



CONFERENCE POSITION ON DEFINED CONTRIBUTION PROVISIONS IN THE PENSION SECURITY AND TRANSPARENCY ACT OF 2005 (PSTA)¹, AND THE PENSION PROTECTION ACT OF 2005 (PPA)².

<u>TOPIC³</u>	<u>LANGUAGE IN PSTA AS PASSED 11/16/2005</u>	<u>PROVISIONS IN HOUSE BILL (H.R. 2830) AS PASSED 12/15/2005</u>	<u>ERIC CONFERENCE POSITION</u>
Diversification of Pension Plan Assets	<ul style="list-style-type: none">• (PTSA Sec. 701) Same.	None.	
Periodic pension benefit statements in defined contribution plans.	<ul style="list-style-type: none">• (Sec. 703) Administrators of individual account plans must furnish a benefit statement to each participant once per quarter.• DB plan administrators must furnish a statement once every 3 years to all participants with a nonforfeitable accrued benefit.• Most of the content requirements are still applicable.• Excise tax and civil penalty provisions eliminated.• Normal ERISA penalties apply.	None.	The vast majority of ERIC members provide participant access to clear, concise benefit statements at least quarterly. ERIC strongly urges conferees to amend this provision to provide for an exception to the formatting requirements for plans that provide substantially immediate access to benefit statements via internet or telephone. ERIC also urges changes to this provision that would make it effective only after final regulations are issued.

¹ S. 1783, introduced on September 28, 2005 and passed on November 16, 2005.

² H.R. 2830, as passed by the House on December 15, 2005.

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³ Provisions applicable exclusively to governmental, church, public or tribal plans or employees are not included in this summary. In addition, provisions applicable only to small businesses, S corporations, and industry-specific benefits (such as black lung benefits) are excluded.

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Additional IRA catch-up contributions- troubled companies	<ul style="list-style-type: none"> (Sec. 705) Amends IRC §219 (regarding IRA contribution limits) to permit an individual to make additional contributions up to three times the normal catch-up amount for IRAs, provided they participate in a 401(k) plan in which the employer matched at least 50% of the employee's contribution with stock of the employer, the employer has filed for bankruptcy, the employer or any other person is subject to an indictment or conviction resulting from business transactions related to the bankruptcy, and the individual was a participant in the plan on date 6 months prior to the filing of the bankruptcy. Savers Credit applies to an additional IRA contribution made by an eligible individual, and the Saver's Credit is extended until 12/31/07 for this purpose. 	None.	
Relief from Fiduciary Liability for 404(c) plans	<ul style="list-style-type: none"> (Sec. 706) §404(c) is amended to provide that fiduciary relief does not apply during blackout periods under certain conditions, including the provision of notice of the blackout under ERISA 101(i)(1). 	None.	

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Investment Advice and Education	<ul style="list-style-type: none"> • (Sec. 801) Same, except IRC is not amended. • Excise tax and civil penalty provisions eliminated. Normal ERISA penalties apply. 	See description below regarding Fiduciary Rules.	
Fiduciary Rules for Plan Sponsors Designating Independent Investment Advisors	<ul style="list-style-type: none"> • (Sec. 802) Same. 	The comparable provisions in the House bill would exempt from the prohibited transaction rules certain transactions involving the provision of investment advice to participants in self-directed individual account plans if the advice is provided by a 'fiduciary advisor' (as defined under the bill). The language of the bill requires that the fiduciary advisor make certain disclosures regarding fees, limits on the advice, and other material information. The bill allows plan sponsors to act as 'fiduciary advisors', but they must agree to accept fiduciary responsibility with regard to the advice.	

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Employer-Provided Qualified Retirement Planning Services	<ul style="list-style-type: none"> (Sec. 803) Same. 	None.	
Rollover of after-tax amounts	<ul style="list-style-type: none"> (Sec. 1002) Same. 	None.	ERIC members support provisions allowing rollover of after-tax amounts to plans equipped to accept them.
Rollovers by nonspouse beneficiaries	<ul style="list-style-type: none"> (Sec. 1005) Same. 	<ul style="list-style-type: none"> Permits nonspouse beneficiaries of retirement plan distributions to roll such amounts over to an IRA. 	ERIC members believe that this is an important provision that advances retirement policy goals of reducing leakage from the retirement system and preserving retirement assets.
Faster vesting of employer nonelective contributions	<ul style="list-style-type: none"> (Sec. 1006) Same. 	None.	This mandated change to the vesting schedule strips employers of the flexibility needed to design plans that meet their individual workforce needs, and discourages employers from implementing new plans.
Direct rollovers from retirement plans to Roth IRAs.	<ul style="list-style-type: none"> (Sec. 1007) Same. 	None.	

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Improvement of Employee Plans Compliance Resolution System (EPCRS)	<ul style="list-style-type: none"> (Sec. 1101) Same. 	None.	ERIC members support updating and improving the Employee Plans Compliance Resolution System.
Notice and consent period regarding distributions	<ul style="list-style-type: none"> (Sec. 1102) Same. 	None.	
Missing participants	<ul style="list-style-type: none"> (Sec. 1012) Same. 	None.	
Study of spousal consent for distributions from DC plans	<ul style="list-style-type: none"> None. 	None.	

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Default Investments	<ul style="list-style-type: none"> • (Sec. 1109) Provides that assets may be invested in default investments in an self-directed defined contribution plan when the participant gives no investment directions. • DOL directed to provide guidance as to the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation, long-term capital appreciation, or a blend of both. • Guidance to be issued no later than 6 months after enactment of this provision. • Effective Date: PYs beginning after 12/31/05. 	Similar provisions in House bill.	<p>While ERIC members applaud legislation that gives employers protection regarding default investments, members believe that default investments should focus more on long-term growth rather than capital preservation in an effort to provide plan participants with adequate retirement savings. As defined contribution savings plans become the primary (or sole) retirement savings vehicle for more Americans, asset growth becomes key to the efficiency of the voluntary employer plans system. As such, employers should be encouraged to select default investments that have the most potential to grow over time, while minimizing unreasonable risk.</p>

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Automatic Enrollment Arrangements	<ul style="list-style-type: none"> • (Sec. 1108) Provides for safe harbors from the nondiscrimination, matching, and top heavy rules created for CODAs with certain automatic enrollment features. • New hires must be automatically enrolled at 3% of compensation by the first day after the first quarter in which they become eligible. • Current employees must be automatically enrolled within 1 year after the adoption of the automatic enrollment arrangement, unless they opt out. • The automatic deferral rate increases by 1% each year, or in conjunction with an annual increase in compensation. • Corrective distributions: May be allowed upon employee request made no later than 60 days after the first employee contribution. 72(t) penalty will not apply. • Required employer contribution: A match of 50% of the first 7% of compensation or a nonelective contribution of 3%. • Two year cliff vesting. • State laws that prohibit automatic contribution arrangements are preempted. • DOL directed to develop requirements for default investments. • <u>Effective Date: PYs after 12/31/2005</u> 	<ul style="list-style-type: none"> • Provides that 401(k) plans will be deemed to meet the ADP, ACP and top-heavy requirements if the plan provides for an automatic enrollment arrangement that defers compensation in an amount totaling no more than 10% and no less than 3% in the first year, with up 1% increases. • Automatic deferral is not required for new employees. • At least 70% for eligible NHCEs must participate in the plan. • Required Employer Contribution: A match of 50% up to the first 6% of deferred compensation or a 2% nonelective contribution. • Two year cliff vesting. • Up to \$500 of amounts automatically deferred can be returned to the participant penalty-free in the case of an "erroneous automatic contribution". • The bill directs DOL to design default investments. • Conflicting state laws that prevent automatic contributions without an employee's express consent are preempted. 	<p>ERIC applauds efforts to support automatic enrollment legislation. However, ERIC members emphasize the following points:</p> <ul style="list-style-type: none"> - Employers and plan fiduciaries must retain the flexibility to select or create the default investment funds offered under the automatic enrollment arrangement. - All 401(k) plans should have the option to include an automatic enrollment feature, not just safe harbor plans. - Plans should be permitted, but not required, to provide for automatic increases in employee contribution rates. - Legislation should not mandate the design of automatic contribution increase features. - Plans with automatic enrollment should not be required to include "unwind" provisions, but should be allowed to include early, penalty-free distribution provisions for employees who wish to opt out of the plan after the first contribution is made on their behalf.

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Joint and Survivor Annuity Requirements	<ul style="list-style-type: none"> (Sec. 904) A participant who waives a QJSA or QPSA can elect a qualified optional survivor annuity. Plans currently required to offer a QJSA must provide a 75% qualified optional survivor annuity option. <u>Effective Date</u>: PYs beginning after 12/31/05. 	Same.	
Fiduciary Rules	<ul style="list-style-type: none"> (Sec. 1110) DOL directed to issue regulations clarifying that annuity options in individual account plans are not subject to Interpretive Bulletin 95-1 (relating to the fiduciary standard under ERISA when selecting an annuity provider) and are subject to all otherwise applicable fiduciary standards. 	Similar language added H.R. 2830.	
Remedial Amendments	<ul style="list-style-type: none"> (Sec. 1301) Amendments must be made by the last day of the first plan year beginning on or after 1/1/07, or as determined by Treasury. 	None.	ERIC members believe that plan sponsors will need more time to effect plan amendments, and seek a remedial amendment period that ends on the last day of the first plan year beginning on or after 1/1/08, or later if determined by Treasury.
Hurricane Relief	<ul style="list-style-type: none"> (Sec. 1302) DOL, Treasury, and the PBGC are granted authority to postpone certain deadlines by reason of Hurricane Katrina, Rita, and Wilma. 	None.	

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DBK Plans	<ul style="list-style-type: none"> • (Sec. 1336) Authorizes DBK plans under the Internal Revenue Code. • The DB portion of the plan must provide a minimum benefit of 1% of final average compensation per year of service up to 20 years. • DB benefits must be fully vested after 3 years. • DB plan can be a cash balance plan. • 401(k) plan component must provide matching contributions of at least 50% up to the first 4% of compensation. • 401(k) matching contributions are fully vested immediately and must provide for automatic enrollment at up to 4% of pay. • DBKs that meet the requirements are exempt from top heavy rules and are deemed to satisfy ADP and ACP nondiscrimination tests. • Limited to employers with 500 or fewer participants. 	None.	
Excess Contributions	<ul style="list-style-type: none"> • (Sec. 1339) Period of distributing excess contributions extended to 6 months in an automatic enrollment plan. 	None.	
Prohibited Transactions	<ul style="list-style-type: none"> • (Sec. 1341) Additional exceptions added for block trading, certain brokers and dealers, and foreign exchange transactions. 	Same.	
Restriction on Funding of NQDC Plan when DB Plan is Underfunded	<ul style="list-style-type: none"> • (Sec. 303) Same. 	<ul style="list-style-type: none"> • If an employer's db plan is in "at risk" status, assets set aside to pay NQDC benefits will be treated as §83 property. 	

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EGTRRA Permanency	None.	<ul style="list-style-type: none"> Makes permanent the provisions of EGTRRA related to defined contribution plans. 	ERIC members strongly support EGTRRA permanency. See <i>ERIC Conference Position on the Pension Provisions in EGTRRA</i>.
Saver's Credit	None.	<ul style="list-style-type: none"> Makes permanent the Savers' Credit. 	ERIC members support making the Saver's Credit Permanent.
Penalty Free Withdrawals for Active Reservists	None.	<ul style="list-style-type: none"> Provides for penalty-free withdrawals for active reservists called to duty for at least 179 days. 	
Long Term Care Contracts	None.	<ul style="list-style-type: none"> Provides that if a charge against the cash value of an annuity contract or a life insurance contract is used to pay for coverage under a long term care contract, the investment in the original contract is reduced and the charge will not be included in gross income of the taxpayer. Allows annuity contracts and life insurance contracts to include qualified long-term care insurance riders. Provides for the expansion of tax-free exchanges of life insurance contracts and annuity contracts for long term care contracts. Note: 401(a) qualified trusts will <u>not</u> be treated as annuity contracts under these rules. 	
Flexible Spending Accounts	None.	<ul style="list-style-type: none"> Allows up to \$500 of unused benefits in a health or dependent care flexible spending account to be carried forward or contributed to a HSA (in the case of a health flexible spending account). 	