



Dedicated to the Private Pension System

Comparison of House and Senate Enron Pension Bills

Updated: July 12, 2002

Issue	Current Law	House Bill ¹	Senate HELP Bill ²	Senate Finance Bill ³
Restrictions on Investments in Employer Stock or Employer Real Property	<p>There is no current law restriction on the ability of participants to choose to invest assets in their account in employer stock or employer real property.</p>	<p>Not included.</p>	<p>If employer contributions (<i>i.e.</i>, matching or nonelective contributions) of employer stock or employer real property are made on behalf of a participant to any defined contribution plan maintained by the employer, the participant would not be permitted to invest elective deferrals in employer stock or employer real property. The proposal could not be circumvented through use of a self-directed brokerage-account.</p> <p>The proposal would not apply if the employer maintains a qualified defined benefit plan that covers at least 90 percent of the individuals covered by the defined contribution plan. A DB plan is qualified if it provides an accrued benefit that is the actuarial equivalent of at least 1.5 percent of the participant's final average pay times years of service (not greater than 20). The proposal allows for an equivalent DB benefit through a flat-dollar arrangement.</p> <p>This proposal would apply regardless of whether the stock is publicly-traded or closely-held. Further, ERISA Section 404(c) would not apply with respect to a failure to satisfy the requirements of this provision.</p>	<p>Not included.</p>

1. House Bill refers to H.R. 3762, the "Pension Security Act of 2002," which passed the full House of Representatives on April 11, 2002 by a vote of 255 to 163. Provisions are generally effective beginning in 2003, except as otherwise indicated.

2. Senate HELP Bill refers to S. 1992, the "Protecting America's Pensions Act of 2002," which was reported out of the Senate Health, Education, Labor and Pension Committee on March 21, 2002, by a vote of 11-10. Provisions are generally effective beginning in 2003, except as otherwise indicated.

3 Senate Finance Bill refers to S. 1971, the "National Employee Savings and Trust Equity Guarantee Act," which was reported out of the Senate Finance committee on July 11, 2002, by voice vote (no dissenting views expressed). Full Senate consideration of a bill is currently scheduled for sometime in September. However, differences between the HELP Bill and the Finance Bill will still need to be resolved. Provisions are generally effective beginning in 2003, except as otherwise indicated.

Issue	Current Law	House Bill	Senate HELP Bill	Senate Finance Bill
<p>Diversification Restrictions on Employer Securities</p>	<p>A plan cannot force more than 10 percent of employee elective deferrals (including earnings) to be invested in employer stock or employer real property. Plans can place restrictions without limit on the ability to diversify other types of contributions in employer stock and employer real property. However, in the case of ESOPs, participants must generally start having the right to diversify once they have reached age 55 and attained 10 years of service.</p>	<p>Participants would have the immediate right to diversify elective deferrals contributed to the plan in the form of employer stock. Participants with 3 years of service would have the right to diversify any other contributions in employer stock. The plan would have to offer a broad range of at least three alternative investment options. The rights to diversify could be restricted to periodic periods, but no less frequently than quarterly.</p> <p>Under the proposal, plans would be given the option of granting diversification rights on a rolling basis. Thus, a participant would have the right to diversify a contribution of employer stock 3 years after it is made. Rolling diversification would be implemented on an annual basis.</p> <p>In the case of contributions of employer stock made prior to the effective date of the proposal (<i>i.e.</i>, the 2003 plan year), the right to diversify would be phased-in over 5 years, increasing 20 percent per year, until fully phased-in in 2007.</p> <p>The proposal would only apply to plans with employer stock that is publicly-traded (or if the employer issues any stock that is publicly-traded). Also, the proposal would not apply to “stand-alone” ESOPs—ESOPs that do not contain elective deferrals or matching contributions.</p> <p>The new diversification requirements would be a plan qualification requirement and would also be a requirement under ERISA. The diversification requirements would be under the regulatory jurisdiction of the IRS.</p>	<p>Participants would have the immediate right to diversify elective deferrals contributed to the plan in the form of employer stock or employer real property. Participants with 3 years of service would have the right to diversify any other contributions to the plan made on their behalf in the form of employer stock or employer real property. Plans could restrict the right to diversify to periodic intervals, but would generally have 30-days to effectuate any request to diversify. The plan would have to offer at least 3 alternative investment options (consistent with DOL regulations). Further, participants would have to be given the right to vote employer stock allocated to their accounts. ERISA Section 404(c) would not apply with respect to a failure to satisfy the requirements of this provision.</p> <p>As with the House Bill, the HELP Bill proposal would not apply to closely-held stock. DOL would be directed to do a study on the feasibility of extending the proposal to closely-held stock. Also, the proposal would not apply to stand-alone ESOPs.</p> <p>There would be no phase-in of the diversification requirements under the HELP Bill. The provision would be under DOL’s jurisdiction.</p>	<p>Same as the House Bill, except the Finance Bill does not give employers the option of granting diversification rights on a rolling basis.</p> <p>Also, the right to diversify contributions of employer stock made prior to the effective date of the proposal would be phased in over 3 years as opposed to 5 years as in the House Bill. However, the phase-in would not apply to participants who are age 55 and older prior to the effective date.</p>

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<p>Periodic Pension Benefits Statements</p>	<p>Upon the request of a participant, the plan administrator must provide a summary of the participant's benefits under the plan. A participant is not entitled to more than one benefit statement per year.</p>	<p><u>Defined Contribution Plans:</u> Benefit statements would have to be given at least quarterly regardless of whether the plan allows participants to direct investments in their account. The most recent valuation can be used only for employer stock not publicly-traded. Quarterly statements would have to include an explanation of any restrictions on the right to direct investments. Stand-alone ESOPs and one-participant plans would be exempt from the quarterly statement requirement, and instead would have to be provided once annually.</p> <p><u>Defined Benefit Plans:</u> A benefit statement would have to be provided to DB plan participants at least once every three years. Alternatively, the employer could provide participants with notice of their right to request a benefit statement at least annually.</p> <p><u>Electronic Delivery:</u> Statements for both DC and DB plans could be provided by electronic means. In the case of quarterly statements, participants must be separately notified that they will be delivered electronically.</p>	<p><u>Defined Contribution Plans:</u> Benefit statements would have to be given quarterly in the case of plans that allow participants to direct investments in their account. For DC plans that do not allow participants to direct investments, benefit statements would only have to be given to participants upon request, and no more than once each year. In addition, if more than 20 percent of a participant's account is invested in employer stock or employer real property, the quarterly statement required must include a warning that the account may be over invested in employer stock or employer real property.</p> <p><u>Defined Benefit Plans:</u> A benefit statement would have to be provided to DB plan participants at least once every three years or upon request (but no more than once a year). The benefit statement could be based on reasonable estimates.</p> <p><u>Electronic Delivery:</u> Same as the House Bill.</p>	<p><u>Define Contribution Plans:</u> Same as the House Bill, except quarterly statements would only have to be provided in the case of plans that permit participants to direct investments. All other DC plans would have to provide benefit statements at least once annually. In all cases, valuation of assets could be based on the most recent valuation.</p> <p><u>Defined Benefit Plans:</u> Same as the House Bill, except the Finance Bill makes clear that DB benefit statements could be based on reasonable estimates pursuant to DOL regulations.</p> <p><u>Electronic Delivery:</u> Same as the House Bill, except if provided electronically it would have to be reasonably expected to result in a receipt by the participant.</p>

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Investment and Retirement Savings Education Notices	<p>There is currently no requirement to give participants with the right to direct investments any investment education.</p>	<p>DC plans would have to give participants, at the time of enrollment, and with the quarterly statement thereafter, an investment education notice, including an explanation of generally accepted investment principles (including principles of risk management and the importance of diversification). (Note: the House Bill amends ERISA to require this notice quarterly even if participants do not have the right to direct investments.) Stand-alone ESOPs and one participant plans are exempt from this requirement. The notice could be provided by electronic means. The notice would be under the jurisdiction of both IRS and DOL.</p>	<p>Same as the House Bill, except that instead of upon enrollment in the plan, the investment education notice would be given to participants when entitled to diversify employer stock or employer real property. Further, unlike the House Bill, the education notice would only have to be given to participants with the right to direct investments. As with the House Bill, it could be provided by electronic means. The HELP Bill provision would only be under the jurisdiction of DOL.</p>	<p>DC plans would have to give participants at least annually a model form relating to basic investment guidelines and retirement saving education. This would apply for all DC plan participants, even those without the right to direct investments. Treasury and DOL would be directed to develop the model form which would include information on: 1) the benefits of diversification; 2) risk and return characteristics of different kinds of investments; 3) how investment allocations may differ depending on the participant's age; and 4) where participants can learn about their pension rights and investment advice. The model form would be modified for plans that do not allow participants to direct investments. The model form would include a worksheet that a participant could use to calculate the amount he or she needs to save for retirement. The model form could be delivered electronically if it was reasonably expected to result in receipt by the participant.</p>

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<p>Blackout or Lockdown Notices</p>	<p>There is no specific requirement in the law to notify participants of an impending suspension on their ability to direct investments.</p>	<p>Plans that take any action to temporarily suspend or restrict the ability of participants to direct investments in their account for more than 3 business days (3 calendar days in the case of investments not publicly-traded) would be required to make a determination that the expected period of suspension or restriction is reasonable and would have to give affected participants at least 30-days advance notice of the suspension or restriction.</p> <p>The notice would have to include: (1) the reasons for the suspension or restriction; (2) the investments affected; (3) the expected period of the suspension or restriction; (4) a statement that the plan administrator has evaluated the reasonableness of the suspension or restriction; (5) a statement that the participant should evaluate their investment choices in light of the impending suspension or restriction. The notice could be provided by electronic means.</p> <p>Exceptions to the 30-day notice requirement would be allowed for unforeseen emergencies, although the plan fiduciary would have to keep a written record of the reasons for not complying with the 30-day requirement. Exceptions to the 30-day notice would also be provided in the case of QDROs and mergers and acquisitions. If after the notice is given, there is a change in the expected period of suspension or restriction, notice of the change would have to be provided to participants as soon as reasonably practicable. The notice requirement would be under the joint jurisdiction of both IRS and DOL. DOL would be directed to issue a model notice.</p>	<p>Provides that no lockdown may take effect until at least 30-days after notice of the lockdown is given to affected participants and that the lockdown may not continue for an unreasonable period of time. The proposal does not outline specific information to be contained in the notice. The notice may be provided by electronic means.</p> <p>A lockdown would be defined as any suspension or restriction on the ability of participants to direct investment as otherwise provided under the terms of the plan. The HELP Bill does not contain the 3-day rule as in the House Bill. However, any restriction governing the frequency of transfers between investment options is not a lockdown to the extent the restriction has previously been disclosed in the summary plan description. The notice would be only under the jurisdiction of DOL.</p>	<p>Same as the House Bill, except a notice would not be required unless the transaction suspension period lasts more than 3 business days in all cases. Further, the notice would not have to include a statement that the plan administrator has evaluated the reasonableness of the suspension.</p> <p>The Finance Bill makes clear that the lockdown notice not only applies to any restriction on the ability of participants to direct investments in their account as otherwise normally provided by the plan, but also any restriction on the ability of participants to obtain a plan loan or a distribution as otherwise normally provided under the plan. Thus, in theory the provision could apply to plans that do not allow directed investments, but do allow plan loans, for example.</p> <p>The notice could be delivered electronically if it was reasonably expected to result in receipt by the participant. Both Treasury and DOL would develop a model notice.</p>

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<p>Application of ERISA Section 404(c) During a Blackout of Lockdown</p>	<p>Plan fiduciaries must act in the best interest of participants. Fiduciaries who breach this duty may be liable for losses suffered by the plan as a result of the breach. ERISA Section 404(c) provides fiduciaries with a defense against such potential liability. Under Section 404(c), plan fiduciaries will not be liable for any loss, or by reason of any fiduciary breach, which results from the participant's exercise of control over the assets in his or her account.</p>	<p>Provides that Section 404(c) would not apply for any period during which a participant's ability to direct investments, as normally provided under the plan, has been suspended.</p> <p>However, if plan fiduciaries in authorizing the suspension satisfy their fiduciary obligations under ERISA, they will not be liable for any loss occurring during the suspension resulting from a participant's exercise of control over the assets in his or her account prior to the suspension.</p> <p>Committee report language would make it clear that when a suspension results from a change in investment options a participant is deemed to be still exercising control over the account pursuant to an election prior to the suspension if, after proper notice, and in the absence of an affirmative election by the participant to choose from the new investment options, assets are transferred (or "mapped") to investment options that are similar in type to the investment options previously elected.</p> <p>Matters to be considered in determining whether a plan fiduciary has satisfied the fiduciary obligations under ERISA include whether the fiduciary has (1) considered the reasonableness of the expected suspension period; (2) has satisfied the 30-day notice requirement; and (3) has satisfied their ERISA fiduciary responsibilities in determining to enter into the suspension. Committee report language is expected to make clear that these requirements are not intended to be more than what is already expected under current law.</p>	<p>Provides that Section 404(c) would not apply with respect to a participant for any period during which a participant's ability to divest investments, as normally provided under the plan, has been suspended. Directs DOL to issue safe harbor guidance on how plan fiduciaries can satisfy their fiduciary obligations during a lockdown.</p>	<p>Same as the House Bill, except the Finance Bill specifically provides in the statute that if a transaction suspension period occurs in connection with a change in investment options, a participant would be deemed to have exercised control over the assets in his or her account before the transaction suspension period (and plan fiduciaries would thus not be liable for any loss occurring during the suspension) provided, if after notice of the change in investment options is given to such participant, assets in the account of the participant are transferred either 1) to investment options in accordance with the participant's affirmative election; or 2) in the absence of an affirmative election by the participant, to investment options with reasonably comparable risk and return characteristics in the manner set forth in the notice.</p> <p>Also, DOL and Treasury would have to provide guidance, including safe harbors, on how plan fiduciaries would be able to satisfy their fiduciary responsibilities during a transaction suspension period.</p>

Issue	Current Law	House Bill	Senate HELP Bill	Senate Finance Bill
<p>Proposals to Encourage the Provision of Investment Advice to Participants</p>	<p>Investment advisors are plan fiduciaries that must act in the best interest of plan participants. It is a prohibited transaction for an investment advisor to give advice with respect to investments for which it receives fee and/or commissions. The selection of an investment advisor is a fiduciary act and employers are responsible for the selection and monitoring of investment advisors.</p> <p>Plan fiduciaries are liable for losses to the plan resulting from a breach of fiduciary duty. However, ERISA Section 404(c) provides that plan fiduciaries will not be liable for any investment losses from a participant's exercise of control over his or her account. Consequently, if a fiduciary advisor breaches his or her fiduciary duty with respect to the advice given, the plan cannot recover investment losses resulting from a participant's reliance on that advice.</p>	<p>Grants a prohibited transaction exemption for investment advice by "fiduciary advisors," provided that certain disclosure requirements are met, even though the fiduciary advisor will be giving advice with respect to investments for which it will receive a fee and/or commission. Under the proposal the disclosure requirements are met if, at a time reasonably contemporaneous with the initial provision of advice, the participant is given notice (in writing or electronically) of: 1) all fees and/or commissions the advisor would receive; 2) the relationship between the advisor and the investments offered; 3) any limitation on the scope of the advice; 4) the types of service offered by the advisor; 5) that the advisor is acting as a fiduciary; and 6) that the participant can separately arrange for an independent advisor at his or her cost. This notice would thereafter have to be provided annually or if there was a material change in the information contained in the notice (<i>e.g.</i>, a change in fees). Any disclosures required by applicable securities laws would also have to be provided. Further, any fees and/or commissions received by the advisor would have to be reasonable and the terms of any sale of investments by the advisor would have to be at least as favorable as an arm's length transaction.</p> <p>A "fiduciary advisor" would be defined as a registered investment advisor, bank, insurance company, or registered broker/dealer. In addition, an "affiliate" of any of the above (including any employee) would qualify. Finally, an agent or registered representative of any of the above would qualify if they satisfy applicable insurance, banking, or securities laws regarding advice.</p>	<p>Creates a safe harbor for plan sponsors for satisfying their fiduciary obligations with respect to the provision of investment advice for participants. Plan sponsors who meet the safe harbor requirements would: 1) be deemed to have satisfied their responsibilities for prudent designation and periodic review of the investment advisor; 2) not be liable for any losses resulting from the provision of investment advice; 3) not be liable for any co-fiduciary liability resulting from a breach by the investment advisor.</p> <p>The safe harbor requires the use of a "qualified investment advisor." Such advisor would have to be a registered investment advisor, bank, insurance company, or any other comparable qualified entity as determined by DOL. Further, any individual employees or agents of the above entities providing investment advice would have to be a registered investment advisor, a registered broker/dealer, a registered representative, or any other comparably qualified individual as determined by DOL.</p> <p>The qualified investment advisor would have to annually provide written verification to the plan sponsor that the advisor: 1) is qualified and is a fiduciary with respect to the plan; 2) has reviewed the plan and has determined that its relationship with the plan is not a prohibited transaction; 3) will, in providing advice, consider any employer securities or employer real property allocated to the participant's account; and 4) has adequate fiduciary insurance coverage in case of a claim.</p>	<p>Same as the HELP Bill.</p>

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<p>Proposals to Encourage the Provision of Investment Advice to Participants (cont.)</p>		<p>Plan sponsors would still be liable for the selection and periodic review of the investment advisor. However, the plan sponsor would not be responsible for monitoring the specific investment advice given to any particular participant. No changes would be made to ERISA Section 404(c).</p>	<p>Before hiring the investment advisor, the plan sponsor would have to review the contract with the investment advisor, including a disclosure as to the fees the advisor will receive. Further, the plan sponsor would have to review the advisor's disclosure with the Federal government that outlines the advisor's methodology for providing advice (<i>e.g.</i>, Form-ADV). If a substantial number of participants complain about the advisor's services, the plan sponsor would have to determine whether or not to continue the relationship with that advisor within 30 days.</p> <p>The HELP Bill also modifies ERISA Section 404(c) to provide that the protection against liability afforded to plan fiduciaries under that Section would not apply to qualified investment advisors. Thus, qualified investment advisors would be liable for any losses resulting from advice given that constituted a fiduciary breach.</p>	
<p>Compensation Used to Pay for Qualified Retirement Planning Services</p>	<p>A taxpayer may not choose between qualified retirement planning services and compensation that would otherwise be included in taxable income.</p>	<p>An employee will not have to include in his or her taxable income the value of qualified retirement planning services provided by a qualified investment advisor, merely because the employee may choose to use some of his or her otherwise taxable compensation to pay for such services. This rule only applies with respect to highly compensated employees to the extent the choice is available, on substantially the same terms, to the group of employees normally provided educational information regarding the plan.</p>	<p>Not included.</p>	<p>Not included.</p>

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Fiduciary Obligation to Provide Participants with Material Investment Information	ERISA mandates that certain disclosures be made to participants. However, there is no specific fiduciary obligation on plan sponsors or plan administrators to provide material investment information to participants.	Not included.	Would impose a specific fiduciary duty on the plan sponsor and plan administrator (under ERISA) to provide participants, with the right to direct the investment of assets in their accounts into employer stock, with all material investment information to the extent such information must generally be provided by the plan sponsor to outside investors under applicable securities laws.	Same as the HELP Bill.
Restrictions on Insider Trading During a Blackout or Lockdown	Corporate insiders are generally subject to certain restrictions on trading in employer stock under Federal securities law. However, there is no specific restriction on insider trading when participants in the employer-sponsored plan are restricted from trading in employer stock held by the plan.	<p>The Federal securities laws would be amended to make it unlawful for any corporate insider (generally a corporate officer, director or 10 percent shareholder) to trade in employer stock during a “pension plan suspension period.” Insiders would be required to disgorge any profits made from such unlawful trading.</p> <p>A “pension plan suspension period” would be defined as any period in which the ability of at least 50% of participants to diversify employer stock is suspended. A pension plan suspension period would not include any regular, periodic restriction on directing investments. There would also be an exception for mergers and acquisitions.</p>	Not included. However, the Senate Banking Committee is expected to take up a similar measure.	Not included. However, the Senate Banking Committee is expected to take up a similar measure.
Electronic Disclosure of Insider Trading	Federal securities laws mandate that trading in employer stock must generally be disclosed. However, there is no specific requirement for disclosure directly to plan participants.	Not included.	ERISA would be amended to provide that if the Securities and Exchange Commission requires any disclosure of the sale of employer stock by a corporate officer, director, or an affiliated person (generally a 5 percent shareholder), the plan sponsor must, within 2 business days after the disclosure is made, make such disclosure available on any corporate Intranet (internal Web site) maintained by the plan sponsor. The disclosure would be given (in writing or electronically) to employees without access to the Web site.	Same as the HELP Bill, except the disclosure would have to be posted on the corporate Intranet site within a reasonably practicable timeframe after disclosure is made to the SEC. Further, the disclosure would be provided upon request to employees without access to the Web site.

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<p>Modifications to ERISA Remedies</p>	<p>ERISA Section 409 provides that a plan fiduciary who breaches his or her fiduciary duties will be personally liable to make good to the plan any losses to the plan resulting from the breach, and to restore to the plan any profits made by the fiduciary through the use of plan assets. The fiduciary is also subject to other equitable or remedial relief, as the court deems appropriate.</p> <p>However, in <u>Massachusetts Mutual Life Insurance Company v. Russell</u>, the Supreme Court decided that an individual plan participant could not bring a claim for breach of fiduciary duty on behalf of himself or herself under ERISA Section 409. An individual plan participant could bring a claim for breach of fiduciary duty under ERISA Section 502(c)(3), but the remedy would be limited to equitable relief, not monetary (<i>i.e.</i>, compensatory) damages.</p> <p>ERISA Section 510 makes it unlawful to discharge an employee (whether or not a participant) for giving any information or testifying with respect to an inquiry or proceeding relating to ERISA (<i>i.e.</i>, a whistleblower). However, such employee may not have an individual cause of action against the employer under ERISA.</p>	<p>Not included.</p>	<p>Creates new ERISA Section 409A providing that a 401(k) plan fiduciary, who breaches his or her fiduciary duties, would be personally liable to make good to each plan participant any losses to such participant resulting from the breach, and to restore to such participant any profits made by the fiduciary through the use of plan assets. The fiduciary would also be subject to other equitable or remedial relief, as the court deems appropriate. Any rights under the new Section 409A would be in addition to any rights of the participant under existing Section 409 or Section 502. (Note: Concerns have been raised that the proposed statutory language would allow recovery for losses outside the plan, including consequential damages.)</p> <p>The proposal also amends existing Section 409 by providing that an “insider,” with respect to a DC plan that holds employer securities that are publicly-traded, who knowingly participates in a fiduciary breach or knowingly undertakes to conceal such breach, would be liable under Section 409 for such breach as if he or she were a fiduciary. An “insider” would be defined as a corporate officer or director, or the independent qualified public accountant for the plan and plan sponsor.</p> <p>The proposal would additionally amend Section 502 to give whistleblowers (or DOL) the authority to individually sue the plan sponsor to enjoin the plan sponsor from firing the employee and to obtain appropriate equitable or legal relief to redress the violation of Section 510.</p>	<p>Current ERISA Section 409 would be amended to clarify that in the case of a fiduciary breach with respect to a defined contribution plan, the relief available under Section 409 would, to the extent the court deemed appropriate, be apportioned to each individual account affected by the breach.</p> <p>The provision specifically clarifies that no inference is intended as to the scope of recovery available to participants under current law.</p>

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Mandated Fiduciary Insurance Coverage/ Increase in the Bond Cap	Plans must obtain a fidelity bond to protect plan assets against fraud, theft, or embezzlement. The bond must cover at least 10 percent of plan assets, but in no case need it provide more than \$500,000 in coverage. There is no requirement for plan fiduciaries to maintain fiduciary insurance coverage.	Not included.	Each plan fiduciary of a defined contribution plan covering more than 100 participants would have to maintain reasonable fiduciary insurance coverage in accordance with DOL regulations. The proposal does not specify the amount of such coverage required, nor does it place any limit on the amount of coverage needed. The proposal would not be effective until DOL regulations implementing the proposal are issued.	The maximum required ERISA bond amount would be increased to \$1 million for plans that hold employer securities.
Joint Trusteeship of Defined Contribution Plans	There is no current law requirement that defined contribution plans be trustee by a joint board of employer and employee representatives.	Not included.	<p>Defined contribution plans with more than 100 participants would have to be held in trust by a joint board of trustees consisting of two or more trustees representing on an equal basis the interest of the employer and the employees.</p> <p>In the case of a plan maintained pursuant to a collective bargaining agreement, the employee representatives would be designated pursuant to an election process organized by the union. For all other plans, the employee representatives would be elected by participants pursuant to DOL regulations. Employee representatives could not be highly compensated employees (as defined under IRC Section 414(q)). DOL would issue regulations for resolving tie votes among the trustees. DOL would be directed to issue regulations for implementing this provision within 90 days after the date of enactment.</p>	Not included.

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Treatment of Mandatory Arbitration Clauses Under ERISA	Plans that provide self-directed brokerage accounts may require that disputes be resolved through mandatory and binding arbitration.	Not included.	Provides that with respect to pension plans, ERISA rights and remedies (including the right to file a civil action) cannot be lost through a provision mandating binding arbitration. However, arbitration can be used to resolve a dispute if the participant knowingly and voluntarily agrees to arbitrate after the dispute has arisen or the agreement to arbitrate is pursuant to a collective bargaining agreement.	Not included.
Office of Pension Participant Advocacy	There is no designated office within DOL with the responsibility of advocating solely on behalf of participants.	Not included.	Establishes an “Office of Pension Participant Advocacy” within DOL. The office would be tasked with, among other things, evaluating Federal pension policy in terms of its impact on pension coverage and making suggestions to change policies in order to improve such coverage. The office could also pursue claims on behalf of individual participants (including, upon request by the participant, bringing a civil action on behalf of the participant). Further, the office could assist in the resolution of disputes between plans and plan participants.	Not included.
Notice and Consent Period Regarding Distributions/Information on Optional Forms of Benefits	Generally, benefits cannot be distributed before the later of age 62 or normal retirement age unless the participant consents no more than 90 days before benefit commencement. Also, information on the tax implications of rollover must be given to the employee within 90 days of distribution. No information is required to be given to DB plan participants explaining the relative value of lump sums versus annuity distributions. Further, DB participants are not entitled to ask for a detailed worksheet outlining how the participant’s distribution was calculated.	The notice and consent period regarding distributions would be expanded from 90 days to 180 days.	DB plans with more than 100 participants would have to give participants, within a reasonable period of time before they are required to elect a form of distribution, a statement comparing the relative values (including the effect of any early retirement subsidies) of each form of benefit payable under the plan. Further, DB participants entitled to a distribution, regardless of plan size, would have to be notified of their right to request a worksheet explaining how the amount of the distribution was calculated and stating the assumptions used.	The notice and consent period regarding distributions would be expanded from 90 days to 180 days. Also, Treasury would be directed to issue (within 30 days of enactment) regulations requiring DB plans to provide participants entitled to a distribution with a statement comparing the relative values (including the effect of any early retirement subsidies) of each form of benefit payable under the plan.

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<p>Retroactive Funding Relief</p>	<p>The 30-year Treasury bond rate is used for various defined benefit plan calculations. For example, up to 105 percent of the four-year weighted average of 30-year Treasury bond rates is used to calculate current liability for purposes of the deficit reduction contribution. 85 percent of the 30-year Treasury bond rate is used for purposes of calculating the variable rate premium required by the PBGC. The 30-year Treasury bond rate is also used for calculating lump-sum distributions and for calculating the 415 limit for lump sums.</p> <p>In October 2001, the Department of Treasury announced it was no longer issuing 30-year Treasury bonds. As a result, the 30-year Treasury bond rate, still being issued based on Federal Reserve statistics, has been artificially depressed. This has resulted in sharply increased funding requirements for certain plan sponsors. In response, the Job Creation and Worker Assistance Act of 2002, enacted this past March, included a provision allowing plans to use up to 120 percent of the four-year weighted average of 30-year Treasury bond rates for purposes of the deficit reduction contribution and 100 percent of the 30-year Treasury bond rate for purposes of the variable rate premium.</p> <p>The provision only applies for the 2002 and 2003 plan years. No changes were made with respect to the 30-year Treasury bond rate for purposes of calculating lump sums.</p>	<p>Retroactively extends the changes made by the Job Creation and Worker Assistance Act of 2002 to the 2001 plan year in addition to the 2002 and 2003 plan years.</p>	<p>Not included.</p>	<p>Plans would be permitted, for purposes of the 2001 plan year, to use in calculating current liability up to 108 percent of the four-year weighted average of 30-year Treasury bond rates.</p> <p>Also, conforming changes to Title IV of ERISA would be made so that the interest rate changes made under the Job Creation and Worker Assistance Act of 2002 for purposes of calculating the variable rate premium would also apply for purposes of notices and reporting required with respect to underfunded plans.</p>

Issue	Current Law	House Bill	Senate HELP Bill	Senate Finance Bill
Expansion of Missing Participants Program	The PBGC acts as a clearinghouse for DB plan benefits due to participants who cannot be located. When a defined benefit plan terminates, the plan may transfer the benefits of the missing participant to the PBGC, which then attempts to locate the participant.	The PBGC's missing participant program would be expanded to cover defined contribution plans. This expansion would be voluntary at the election of the plan sponsor. This provision would be effective after final regulations are published by the PBGC.	Not included.	Same as the House Bill.
Reduced PBGC Premiums for New and Small Plans	Defined benefit plans are subject to a flat-rate premium of \$19 per participant. Underfunded defined benefit plans are subject to an additional variable rate premium. There is no variable rate premium for the first year of a new defined benefit plan.	<p>New defined benefit plans established by employers with 100 employees or less would only have to pay a \$5 per participant PBGC premium for the first 5 years of the plan. No variable rate premium would be assessed during this period.</p> <p>Any variable rate premium that might be assessed against a new defined benefit plan established by any sized employer would be phased-in as follows: 0 percent for the first plan year; 20 percent for the second; 40 percent for the third; 60 percent for the fourth; 80 percent for the fifth, and 100 percent for the sixth and succeeding plan years.</p> <p>Further, in the case of any defined benefit plan (not just a new plan) of an employer with 25 employees or less, the variable rate premium for each participant shall be no more than \$5 multiplied by the number of plan participants.</p>	Not included.	Same as the House Bill.
Authorization for PBGC to Pay Interest on Premium Overpayments	The PBGC does not have the authority to pay interest on refunds of premium overpayments.	The PBGC would be authorized to pay interest on refunds of premium overpayments.	Not included.	Same as the House Bill.

Issue	Current Law	House Bill	Senate HELP Bill	Senate Finance Bill
Rules for Substantial Owners Relating to Plan Terminations	The PBGC guarantees a certain level of benefits in the case of terminating defined benefit plans that are underfunded. The plan must be in effect for at least 5-years for the PBGC to guarantee the full level of benefits, except in the case of substantial owners. For substantial owners, the benefit guarantee is phased-in over 30 years. "Substantial owners" are defined as individuals who own more than 10 percent of a business.	The same five-year phase-in that currently applies to a participant who is not a substantial owner would apply to a substantial owner with less than a 50 percent ownership interest. For a majority owner, the phase-in occurs over a 10-year period and depends on the number of years the plan has been in effect. Also, the majority owners' guaranteed benefit is limited so that it cannot be more than the amount phased-in over 5 years for other participants.	Not included.	Same as the House Bill.
Simplified Reporting and Documentation for Small Business	There presently is no 5500EZ Form for small businesses with employees. One participant plans are exempt from annual reporting requirements to the extent plan assets do not exceed \$100,000.	DOL would be directed to develop a simplified Form 5500 for plans with less than 25 participants. Further, one-participant plans would be exempt from annual reporting requirements to the extent plan assets do not exceed \$250,000.	Not included.	Not included.
Improvements to Voluntary Correction Programs	<p>The only statutory sanction for plan violations is disqualification of the plan—regardless of the severity of the infraction.</p> <p>In recent years, the IRS has established programs that address many of the problems inherent in the current statutory sanction structure. Each year the IRS issues a Revenue Procedure making improvements to these voluntary correction programs.</p>	<p>Treasury would be directed to update and improve the voluntary correction programs taking into account, among other things, the special concerns small employers face with respect to compliance and correction of compliance failures.</p> <p>The provision is effective on the date of enactment.</p>	Not included.	Same as the House Bill.

Issue	Current Law	House Bill	Senate HELP Bill	Senate Finance Bill
Nondiscrimination, Lines of Business, and Coverage Rules Safety Valve	<p>Section 401(a)(4) nondiscrimination rules consist of a series of complicated mechanical tests. Prior to 1994, these rules were not mechanical but rather were applied based on all the facts and circumstances.</p> <p>Separate line of business rules require unworkable testing and employee allocation requirements. Before using the SLOB test, the employer must pass a “gateway test” that applies on an employer-wide basis, thus defeating the purpose of the SLOB rules.</p>	<p>Treasury would be directed to modify regulations under sections 401(a)(4) and 410(b) to permit plans to satisfy the nondiscrimination and coverage rules and the section 414(r) lines of business rules using a facts and circumstances test when the mechanical tests do not appropriately reflect the nondiscriminatory nature of the plan. In order for a plan to take advantage of these rules, the plan would have to make a submission to the IRS for a determination that the facts and circumstances test has been met.</p>	Not included.	Not included.
Summary Annual Reports Delivered Electronically	<p>Participants must be provided a summary annual report within 9 months after the end of the plan year.</p>	<p>Summary annual reports could be provided to participants through electronic means.</p>	Not included.	Not included.
Suspension of Benefits Notice	<p>When an employee continues to work beyond normal retirement age, or is reemployed after commencing benefits, a defined benefit plan may provide for a suspension of pension payments during the post normal retirement age employment period. DOL regulations require that affected participants (even those who have not begun to receive benefits) be notified in writing of such potential suspension and that such notice include a copy of the relevant plan provisions.</p>	<p>DOL would be required to modify its regulations regarding suspension of benefits rules to eliminate the requirement of a written individual notice and instead require that the suspension of benefits rules be outlined in the summary plan description. This change would not apply to individuals reentering the workforce. Such individuals would still receive the existing suspension notice.</p>	Not included.	Same as the House Bill.

Issue	Current Law	House Bill	Senate HELP Bill	Senate Finance Bill
Various Studies and Programs	No provision in current law for these studies or programs.	<p>DOL and Treasury would be directed to study model plans that could be used by small businesses or groups of small businesses.</p> <p>DOL would be directed to study the effect of the provisions in EGTRRA on pension coverage for moderate income workers.</p> <p>DOL would be directed to establish a program to make available to plan fiduciaries information and educational materials regarding their fiduciary duties.</p> <p>DOL would be directed to study the feasibility (and potential cost) of requiring independent consultants to advise defined contribution plan fiduciaries regarding their obligations and responsibilities with respect to the plan.</p>	<p>The PBGC would be directed to study the feasibility of an insurance system for defined contribution plans.</p> <p>DOL would be directed to study the administrative and transaction fees incurred by participants in connection with the investment of assets in their accounts in a defined contribution plan.</p>	<p>Same as the HELP Bill, plus Treasury would be directed to study ways to revitalize employer interest in DB plans, including ways to encourage the establishment of DB plans by small and mid-sized employers and ways to encourage the continued maintenance of DB plans by larger employers.</p> <p>PBGC would be directed to determine the number of existing floor-offset ESOPs and to study whether such plans pose a risk to participants or to the PBGC.</p>
Technical Correction to Automatic Rollover Provision	EGTRRA requires that a direct rollover to an IRA must be the default option (i.e., in the absence of an affirmative distribution election by the participant) for an involuntary eligible rollover distribution that exceeds \$1,000. ERISA's fiduciary rules were also amended so that, in the case of an automatic direct rollover, the participant is treated as exercising control over the assets in the IRA upon (1) the earlier of a rollover to another IRA or one year after the automatic rollover is made; or (2) an automatic rollover made in accordance with DOL guidance. DOL was directed to issue safe harbors for complying with this provision. The provision is effective after final regulations implementing the provision are adopted by DOL. DOL has not yet proposed regulations in this area.	Not included.	Not included.	The portion of this provision in EGTRRA amending ERISA's fiduciary rules would be repealed. Thus, it would be clarified that amounts that are transferred to an IRA in an automatic rollover are no longer plan assets for purposes of ERISA. Of course, the designation of an institution to accept the IRA would still be a fiduciary decision under ERISA.

Issue	Current Law	House Bill	Senate HELP Bill	Senate Finance Bill
Provisions Relating to Plan Amendments	Generally, there is a short time within which to make plan amendments to reflect amendments to the law. In addition, the anti-cutback rules can have the unintended consequence of preventing an employer from amending its plan to reflect a change in the law.	Amendments to a plan or annuity contract made pursuant to any provision in the Bill would not be required to be made before the last day of the first plan year beginning on or after January 1, 2005 (2007, in the case of a governmental plan). Operational compliance would, of course, be required with respect to all plans as of the applicable effective date of any amendment required by the Bill.	Provisions in the Bill requiring a plan amendment would not have to be made before the 2005 plan year, provided such amendments are then retroactively made. Prior to amendment, the plan would have to be operated in good faith compliance with the provisions in the Bill.	Same as the House Bill.