceed $500,000. The conference agreement also modifies the Senate's provision similar to the notice requirement under the generalized notice and the benefit estimation tool kit. In addition, the Senate amendment directs the Secretary of the Treasury to prepare a report on the significant restructuring of plan benefit formulas of traditional defined benefit plans. Such study is to examine the effects of such restructuring on long-service participants, including the incidence and effects of "wear away" provisions under which participants earn no additional benefits for a period during which any person subject to liability for the tax did not know that the failure existed and exercised reasonable diligence to meet the notice requirement an excise tax equal to $100 per day per omitted participant and alternate payee. No excise tax is imposed during any period during which any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement. In addition, no excise tax is imposed on any period during which any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement and such person knew, or exercising reasonable diligence would have known, that the failure existed. Also, if the person subject to liability for the excise tax exercised reasonable diligence to meet the notice requirement, the total excise tax imposed during a taxable year of the employer will not exceed $500,000. The conference agreement also modifies the Senate's provision similar to the notice requirement under the generalized notice and the benefit estimation tool kit. In addition, the Senate amendment directs the Secretary of the Treasury to issue, not later than one year after the effective date of the conference agreement, regulations with respect to early retirement benefits or retirement-type subsidies, the determination of a significant restructuring and the plan administrator to comply with a notice requirement an excise tax equal to $100 per day per omitted participant and alternate payee. No excise tax is imposed during any period during which any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement and such person knew, or exercising reasonable diligence would have known, that the failure existed. Also, if the person subject to liability for the excise tax exercised reasonable diligence to meet the notice requirement, the total excise tax imposed during a taxable year of the employer will not exceed $500,000. 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No excise tax is imposed during any period during which any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement and such person knew, or exercising reasonable diligence would have known, that the failure existed. Also, if the person subject to liability for the excise tax exercised reasonable diligence to meet the notice requirement, the total excise tax imposed during a taxable year of the employer will not exceed $500,000. The conference agreement also modifies the Senate's provision similar to the notice requirement under the generalized notice and the benefit estimation tool kit. In addition, the Senate amendment directs the Secretary of the Treasury to issue, not later than one year after the effective date of the conference agreement, regulations with respect to early retirement benefits or retirement-type subsidies, the determination of a significant restructuring and the plan administrator to comply with a notice requirement an excise tax equal to $100 per day per omitted participant and alternate payee. No excise tax is imposed during any period during which any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement and such person knew, or exercising reasonable diligence would have known, that the failure existed. Also, if the person subject to liability for the excise tax exercised reasonable diligence to meet the notice requirement, the total excise tax imposed during a taxable year of the employer will not exceed $500,000.
(d) Modifications to section 415 limits for multiemployer plans (sec. 505 of the House bill, sec. 654 of the Senate amendment, and sec. 415 of the Code)

(e) Investment of employee contributions in 401(k) plans (sec. 506 of the House bill, sec. 655 of the Senate amendment, and sec. 1524(b) of the Taxpayer Relief Act of 1997)

PRESENT LAW

Under present law, limits apply to contributions and benefits under qualified plans (sec. 415). The limits on contributions and benefits under qualified plans are based on the type of plan.

Under a defined benefit plan, the maximum annual benefit payable at retirement is generally the lesser of (1) 100 percent of average compensation for the highest three years, or (2) $140,000 (for 2001). The dollar limit is adjusted for cost-of-living increases in $5,000 increments. The dollar limit is reduced in the case of retirement before age 62 and increased in the case of retirement after age 65. In addition, there is a floor on early retirement benefits. Pursuant to this floor, the minimum benefit payable at age 55 is $75,000.

In the case of a defined contribution plan, the limit on annual additions is the lesser of (1) 25 percent of compensation or (2) $35,000 (for 2001). In addition, the limits on contributions and benefits, plans of the same employer are aggregated. That is, all defined benefit plans of the employer, except for purposes of applying the 100 percent of compensation limit, are treated as a single plan for purposes of computing the 10 percent limitation.

Under Treasury regulations, multiemployer plans are treated as a single plan, and all defined contribution plans of the same employer are treated as a single plan. Under Treasury regulations, multiemployer plans are treated as a single plan, and all defined benefit plans of the same employer are treated as a single plan. Under Treasury regulations, multiemployer plans are treated as a single plan, and all defined benefit plans of the same employer are treated as a single plan.

A special rule applies to governmental defined benefit plans. In the case of such plans, the defined benefit dollar limit is reduced in the case of retirement before age 62 and increased in the case of retirement after age 65. In addition, there is a floor on early retirement benefits. Pursuant to this floor, the minimum benefit payable at age 55 is $75,000.

In the case of a defined contribution plan, the limit on annual additions is the lesser of (1) 25 percent of compensation or (2) $35,000 (for 2001). In addition, the limits on contributions and benefits, plans of the same employer are aggregated. That is, all defined benefit plans of the employer, except for purposes of applying the 100 percent of average compensation limit to such single-employer plan.

HOUSE BILL

Under the House bill, the 100 percent of compensation defined benefit plan limit does not apply to multiemployer plans. With respect to aggregation of multiemployer plans with other plans, the House bill provides that multiemployer plans are not aggregated with other multiemployer plans. However, if an employer maintains both a plan that is not a multiemployer plan and a multiemployer plan, the plan that is not a multiemployer plan is aggregated with the multiemployer plan to the extent that benefits provided under the multiemployer plan are provided with respect to a common participant.

Effective date.—The House bill is effective for years beginning after December 31, 2001.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

120%Another provision of the House bill increases this limit to 100 percent of compensation.

121%Treas. Reg. sec. 1.415-6(c).

Title I of ERISA provides that a pension plan administrator must furnish a benefit statement to any participant or beneficiary who makes a written request for such a statement. This statement must indicate, on an annual basis, (1) the participant’s or beneficiary’s total accrued benefit, and (2) the participant’s or beneficiary’s vested accrued benefit or the earliest date on which the accrued benefit will become vested. A participant or beneficiary is not entitled to receive more than one benefit statement during any 12-month period. The plan administrator must furnish the benefit statement no later than 60 days after receipt of the request or, if later, 120 days after the close of the immediately preceding plan year.

In addition, the plan administrator must furnish a benefit statement to each participant whose employment terminates or who has a one-year break in service. For purposes of this benefit statement requirement, a “one-year break in service” is a calendar year, plan year, or other 12-month period during which the participant does not complete more than 500 hours of service for the employer. A participant is not entitled to receive more than one benefit statement with respect to consecutively occurring breaks in service. The plan administrator must provide a benefit statement required upon termination of employment or a break in service no later than 120 days after the end of the plan year in which the termination of employment or break in service occurs.

HOUSE BILL

A plan administrator of a defined contribution plan generally is required to furnish a benefit statement to each participant at least once annually and to a beneficiary upon written request.

In addition to providing a benefit statement to a participant or beneficiary upon written request, the plan administrator of a defined contribution plan generally is required to furnish written notice to each participant at least once a year that the participant and is permitted to furnish the benefit statement in a manner calculated to be understood by the average plan participant. In particular, the plan administrator is required to furnish the benefit statement to any participant or beneficiary who is employed by the employer at the time the plan administrator furnishes the benefit statements to participants. This notice must indicate the availability of and the manner in which the participant may obtain the benefit statement.

The plan administrator is required to write the benefit statement in a manner calculated to be understood by the average plan participant and is required to furnish the statement in written, electronic, telephonic, or other appropriate form. The Secretary of Labor is authorized to provide that years in which the employee or former employee benefits under a plan need not be taken into account in determining the applicable three-year period.

The Secretary of Labor is directed to develop a model benefit statement, written in a manner calculated to be understood by the average plan participant, that must be used by plans meeting the requirements of section 105 of ERISA. The use of the model statement is
optional. It is intended that the model statement include items such as the amount of nonforfeitable accrued benefits as of the statement date that are payable at normal retirement age under the plan, the amount of accrued benefits that are forfeitable but that may become nonforfeitable under the terms of the plan, information on how to contact the Social Security Administration to obtain a participant’s personal earnings and benefit estimate statement, and other information that may be important to understanding benefits earned under the plan. Statements provided by electronic forms of communications shall be provided consistent with Department of Labor and Department of Treasury regulations.

Effective date.—The provision is effective for plan years beginning after December 31, 2002.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill.

(g) Prohibited allocations of stock in an S corporation ESOP (sec. 506 of the House amendment, and secs. 409 and 4979a of the Code)

PRESENT LAW

The Small Business Job Protection Act of 1996 allowed qualified retirement plan trusts described in section 401(a) to own stock in an S corporation. That Act treated the plan’s share of the S corporation’s income (and gain or loss) as includible in full in the trust’s unrelated business taxable income (‘‘UBTI’’). The Tax Relief Act of 1997 repealed the provision treating items of income or loss of an S corporation as UBTI in the case of an employee stock ownership plan (‘‘ESOP’’).

Thus, the inclusion of an S corporation allocable to an ESOP is not subject to current taxation.

Present law provides a deferral of income tax on the sales of certain employer securities to qualified persons own at least 50 percent of the number of outstanding shares of the S corporation as UBTI in the case of an ESOP, and (2) an individual share of unallocated stock held by the ESOP. An individual’s share of unallocated stock held by an ESOP is determined in the same manner as the most recent allocation of stock under the terms of the stock allocable to the individual.

For purposes of determining whether there is a nonallocation year, ownership of stock for the purposes of the rules of section 318,124 except that: (1) the family attribution rules are modified to include certain other family members, as described below, (2) option attribution does not apply (but instead special rules relating to synthetic equity described below apply), and (3) ‘‘deemed-owned shares’’ held by the ESOP are treated as owned by the individual with respect to whom they are deemed owned.

Under the House bill, family members of an individual include (1) the spouse, (2) an attorney, lineal descendant, brother, sister, or lineal descendant of the brother or sister of the individual, (3) the spouse of any described in (2) or (3).

The House bill contains special rules applicable to synthetic equity interests. Except to the extent provided in regulations, the stock on which a synthetic equity interest is based are treated as outstanding stock of the S corporation allocable to the individual.

The conference agreement follows the House bill.

In general

Under the House bill, if there is a nonallocation year with respect to an ESOP maintained by an S corporation: (1) the amount allocated in a prohibited allocation to an individual who is a disqualified person is treated as distributed to such individual (i.e., the value of the prohibited allocation is includible in the gross income of the individual receiving the prohibited allocation); (2) an excise tax is imposed on the S corporation equal to 50 percent of the amount involved in a prohibited allocation; and (3) an excise tax is imposed on the S corporation with respect to any synthetic equity owned by a disqualified person.

Definition of nonallocation year

A nonallocation year means any plan year of an ESOP holding shares in an S corporation if, at any time during the plan year, disqualified persons own at least 50 percent of the number of outstanding shares of the S corporation.

A person is a disqualified person if the person is either (1) a member of a ‘‘deemed 20-percent shareholder group’’ or (2) a ‘‘deemed 10-percent shareholder.’’ A person is a member of a ‘‘deemed shareholder group’’ if the aggregate number of deemed-owned shares of the person and his or her family members is at least 20 percent of the number of outstanding shares of the S corporation.125 A person is a deemed 10-percent shareholder if the person is not a member of a deemed 20-percent shareholder group and the person’s deemed-owned shares is at least 10 percent of the number of deemed-owned shares of stock of the corporation.

In general, ‘‘deemed-owned shares’’ means: (1) stock allocated to the account of an individual under the ESOP, and (2) an individual share of unallocated stock held by the ESOP. An individual’s share of unallocated stock held by an ESOP is determined in the same manner as the most recent allocation of stock under the terms of the stock allocable to the individual.

Ownership of synthetic equity is attributed in the same manner as stock is attributed under the House bill (as described above). In addition, ownership of synthetic equity is attributed with respect to any synthetic equity owned by a disqualified person.

Definition of prohibited allocation

An ESOP of an S corporation is required to provide that no portion of the assets of the ESOP is allocable in the same manner as stock of an S corporation may, during a nonallocation year, accrue (or be allocated directly or indirectly under any qualified plan of the S corporation) for the benefit of a disqualified person. A ‘‘prohibited allocation’’ refers to violations of this provision. A prohibited allocation occurs if, for example, income on S corporation stock held by an ESOP is allocated to the account of an individual who is a disqualified person.

Application of excise tax

In the case of a prohibited allocation, the S corporation is liable for an excise tax equal to 50 percent of the amount of the allocation. For example, if S corporation stock is allocated under the rules of section 318, the excise tax is equal to 50 percent of the fair market value of such stock.

A special rule applies in the case of the first nonallocation year, regardless of whether there is a prohibited allocation. In that year, the excise tax also applies to the fair market value of the deemed-owned shares of any disqualified person held by the ESOP, even though those shares are not allocated to the disqualified person in that year.

Treasury regulations

The Treasury Department is given the authority to prescribe such regulations as may be necessary to carry out the purposes of the House bill.

Effective date

The House bill generally is effective with respect to plan years beginning after December 31, 2001. In the case of an ESOP established after March 14, 2001, or an ESOP established on or before such date if the employer maintaining the plan was not an S corporation on such date, the House bill is effective with respect to plan years ending after March 14, 2001.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, with a modification of the effective date.

Effective date.—The Senate amendment generally is effective with respect to plan years beginning after December 31, 2002. In the case of an ESOP established after July 11, 2000, or an ESOP established on or before such date if the employer maintaining the plan was not an S corporation on such date, the Senate amendment is effective with respect to plan years ending after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement follows the House bill. The conference agreement authorizes the Secretary to determine, by regulations or other guidelines or pattern, that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes, in substance, an avoidance or evasion of the prohibited allocation rules. For example, this might apply if more than 10 independent businesses are combined in an S corporation owned by an ESOP in order to take advantage of the income tax treatment of S corporations owned by an ESOP.
The Senate amendment makes a direct rollover the default option for involuntary distributions that exceed $1,000 and that are eligible rollover distributions from qualified retirement plans. The distribution must be rolled over automatically to a designated IRA, unless the participant affirmatively elects to have the distribution transferred to a different IRA or a qualified plan or to receive it directly.

The written explanation provided by the plan administrator is required to explain that an automatic direct rollover will be provided without cost to another IRA.

The Senate amendment directs the Secretary of Labor to issue safe harbors under which the designation of an institution and investment of funds in accordance with the Senate amendment is deemed to be rollover that occurs after the close of the plan year in which the determination of whether contributions to multiemployer pension plans are on account of a prior year under section 404(a)(6) is not a method of accounting. Thus, any taxpayer that begins to deduct contributions to multiemployer plans as provided in section 404(a)(6) has not changed its method of accounting, nor is subject to an adjustment under section 481. The Senate amendment is intended to respect, not disturb, the effect of the statute of limitations. The Senate amendment directs, as of the end of the taxable year, aggregate deductions for contributions to a qualified plan in excess of the amounts actually contributed or deemed contributed to the plan by the taxpayer. The Secretary of the Treasury is authorized to promulgate regulations to clarify that it is not a method of accounting for purposes of the provision and for other uses that promote the preservation of tax-qualified retirement assets for retirement income purposes.

Effective date.—The Senate amendment applies to distributions that occur after the Department of Labor has adopted final regulations implementing the Senate amendment.

Conference agreement

The conference agreement follows the Senate amendment, with modifications. The conference agreement directs the Secretary of Labor to adopt final regulations implementing the conference agreement not later than three years after the date of enactment.

(a) Modification of timing of plan valuations (sec. 601 of the House bill, sec. 661 of the Senate amendment, and sec. 412 of the Code)

Under present law, plan valuations are generally required annually for plans subject to the minimum funding rules. Under proposed Treasury regulations, except as provided by the Commissioner, the valuation must be as of a date within the plan year to which the valuation refers or within the month prior to the beginning of that year.129

House bill

The House bill incorporates into the statute the proposed regulation regarding the date of valuations. The House bill also provides, as an exception to this general rule, that the date of valuation with respect to a plan year may be any date within the immediately preceding plan year if, as of such date, plan assets are not less than 125 percent of the plan’s current liability. Information determined as of such date is required to be adjusted actuarially, in accordance with Treasury regulations, to reflect significant differences in plan participants. An election to use a prior year valuation date, once made, may only be revoked with the consent of the Secretary.

Effective date.—The House bill is effective for plan years beginning after December 31, 2001.

Conference agreement

The conference agreement incorporates into the statute the proposed regulation regarding the date of valuations. The conference agreement also provides, as an exception to this general rule, that the date of valuation with respect to a plan year may be any date within the immediately preceding plan year if, as of such date, plan assets are not less than 125 percent of the plan’s current liability. Information determined as of such date is required to be adjusted actuarially, in accordance with Treasury regulations, to reflect significant differences in plan participants. A change in funding method to take advantage of the exception to the general rule may not be made unless, as of such date, plan assets are not less than 125 percent of the plan’s current liability. The Secretary is directed to automatically approve changes in funding method to use a prior year valuation date if the change is within the first three years that the plan is eligible to make the change.

(b) ESOP dividends may be reinvested without loss of dividend deduction (sec. 602 of the House bill, sec. 662 of the Senate amendment, and sec. 404 of the Code)

Under present law, if employers sustain a loss to the extent of excess dividends paid in cash during the employer’s taxable year with respect to stock of the employer that is held by an employee stock ownership plan (“ESOP”), the deduction is allowed with respect to amounts that are paid to the plan and accumulated in trust, but not distributed to the participants or beneficiaries in cash. The Senate amendment makes a change in treatment resulting from a change in accounting method also does not include a change in treatment resulting from a change in accounting method that does not involve the proper accounting of a transaction, etc. A change in method of accounting does not include correction of mathematical or posting errors, or errors in the computation of eligibility. Also, a change in method of accounting also does not include adjustment of any item of income or deduction that does not involve the proper time for the inclusion of the item of income or the taking of a deduction. A change in method of accounting does not include adjustment of any item of income or deduction that does not involve the proper time for the inclusion of the item of income or the taking of a deduction. A change in method of accounting also does not include a change in treatment resulting from a change in underlying facts.
were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

The Secretary may disallow the deduction for any amount if he determines that the dividend constitutes, in substance, an evasion of taxation (sec. 404(k)(5)).

**HOUSE BILL**

In addition to the deductions permitted under present law for dividends paid with respect to employer securities that are held by an ESOP, an employer is entitled to deduct dividends that, at the election of plan participants or beneficiaries, are (1) payable in cash directly to plan participants or beneficiaries, (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or (3) paid to the plan and reinvested in qualifying employer securities.

The House bill permits the Secretary to disallow the deduction for any ESOP dividend if the Secretary determines that the dividend constitutes, in substance, the avoidance or evasion of taxation. **Effective date.**—The House bill is effective for taxable years beginning after December 31, 2001.

**SENATE AMENDMENT**

In addition to the deductions permitted under present law for dividends paid with respect to employer securities that are held by an ESOP, an employer is entitled to deduct the applicable percentage of dividends that, at the election of plan participants or beneficiaries, are (1) payable in cash directly to plan participants or beneficiaries, (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or (3) paid to the plan and reinvested in qualifying employer securities. The applicable percentage is 25 percent for 2002 through 2004, 50 percent for 2005 through 2007, 75 percent for 2008 through 2010 and 100 percent for 2011 and thereafter.

**CONFERENCE AGREEMENT**

The conference agreement follows the House bill. The provision of the conference agreement that authorizes the Secretary to disallow the deduction for any ESOP dividend if the Secretary determines that the dividend constitutes, in substance, the avoidance or evasion of taxation includes authority to disallow a deduction for dividends paid with respect to employer securities that are held by an ESOP, an employer is entitled to deduct dividends that, at the election of plan participants or beneficiaries, are (1) payable in cash directly to plan participants or beneficiaries, (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or (3) paid to the plan and reinvested in qualifying employer securities. The applicable percentage is 25 percent for 2002 through 2004, 50 percent for 2005 through 2007, 75 percent for 2008 through 2010 and 100 percent for 2011 and thereafter.

**PRESENT LAW**

The Tax Reform Act of 1986 provided that nongovernmental tax-exempt employers were not permitted to maintain a qualified cash or deferred arrangement ("section 401(k) plan"). This prohibition was repealed, effective for years beginning after December 31, 1996, by the Small Business Job Protec- tion Act of 1996. Treasury regulations provide that, in applying the nondiscrimination rules to a section 401(k) plan (or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan), the employer may treat as excludable from gross income (sec. 127) and wages. This exclusion expires with respect to courses beginning after December 31, 2001. Education not normally taxable under section 127 may be excludable as a working condition fringe. There is no specific exclusion under present law for employer-provided retirement planning services. However, such services may be excludable as employer-provided educational assistance or a fringe benefit.

**HOUSE BILL**

Qualified retirement planning services provided to an employee and his or her spouse by an employer maintaining a qualified plan are excludable from income and wages. The exclusion does not apply to services that may be related to retirement planning for an individual and his or her spouse and how the employer's plan fits into the individual's overall retirement income plan. On the other hand, the exclusion does not apply to services that may be related to retirement planning, such as tax preparation, accounting, legal or brokerage services. It is intended that the Secretary, in determining the application of the exclusion to highly compensated employees, may permit employers to take into consideration employee circumstances other than compensation and position in providing education, training, or other qualifications of employees. Thus, for example, the Secretary may permit employers to limit certain advice to individuals nearing retire-
Effective date.—The House bill is effective with respect to years beginning after December 31, 2001.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

(f) Reporting simplification (sec. 606 of the House bill and sec. 666 of the Senate amendment)

PRESENT LAW

A plan administrator of a pension, annuity, stock bonus, profit-sharing or other funded plan of deferred compensation generally must file with the Secretary of the Treasury an annual return for each plan year containing certain information with respect to the qualification, financial condition, and operation of the plan. Title I of ERISA also may require the plan administrator to file annual reports concerning the plan with the Department of Labor and the Pension Benefit Guaranty Corporation (‘PBGC’). The plan administrator must use the Form 5500 series as the format for the required annual return. The Form 5500 series annual return/report, which consists of a primary form and various schedules, includes the information required to be filed with all three agencies. The plan administrator satisfies the reporting requirement with respect to each agency by filing the Form 5500 series annual return/report with the Department of Labor, which forwards the form to the Internal Revenue Service and the PBGC.

The Form 5500 series consists of two different forms: Form 5500 and Form 5500-EZ. Form 5500 is the more comprehensive of the two forms and contains the most detailed financial information. A plan administrator generally may file Form 5500-EZ, which consists of only one page, if (1) the only participants in the plan are the sole owner of a business that maintains the plan (and such owner’s spouse), or partners in a partnership that maintains the plan (and such partners’ spouses), (2) the plan is not aggregated with any other plan, and (3) the employer does not receive the services of leased employees. If the plan satisfies the eligibility requirements for Form 5500-EZ and the tax year of the plan ends on or before the last day of the plan year, the plan may file Form 5500-EZ instead of Form 5500.

With respect to a plan that does not satisfy the eligibility requirements for Form 5500-EZ, the characteristics and the size of the plan determine the amount of detailed financial information that the plan administrator must provide on Form 5500. If the plan has more than 100 participants at the beginning of the plan year, the plan administrator generally must provide more information.

HOUSE BILL

The Secretary of the Treasury is directed to modify the annual return filing requirements to require that plans that satisfy the eligibility requirements for Form 5500-EZ to provide that if the total value of the plan assets of such a plan as of the end of the plan year equals or exceeds $500,000 on or after January 1, 1994, does not exceed $250,000, the plan administrator is not required to file a return. In addition, the House bill directs the Secretary of the Treasury and the Secretary of Labor to provide simpl

compensated employee group for the prior plan year and not more than two percentage points greater than the ACP of the non-highly compensated employee group for the prior plan year.

For any year in which (1) at least one highly compensated employee is eligible to participate in an employer’s plan or plans that are subject to the ADP test under section 410(b) and (2) the plan subject to the ADP test satisfies the ADP test but the ADP of the highly compensated employee group exceeds more than two times (B) two percentage points plus (but not more than two times) the lesser of the ADP or the ACP of the nonhighly compensated employee group, and (3) the plan subject to the ACP test satisfies the ACP test but the ACP of the highly compensated employee group exceeds more than two times (B) two percentage points plus (but not more than two times) the lesser of the ADP or the ACP of the nonhighly compensated employee group, an additional special nondiscrimination test (“multiple use test”) applies to the elective deferrals, employer matching contributions, and after-tax employee contributions. The plan or plans generally satisfy the multiple use test if the sum of the ADP and the ACP of the highly compensated employee group does not exceed the greater of (1) the sum of (A) 1.25 times the greater of the ADP or the ACP of the nonhighly compensated employee group, and (B) two percentage points plus (but not more than two times) the lesser of the ADP or the ACP of the nonhighly compensated employee group, and (2) two percentage points plus (but not more than two times) the greater of the ADP or the ACP of the nonhighly compensated employee group.

HOUSE BILL

The House bill repeals the multiple use test.

Effective date.—The House bill is effective for years beginning after December 31, 2001.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

(i) Flexibility in nondiscrimination, coverage, and line of business rules (sec. 609 of the House bill, sec. 609 of the Senate amendment, sec. 401(a)(4), 410(b), and 414(r) of the Code)

PRESENT LAW

A plan is not a qualified retirement plan if the contributions or benefits provided under the plan are in favor of highly compensated employees (sec. 401(a)(4)). The applicable Treasury regulations set forth the exclusive rules for determining whether a plan satisfies the nondiscrimination requirement. These regulations state that the form of the plan and the method of operation determine whether the plan is nondiscriminatory, and that intent is irrelevant.

Similarly, a plan is not a qualified retirement plan if the plan does not benefit a minimum number of employees (sec. 410(b)). A plan satisfies this minimum coverage requirement if and only if it satisfies one of the tests specified in the applicable Treasury regulations. If an employer is treated as operating separate lines of business, the employer may apply the minimum coverage requirements to a plan separately with respect to the employees in each separate line of business. Under a plan that includes a “gateway” requirement, however, the plan must benefit a classification of employees that does not discriminate in favor of highly compensated employees in order for the employer to apply the minimum coverage requirements separately for the employees in each separate line of business. A plan satisfies this gateway requirement only if it satisfies one of the tests specified in the applicable Treasury regulations.

HOUSE BILL

The Secretary of the Treasury is directed to modify, on or before December 31, 2003, the existing regulations issued under section 410(r) in order to expand (to the extent that the Secretary may determine to be appropriate) the ability of a plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

The Secretary is directed to provide by regulation applicable to years beginning after December 31, 2003, that a plan is deemed to satisfy the nondiscrimination requirements of section 401(a)(4) if the plan satisfies the pre-1994 facts and circumstances test, satisfies the conditions prescribed by the Secretary to appropriately limit the availability of such test, and is submitted to the Secretary for a determination of whether it satisfies such test (to the extent provided by the Secretary).

Similarly, a plan meets the minimum coverage requirement of section 401(b) if the plan satisfies the pre-1989 coverage rules, is submitted to the Secretary for a determination whether it satisfies the pre-1989 coverage rules (to the extent provided by the Secretary), and satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of the pre-1989 coverage rules.

Effective date.—The provision of the House bill relating to the line of business requirements under sections 410(b) and 410(r) is effective on the date of enactment. The provision relating to the nondiscrimination requirements under section 401(a)(4) is effective on the date of enactment, except that any condition of availability prescribed by the Secretary is not effective before the first year beginning not less than 120 days after the date on which such condition is prescribed. The provision relating to the minimum coverage requirements under section 410(b) is effective for years beginning after December 31, 2003, except that any condition of availability prescribed by the Secretary by regulation does not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment.

(k) Notice and consent period regarding distributions (sec. 611 of the House bill and sec. 417 of the Code)

Notice and consent requirements apply to certain distributions from qualified retirement plans. These requirements relate to the content and timing of information that a plan must provide to a participant prior to a distribution, and to whether the plan must obtain the participant’s consent to the distribution. The nature and extent of the notice and consent requirements applicable to a distribution depend upon the value of the participant’s vested accrued benefit and whether the joint and survivor annuity requirements (sec. 417) apply to the participant.

If the present value of the participant’s vested accrued benefit exceeds $5,000, the plan may not distribute the participant’s benefit without the written consent of the participant. The participant’s consent to a distribution is not valid unless the participant has received from the plan a notice that contains a written explanation of (1) the material features and the relative values of the optional forms of benefit available under the plan, (2) the participant’s right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (3) the rules concerning the taxation of a distribution. If the joint and survivor annuity requirements apply to the participant, this notice also must contain a written explanation of (1) the terms and conditions of the qualified joint and survivor annuity, (2) the participant’s right to make, and the effect of, an election to waive the QJSA, (3) the rights of the participant’s spouse with respect to a participant’s QJSA, and (4) the right to make, and the effect of, a revocation of a waiver of the QJSA.

The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

If the participant’s vested accrued benefit does not exceed $5,000, the terms of the plan may provide for distribution without the participant’s consent. The plan generally is required, however, to provide to the participant a notice that contains a written explanation of (1) the participant’s right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (2) the rules concerning the taxation of a distribution. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

HOUSE BILL

A qualified retirement plan is required to provide the applicable distribution notice no less than 30 days and no more than 180 days

125 Similar provisions are contained in Title I of ERISA.
The House bill clarifies that future National Summits on Retirement Savings are to be held in the month of September in 2001 and 2005, and adds an additional National Summit in 2007. The Department of Labor, in consultation with the Department of the Treasury, is directed to prescribe for terminating single-employer plans that provide benefits based upon the separate accounts of participants and therefore are treated as defined contribution plans under ERISA.

Effective date.—The House bill is effective for distributions from terminating plans that occur after the PBGC has adopted final regulations implementing this provision.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment.

(b) Reduce PBGC premiums for small and new plans

Under present law, the Pension Benefit Guaranty Corporation ("PBGC") provides insurance protection for participants under certain defined benefit pension plans by guaranteeing certain basic benefits under the plan in the event the plan terminates with insufficient assets to pay benefits promised under the plan. The guaranteed benefits are funded in part by premiums paid by employers who sponsor defined benefit plans. The amount of the required annual PBGC premium for a single-employer plan is generally a flat rate premium of $19 per participant and an additional variable-rate premium based on a charge of $9 per $1,000 of unfunded vested benefits. Unfunded vested benefits under a plan generally means (1) the unfunded current liability for vested benefits under the plan, over (2) the value of the plan's assets, reduced by any credit balance in the funding standard account. No variable-rate premium is imposed for a year if contributions to the plan were at least equal to the full funding limit.

The PBGC guarantee is phased in ratably in the case of plans that have been in effect for less than five years, and with respect to benefit increases from a plan amendment that was in effect for less than five years before termination. In this section:

HOUSE BILL

Reduced flat-rate premiums for new plans of small employers

Under the House bill, for the first five plan years of a new single-employer plan of a small employer, the flat-rate PBGC premium is $5 per plan participant. A small employer is a contributing sponsor that, on the first day of the plan year, has 100 or fewer employees. For this purpose, all employees of the controlling group of the contributing sponsor are taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, each contributing sponsor (or controlled group member) is taken into account in determining whether the plan is a small employer plan.

A new plan means a defined benefit plan maintained by a contributing sponsor if, during the 36-month period ending on the date of plan termination, the plan is sponsored by an unrelated contributing sponsor (or controlled group member or a predecessor of either) has not established or maintained a plan subject to PBGC coverage with respect thereto, and the plan is treated for substantially the same employees as are in the new plan.
Reduced variable-rate PBGC premium for new plans

The House bill provides that the variable-rate premium is phased in for new defined benefit plans over a six-year period starting with their first plan year. The amount of the variable-rate premium is a percentage of the variable premium otherwise due, as follows: zero percent of the otherwise applicable premium for the first plan year; 20 percent in the second plan year; 40 percent in the third plan year; 60 percent in the fourth plan year; 80 percent in the fifth plan year; and 100 percent in the sixth plan year (and thereafter).

A new defined benefit plan is defined as described above under the flat-rate premium provision of the House bill relating to new small employer plans.

Reduced variable-rate PBGC premium for small plans

In the case of a plan of a small employer, the variable-rate premium is no more than $5 multiplied by the number of plan participants in the plan at the end of the preceding plan year. For purposes of the House bill, a small employer is a contributing sponsor that, on the first day of the plan year, has 25 or fewer covered participants. For this purpose, all employees of the members of the controlled group of the contributing sponsor are taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, employees of all contributing sponsors (and their controlled group members) are taken into account in determining whether the plan is a plan of a small employer.

Effective date

The reduction of the flat-rate premium for new plans of small employers and the reduction of the variable-rate premium for new plans is effective with respect to plans established after December 31, 2001. The reduction of the variable-rate premium for small plans is effective with respect to plan years beginning after December 31, 2001.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement does not include the House bill or the Senate amendment.

(a) Authorization for PBGC to pay interest on premium overpayment refunds (sec. 704 of the House bill, sec. 684 of the Senate amendment, and sec. 4007(b) of ERISA)

Present Law

The PBGC charges interest on underpayments of premiums, but is not authorized to pay interest on overpayments.

House Bill

The House bill allows the PBGC to pay interest on overpayments made by premium payors. Interest paid on overpayments is calculated at the same rate and in the same manner as interest charged on premium underpayments.

Effective date—The House bill is effective with respect to interest accruing for periods beginning not earlier than the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement does not include the House bill or the Senate amendment.

(b) Rules for substantial owner benefits in terminated plans (sec. 705 of the House bill, sec. 685 of the Senate amendment, and secs. 4021, 4022, 4035 and 4044 of ERISA)

Present Law

Under present law, the Pension Benefit Guaranty Corporation (“PBGC”) provides participants and beneficiaries in a defined benefit pension plan with certain minimal guarantees as to the receipt of benefits under the plan in case of plan termination. The employer sponsoring the defined benefit pension plan is required to provide the PBGC to provide insurance for the guaranteed benefits. In general, the PBGC will guarantee all basic benefits which are payable in cash and the actuarial present value of the deferred vested benefits.

The House bill provides that the 60-month phase-in of guaranteed benefits applies to a substantial owner with less than 5 percent ownership interest, an substantial owner with a 10 percent or more ownership interest (“majority owner”), and to the plan in case of plan termination. The majority owner’s guaranteed benefit is limited so that it could not be more than the amount phased in over 60 months for other participants. The rules regarding allocation of assets applies to substantial owners, other than majority owners, in the same manner as other participants.

Effective date—The House bill is effective for plan terminations with respect to which notices of intent to terminate are provided, or for which proceedings for termination are instituted by the PBGC, after December 31, 2001.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement does not include the House bill or the Senate amendment.

(c) Civil penalties for breach of fiduciary responsibility (sec. 706 of the House bill and sec. 502 of ERISA)

Present Law

Present law requires the Secretary of Labor to assess a civil penalty against (1) any person who breaches a fiduciary responsibility under, or commits a violation of, part I of Title I of ERISA, or (2) any person who knowingly participates in such a breach or violation. The penalty is equal to 20 percent of the “applicable recovery amount” that is paid pursuant to a settlement agreement with the Secretary of Labor that a court orders to be paid in a judicial proceeding brought by the Secretary of Labor to enforce the provisions of ERISA. The penalty may evade or reduce the penalty if the Secretary finds in writing that either (1) the fiduciary or other person acted reasonably and in good faith, or (2) it is reasonable to expect that the fiduciary or other person cannot restore all the losses without hardship unless the waiver or reduction is granted.

House Bill

The House bill makes the assessment of the penalty discretionary with the Secretary of Labor, rather than mandatory. This change will allow the Secretary to refrain from imposing the penalty in certain cases and to assess the penalty only if the Secretary finds that the penalty is appropriate.

Effective date—The House bill applies to any breach of fiduciary responsibility or other violation of part I of Title I of ERISA occurring on or after the date of enactment. The change with respect to “applicable recovery amount” includes a transition rule whereby a breach or violation occurring before the date of enactment which continues past the 180th day from enactment (and which may have been discontinued during that period) is treated as having occurred after the date of enactment (to avoid having to make a complex determination regarding how much of the applicable recovery amount for such continuing violations should be attributed to the post-enactment part of the violation).

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill.

(f) Benefit suspension notice (sec. 707 of the House bill and sec. 203 of ERISA)

Present Law

Under present law (ERISA sec. 203 of ERISA), a plan will not fail to satisfy the vesting requirements with respect to a participant by reason of suspending payment of the participant’s benefits while such participant is employed, if the Department of Labor (“DOL”) regulations, such a suspension is only permissible if the plan notifies the participant of the first day that benefits are suspended and the date of return of benefits.

In the case of a plan that does not pay benefits to active participants upon attainment of normal retirement age, the employer must immediately notify the participant and ERISA’s minimum benefit provisions. The Secretary of Labor may waive or reduce the penalty if the Secretary finds in writing that either (1) the fiduciary or other person acted reasonably and in good faith, or (2) it is reasonable to expect that the fiduciary or other person cannot restore all the losses without hardship unless the waiver or reduction is granted.
The Senate amendment does not include the House bill.

7. Miscellaneous provisions


(b) An Alaska Native Corporation (ANC) may establish a Settlement Trust (Trust) under section 39 of the Alaska Native Claims Settlement Act (ANCSA).

(c) The Trust will be subject to the rules of the provision.

(d) The Trust will be included in the gross income of a beneficiary.

(e) The Trust will be subject to the rules of the provision.

(f) The Trust will be included in the gross income of a beneficiary.

(g) The Trust will be subject to the rules of the provision.

(h) The Trust will be included in the gross income of a beneficiary.

(i) The Trust will be subject to the rules of the provision.

(j) The Trust will be included in the gross income of a beneficiary.

(k) The Trust will be subject to the rules of the provision.

(l) The Trust will be included in the gross income of a beneficiary.

(m) The Trust will be subject to the rules of the provision.

(n) The Trust will be included in the gross income of a beneficiary.

(o) The Trust will be subject to the rules of the provision.

(p) The Trust will be included in the gross income of a beneficiary.

(q) The Trust will be subject to the rules of the provision.

(r) The Trust will be included in the gross income of a beneficiary.

(s) The Trust will be subject to the rules of the provision.

(t) The Trust will be included in the gross income of a beneficiary.

(u) The Trust will be subject to the rules of the provision.

(v) The Trust will be included in the gross income of a beneficiary.

(w) The Trust will be subject to the rules of the provision.

(x) The Trust will be included in the gross income of a beneficiary.

(y) The Trust will be subject to the rules of the provision.

(z) The Trust will be included in the gross income of a beneficiary.

136 43 U.S.C. 1601 et seq. A settlement Trust is subject to the provisions of the settlement agreement and may be a trust that may operate a business.

137 Also, a Trust and its beneficiaries are generally taxed subject to applicable trust rules.

138 See Code sections 643(e) and 643(e)(3).

139 The Trust will be subject to the rules of the provision.

140 Under general rules.

141 Under certain circumstances.

142 Additional provisions.

143 In the case of any such excludable distribution that involves a distribution of property other than cash, the basis of such property in the hands of the recipient beneficiary will generally be the adjusted basis of the property in the hands of the Trust.

144 The treatment of such amounts distributed by an electing Trust as a dividend applies even if all or any part of the property distributed is from non-taxable amounts.

ANC, as under present law, so that the ANC will receive tax relief as if it had the same tax liability as any fair market value. The Trust takes the property with a fair market value basis, pursuant to section 301(d) of the Code.

SECTION 661 of the Code, which provides a deduction to the trust for certain distributions, does not apply to an electing Trust under the provision unless the election is terminated by disqualification. Similarly, the inclusion provisions of section 662 of the Code, relating to amounts included in the income of beneficiaries, also do not apply to a qualified Trust.

In the case of any such excludable distribution that involves a distribution of property other than cash, the basis of such property in the hands of the recipient beneficiary will generally be the adjusted basis of the property in the hands of the Trust.

The treatment of such amounts distributed by an electing Trust as a dividend applies even if all or any part of the property distributed is from non-taxable amounts.
The fiduciary of an electing Trust must report to the IRS, with the Trust tax return, the amount of distributions to each beneficiary, and the tax treatment to the beneficiary of such distributions under the provision (either as exempt from tax to the beneficiary, or as a distribution deemed made by the ANC). The electing Trust must also furnish information to the ANC. In the case of distributions that are treated as if made by the ANC, the ANC must then report such amounts to the beneficiaries and must indicate whether they are dividends from the ANC to the Trust beneficiaries.

If any taxable year the beneficial interests of the Trust become disposable, then the Trust shall be treated as a stock or beneficial interests under the provisions applicable to electing Trusts, including the favorable ordinary income tax rate and corresponding lower capital gains tax rate, cease to apply as of the beginning of such taxable year. The distributable net income of the Trust is increased up to the amount of current and accumulated earnings and profits of the Trust as of the end of that year, but such increase shall not exceed the fair market value of the assets of the Trust as of the date the beneficial interests of the Trust became disposable.

Thereafter, the Trust and its beneficiaries are generally subject to the rules of chapter J and to the generally applicable requirements for classification and election remains subject to the generally applicable requirements for classification and election.
The conference agreement does not include the House bill.

VII. ALTERNATIVE MINIMUM TAX

A. INDIVIDUAL ALTERNATIVE MINIMUM TAX RELIEF (SEC. 3(C) OF H.R. 6, SEC. 701 OF THE SENATE AMENDMENT AND SEC. 55 OF THE CODE)

PRESENT LAW

Present law imposes an alternative minimum tax ("AMT") on individuals to the extent that the tentative minimum tax exceeds the regular tax. An individual's tentative minimum tax generally is an amount equal to the sum of (1) 26 percent of the first $175,000 ($87,500 in the case of a married individual filing a separate return) of alternative minimum taxable income ("AMTI") in excess of an exemption amount and (2) 28 percent of the remaining AMTI. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments.

The AMT exemption amounts are: (1) $45,000 in the case of married individuals filing a joint return and surviving spouses; (2) $33,750 in the case of other unmarried individuals; and (3) $22,500 in the case of married individuals filing a separate return, estates and trusts. The exemption amounts are phased out by a 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses; (2) $120,000 in the case of other unmarried individuals, and (3) $75,000 in the case of married individuals filing separate returns or an estate or a trust. The exemption amount for married individuals filing a separate return is one-half the exemption amount for a married couple filing a joint return.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

The Senate amendment increases the AMT exemption amount for married couples filing a joint return and surviving spouses by $1,000. The AMT exemption amounts for other individuals (i.e., unmarried individuals and married individuals filing a separate return) are increased by $2,000.

Effective date.—The provision applies to taxable years beginning after January 1, 2007.

CONFERENCE AGREEMENT

The conference agreement increases the AMT exemption amount for married couples filing a joint return and surviving spouses by $1,000. The AMT exemption amounts for other individuals (i.e., unmarried individuals and married individuals filing a separate return) are increased by $2,000.

Effective date.—The provision applies to taxable years beginning after December 31, 2004, and beginning before January 1, 2005.

VIII. OTHER PROVISIONS

A. MODIFICATION TO CORPORATE ESTIMATED TAX REQUIREMENTS (SECS. 801 AND 815 OF THE HOUSE BILL)

PRESENT LAW

In general, corporations are required to make quarterly estimated tax payments of their income tax liability (section 6655). For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

HOUSE BILL

No provision.

SENATE AMENDMENT

With respect to corporate estimated tax payments due on September 17, 2001, 90 percent is required to be paid by September 17, 2001, and 70 percent is required to be paid by October 1, 2001. With respect to corporate estimated tax payments due on September 15, 2004, 80 percent is required to be paid by September 15, 2004, and 20 percent is required to be paid by October 1, 2004.

With respect to corporate estimated tax payments due in July, August, or September 2011, the payment must be 170 percent of the amount otherwise required to be paid under the corporate estimated tax rules.

Effective date.—The provision is effective on the date of enactment.

The conference agreement follows the Senate amendment with respect to corporate estimated tax payments due on September 15, 2004. With respect to corporate estimated tax payments due on September 17, 2001, 90 percent is not due until October 1, 2001. The conference agreement does not include the provision affecting corporate estimated tax payments due in 2011.

B. AUTHORITY TO POSTPONE CERTAIN TAX-RELATED DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER (SEC. 802 OF THE SENATE AMENDMENT AND SEC. 7508A OF THE CODE)

PRESENT LAW

The Secretary of the Treasury may postpone certain deadlines from the due date of tax returns and for paying income tax, the Secretary must abate related interest for that same period of time.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment directs the Secretary to create in the IRS a Permanent Disaster Response Team, which, in coordination with the Federal Emergency Management Agency, is to assist taxpayers in clarifying and resolving tax matters associated with a Presidentially declared disaster. One of the duties of the Disaster Response Team is to postpone certain tax-related deadlines for up to 120 days in appropriate cases for taxpayers determined to be affected by a Presidentially declared disaster.

It is anticipated that the Disaster Response Team would be staffed by IRS employees with relevant knowledge and experience. It is anticipated that the Disaster Response Team would staff a toll-free number dedicated to responding to taxpayers affected by a Presidentially declared disaster and provide relevant information via the IRS website.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement expands the period of time with respect to which the Secretary may postpone certain deadlines from 90 days to 120 days. The conference agreement does not include the provision of the Senate amendment that provides for a Permanent Disaster Response Team.

C. INCOME TAX TREATMENT OF CERTAIN RESTITUTION PAYMENTS TO HOLOCAUST VICTIMS (SEC. 803 OF THE SENATE AMENDMENT)

PRESENT LAW

Under the Code, gross income means "income from whatever source derived" except for certain items specifically exempt or excluded by statute (sec. 61). There is no explicit statutory exception from gross income for amounts received by Holocaust victims or their heirs.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that excludable restitution payments made to an eligible individual (or the individual's heirs or estate) are: (1) excluded from gross income; and (2) not taken into account for any provision of the Code which takes into account excludable gross income in computing adjusted gross income (e.g., taxation of Social Security benefits).

The basis of any property received by an eligible individual (or the individual's heirs or estate) that is excluded from gross income is the fair market value of such property at the time of receipt by the eligible individual (or the individual's heirs or estate).

The Senate amendment provides that any excludable restitution payment is disregarded in determining eligibility for, and the amount of benefits and services to be provided under, any Federal or federally assisted program which provides benefit or services based, in whole or in part, on need. Under the Senate amendment, no officer, agency, or instrumentality of any government may attempt to recover the value of excess benefits or services provided under such a program before January 1, 2000, by reason of failure to take account of excludable restitution payments received before that date. Similarly, the Senate amendment requires a good faith effort to notify any eligible individual who may have been denied such benefits or services of their potential eligibility for such benefits or services. The Senate amendment also provides coordination between this bill and Public Law 103-286, which also disregarded certain restitution payments in determining eligibility for, and the amount of certain needs-based benefits and services.

Eligible restitution payments are any payments distributed to an eligible individual (or the individual's heirs or estate) which: (1) is payable by reason of the individual's status as an eligible individual (including any amount payable by reason of a claim against Germany, the United States, or any foreign or domestic entity or fund established by any such country or entity, any amount payable as a result of a final legal action, and any amount payable under a law providing for payments or restitution of property); (2) constitutes the direct or indirect return of, or compensation for, assets stolen or hidden, or otherwise lost to, the individual before, during, or immediately after World War II; or (3) is payable by reason of a property transfer from a death estate.

150 Section 7508A.
151 Section 6655A.

V. OTHER PROVISIONS