



Dedicated to the Private Pension System

Summary of House Enron Pension Bill

Updated: May 14, 2003

Issue	Current Law	House Bill ¹
<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 the end of the plan year in which it is made. Thus, 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, the right to diversify would be phased-in over 5 years, increasing 20 percent per year, until fully phased-in.</p> <p>The proposal would not apply to plans if there is no class of stock issued by the employer (or by an affiliate of the employer) 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>

1. House Bill refers to H.R. 1000, the “Pension Security Act of 2003,” which was approved by the House Education and the Workforce Committee on March 6, 2003, by a vote of 29-19. It was passed by the full House on May 14, 2003, by a vote of 271-157. Provisions are generally effective for plan years beginning on or after the date, which is 1 year after the date of enactment, except as otherwise indicated. The Senate is expected to consider their Enron pension bill beginning in June 2003.

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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 in plans that allow participants to direct investments in their account. The most recent valuation can be used for determining the value of all investments. Further, vesting status may be determined on the basis of the latest available information (<i>e.g.</i>, end of the last plan year). It is unclear whether a separate vesting schedule would be permitted in cases where, like an open brokerage account, the investment recordkeeper does not have access to such information.</p> <p>Quarterly statements would have to include an explanation of any restrictions on the right to direct investment and an explanation on the importance of a diversified portfolio. Plans that do not allow participants to direct investments, stand-alone ESOPs, and one-participant plans would be exempt from the quarterly statement requirement, and instead would have to provide benefit statements 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 (at their last known address) with notice of their right to request a benefit statement at least annually. The provision does not specify how DB statements need to be prepared.</p> <p><u>Electronic Delivery:</u> Statements for both DC and DB plans could be provided by electronic means to the extent the statements are reasonably accessible to the recipient. The Committee report provides that statements may be made available on the sponsor's Web site as prescribed in DOL's regulations. It is unclear, however, whether participants need to be affirmatively made aware of the availability of the statement on the Web site each quarter.</p>

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<p>Investment and Retirement Savings Education Notices</p>	<p>There is currently no requirement to give participants with the right to direct investments any investment education.</p>	<p>In addition to the quarterly benefit statements, plans subject to ERISA are required to include in the statements an explanation of the importance of a diversified portfolio, including a discussion of the risk of holding more than 25 percent in a specific security. DC plans not subject to ERISA would have to give participants, at the time of enrollment, and annually thereafter, an investment education notice, including an explanation of generally accepted investment principles (including principles of risk management and the importance of diversification). One-participant plans are exempt from this requirement. The notice could be provided by electronic means to the extent it is reasonably accessible. The investment education notice applicable to non-ERISA plans would be under the jurisdiction of IRS.</p>
<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 during any blackout period during which a participants' ability to direct or diversify investments has been suspended by reason of the imposition of the blackout period. The term "blackout period" is as defined under the 30-day blackout notice requirements.</p> <p>However, if the fiduciary authorizing the blackout period satisfies its fiduciary obligations under ERISA, plan fiduciaries will not be liable for any loss occurring during the blackout period resulting from a participant's exercise of control over the assets in his or her account prior to the blackout period.</p> <p>The provision includes a safe harbor supported by ASPA that if followed will retain ERISA section 404(c) protection during a blackout period. When a blackout period results from a change in investment options, a participant is deemed to have exercised control over the account prior to the blackout period if, after proper notice, and in the absence of an affirmative election by the participant to choose to where current account assets should be invested among the new investment options, assets are transferred (or "mapped") to investment options in the manner as set forth in the notice.</p>

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<p>Application of ERISA Section 404(c) During a Blackout of Lockdown (cont.)</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 blackout period; (2) has satisfied the 30-day notice requirement; and (3) has satisfied its ERISA fiduciary responsibilities in determining to enter into the blackout period.</p>
<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 from plan assets. 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>Beginning in 2005, grants a prohibited transaction exemption for investment advice by "fiduciary advisors," provided that certain disclosure requirements are met, even if 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>

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<p>Proposals to Encourage the Provision of Investment Advice to Participants (cont.)</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 would qualify. Finally, an employee, agent or registered representative of any of the above would qualify if they satisfy applicable insurance, banking, or securities laws regarding advice.</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>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>Notice and Consent Period Regarding Distributions</p>	<p>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.</p>	<p>The notice and consent period regarding distributions would be expanded from 90 days to 180 days. Treasury would also be directed to modify its regulations under section 411(a)(11) to provide that the description of a participant’s right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt. The changes would be effective for plan years beginning after 2003.</p>

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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. Plan sponsors may voluntarily elect to extend the relief to 2001.</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>
<p>Expansion of Missing Participants Program</p>	<p>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.</p>	<p>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.</p>

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<p>Reduced PBGC Premiums for New and Small Plans</p>	<p>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>	<p>Effective for plans first effective after 2003, 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>Effective for plans first effective after 2003, 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>For plan years beginning after 2003, 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>
<p>Authorization for PBGC to Pay Interest on Premium Overpayments</p>	<p>The PBGC does not have the authority to pay interest on refunds of premium overpayments.</p>	<p>The PBGC would be authorized to pay interest on refunds of premium overpayments. The provision would apply to interest accruing after the date of enactment.</p>
<p>Rules for Substantial Owners Relating to Plan Terminations</p>	<p>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.</p>	<p>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. The provision generally would be effective for terminations after 2003.</p>

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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.	For plan years beginning after 2004, DOL would be directed to develop a simplified Form 5500 for plans with less than 25 participants. Further, for plan years beginning in 2003, one-participant plans would be exempt from annual reporting requirements to the extent plan assets do not exceed \$250,000.
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 would be effective on the date of enactment.</p>
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>	By 2005, 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 the changes to sections 401(a)(4) and 410(b), the plan would have to make a submission to the IRS for a determination that the facts and circumstances test has been met.
Summary Annual Reports Delivered Electronically	Participants must be provided a summary annual report within 9 months after the end of the plan year.	Effective for reports for years beginning after 2003, summary annual reports could be provided to participants through "reasonably available" electronic means. Committee report language provides that the provision would be interpreted consistent with DOL and Treasury regulations.

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Suspension of Benefits Notice	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.	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. These changes would apply for plan years beginning after 2003.
Various Studies and Programs	No provision in current law for these studies or programs.	<p>DOL (in consultation with 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 and this Act on pension coverage for low-and 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>
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 this Act or in EGTRRA would not be required to be made before the last day of the first plan year beginning on or after January 1, 2006 (2008, 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 Act or EGTRRA.