ERIC COMPARISON OF MAJOR EMPLOYER DEFIEND CONTIBUTION PROVISIONS IN THE CHAIRMAN'S MARK OF THE NATIONAL EMPLOYEE SAVINGS AND TRUST EQUITY GUARANTEE ACT (NESTEG)[1] AND THE PENSION SECURITY AND TRANSPARENCY ACT OF 2005 (PSTA)[2]

TOPIC[3]	LANGUAGE IN JULY 26, 2005 NESTEG MARK UP	LANGUAGE IN PSTA AS INTRODUCED 9/28/2005	AFFECTED CODE/ERISA PROVISIONS[4]
Diversification of Pension Plan Assets	• 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 3 years of service (YOS). Transition rule: 3-year phase-in for stock contributed in previous years, but participants 55 and older w/3 YOS can divest immediately. • Must provide at least 3 investment options. • Does not apply to free-standing ESOPs. • Does not apply to privately held companies. • Option to diversify must be available quarterly. • Applies to both employer securities and employer real property • <u>Effective Date</u>: Plan Years (PY) beginning after 12/31/05, w/ an extension for collectively bargained plans.	• (PTSA Sec. 701) Same.	New IRC §401(a)(35);New ERISA §204(j)

[1] The summary of the NESTEG Chairman's Mark is based on the Senate Finance Committee's on the National Employee Savings and Trust Equity Guarantee Act (NESTEG). 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 if its comprehensive retirement reform bill on July 26, 2005.

[2] S. 1783, introduced on September 28, 2005.

[3] Provisions applicable exclusively to governmental, church, or public 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.

[4] Based on legislative language from PSTA.

<u>TOPIC</u>	**<u>LANGUAGE IN JULY 26, 2005 NESTEG MARK UP</u>**	**<u>LANGUAGE IN PSTA AS INTRODUCED 9/28/2005</u>**	**<u>AFFECTED CODE/ERISA PROVISIONS</u>**
Periodic pension benefit statements in defined contribution plans.	• Requires self-directed defined contribution plans to provide quarterly benefit statements. • Non-self-directed DC plans must provide annual benefit statements. • DOL directed to develop model benefit statements that may be used by plan administrators in complying with this section. • The notice must include market value of each investment and, for self-directed accounts, description of any restrictions on right to direct investments, and a notice that assets may not be adequately diversified if over 20% of the account is in one investment. • Notice must also indicate total benefits accrued, vested accrued benefit, and an explanation of any floor-offset arrangement. • Excise tax for failure to provide statement or model form: $100 per day for each participant, capped at $500,000, if the employer exercises "reasonable diligence" to meet the requirement. • No tax if employer did not know of failure, or corrects failure within 30 days. • Civil penalties under ERISA of up to $100 per day also apply. • <u>Effective Date</u>: Plan Years (PY) beginning after 12/31/06, extension for collectively bargained plans	• (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.	ERISA §§105

TOPIC	LANGUAGE IN JULY 26, 2005 NESTEG MARK UP	LANGUAGE IN PSTA AS INTRODUCED 9/28/2005	AFFECTED CODE/ERISA PROVISIONS
Additional IRA catch-up contributions-troubled companies	• Individuals will be permitted to make additional contributions to an IRA up to $1,500 per year in 2005, and $3,000 per year in 2006-2009, 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. • <u>Effective Date</u>: taxable years beginning after 12/31/2004 and before 1/1/2010.	• (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.	New IRC §219(b)(5)(C)
Investment Advice and Education	• Requires the administrator of a defined contribution plan to provide (annually) a model form relating to basic investment guidelines to each participant or beneficiary who has the right to direct plan investments. • DOL and Treas. are directed to develop, subject to public comment, a model form that includes information on the benefits of diversification, information on the risk and return characteristics of different types of investments, information on investment allocation based on age, retirement and other factors, and sources of information on participant rights and investment advice. • Excise tax for failure to provide statement or model form: $100 per day for each participant, capped at $500,000, if the employer exercises "reasonable diligence" to meet the requirement. • No tax if employer did not know of failure, or corrects failure within 30 days. • Civil penalties under ERISA of up to $100 per day also apply. • <u>Effective Date</u>: PYs beginning after 12/31/06, extension for collectively bargained plans	• (Sec. 801) Same, except IRC is not amended. • Excise tax and civil penalty provisions eliminated.	New ERISA §101(m)

TOPIC	LANGUAGE IN JULY 26, 2005 NESTEG MARK UP	LANGUAGE IN PSTA AS INTRODUCED 9/28/2005	AFFECTED CODE/ERISA PROVISIONS
Fiduciary Rules for Plan Sponsors Designating Independent Investment Advisors	• Sponsors and "other fiduciaries" of self-directed DC plans may avoid liability for investment advice provided by a "qualified investment advisor" (QIA), if certain requirements are met. • 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. • Employer must adequately monitor QIA • Employer who complies with provisions will be deemed to have satisfied its fiduciary duty and will not bear liability for any loss or breach resulting from the investment advice • <u>Effective Date</u>: QIAs designated after the date of enactment.	• (Sec. 802) Same.	New ERISA §404(e)
Restriction on Funding of NQDC Plan when DB Plan is Underfunded	• During any restricted period, a plan sponsor of a db plan (and any member of its controlled group) may not transfer or reserve assets in trust for purposes of paying deferred compensation to a covered employee under a NQDC plan. • Covered employees: CEO and the four highest compensated offers for the taxable year. • Creates a right of action by the Secretary of Labor or plan fiduciary to recover assets set aside for NQDC in violation of the proposal.	• (Sec. 303) Same	New ERISA §22306

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Employer-Provided Qualified Retirement Planning Services	• Allows an employee to choose between cash compensation and eligible qualified retirement planning services (up to $1000 per year). • Services must be provided by an "eligible investment adviser". • Amounts are included in compensation for purposes of applying the limits on contributions and benefits, and employer is able to elect whether or not to include amounts in compensation for nondiscrimination testing. • Effective Date: Taxable years after 12/31/05 and before 1/1/2011.	• (Sec. 803) Same, except sunset provision eliminated.	IRC §132(m)
Rollover of after-tax amounts	• Allows after-tax contributions to be rolled over from a qualified retirement plan to another qualified retirement plan (DC or DB) or to a tax-sheltered annuity. • Effective Date: Taxable years after 12/31/05	• (Sec. 1002) No longer allows rollovers to any other qualified retirement plan. Only allows rollovers to a 403(b).	IRC§402(c)(2)
Rollovers by nonspouse beneficiaries	• Benefits of a beneficiary other than a surviving spouse may be transferred directly to an IRA. Applies to amounts payable to a beneficiary under a qualified retirement plan, governmental §457 plan, or tax-sheltered annuity. • Effective Date: Distributions made after 12/31/05	• (Sec. 1005) Same.	IRC §§ 402, 403(a)(4), 403(b)(8), 457(e)(16)
Faster vesting of employer nonelective contributions	• Applies the present law vesting schedule for matching contributions (3 year cliff or 6 year graded) to all employer contributions to DC plans. • Effective Date: PYs beginning after 12/31/05, with a delayed effective date for collectively bargained plans.	• (Sec. 1006) Same.	IRC §411; ERISA §203
Direct rollovers from retirement plans to Roth IRAs	• Allows distributions from tax-qualified retirement plans, tax-sheltered annuities, and governmental 457 plans to be rolled over directly to Roth IRAs • Effective Date: Distributions after 12/31/05	• (Sec. 1007) Same.	IRC §408A(e)

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Improvement of Employee Plans Compliance Resolution System (EPCRS)	• Treasury directed to continue to update and improve EPCRS, giving special attention to small employers, extending the duration of the self-correction period for significant failures, expanding the availability to correct insignificant failures during audit, and assuring that penalties and fees are reasonable. • Effective Date: Date of enactment.	• (Sec. 1101) Same.	
Notice and consent period regarding distributions	• Qualified retirement plans are required to provide the applicable distribution notices under current law no less than 30 or more than 180 days before the distribution commences, and to include the notice of the consequences of failure to defer receipt of the distribution. • Effective Date: PYs beginning after 12/31/05	• (Sec. 1103) Same.	IRC §417(a); ERISA §205(c)
Missing participants	• PBGC missing participant program extended to DC plans, multiemployer plans, DB plans with no more than 25 participants, and a portion of DB plans that provide benefits under separate accounts and are therefore treated as DC plans under ERISA. • Effective Date: After final regs. are prescribed.	• (Sec. 1012) Same.	ERISA §4050
Study of spousal consent for distributions from DC plans	• DOL and Treasury required to conduct a joint study of the feasibility of extending spousal consent requirements to DC plans. Results to be reported to Senate Committees on Finance and HELP, and House Ways and Means and Education and the Workforce. • Effective Date: Date of enactment	• Eliminated	
Division of Pension Benefits upon Divorce	• DOL directed to issue regulations to clarify that domestic relations orders otherwise meeting the QDRO requirements will not fail to be treated as a QDRO solely because of the time it is issued or because it revises an earlier domestic relations order. • Effective Date: Date of enactment.	• (Sec. 901) Same.	