September 20, 2006

SUMMARY COMPARISON OF CURRENT LAW AND THE PRIMARY PROVISIONS OF THE PENSION PROTECTION ACT OF 2006 OF INTEREST TO PUBLIC SECTOR PENSION PLANS

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GOVERNMENTAL AND TAX-EXEMPT EMPLOYER PLANS

	Current Law	**The Pension Protection Act of 2006 (the "Act")**
Tax-Free Pension Distributions to Pay Premiums for Health and LTC Insurance for Public Safety Officers	Distributions from a governmental qualified retirement plan, 403(b) annuity or 457(b) plan are generally includible in income when paid (IRC § 403(b)(1) and 457(a)). Premium payments for coverage under an accident or health insurance plan or qualified long-term care insurance contract are generally made on an after-tax basis, but may be deductible on an individual's return if certain requirements are met (see IRC § 213(a)).	Section 845 of the Act adds new IRC § 402(l) permitting, beginning in 2007, retired or disabled public safety officers (i.e., law enforcement officers, firefighters, or rescue squad or ambulance crew) to exclude up to $3,000 of distributions from a governmental qualified retirement plan, 403(b) annuity, or 457(b) plan for the direct payment of premiums for coverage for the public safety officer, his or her spouse, and his or her dependents under an accident or health insurance plan or qualified long-term care insurance contract. The statute defines "retired" as separated from service by reason of attainment of "normal retirement age."
Purchase of Permissive Service Credit	Generally, participants of state and local government defined benefit plans may be credited with "permissive service credit" (i.e., service not otherwise credited under the plan) if the participant voluntarily contributes an amount necessary to fund the benefit attributable to the credited service. Special rules apply under § 415 to the contributions or benefits associated with such service credit (IRC § 415(n)). Amounts from a 403(b) or 457 plan may generally be used to purchase permissive service credit if certain requirements are met (IRC §§ 403(b)(13) and 457(e)(17)).	Section 821 of the Act retroactively amends the purchase of service credit and transfer rules enacted in 1997 and 2001 (under IRC § 415(n)) to clarify that state and local governmental employees may purchase enhanced benefits and benefits for which there is no performance of actual service, including through amounts transferred from 403(b) or governmental 457(b) plans. With respect to distributions of amounts attributable to transfers of 403(b) and 457(b) plan assets, the distribution rules applicable to defined benefit plans apply, however, the transfers need not be tested under the 415(n) limits on after-tax contributions.

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	Current Law	The Pension Protection Act of 2006 (the "Act")
Waiver of the 10 Percent Penalty on Certain Distribut-ions	In general, a 10-percent early withdrawal penalty tax is applied to amounts distributed from a qualified retirement plan prior to separation from service after age 55, the attainment of age 59-1/2, death, or disability (IRC § 72(t)).	Effective upon the date of enactment (August 17, 2006), § 828 of the Act amends IRC § 72(t) providing that the 10-percent early withdrawal penalty tax does not apply to distributions from a governmental defined benefit pension plan made to a public safety employee (i.e., a police officer, fire fighter, or emergency medical services employee) after separation from service after the attainment of age 50.
Incentive and Retention Plans for Educational Institutions	Generally, any amounts deferred under a governmental 457(b) plan (and any income attributable to such amounts) are not taxed until such amounts are actually "paid to" the participant or beneficiary (IRC § 457(a)(1)). In general, welfare benefit plans escape many of ERISA's regulatory requirements. Generally, voluntary early retirement incentive plans are permitted under ADEA so long as the plan prohibits arbitrary age discrimination in employment (see ADEA 4(f)(2)(B)(ii), (l)(1)).	Section 1104 of the Act amends ERISA § 3(2)(B), IRC § 457, and ADEA § 4 providing that certain voluntary early retirement incentive plans of local educational agencies (e.g., a public board of education) or § 501(c)(5) or (6) education associations (e.g., teachers' unions) will be treated as bona fide severance plans for purposes of (i) IRC § 457 (and therefore not subject to the § 457 limits), (ii) welfare benefit plans under ERISA (and therefore exempt from some of ERISA's requirements), and (iii) defined benefit plans exempt from ADEA (and therefore not limited by ADEA). In addition, certain payments not in excess of 2 times the § 457(b) deferral limit under an employment retention plan of a local educational agency or § 501(c)(5) or (6) education association are not includible in income until paid. Such employment retention plans are also treated as welfare benefit plans under ERISA. These provisions are generally effective upon enactment (August 17, 2006).

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	Current Law	**The Pension Protection Act of 2006 (the "Act")**
Clarification-ion of the Minimum Distribution Rules	A participant in a qualified plan (including governmental plans) must begin receiving distributions by the April 1 of the calendar year following the calendar year in which the individual attains age 70-1/2 or the calendar year in which he or she retires. IRS rules limit permissible distribution options (e.g., to satisfy the general rule that minimum distributions be "nonincreasing") (IRC § 401(a)(9)).	Section 823 of the Act directs Treasury to issue regulations providing that a governmental plan is treated as complying with the minimum distribution rules (retroactive to effective date of the requirements) if it complies with a reasonable, good faith interpretation of those requirements.
Nondiscrim-ination Rules	In general, only state and local government plans are exempt from the nondiscrimination rules under the Code (see IRC §§ 401(a)(5)(G), 401(a)(26)(G), and 401(k)(3)(G)).	Section 861 of the Act amends IRC §§ 401(a)(5)(G), 401(a)(26)(G), and 401(k)(3)(G) providing that, beginning after the date of enactment (August 17, 2006), all governmental plans (not just state and local plans) would be exempt from the nondiscrimination and minimum participation rules.
Indian Tribal Government Plans	In general, a governmental plan is a plan established and maintained for its employees by (i) the Federal government, (ii) state and local governments, and (iii) any agency or instrumentality of such governments (ERSIA § 3(32) and IRC § 414(d)).	Section 906 of the Act amends ERISA § 3(32) and IRC § 414(d) providing that, beginning after the date of enactment (August 17, 2006), the term "governmental plan" includes a defined benefit plan established or maintained by an Indian tribal government for its employees performing governmental functions and not commercial activities.

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EGTRRA AND SAVER'S CREDIT PERMANENCE

	Current Law	The Pension Protection Act of 2006 (the "Act")
EGTRRA Permanence	The Economic Growth Tax Relief Reconciliation Act of 2001 ("EGTRRA") made a number of changes relating to retirement plans (e.g., 401(a) tax-favored, 403(b), and 457 plans and IRAs). The provisions of EGTRRA, however, are scheduled to sunset on December 31, 2010.	The changes made by EGTRRA to tax-favored retirement plans are made permanent under § 811 of the Act.
Saver's Credit Permanence	A non-refundable credit (at a rate of up to 50 percent) is provided on contributions (up to $2,000) made by certain eligible individuals below certain AGI limits to a tax-favored retirement plan. The credit is phased out based on AGI and would sunset on December 31, 2006 (IRC § 25B).	The Saver's Credit is made permanent under § 812 of the Act. Section 833(a) of the Act amends IRC § 25B indexing the AGI limits for inflation (rounded to the nearest $500) beginning in 2007.

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CHANGES AFFECTING PLAN DISTRIBUTIONS

	Current Law	**The Pension Protection Act of 2006 (the "Act")**
Direct Rollovers to Roth IRAs	Generally, distributions from qualified plans, tax-deferred annuities, and governmental 457(b) plans cannot be rolled directly over to a Roth IRA. Instead, the initial rollover must be made to a traditional IRA (as a conduit) (see generally IRC § 402(c)).	Section 824 of the Act amends IRC § 408A providing that, beginning in 2008, distributions from qualified plans, tax-deferred annuities, and governmental 457(b) plans (but not IRAs) may be rolled over directly to a Roth IRA, but only if the current law Roth IRA conversion rules are satisfied.
In-Service Distributions	Generally, pension payments may not be made until the later of termination of employment or the attainment or Normal Retirement Age ("NRA") (typically age 65). Thus, pension payments may be made to participants who (i) have reached NRA and (ii) continue in employment, if the plan permits them (see Rev. Rul. 74-254).	Section 905 of the Act amends ERISA § 3(2) and adds new IRC § 401(a)(36) permitting, beginning in 2007, in-service pension payments to be made to a participant after age 62.
Rollover of After-Tax Amounts	Generally, after-tax contributions may be rolled directly over from a qualified plan to a defined contribution plan, and from one tax-deferred annuity to another, so long as the receiving plan or tax-deferred annuity separately accounts for such rollover amounts (IRC § 402(c)(2)).	Section 822 of the Act amends IRC § 402(c)(2) permitting, beginning in 2007, direct rollovers of after-tax amounts from qualified retirement plans into a defined contribution plan, defined benefit plan, and tax-deferred annuity, but only if the plan or annuity separately accounts for such contributions and earnings thereon.
Rollovers by Non-spouse Benefic-iaries	The spouse of a deceased participant in a qualified plan, tax-deferred annuity, or governmental § 457(b) plan may generally rollover the participant's benefit to an IRA (see IRC § 402(c)). Non-spouse beneficiaries may not make such rollovers. IRA beneficiaries may maintain and receive distributions from an inherited IRA subject to certain minimum distribution rules (see generally IRC § 401(a)(9)).	Section 829 of the Act adds new IRC § 402(c)(11) permitting, beginning in 2007, nonspouse beneficiaries to transfer amounts from a qualified plan, tax-deferred annuity, or governmental 457(b) plan directly to an IRA. The IRA is treated as an inherited IRA for purposes of the minimum distribution rules.

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	Current Law	**The Pension Protection Act of 2006 (the "Act")**
	If a nonspouse beneficiary inherits an IRA, contributions may generally not be made nor may amounts from the inherited IRA be rolled over to another IRA or employer-provided plan (IRC § 408(d)(3)(C)).	
Expansion of the Hardship Rules	An IRC § 401(k), 403(b), or 457(b) plan participant may receive a hardship distribution if certain requirements are met (see generally IRC §§ 401(k)(2)(B)(i)(IV), 403(b)(11), and 457(d)(1)(A)(iii)). Similarly, nonqualified deferred compensation plan participants may receive a distribution for an unforeseeable emergency as that term is defined under IRC § 409A (IRC § 409A(a)(2)(A)(vi), (a)(2)(B)(ii)). Generally, a hardship distribution may only be made on account of a financial emergency or unforeseeable emergency of the participant.	Section 826 of the Act directs Treasury, within 180 days of enactment (by February 17, 2007), to modify the rules relating to a distribution on account of a "hardship" or "unforeseeable emergency" under IRC §§ 401(k), 403(b), 457(b), and 409A to permit such a distribution upon a hardship or unforeseeable emergency of a participant's designated beneficiary, regardless of whether the beneficiary is a spouse or dependent. For example, it appears that a distribution may be made on account of a hardship or unforeseeable emergency of a grandchild, parent, or domestic partner.
Distribut-ions to Active Duty Reservists	In general, a 10-percent early withdrawal penalty tax is applied to amounts distributed from a qualified retirement plan or traditional IRA prior to the attainment of age 59-1/2, death, or disability (IRC § 72(t)).	Section 827 of the Act amends IRC § 72(t) providing that a distribution made from an IRA or elective deferrals from a 401(k) or 403(b) plan to a military reservist called to active duty on or after September 11, 2001 and before December 31, 2007 for more than 179 days will not be subject to the 10 percent early withdrawal penalty tax if such distribution is made during the period of active duty. Such distributions do not violate the distribution restrictions applicable to such plans. Generally, a military reservist receiving an early distribution may re-contribute the amounts received to an IRA on an after-tax basis over the two-year period after the reservist's active duty ends and such re-contributed amounts will not affect the annual contribution limit.

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	Current Law	**The Pension Protection Act of 2006 (the "Act")**
Notice and Consent Period Regarding Distribut-ions	In general, participants must receive written notice prior to amounts being distributed under the plan. In addition, if the plan is subject to the qualified joint and survivor annuity ("QJSA") requirements, special notice and consent rules apply. Generally, notice to participants must be made no less than 30 and no more than 90 days before the date of distribution (see ERISA § 205(c) and IRC § 417(a)).	Section 1102 amends ERISA § 205(c)(7)(A) and IRC § 417(a)(6)(A) requiring, beginning in 2007, distribution notices to be furnished no less than 30 days and no more than 180 days before the date of distribution.

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AUTOMATIC ENROLLMENT

	Current Law	The Pension Protection Act of 2006 (the "Act")
Automatic Enrollment	Generally, a 401(k) plan participant must affirmatively make an election to defer compensation under the plan. However, IRS guidance allows employers to make contributions on behalf of new employees or current non-participating employees under an "auto enrollment" program (also known as a "negative election" program) as long as they are notified of, and have, the opportunity to change or opt out at any time (see Rev. Rul. 98-30; see also, Treas. Reg. § 1.401(k)-1(a)(3)(ii)). Similar rules apply for 403(b) and 457(b) plans. See Rev. Rul. 2000-35 and Rev. Rul. 2000-33.	Directed at ERISA plans, § 902 of the Act sets forth certain requirements for 401(k) plan "qualified automatic contribution arrangements" so they may automatically meet ERISA nondiscrimination and top-heavy rules and clarifies that in the case of ERISA-covered plans, such arrangements are preempted from State laws that may restrict the redirection of wages. Section 624 of the Act also adds new ERISA protections regarding "default investments" which DOL is required to designate to permit the use of a mix of investments and asset classes consistent with long-term capital appreciation or capital preservation, or a blend of both. The Act also permits, beginning in 2008, an IRC § 401(a) plan, a tax-deferred annuity, and a governmental 457(b) plan that generally incorporates a negative election-type feature into the plan (i.e., an "eligible automatic contribution arrangement"), and generally meets the notice requirements applicable to a qualified automatic contribution arrangement explaining (i) the participant's rights to elect not to have elective contributions made under the plan (or to elect a different percentage) and (ii) how such contributions will be invested in the absence of any investment election, may return automatic contributions to participants, but only if the participant elects to receive an "erroneous automatic contribution" within 90 days of the date the first automatic contribution was made on behalf of the participant.

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	Current Law	The Pension Protection Act of 2006 (the "Act")
		The returned amounts are includible income in the year in which such amounts are returned, but the 10 percent early withdrawal penalty and the otherwise applicable withdrawal restrictions would not apply. If matching contributions are made, such contributions shall generally be forfeited. In general, the returned amount must not exceed the amounts that were automatically contributed prior to the effective date of the participant's election to return such amounts. Beginning in 2008, if automatic contributions made under an eligible automatic contribution arrangement result in excess contributions or excess aggregate contributions, the 10 percent excise tax does not apply if such contributions (and earnings) are returned to participants within 6 months after the close of the plan year and such amounts are included in income (see § 902(e) of the Act amending IRC § 4979(f)). While ERISA protections (and preemption) under these new rules does not extend to governmental plans not subject to ERISA, the new automatic enrollment rules are likely to become a best practice, particularly due to the expanded correction opportunities compared to current law.

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CASH BALANCE AND OTHER HYBRID PLANS

	Current Law	The Pension Protection Act of 2006 (the "Act")
New Age Discrim-ination Require-ments	The Age Discrimination in Employment Act ("ADEA"), applicable to both private and public plans, provides that a defined benefit plan may not provide that benefit accruals cease, or the rate of a benefit accrual is reduced, because of the attainment of any age (ADEA § 4(i)(1)). Notable court interpretations had brought into question whether interest features in the DB plan setting could be read to be inherently discriminatory as the time to compound such interest is conceivably reduced with age.	Section 701 of the Act adds new ADEA § 4(i)(10). Beginning on or after June 29, 2005, a defined benefit plan does not violate the age discrimination provisions under ADEA if under the terms of the plan a participant's accrued benefit is equal to or greater than a similarly situated younger person. A participant's accrued benefit may be expressed as an annuity payable at normal retirement age, a hypothetical account balance as under a cash balance formula, or the current value of the accumulated percentage of the employee's final average compensation as under a pension equity plan formula. Subsidized early retirement benefits (or retirement-type subsidies) are not taken into account in determining the accrued benefit. In addition, benefit offsets permissible under IRC § 401(a) (e.g., Social Security offsets) and pre-retirement indexing of a benefit do not violate the age discrimination rules. The statute expressly provides that the amendments made under this new law shall not be construed to create any inference with regard to whether cash balance or other hybrid plan formulas were age discriminatory prior to June 29, 2005.
Interest Credit	No provision.	New ADEA § 4(i)(10) (as added by § 701 of the Act) also provides that existing plans must provide an interest credit no greater than a market rate. This requirement is met if a minimum guaranteed rate or a rate that is equal to the greater of a fixed or variable rate of return is provided. This interest crediting rate cannot be less than zero.

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	Current Law	**The Pension Protection Act of 2006 (the "Act")**
		Treasury is directed to define the "market rate" of return and prescribe methods for crediting interest to a participant's account. If the interest credit rate is a variable rate, the plan must provide that, upon plan termination, the rate used to determine accrued benefits under the plan shall be equal to the average of the interest rates used under the plan during the past 5 years. This provision is effective with respect to plans in existence on June 29, 2005 and applies to years beginning in 2008, although a plan sponsor could elect early application of these rules for any period after June 29, 2005. For plans in existence after June 29, 2005, this provision is effective when the plan is established.
Conversions	No provision.	New ADEA § 4(i)(10) (as added by § 701 of the Act) provides that any conversion from a traditional pension plan to a cash balance plan occurring on or after June 29, 2005 will not be age discriminatory if a participant's accrued benefit after the amendment is no less than the participant's accrued benefit prior to the conversion (under the terms of the traditional pension plan) for years of service prior to the conversion plus the participant's accrued benefit under the cash balance or hybrid plan for years of service after the conversion (i.e., an A + B-type formula). If a participant meets the eligibility requirements to receive an early retirement benefit or retirement-type subsidy under the terms of the traditional pension plan at the time of retirement, the participant must receive such benefit or subsidy under the cash balance or hybrid plan. The statute expressly provides that the amendments made under this new law shall not be construed to create any inference as to the treatment of conversions prior to June 29, 2005.

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MISCELLANEOUS

	Current Law	The Pension Protection Act of 2006 (the "Act")
Significant Participat-ion Test (25% Threshold)	The "significant participation test" under DOL's plan asset regulation provides that a non-publicly traded investment entity (e.g., a limited partnership, LLC or trust) is treated as holding ERISA "plan assets," and must be managed to comply with ERISA's prohibited transaction rules and other fiduciary requirements, if participation by "benefit plan investors" is significant — that is, benefit plan investors own 25 percent or more of any class of the fund's equity interests. 29 C.F.R. § 2510.3-101. The plan asset regulation currently defines a "benefit plan investor" as any employee benefit plan, including an ERISA plan, a non-ERISA governmental or foreign plan, an individual retirement account (IRA) or other arrangement subject to Code section 4975, and an entity that holds plan assets by reason of a plan's investment. 29 C.F.R. § 2510.3-101(f). DOL's current position is that, if any fund holds plan assets (because benefit plan investors hold 25% or more of its equity interests), that entity's entire investment in another entity must be treated as the investment by a "benefit plan investor." For example, if Fund A holds plan assets and invests in Fund B, Fund B must treat Fund A's entire investment as an investment by a benefit plan investor, even if only 50% of A's equity interests are owned by benefit plan investors.	The Act adds ERISA §3(42) which, among other things effectively excludes non-ERISA plans such as governmental, church and foreign benefit plans from the definition of "benefit plan investor." In another change, the Act provides that an investment entity is deemed to hold plan assets only to the extent of the percentage of the entity owned by benefit plan investors. For example, if 50% of Fund A's equity interests are held by benefit plan investors, only 50% of Fund A's investment in Fund B must be counted as an investment by a benefit plan investor in Fund B's calculations under the significant participation test. The 25% threshold under the significant participation test was not changed by the Act. Applies to transactions occurring after the date of the Act's enactment

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	Current Law	**The Pension Protection Act of 2006 (the "Act")**
	In calculating the percentage of equity interests owned by benefit plan investors, any equity interest "held" by a person who has discretionary authority with respect to the assets of the entity (or who provides investment advice with respect to such assets) must be disregarded (e.g., subtracted from the denominator) (the "Manager Disregard Rule").	
Plan Amendments	In general, unless IRS prescribes otherwise, discretionary plan amendments must be made by the end of the plan year, and required amendments by the end of the tax filing deadline for the plan year for which they are first effective (see IRC § 401(b)).	In general, plans must be amended on or before the last day of the first plan year beginning on or after January 1, 2009 to effectuate the changes made by the Act (or as required to implement applicable IRS regulations). Governmental plans have until the last day of the 2011 plan year (see § 1107 of the Act).

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CHANGES NOT DIRECTLY APPLICABLE TO GOVERNMENTAL PLANS, BUT MAY INFLUENCE BEST PRACTICES OR FUTURE APPLICATION

Investment Advice	The provision of investment advice for a fee to plan sponsor or to participants in a participant-directed plan is a fiduciary act (ERISA § 3(21)(A)). Generally, an investment adviser that provides advice to invest in specific securities or vehicles that pay additional fees to the adviser or the adviser's affiliate could violate ERISA's self-dealing restrictions. The DOL has issued several older class exemptions that may provide relief for such transactions (see PTEs 75-1, 77-4, 84-24, 86-128). The DOL more recently has indicated a prohibited transaction will not occur if an adviser levels or offsets all of his fees such that the adviser has no financial interest in a transaction (see DOL Adv. Ops. 97-15A (Frost Bank), 2005-10A (Country Bank)). Alternatively, the adviser must use, and not deviate from, an independently developed computer model that provides the investment recommendations (DOL Adv. Op. 2001-09 (Sun America)). Plan sponsors that hire investment advisers have a fiduciary responsibility to prudently select and monitor the adviser. In addition, under ERISA § 405, a sponsor could be liable for the fiduciary breaches of advisers they have hired under certain circumstances.	Section 601 of the Act adds a prohibited transaction exemption under ERISA § 408 and IRC § 4975, effective beginning in 2007, for the provision of advice to participants and receipt of fees from such advice by a "fiduciary advisor." The exemption does not apply to "plan level" advice (i.e., advice to plan fiduciaries who are selecting investment options, or any plans other than participant directed plans). Fiduciary adviser is defined broadly to include banks, insurance companies, broker dealers, registered investment advisers, all of their affiliates, and all of their employees, representatives and agents. The exemption includes significant conditions. Most importantly, advice must be given pursuant to an "eligible investment advice arrangement" ("Eligible Arrangement"). To be an Eligible Arrangement, either (i) any fees received by the adviser must not vary on the basis of investment options selected or (ii) the adviser must use a computer model. The computer model must be objective and must be certified by an eligible investment expert at the time it is initially used and then again if later modified. The independent expert must have no material relationship with the adviser. A myriad of additional conditions apply, including comprehensive disclosures of fees and affiliations that must be given before the time of the advice and regularly updated. Advisers must obtain an annual audit from an independent auditor regarding compliance with the exemption. Plan sponsors are given some relief from the specific advice provided by advisers, but they must prudently select and

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		monitor advisers as they currently must do for investment managers. The exemption for IRAs includes the same conditions in ERISA § 406 and IRC § 4975. However, the exemption includes a special rule that directs the DOL to study whether computer models are feasible for IRAs. In particular, the DOL must determine if computer models can take into account the full range of investments available in IRAs, including individual bonds and equities. The DOL must issue a report to Congress and if it determines a computer model is not feasible it must issue a class exemption for IRAs that follows the statutory exemption, but without the computer model requirement. If the DOL initially finds that computer models are not feasible for IRAs, any person may later ask the DOL to review that finding based on new information and the DOL must respond within 90 days of such request. If the DOL then makes a finding that computer models are feasible, then the exemption is revoked within 2 years.
Default Investment Options	Under ERISA, the investment of plan assets is generally a "fiduciary" act (ERISA § 3(21)(A)). Under ERISA a fiduciary must, among other things, act for the exclusive benefit of participants and act with care, skill and prudence (ERISA § 404(a)(1)). Under ERISA § 404(c), provided certain requirements are met, plan fiduciaries are relieved of liability for losses that result from a participant's exercise of control over his or her plan account balance. It is DOL's view that 404(c) relief is not available in the absence of a participant's affirmative investment direction, including where a participant's account is invested "by default" in an investment option.	Section 624 of the Act adds new ERISA § 404(c)(5), effective beginning in 2007, extending protection to fiduciaries of plans that provide for the investment of the participant account balances in the absence of an affirmative investment election in "default investments." To obtain relief, the plan must comply with new DOL regulations and provide notice to participants. The DOL must issue regulations on the appropriateness of designating certain investments as "default investments" that would permit the use of a mix of investments and asset classes consistent with long-term capital appreciation or capital preservation, or a blend of both.

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		Annual notice must be provided to participants explaining the employee's right to designate investments under the plan and how a participant's account balance will be invested in the absence of an affirmative investment election. The participant must be given a reasonable amount of time after receipt of the notice, and before the beginning of the plan year, to affirmatively designate investments under the plan.
Mapping	ERISA § 404(c) provides that if a participant is permitted to direct his own investments under the plan, plan fiduciaries will generally not be liable for losses that result from the participant's direction. Under 404(c), the plan fiduciary must provide a broad range of investment options, consisting of at least three diversified investment options. Failure to prudently choose these investment options may result in personal liability on the part of the fiduciary under ERISA § 404(a). The DOL currently takes the position that § 404(c) is not available to a fiduciary either (1) during a blackout period or (2) when participant account balances are "mapped" to new options without an affirmative participant direction. ERISA § 101(i) requires administrators to provide advance notice of a "blackout period." Generally, the notice must be provided at least 30 days in advance. A "blackout period is defined as a period of 3 or more consecutive days in which individual account participants may not direct trades, obtain loans or obtain distributions.	For plan years beginning after 2007 (later for collectively bargained plans), § 621 of the Act amends ERISA § 404(c) in two respects. First, fiduciaries are provided with 404(c) relief during a blackout period if they authorized and implemented the blackout period consistent with the "requirements of this title." In addition, ERISA § 404(c)(4) would be added to provide generally that, if certain requirements are met, § 404(c) relief would be available for mapping that constitutes a "qualified change in investment options." A "qualified change in investment options" must meet the following requirements: • The participant's account is reallocated among one or more new investment options which have characteristics relating to risk and rate of return are reasonably similar to the existing investment options immediately before the change; • Notice must be sent at least 30 days and no more than 60 days before the effective date of the change, explaining how the account will be invested in the absence of affirmative directions and including information comparing the new and existing options;

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		• The participant must not have provided affirmative investment instructions contrary to the change before the effective date of such change; and The investments of the participant or beneficiary in effect immediately before the change must have been the product of the exercise of control by the participant or beneficiary.
EPCRS	The IRS Employee Plans Correction Resolution System ("EPCRS") allows the sponsor of a qualified plan, a 403(a) or 403(b) plan, or a SEP or a SIMPLE IRA (and on a provisional basis, 457(b) governmental plans) to voluntarily correct failures that may result in adverse tax consequences through various correction programs, including the Self-Correction Program ("SCP") or the Voluntary Correction Program ("VCP") (see Rev. Proc. 2006-27).	Section 1101 of the Act clarifies that the IRS has the authority to (i) continuously update and improve EPCRS, giving special consideration to issues relating to small employers and significant and insignificant failures under the SCP, and (ii) to waive income, excise, or other taxes to ensure that such penalties bear a reasonable relationship to the failure.
Clarification of the QDRO Rules	Generally, benefits provided under a qualified retirement plan may not be assigned or alienated. However, benefits may be assigned to a former spouse (or other alternate payee) pursuant to a qualified domestic relations order ("QDRO"). Special rules govern whether a domestic relations order is qualified (ERISA § 206(d)(3) and IRC § 414(p)).	Section 1001 of the Act directs the DOL to issue, within 1 year after the date of enactment (by August 17, 2007), regulations clarifying the status of certain domestic relations orders, including that a domestic relations order will not fail to be a QDRO solely because it is issued after or modifies a previous domestic relations order or QDRO, or because of the time at which it is issued.

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