



**BILL SUMMARY & DRAFT ERIC POSITION**  
**H.R.1776**  
**PENSION PRESERVATION AND SAVINGS EXPANSION ACT OF 2003**  
**[MAJOR EMPLOYER PROVISIONS]**

*ERIC tentatively supports all provisions of H.R. 1776 except as noted.*

**TITLE I. – EGTRRA (P.L.107-16) PROVISIONS MADE PERMANENT (Secs. 101 & 102)**

- ! (101) Extend the pension & IRA provisions of EGTRRA beyond 12-31-2010.
- ! (102) Extend the low-income savers tax credit beyond 12-31-2006.

[EGTRRA substantially increased qualified plan limits and deduction limits and created a low-income savers tax credit. It made numerous change to rollover rules, provided anti-cutback relief for merged DC plans, eliminated the “same desk” rule and the multiple use test, required faster vesting for matching payments, provided an employer deduction for re-invested dividends, and made other changes.]

**TITLE II – PRESERVING RETIREMENT ASSETS (Secs. 201 through 205)**

- ! **Minimum Distributions:** (201) Increase age to begin minimum required distributions from 70½ to 75 by 2010; limit to one required distribution in first year; reduce excise tax for failure to take a distribution from 50% to 20%.
- ! **Cashouts and Unclaimed Benefits:** (202) Allow cashouts of \$5000 or less, distributions of more than \$5000 (after a one year wait), and account balances of missing DC plan participants to be transferred to the PBGC.
- ! **404(c) Protection for Rollovers to IRAs:** (203) Extend 404(c) protection to transfers to IRAs or annuity contracts specified by the plan so long as the participant elects the transfer and has an option to choose a different IRA or annuity contract.
- ! **Revise Proposed Regulations Regarding DB Plan Annuity Payments:** (204) Allow DB plans to satisfy the required distribution rules under the same rules as apply to annuity contracts under DC plans or other options provided in final regulations.
- ! **Study of DC Plan Losses Due to Market Volatility.** (205)

**TITLE III – ENHANCING FAIRNESS AND PENSION PORTABILITY (Sec. 301-312)**

- ! **Faster Vesting for Employer Contributions:** (302) The vesting schedule for nonelective employer contributions would be conformed to that for matching contributions in EGTRRA.
- ! **Treatment of Distributions to Non-spouse Beneficiaries:** (303) A non-spouse beneficiary of a deceased plan participant could transfer retirement plan benefits to an “inherited” IRA.
- ! **Direct Rollovers to Roth IRAs:** (304) For those eligible to participate in a Roth IRA, a plan distribution can be rolled directly into a Roth IRA account (instead of first to a traditional IRA).
- ! **Incentive to Choose Annuity Payment:** (305) Subject to certain income limits, by 2008 a percentage of distributions in the form annuity payments of up to one half of the IRC section 415 limit applicable to DC plans could be excluded from income.

[ERIC members may want to review proposal to ensure that it includes all forms of periodic payments offered by member-company plans.]

- ! **After-tax Rollovers Clarified:** (306) Clarify that rollovers of after-tax contributions, as permitted in EGTRRA, are permissible between 401(k) and 403(b) plans.
- ! **Exemption from Excise Tax for Changes to Distributions Prior to Age 59½:** (307) Allow change from one permissible method of distribution to another without incurring the 10% penalty tax under IRC section 72(t).
- ! **Subsequent QDROs:** (308) Subsequent QDROs must be obeyed by the plan for amounts paid after the subsequent QDRO has been determined to be qualified.
- ! **Delayed QDROs:** (309) QDROs meeting the requirements of ERISA must be recognized regardless of the date they were issued.
- ! **Preserving NUA:** (310) Correct omission from SBJPA (P.L. 104-188) that could cause a distribution a part of which is in the form of an annuity to be denied lump sum status for purposes of net unrealized appreciation.
- ! **Transfers Allowed When Employer Changes Type of Plan:** (312) If participant and spouse rights are preserved, an employer may transfer assets from one type of individual account plan to another.
  
- ! Other Provisions – **Transfer of IRA Between Spouses:** (301) Amounts in one spouse’s IRA could be transferred to the other spouse’s IRA without resulting in current taxation to either. **Exclusion of Retirement Assets from SSI Income Test:** (311) Up to \$75,000 in retirement assets could be excluded from determining an individual’s income and resources under SSI prior to age 60½.

#### **TITLE IV – INCREASING RETIREMENT PLAN PARTICIPATION AND SAVINGS (Secs. 401-405)**

- ! **Expand Savers’ Credit:** (401) Expand the credit percentage and the income limits for those eligible for the low-income savers’ credit.
- ! **Accelerate Scheduled Increases In Qualified Plan Limits:** (402) Among other changes, the \$15,000 dollar limit for 404(k) plans and \$5000 dollar limit for catch-up contributions would be accelerated from 2006 to 2004.
- ! **Automatic Enrollment:** (403) Extend ERISA sec. 404(c) protection to automatic enrollment programs and pre-empts state laws that prohibit automatic enrollment.
- ! **Transfer of Unused FSA Amounts to Qualified Plans:** (404) Allow up to \$500 of unused flexible spending account amounts to be transferred to a qualified plan, subject to the contribution rules applicable to that plan.
- ! **Exception to 25% of Compensation Deduction Limit:** (405) Where an employer maintains both DB and DC plan(s), limit the employer’s deduction for contributions in excess of 25% of compensation only to the extent contributions to the DC plan(s) exceed 6% of compensation.

TITLE V – EXPANDING RETIREMENT PLAN COVERAGE TO EMPLOYEES OF SMALL BUSINESS (Secs. 501-508)  
– Changes regarding SIMPLE plans and plans maintained by self-employed individuals.

TITLE VI – STRENGTHENING INDIVIDUAL RETIREMENT ARRANGEMENTS (Secs. 601-604) – Changes regarding IRAs.

## TITLE VII – REVITALIZING DEFINED BENEFIT PLANS (Secs. 701-709)

- ! **Contributory DB Plans:** (702) Employee contributions to DB plans may be on pre-tax basis.
- ! **Modify Minimum Participation Rule:** (703) The requirement that a DB plan cover 50 employees or 40% of the employer’s employees would apply only to the extent provided in regulations.
- ! **Plan Valuation Data:** (704) Allow DB plans to value plan liabilities on a date up to one year before the date of the plan valuation.
- ! **Replace 30-Year Treasury Bond:** (705) Replace 30-year bond with “amounts conservatively invested in long term corporate bonds”; phase in new rate for lump sums over seven years. Replace 30-year rate in 415(b) with 5.5%.

[The bill’s language is very general. Legislative history will be important in assuring that the final outcome closely resembles ERIC’s proposal.]

- ! **Extension of Temporary Fix to 2001:** (706) Extend “temporary fix” of 120% of 30-year rate to 2001.
- ! **Asset Valuation for PBGC Premiums:** (707) In determining whether contributions match the full funding limit (thereby exempting plan from VRP), plan could use the actuarial value of assets.
- ! **Mortality Table:** (709) Secretary is to develop blue-collar mortality table that could be used by plans.
  
- ! Other Provisions: **Multiple Employer Plan Deduction Limits** (701) **Multiemployer Plan Investment Loss:** (708) Modifies amortization rules for investment losses for multiemployer plans.

## TITLE VIII – SIMPLIFY AND STREAMLINE RETIREMENT PLAN RULES (Secs. 801-815)

- ! **Excise Tax on Excess Contributions:** (801) Extend time for corrective distributions.
- ! **Excess Benefit Plan** (802) Expand definition of excess benefit plan.
- ! **Paperless Technologies:** (803) Regulations are to expand circumstances under which paperless technologies can be used.

[ERIC members may want to determine what uses are already permitted under current law as well as what additional uses should be included.]

- ! **Base Pay:** (804) Regulations are to drop the requirement that “base pay” satisfy the mechanical, mathematical test in order to qualify the plan under the DB plan nondiscrimination rule safe harbor. [see Treas.Reg. 1.414(s)-1(d)(3)]
- ! **Separate Line of Business:** (805) Repeal the “gateway test.”
- ! **Restrict use of “Maximum Payment Amount”:** (806) Prohibits sanctions for inadvertent failures corrected prior to audit, and after commencement of audit requires sanctions that do “not exceed an amount that bears a reasonable relationship to the severity of the plan’s failure” for inadvertent failures that are corrected. In addition, non-highly compensated employee would be exempted from impact of disqualification.

[ERIC has strongly advocated ceasing to apply the “maximum payment amount” as a negotiating starting point for failures that occur despite good faith efforts to meet compliance regulation. But it has opposed the exemption of NHCE’s from the impact of plan disqualification because thousands of ERIC members’ employees could be irreparably harmed if the IRS increased use of disqualification because it would not impact NHCEs.]

- ! **Pre-retirement Survivor Annuity Waivers:** (807) An election made prior to age 35 to waive a qualified pre-retirement survivor annuity would continue to be valid after age 35.

- ! **Index \$5000 Cash-out Limit:** (808) Index the limit to the CPI in \$500 increments.
- ! **Catch-up Contribution Universal Availability Requirement:** (809) Do not consider employees under a collective bargaining agreement or employees of a qualified separate line of business in determining compliance with the requirement that catch-up contributions be available to participants in all 404(k) plans sponsored by the employer.
- ! **Fiduciary Duty Regarding Required Automatic Rollovers of Cash-outs:** (813) EGTRRA required mandatory cash-outs of vested accrued benefits to be transferred directly to an IRA unless the participant elects otherwise. The provision would amend 404(c) so that fiduciary obligations would extend only to the initial selection of the IRA and the investments thereunder, and no fiduciary liability under selections consistent with DOL guidance.
  
- ! Other Provisions: **Amendments to SEPs** (810-812) **Multiemployer and YMCA plans:** (814-815)

TITLE IX – EXPANDING RETIREMENT SAVINGS OPPORTUNITIES FOR EMPLOYEES OF TAX-EXEMPT ORGANIZATIONS AND GOVERNMENTS

**TITLE X – RESTRICTING EXCESSIVE REMUNERATION**

- ! **Excise Tax on Excessive Remuneration:** (1001) For payments made during or two-years preceding a period of bankruptcy, the 20% excise tax on excess golden parachute payments would be increased to 50% and applied to any “excessive employee remuneration,” i.e., taxable remuneration other than qualified plan benefits for which a deduction is not allowed under IRC sec. 162(m) paid to any person whose compensation is subject to sec. 162(m). Similar rules apply to non-public companies, and the excise tax is increased to 100% for tax gross-up payments.

**TITLE XI – DEFINED CONTRIBUTION PLAN PROTECTIONS**

- ! **Quarterly Investment Education Notices:** (1101) Participants in plans with participant-directed investments must receive quarterly a notice (e.g. a DOL model notice) outlining principles of risk management and diversification, including the risk of holding substantial portions of a portfolio in the securities of any one entity (such as employer securities).

[ERIC members may view this requirement as excessive.]

- ! **Black-out Notices:** (1102) The IRS would have authority to impose an excise tax penalty for failure to provide a notice (similar to that required by Sarbanes-Oxley) of an upcoming black-out period. In addition plans where individuals direct a hypothetical account – as well as church and government plans – would be required to provide notices.
- ! **Diversification Requirements for DC Plans:** (1103) Participants cannot be required to invest their own elective deferrals in employer stock. Employer contributions made in employer stock could be divested after 3 years of service in the case of matching payments or 5 years of service in the case of non-elective employer contributions. The requirements are phased in 20% per year 2004-2008. Stand-alone ESOPs and non-publicly traded stock are exempt.
- ! **Pre-tax Payment for Retirement Planning Services:** (1104) Employees could pay for retirement planning services on a pre-tax basis through payroll deduction.

- ! **Delayed Date for Collectively Bargained Plans:** (1105) Sections 1101-04 would be delayed for collectively bargained plans.

## TITLE XII – OTHER TAX PROVISIONS RELATING TO PENSIONS

- ! **Technical Changes to Funding Rules:** (1201) Make technical changes to the funding provisions of the Retirement Protection Act of 1994.
- ! **Improvements in EPCRS:** (1203) Extend the period for self-correction; expand the ability to self-correct during audit; assure that any penalty bears a reasonable relationship to the infraction; provide special education and features for small employers.
- ! **Timing of Distribution and Rollover Notice:** (1205) The required notice could be provided up to 180 days before the distribution instead of up to 90 days, but shall also describe the consequences of failing to defer receiving the distribution.
- ! **Group Legal Services:** (1210) Up to a maximum of \$150, contributions and services under group legal services plans would be allowed for 2004-2008. [A \$70 exclusion expired in 1992.]
- ! Other Provisions: **Simplified Reporting for Small Plans:** (1202). **Exempt Government Plans from Nondiscrimination and Participation Rules** (1204). **Reduction of PBGC Premium for New and Small Plans:** (1206, 1207). **Interest on PBGC Premium Overpayments:** (1208) PBGC may pay interest on refunds of premium overpayments. **Substantial Owner Benefits** (1209). **Studies** (1211)

## TITLE XIII – STOCK OPTIONS

- ! **Prohibit Application of Employment Taxes:** (1301) Clarifies that incentive stock option and employee stock purchase plans are not subject to employment taxes.

## TITLE XIV – OTHER ELEMENTS OF RETIREMENT SECURITY (I.E., RETIREE HEALTH)

- ! **Pre-tax Payments for Retiree Health:** (1401) Retirees could reduce their retirement plan distributions on a pre-tax basis in order to pay for retiree health benefits provided by the employer. The pre-tax payments are limited to \$500 in 2004-05, \$1000 in 2006-07, and \$2000 in 2008-09.
- ! **Pre-funding Through 401(h) Accounts:** (1402) 401(h) accounts could be maintained as part of a profit sharing or stock bonus plan. The 25% cumulative contribution limit would be phased in (5% in 2004-05, 10% in 2006-7, 20% in 2007-8).

## TITLE XV – PLAN AMENDMENTS

## TITLE XVI – SOCIAL SECURITY AND MEDICARE TRUST FUNDS HELD HARMLESS

6/19/03