THE ERISA INDUSTRY COMMITTEE

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Advocating the Benefit and Compensation Interests of America's Major Employers

Summary of S. 875: The Save More For Retirement Act of 2005

Sec. 2: A cash or deferred arrangement will be treated as meeting nondiscrimination testing requirements with regard to contributions if the arrangement constitutes an automatic contribution trust. *[Sec. 2(a), IRC §401(k)(13)(A), as amended]*

An automatic contribution trust is an arrangement under which each eligible participants will be treated as having elected to make employee contributions of the default amount (see below), and in which:

- **Employer contributions:** The employer makes matching contributions on behalf of each NHCE of 50% of the employee's elective contribution up to 7% , or makes a 3% nonelective contribution to all eligible NHCEs. Employers can meet the requirements of this section by making contributions in the same amount to another plan (including a DB plan). *[Sec. 2(a), IRC §401(k)(13)(C), as amended]*

- **Notice:** Employees receive annual notice explaining their rights under the arrangement and their right to opt out. *[Sec. 2(a), IRC §401(k)(13)(D), as amended]*

- **Participation:** Eligible participants must begin participation no later than the first day of the first calendar quarter after they become eligible. *[Sec. 2(a), IRC §401(k)(13)(E), as amended]*

- **Vesting:** Employer contributions are nonforeitable after one year of service or, in the case of an employee who is eligible to participate in the arrangement as of their first day of employment, 2 years of service. *[Sec. 2(a), IRC §401(k)(13)(E), as amended]*

- **Unwind:** The employee may elect to withdraw elective contributions, along with earnings, by the close of the latest of: (i) the payroll period in which the contributions first exceed $500; (ii) the employee's second payroll period, or; (3) one month after the close of the first pay period in which the automatic enrollment began. The distribution will be includable in income, but no §72(t) penalty will be applied. Matching contributions will be forfeited.

Default Percentage

The default deferral percentage must be at least 3%, and must increase by 1% annually, up to 10%. In the alternative, instead of annual increases, increases can be linked to compensation. *[Sec. 2(a), IRC §401(k)(13)(B)(iv), as amended]*

Existing Employees

Current employees who were eligible to participate in the plan on the day before the automatic enrollment arrangement was implemented, and whose rate of contribution was less than the default percentage, have a maximum one year delay before being enrolled in the plan. *[Sec. 2(a), IRC §401(k)(13)(B)(ii), as amended].*

Matching Contributions

IRC §401(m) is amended to provide that a defined contribution plan is treated as meeting the nondiscrimination requirements regarding contributions if the plan has an automatic enrollment arrangement that meets the new requirements and the employer provides the requisite matching or nonelective contribution. *[Sec. 2(b)]*

Exclusion from Definition of Top Heavy

A plan with an automatic enrollment arrangement is excluded from the definition of a top-heavy plan. *[Sec. 2(c),].*

Definition of Compensation

Treasury is directed to modify Treasury Regulation §1.414(s)-1(d)(3) to include increased flexibility in satisfying section 414(s) for plans in which overtime compensation can vary significantly. *[Sec. 2(d)]*

State Law Preemption

ERISA §514 is amended to provide that ERISA preempts any State law that directly or indirectly restricts "eligible automatic contribution arrangements" is preempted. *[Sec. 2(f), ERISA §514(e), as amended]*

ERISA 404(c) Relief/Default Investments

Sec. 3**:** ERISA §404(c) is amended to provide that a participant in a plan with an automatic enrollment arrangement who has received notice explaining his rights under the plan and how the contributions and earnings will be invested (and has had reasonable time to elect otherwise) will be treated as exercising control over the assets in the account in the absence of an investment election. Treasury is directed to issue regulations regarding default investments and provide guidance on "the appropriateness of designating default investments that include a mix of asset classes consistent with long-term capital appreciation".