



THE ERISA INDUSTRY COMMITTEE

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

ERIC POSITION STATEMENT

DEFINED CONTRIBUTION PROVISIONS IN THE NATIONAL EMPLOYEE SAVINGS AND TRUST EQUITY GUARANTEE ACT (JULY 2005)¹

Diversification of Pension Plan Assets/Notice of Freedom to Divest

Summary of Provision

Under the Senate Finance Committee bill, publicly-traded companies must allow employees to divest nonelective employer contributions and employer matching contributions from company stock in defined contribution plans at any time and employer matching payments upon completion of three years of service. The bill contains a transition rule that provides for a 3-year phase-in for stock contributed in previous years, but participants 55 and older with three years of service are permitted to divest immediately. The proposal provides that an employee must be notified of the right to divest out of employer stock no later than 30 days before the date the participant is first eligible.

ERIC Position

Major employers believe that investment in employer stock benefits both workers and employers: employers gain capital necessary to expand business operations and grow the workforce, and workers obtain a stake in the company as vested interest in its profitability. The current NESTEG divestiture provisions provide no guarantee that employees who divest out of company stock will re-invest retirement funds in a more secure, higher yield investment vehicle.

Periodic pension benefit statements

Summary of Provision

NESTEG requires self-directed defined contribution plans to provide quarterly benefit statements to participants, and requires non-self-directed plans to provide annual benefit statements. The Department of Labor is directed to develop model benefit statements that may be used by plan administrators in complying with this section.

¹ The summary of provisions is based on the July 2005 summary of provisions of the National Employee Savings and Trust Equity Guarantee Act (NESTEG) issued by the Senate Finance Committee. The bill was originally marked up on September 17, 2003 and favorably reported by the Senate Finance Committee by a voice vote. However, on October 1, 2003, the Committee recalled the bill and amended it. On February 2, 2004, the Committee marked up the bill again and ordered it favorably reported. The NESTEG bill was re-introduced in the 109th Congress as S. 219 on January 31, 2005 and marked-up by the Senate Finance Committee as part of its comprehensive retirement reform bill on July 26, 2005.

ERIC Position

The vast majority of major employers currently provide employees with detailed, comprehensive, user-friendly benefit statements on a regular basis. Few, if any, ERIC members have received complaints regarding the form, content, or timeliness of such statements. The changes to these statements that will be necessary to comply with the current proposal will be costly and time consuming, and will likely lead to confusion among employees. Major employers see no reason why the current form of benefits statement requires change.

Duty to provide material information to participants

Summary of Provision

The Senate proposal requires defined contribution plan sponsors to provide participants who may invest in employer securities with all reports, proxy statements, and other communications required to be provided to other investors in the company.

ERIC Position

Many major employers currently provide employees who invest in employer stock with access to any public filings and reporting information required under SEC rules. The current proposal, while well intentioned, will be costly to implement, and subjects employers to substantial penalties for even inadvertent failures that are undiscovered for more than 30 days.

Fiduciary Rules for Plan Sponsors Designating Independent Investment Advisors

Summary of Provision

NESTEG provides that sponsors and “other fiduciaries” of self-directed defined contribution plans may avoid liability for investment advice provided by a “qualified investment advisor” (QIA). Under the bill, the employer must verify that the person or entity is a QIA, acknowledges its role as a plan fiduciary, has reviewed the plan documents and determined that its relationship does not violate prohibited transaction rules, will consider employer securities allocated to participant accounts when providing investment advice, and has the necessary insurance coverage. The employer is also required to ‘adequately monitor’ the QIA under the bill.

ERIC Position

The current proposal places too great a burden on the employer with regard to verification of the QIA’s qualifications in a fiduciary role, and knowledge of the plan and ERISA. Employers will have no incentive to take on this additional fiduciary burden, particularly given the steadily increasing number of fiduciary lawsuits brought against sponsors of self-directed defined contribution plans.

Rollover of after-tax amounts

Summary of Provision

The Senate proposal allows after-tax contributions to be rolled over from a qualified retirement plan to another qualified retirement plan or to a tax-sheltered annuity.

ERIC Position

The current proposal creates administrative problems for plans that do not currently have after-tax contribution mechanism, and creates no incentives for employers to offer plans that permit after-tax contributions.

Faster vesting of employer nonelective contributions

Summary of Provision

NESTEG would apply the present law vesting schedule for matching contributions (3-year cliff or 6-year graded) to all employer contributions to defined contribution plans.

ERIC Position

Major employers oppose this proposal. In a constantly changing global economy, employers need the flexibility to design qualified plans that are both responsive to current employment conditions and functional as part of a comprehensive workforce management program. This provision strips employers of such flexibility, and discourages the implementation of new employee benefit plans.

Spousal consent for distributions from DC plans

Summary of Position

The Department of Labor and the Treasury Department are required to conduct a joint study of the feasibility of extending spousal consent requirements to defined contribution plans. Results will be reported to Senate Committees on Finance and HELP, and House Ways and Means and Education and the Workforce.

ERIC Position

Major employers oppose this added administrative burden to provide the intended security for the non-participant spouse. Major employers encourage lawmakers to seek options that would allow for electronic signatures.