



The Vita Viewpoint Important Information for Decision Makers

President Bush signs the Pension Protection Act of 2006

On August 17th, President Bush signed the Pension Protection Act of 2006. This substantial law creates a permanent extension of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), including provisions dealing with automatic enrollment, and protection for those employers who choose to provide participant advice. This Vita Viewpoint summarizes a number of the major provisions important to 401(k) plans. It does not address the defined benefit (DB) plan provisions or those provisions applicable solely to tax-exempt, church and governmental plans.

Permanent Incentives for Retirement Saving

The Act makes permanent each of the following 401(k) plan enhancements enacted in the EGTRRA. Without this action, each of the provisions was set to expire on December 31, 2010:

- Simplified plan testing and nondiscrimination rules
- Increased contribution limits to qualified plans and IRAs
- Cost of living increases
- Age 50 catch-up contributions and increased limits
- Roth 401(k) accounts effective January 1, 2006.
- Deemed IRAs established with an employer-sponsored plan
- Enhanced deduction limits for plan contributions
- Enhanced portability
- Faster vesting for matching contributions

Effective Date: As of date of the enactment

Investment Advice

Provides relief from current ERISA prohibitions on providing advice for workplace savings plans, with the following stipulations:

- Compensation received by the advisor does not vary based on the investment option selected by participants, OR
- Advice is provided using a computer model that meets certain requirements and is not biased toward any specific type of investment.

Effective date: For investment advice provided after 12/31/06

Automatic Features in Defined Contribution Plans

Employers now have three options with respect to satisfying the multiple 401(k) nondiscrimination rules: (1) perform regular testing, taking corrective action if the plan fails the tests; (2) comply with the old safe harbor matching and vesting requirements; (3) adopt automatic enrollment and comply with the new safe harbor.

By adding the automatic enrollment arrangement, employers would be able to extend their current vesting requirement of 100% immediately to 100% within two years. Employers would still be required to make a contribution of at least 3% for all eligible employees or match under a new safe harbor formula 100% of the first 1% deferred and 50% of the next 5% deferred.

A plan with an "eligible" automatic enrollment arrangement would be allowed to make ADP/ACP refunds for up to six months after the close of the plan year without a 10% excise tax to the employer.

Effective for plans beginning to 2008, refunds made within 2½ months of the plan year end (or within 6 months for those complying with the automatic enrollment arrangement) will be taxable within the year of the distribution instead of having to have employees re-file tax returns from the previous year. (The law generally supersedes any state restrictions regarding payroll deduction without the employee's affirmative consent.)

It also provides 404(c) relief for plan sponsors who designate default investment options for employees who fail to make investment elections in 401(k) plans; requires the U.S. Department of Labor to issue a safe harbor for providers and plan sponsors around using these types of funds within 6 months of the date of enactment of the Act.

Effective Date: Automatic enrollment provision effective for plan years beginning after 12/31/07; default investment option relief effective for plan years beginning after 12/31/06.

Fiduciary Protection Available During Blackouts

The DOL is to issue guidance on the responsibilities of plan fiduciaries during a blackout. Plan fiduciaries will receive protection under ERISA sections 404(c) during a blackout period if:

- The plan was in compliance with section 404(c) prior to the blackout
- Participants are given 30-60 days notice prior to the beginning of the blackout
- The assets are either invested in accordance with participants' elections or mapped to funds with similar risk and return characteristics

Permanent College Saving 529 Plan Federal Tax-Free Distributions

This provision permanently extends favorable federal income tax treatment on 529 plan distributions for qualified education expenses. It also maintains current flexible rollover and transfer rules and retains the inclusion of certain special education expenses as qualified expenses.

Effective Date: As of date of the enactment

Permanent Saver's Credit

This provision makes permanent the Saver's Credit of up to \$2,000 (now indexed for cost-of-living adjustments) for contributions to 401(k)s, IRAs, and other defined contribution plans to eligible taxpayers that satisfy certain AGI limits. It also allows taxpayers to have their Saver's Tax Credit refund deposited directly into an IRA.

Effective Date: As of date of the enactment

Direct Deposit of Tax Refunds into IRAs

Allows individuals to have a portion of their tax refunds deposited directly into an IRA.

Effective Date: Taxable years beginning after 12/31/06

Direct Rollovers to Roth IRAs

This provision allows investors to roll over pretax employer-sponsored plan assets directly to a Roth IRA. The taxable portion of the rollover amount is taxed at the time of rollover. Previously, investors could only roll over employer-sponsored plan assets to a traditional IRA, which would then have to be converted to a Roth IRA.

Effective Date: Distributions after 12/31/07

Waiver of Penalty on Distributions for Guard and Reservists Called to Active Duty

Eliminates the 10% early withdrawal penalty on elective deferrals distributed from a 401(k) or 403(b) plan, as well as IRA distributions, taken by qualified National Guard and Reservists who are called to active duty after 9/11/01 and before 12/31/07 for more than 179 days.

Effective Date: Distributions made after 9/11/01

Rollovers by Non Spouse Beneficiaries to an Inherited IRA

Provides flexibility for non spouse beneficiaries when inheriting retirement plan assets - they now have the option of rolling the assets over to an IRA. Previously, only spousal beneficiaries could roll over inherited plan assets to an IRA. The IRA will be treated as an "inherited" IRA, allowing the non-spouse to delay receipt of required minimum distributions until he or she attains age 70½. If the assets remain in the deceased's plan, required minimum distributions must begin by December 31st of the year following the year of the participant's death.

Effective Date: As of date of the enactment

Tax-Free IRA Distributions for Charitable Purposes

Excludes from gross income certain distributions of up to \$100,000 per year from a Traditional or Roth IRA if the IRA owner is 70½ or older when the distribution is made, and provided the distribution is directly transferred to a qualifying charitable organization. This provision does not apply to distributions from SEP IRAs or SIMPLE IRAs.

Effective Date: Effective for distributions made in 2006 and 2007 ONLY.

Additional Details about the Law

For complete details and commentaries on the Pension Protection Act of 2006, please refer to: <http://www.dol.gov/ebsa/pensionreform.html>

The information contained herein was provided from numerous sources including publications produced by ASPPA, Great West Retirement Services, Fidelity Investments and Vanguard. The content of this summary does not encompass all of the facets of the Pension Protection Act of 2006 and should not be construed as legal advice or legal opinions, which can be rendered properly only when related to specific fact situations. In all cases, you should consult with your attorney or tax advisor if you have questions. As with any legislation, the Pension Protection Act will be subject to technical corrections, additional analysis and interpretation, and clarification through regulatory guidance. Therefore, the analysis and potential impact of some of the provisions described above may change over time.

A full review of these changes will be included as one of our break-out sessions at our Spring Employee Benefits Symposium scheduled for April 2007. For questions or additional information, please contact Vita Planning Group at 650-567-9300.