1 EXECUTIVE COMMITTEE MEETING TO CONSIDER THE RETIREMENT
2 AND SAVINGS ACT OF 2000; AND THE RETIRED COAL MINERS
3 HEALTH BENEFITS SECURITY ACT
4 THURSDAY, SEPTEMBER 7, 2000
5 U.S. Senate,
6 Committee on Finance,
7 Washington, DC.
8 The meeting was convened, pursuant to notice, at
9 10:44 a.m., Hon. William V. Roth, Jr. (chairman of the
10 committee) presiding.
11 Present: Senators Grassley, Hatch, Nickles, Gramm,
12 Jeffords, Mack, Thompson, Moynihan, Baucus, Rockefeller,
13 Breaux, Conrad, Graham, Bryan, Kerrey, and Robb.
14 Also present: Franklin G. Polk, Staff Director and
15 Chief Counsel; David Podoff, Minority Staff Director and
16 Chief Economist.
17 Also present: Jon Talisman, Acting Assistant
18 Secretary of Treasury for Tax Policy; Lindy Paull, Chief
19 of Staff, Joint Committee on Taxation; William Sweetham,
20 Tax Counsel, Senate Finance Committee; Ms. Carla Martin,
21 Chief Clerk, Senate Finance Committee.
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1 OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S.
2 SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE
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4 The Chairman. The committee will please come to
5 order.
6 This morning the committee will consider two matters,
7 the Retirement and Savings Act of 2000, and the Retired
8 Coal Miners Health Benefits Security Act.
9 The first matter is a Finance Committee substitute to
10 the House-passed retirement security legislation. The
11 second matter is an original bill that is derived from
12 Senator Rockefeller's proposal for coal miners' health
13 benefits.
14 I would like to note that I place before the
15 committee the second matter as an accommodation to
16 Senator Rockefeller. The Chairman's mark was intended as
17 an opportunity for the committee to work its will on an
18 issue that is of vital interest to Senator Rockefeller.
19 Let me also note that Senator Moynihan and I are
20 managing the PNTR China trade legislation, and that
21 legislation is being debated today. Because of this
22 demand on our time, I respectfully ask committee members
23 to help us expedite this mark-up.
24 Now, I would like to turn to the first matter. The
25 work we do today, I believe, will go a long way towards

1 helping Americans everywhere prepare for secure
2 retirements. It builds upon a philosophy that is largely
3 embraced by members on both sides of the aisle, and that
4 is the philosophy of self-reliance, giving individuals
5 and families the ability to provide for themselves.
6 The economy is strong. More Americans are working
7 today than ever before. Congress is able to seize on
8 these conditions to help create an environment where
9 Americans can plan for the long term. Towards this end,
10 there is nothing more important than sound retirement.
11 Right now, Americans are not--are not--saving enough
12 for their retirements. They are prevented from doing so
13 by several factors, including a Tax Code that discourages
14 savings.
15 What we propose here is to reverse some of these
16 disincentives and expand retirement savings opportunity
17 for millions. What we propose is largely a bipartisan
18 effort, taking major provisions out of a pension bill
19 sponsored by Senators Baucus, Graham, Grassley, Jeffords,
20 Breaux, Hatch, Kerrey, Robb, Murkowski, Thompson, and
21 Mack.
22 The cash balance provision of this bill has the
23 bipartisan participation of Senators Jeffords, Grassley,
24 Moynihan, Graham, and Baucus. I appreciate their
25 support.

1 What we are doing here will benefit millions of
2 Americans, allowing them to save more in their IRAs,
3 their 401(k)s, their 403(b)s, S457s, and simple plans.
4 It will help small employers and make it easier to
5 transfer funds between plans to better meet employees'
6 needs. It has a special provision for a non-refundable
7 matching tax credit for low- and moderate-income savers.
8 I look forward to moving this important effort
9 forward in the same spirit of bipartisan cooperation that
10 has marked our work thus far. So, I call up H.R. 1102,
11 the Comprehensive Retirement Security and Pension Reform
12 Act. I offer an amendment in the nature of a substitute,
13 which is a modification to the Chairman's mark.
14 Senator Moynihan, I know, will be here soon, but I
15 would turn to Senator Baucus.
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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA
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4 Senator Baucus. Thank you very much, Mr. Chairman.
5 Just a couple of points. One, although these are
6 good times, generally, in America, we all know that a
7 large segment of our country does not save nearly as much
8 as it should. I deeply compliment you on your bill to
9 try to encourage more pension savings, as you have
10 provided for in this bill.
11 But if we are honest with ourselves, we all know
12 that, with the declining personal savings rate in our
13 country, an issue that frustrates a good number of us and
14 which baffles a good number of us who have tried over the
15 years to try to enact savings incentives to try to
16 encourage the personal savings rate and have found that
17 it really has not worked very well. That is, is probably
18 cultural, the main reason why Americans do not save very
19 much of their income compared with peoples in other
20 countries.
21 But, nevertheless, I think it is important to keep
22 trying to do what we can, because it is like everything
23 else in life, we have got two choices, either we try or
24 we do nothing. Clearly, to try to do something here to
25 encourage savings, and pension savings, in this case, is

1 better than not trying at all.

2 I just note that, for two-thirds of the seniors in
3 our country on retirement, Social Security is the primary
4 source of income. For about 16 percent of seniors, it is
5 the only source of income.

6 Current employees face a difficult situation as well.
7 If you work for a large company, three out of four
8 employees have somewhat of a decent pension plan. But if
9 you work for a small company, only one out of three
10 employees have a pension plan.

11 We have various provisions in this bill, Mr.
12 Chairman--and I think you have got a very good bill--
13 designed to help encourage more savings. I have a couple
14 of amendments that are in the bill, designed particularly
15 to encourage more small business savings. That is, a
16 credit to an employer who sets up a pension plan, as well
17 as a credit to middle/lower income employers who save as
18 they get a credit from Uncle Sam.

19 I think that is going to help, and particularly help
20 address, at least theoretically, and probably at the
21 margin practically, the disparity that is growing,
22 unfortunately, in America between higher income Americans
23 and lower income Americans.

24 This is not a perfect bill, but it is an effort to
25 try to redress a significant problem in our country,

1 i.e., insufficient pension savings for too many
2 Americans. I thank you, Mr. Chairman.
3 The Chairman. Thank you, Senator Baucus.
4 Our distinguished Ranking Member is here. He has
5 been doing yeoman's service on the floor with respect to
6 China. So, I would call upon him for any remarks he
7 would care to make.
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1 OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S.
2 SENATOR FROM NEW YORK
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4 Senator Moynihan. Thank you, Mr. Chairman.
5 I am delayed by the vote on the motion to go on to
6 the permanent normal trade relations, and I am happy to
7 report to you, sir, that as I left the floor, there were
8 only five negative votes. That is a triumph; I hope you
9 feel it personally. There were four votes missing.
10 Our ever-faithful Marty said, oh, there are four of
11 us; I think they mostly think that they have voted.
12 Senator Rockefeller, just this moment, tapped me on the
13 shoulder and said, I have got to rush back to the floor,
14 I forgot to vote.
15 The Chairman. There is nothing more annoying than
16 to go over to vote and forget to do so. [Laughter].
17 Fortunately, I have never done it.
18 I know a number of people have said that they would
19 like to make remarks, so I will give that opportunity.
20 But again, if I could, I would ask you to keep them very
21 brief because Pat and I do have to go back to the floor
22 because of the legislation that is there that we are
23 managing.
24 So with that, I would call upon my good friend and
25 colleague, Senator Grassley.

1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.
2 SENATOR FROM IOWA
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4 Senator Grassley. Mr. Chairman, I want to take
5 advantage of the opportunity to thank you for moving
6 forward on this bill. Obviously, you have been a strong
7 supporter for all the years you have been in Congress of
8 enhancing opportunities to save, and I compliment you on
9 everything you have done on the IRAs and things of that
10 nature.
11 Since Senator Graham of Florida and I have been
12 involved in pension provisions of this legislation, you
13 have acknowledged that, I just want to say a short
14 comment about why we think that these pension changes are
15 absolutely necessary.
16 I would simply say that, when pension laws were
17 passed, times have surely changed in the sense that we
18 have people in and out of the workforce changing jobs
19 many times, and the pension laws are way behind. The
20 days of somebody staying in the same job for decades are
21 over.
22 I will just use an illustration of my own sisters. I
23 had one sister that worked 46 years for F.W. Woolworth.
24 She retired 10 years ago. I have another sister that is
25 in her 41st year of teaching at a small school in Iowa.

1 On the other hand, I have a daughter who has changed
2 jobs five times in 10 years, and let me suggest to you,
3 she has done better each time she has changed jobs. But
4 now she is in her own small business and she will want to
5 give her employees in that small business a pension plan
6 sometime. The laws should not shortchange workers in
7 small businesses. We want to encourage small businesses
8 to have pension plans, and our bill brings this pension
9 law up to date.
10 The Chairman. Thank you, Senator Grassley.
11 Who else wants to speak? Senator Jeffords.
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1 OPENING STATEMENT OF HON. JAMES M. JEFFORDS, A U.S.
2 SENATOR FROM VERMONT
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4 Senator Jeffords. Thank you, Mr. Chairman, for all
5 of your hard work on putting together the Retirement and
6 Security Savings Act of 2000.
7 This Chairman's mark is a strong statement in favor
8 of enhanced retirement savings opportunities for all
9 Americans. I particularly appreciate all of your work,
10 and that of your staff, in putting together the
11 bipartisan agreement on cash balance pension plan
12 conversions. I believe we can all be very proud of the
13 cash balance disclosure provisions of this bill.
14 These provisions will provide realistic and useful
15 information to employees in advance of cash balance
16 conversion for similar transactions. The disclosure
17 requirements go further than the administration's
18 proposal, especially on provisions dealing with
19 disclosure of early retirement benefit changes.
20 The bipartisan agreement in the Chairman's mark
21 prohibits wear-away of normal retirement benefits. This
22 approach on wear-away is not everything sought by some
23 pension plan participants, but I think it is important
24 that we have bipartisan consensus if we want something
25 that can be enacted into law this year.

1 The cash balance section of the Chairman's mark also
2 contains statutory no inference language with respect to
3 other laws. In other words, we have made clear that the
4 cash balance provisions can have no effect on ongoing
5 litigation. This is important for those groups and
6 individuals who have filed lawsuits challenging the
7 validity of cash balance plans.
8 I look forward to hearing constructive criticism on
9 the cash balance provision and plan to continue working
10 in a bipartisan way to make amendments to the proposal
11 once it reaches the Senate floor.
12 Mr. Chairman, I want to make one additional comment
13 about Senate floor consideration of the bill. As
14 Chairman of the Health, Education, Labor and Pensions
15 Committee, I will be working with the committee members
16 to clear a package of additional ERISA amendments that I
17 plan to offer once this bill goes to the Senate floor.
18 Mr. Chairman, thank you for all of your hard work,
19 and I congratulate you on a fine job.
20 The Chairman. Thank you, Senator Jeffords.
21 Senator Hatch?
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1 OPENING STATEMENT OF HON. ORRIN G. HATCH, A. U.S. SENATOR
2 FROM UTAH
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4 Senator Hatch. Mr. Chairman, I will only take a
5 minute or two. I am very impressed with what you have
6 tried to do here, and there is no question that our
7 savings rate recently dropped to a negative number. That
8 is bad news as we move toward the retirement of the huge
9 baby boom generation.
10 So I believe the changes to our tax laws included in
11 this bill will be well-received by the American people
12 who will respond to the increased savings, and I am
13 impressed with the bipartisan nature of the bill.
14 However, Mr. Chairman, it is important to note that
15 our savings crisis is not the only urgent problem facing
16 us right now. The morning's papers are reminding us once
17 again that America's dependency on foreign energy could
18 bring serious oil shortages this winter.
19 I believe this reconciliation bill, before it leaves
20 the Senate, should also include some bipartisan
21 provisions to help move us toward more energy security,
22 just as this mark will move us toward more retirement
23 security. That is all I will say at this point, but I do
24 intend to bring up an amendment, which I will withdraw,
25 that makes that point a little bit later.

1 The Chairman. The Senator from Nebraska.
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1 OPENING STATEMENT OF HON. J. ROBERT KERREY, A U.S.
2 SENATOR FROM NEBRASKA
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4 Senator Kerrey. Mr. Chairman, you can blame the
5 Social Security Administrator for my comments and taking
6 time away. I have to note to my colleagues that the
7 Social Security Administrator objected to proposals that
8 would modify the payroll tax that has become a source of
9 wealth in Oregon. He was factually inaccurate, I think
10 demonstrating once again he is nowhere near as
11 independent as our law intended him to be.
12 But I have to point out to my colleagues that it is
13 the payroll tax, in my view, that is the principal
14 barrier to savings for low- and moderate-income people.
15 If you really want to help people, and even though I
16 support the bill, I will vote for it today and I will
17 vote for it on the floor, until and unless we are willing
18 to look at what the payroll tax is doing as far as the
19 barrier to low- and moderate-income families, it is going
20 to be exceptionally difficult for us to help them
21 generate the wealth that all of us are saying that we
22 want to try to accomplish with this bill.
23 Senator Nickles. Mr. Chairman?
24 The Chairman. Yes, Senator Nickles.
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1 OPENING STATEMENT OF HON. DON NICKLES, A U.S. SENATOR
2 FROM OKLAHOMA
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4 Senator Nickles. Mr. Chairman, I might just make a
5 comment, and staff can correct me if I am wrong. I am
6 going to support the package, but I do think we have gone
7 too far in the credit for low-income individuals. And
8 staff can correct me, but these are people that have an
9 IRA, so this would be done with before-tax dollars, is
10 that correct? So these would not be taxable, federal
11 income tax. They would pay no income tax?
12 Mr. Sweetham. It would depend. You can make a
13 contribution to an IRA either on a before-tax basis or an
14 after-tax basis. It is the same for 401(k) or some of
15 the other provisions.
16 Senator Nickles. But most people would do it before
17 income tax, and they would get a tax credit. They could
18 get both. I think that is too much. You are talking
19 about a 50 percent credit for individuals or couples, I
20 think, up to $30,000; a 50 percent credit for the amount
21 contributed, plus you are talking about tax-exempt or
22 non-taxable income going into it. I think it is a little
23 heavy. I would just make mention of that.
24 I will work with the Chairman; I am not going to
25 raise it now. I filed an amendment or two. Frankly, we

1 have got a lot o of other things going on right now. But
2 I do think, in that one particular area, we have done a
3 little much, and I would say the same thing for the tax
4 credit for small business, to make these contributions.
5 I am a small businessman, too, but I do not know that
6 you need a 50 percent credit for three years to jump
7 start it. So, those are two small provisions out of
8 about four pages of provisions, most of which will
9 certainly encourage savings.
10 The expansion of eligibility, the expansion of the
11 dollars that can be contributed to both 401(k)s and IRAs,
12 I think you are to be applauded on. I applaud the House.
13 Frankly, the House put together a very good package and
14 got 400 votes for it. They are to be commended for that.
15 I look forward to supporting the package. I just wanted
16 to make those two reservations on two sections.
17 Senator Conrad. Mr. Chairman?
18 The Chairman. Yes, Senator Conrad.
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1 OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR
2 FROM NORTH DAKOTA
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4 Senator Conrad. Mr. Chairman, might I just briefly
5 thank the Chairman and our Ranking Member, Senator
6 Moynihan, for their special contributions to this bill,
7 Senator Baucus and Senator Grassley as well, who have
8 worked very hard to give us a package that I think, while
9 not perfect--I mean, if all of us were designing this
10 individually I am sure we would have preferences that are
11 not included here--but this is a good package. It is a
12 solid package.
13 It is going to improve pensions in this country. It
14 is going to improve access through small business to
15 pensions. I think we should also salute Senator Bob
16 Graham, who is not here, who has also made a special
17 effort. So I wanted to single out the five of you who
18 have really made a significant contribution here.
19 We did take a good House package, I think Senator
20 Nickles is correct, and make it better. That is a good
21 bit of business for the day.
22 The Chairman. We are pleased that we did it with a
23 bipartisan approach.
24 The Senator from Virginia.
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1 OPENING STATEMENT OF HON. CHARLES S. ROBB, A U.S. SENATOR
2 FROM VIRGINIA
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4 Senator Robb. Thank you, Mr. Chairman. I was not
5 going to speak, but I just wanted to say, with respect to
6 the comments by my friend from Oklahoma, that I would
7 take a little different view of both the low income tax
8 credit, I think we are probably going to have to make it
9 refundable if we are actually going to meet our goals,
10 and the small business tax credits. I thank you very
11 much for including those. I think they will make a
12 difference.
13 Again, I join others in commending the Chairman and
14 the Ranking Member for working very hard to make this a
15 bipartisan approach. I think it does, clearly, move in
16 the right direction and I plan to support it. But we
17 will work to improve it in ways that we can. Thank you,
18 Mr. Chairman.
19 The Chairman. Thank you, Senator Robb.
20 We will now call upon Bill Sweetham to briefly
21 describe the modification.
22 Mr. Sweetham. Thank you, Mr. Chairman.
23 The modification of the Chairman's mark contains the
24 following items: first, it eliminates the marriage
25 penalty inherent in the rules for conversions from a

1 traditional IRA to a Roth IRA. Under current rules, all
2 taxpayers can only convert to a Roth IRA if their
3 adjusted gross income is $100,000 or less. Married
4 individuals filing separately are unable to convert to a
5 Roth IRA.
6 This modification changes the rule so that married
7 individuals filing jointly will be able to convert if
8 their adjusted gross income is $200,000 or less, and all
9 other taxpayers can convert if their adjusted gross
10 income is $100,000 or less.
11 Number two. The modification changes the credit rate
12 for non-refundable tax credit for low- and moderate-
13 income savers in order to even out the credit rates to
14 reduce the credit eligibility cliffs when moving from one
15 income level to another.
16 In addition, the limitation on the availability of
17 the credit to those taxpayers age 60 and younger is
18 eliminated. Therefore, the credit is only available to
19 those taxpayers age 18 or older other than taxpayers who
20 are not full-time students or claimed as a dependent on
21 another's return.
22 Third, this modification will instruct the Secretary
23 of the Treasury to report on whether the provisions of
24 this bill resulted in more savings and higher employee
25 participation in retirement plans.

1 In addition, the Treasury Secretary will be required
2 to conduct a study as to whether the current withdrawal
3 restrictions on IRAs and other retirement plans undermine
4 the goals of providing adequate resources for retirement
5 and whether the investment decisions made by IRA owners
6 or those in self-directed retirement savings plans result
7 in adequate resources for retirement.
8 Fourth, the modification requires that when a plan
9 sponsor offers a lump sum benefit from a tax-qualified
10 retirement plan that is not equivalent to the plan's
11 annuity benefit, the participant must be expressly
12 informed that there is a difference in values.
13 Fifth, the rules regarding the taxation of benefit
14 distributions from Section 457 defined compensation
15 plans--those are defined compensation plans for State and
16 local government workers--will follow the rules for
17 taxation for other employer-provided deferred
18 compensation plans. That is, these benefits will be
19 subject to taxation when received.
20 In addition, the modification will allow
21 grandfathered Section 457(f) deferred compensation plans
22 to provide a cost-of-living adjustment without triggering
23 adverse tax consequences to the recipient.
24 Sixth, the modification will make amendments to the
25 Savings Are Vital to Everyone's Retirement, or SAVER Act,

1 to clarify the administration of future and national
2 summits on retirement savings.
3 Finally, in order for the bill to remain within the
4 scope of our reconciliation instructions, the following
5 provisions that were in the Chairman's mark needed to be
6 dropped.
7 First, is the elimination of the IRS user fees for
8 certain determination letter requests; the second, is
9 reduction of PBGC premiums for small and new plans; the
10 third, is extension of the PBGC missing participants
11 program to multi-employer plans; and the fourth, is
12 changed rules for substantial owner benefits in
13 terminated plans.
14 We anticipate that these provisions will be added
15 back to the bill when it is considered by the full
16 Senate.
17 Mr. Chairman, this concludes my description of the
18 provisions of the modification.
19 The Chairman. Are there any amendments?
20 Senator Mack. Mr. Chairman?
21 The Chairman. Yes. The Senator from Florida.
22 Senator Mack. First of all, Mr. Chairman, I want to
23 thank you for including the amendment that I offered with
24 respect to the marriage penalty on the Roth IRA
25 conversions. This amendment is broader amendment in the

1 fact that it deals with the Roth IRAs in general.
2 When the Roth IRA was passed by both bodies, there
3 were no limits with respect to income, but in 1997 when
4 we went to conference, the administration insisted on
5 income limits.
6 I think that there has been quite a discussion over
7 these past couple of years with respect to marriage
8 penalties. Those limits, in fact, established marriage
9 penalties for the Roth IRA.
10 So my amendment, amendment number two, co-sponsored
11 by Senators Hatch and Murkowski, eliminates this marriage
12 penalty by raising the phase-out range for joint filers.
13 Now, just to refresh everyone's memory, the phase-out
14 range for use of Roth IRAs by joint filers, $150,000 to
15 $160,000, is less than twice the range for single filers,
16 which is $95,000 to $110,000.
17 What I am proposing, is that phase-out range for
18 joint filers be increased to $190,000 to $220,000, which
19 eliminates the marriage penalty. I do not think there
20 would be any controversy about this, because when we
21 dealt with the marriage penalty bill and there was an
22 alternative offered by my colleagues on the other side of
23 the aisle, they eliminated every marriage penalty, as I
24 recall.
25 So I do not see that there would be any controversy

1 on this proposal, so I would urge its adoption, Mr.
2 Chairman.
3 The Chairman. Any comment on it?
4 Senator Baucus. Mr. Chairman, I might add that the
5 reason they are offering this amendment is precisely why
6 we were offering our amendment, so we would not have to
7 go down this road. That is, the Democratic marriage
8 penalty provision providing for optional filing takes
9 care of all the 65 provisions in the Tax Code which
10 create either a marriage penalty or marriage benefit.
11 I do not mean to be difficult here, but the one
12 offered on your side of the aisle addressed only 3 of the
13 65. Now we are talking about two more, and in a way
14 which I think further complicates the Code.
15 I do not oppose it, but I just want to point out
16 here, by going down this road one by one, now it will be
17 5 of the 63 provisions, then there are going to be 6 of
18 the 63, then 7 of the 63, and they are all, probably,
19 going to be treated a little bit differently, as these
20 two are being treated. We all talk about complexity of
21 the Code.
22 Here is an opportunity to, not add complexity to the
23 Code, but by adopting this amendment we will, in fact, be
24 doing so. It is fair, no doubt about it, but it is also
25 additional complexity that I think is not needed,

1 frankly.

2 Senator Gramm. Mr. Chairman?

3 The Chairman. Yes.

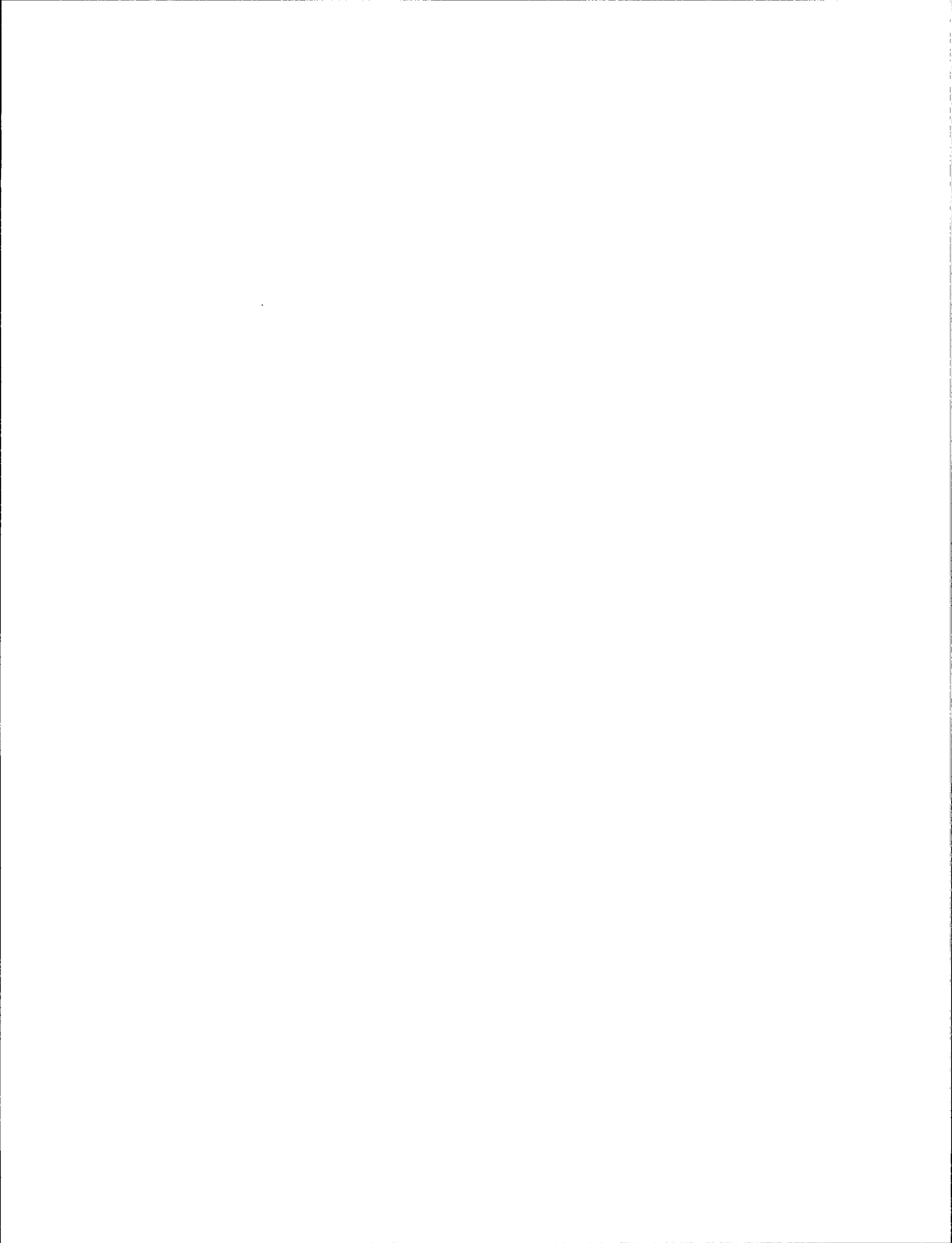
4 Senator Gramm. I would just like to say that I
5 think that we ought to always be looking at complexity,
6 but I see it differently. I think if you change the Code
7 so that whatever an income level is for a single
8 individual, it is twice that for a married couple. That
9 is a simplification.

10 I think it is complicated in the sense that you have
11 a situation, as we do here and in many other places,
12 where you have got one rate for a single individual, but
13 if two people making the same income meet, fall in love,
14 and get married, the rate is different.

15 I think the point that was made basically in both
16 amendments on repealing the marriage penalty was that the
17 rate ought to be the same whether you are single or
18 married, and I see it as a simplification.

19 I am not saying that you cannot look at it in two
20 different ways, but I think this is a good change. I
21 would think we ought to do it for the whole Tax Code, but
22 this is a start.

23 Senator Moynihan. Mr. Chairman, just one moment.
24 May I say, in sorrow more than anger, surely, we offered
25 something remarkable, I think, Ms. Paull would agree, I



1 think Secretary Talisman would agree. We had a one-
2 sentence amendment to the Tax Code that said, married
3 couples are free to file jointly or separately,
4 whereupon, every one of those 56 marriage penalties would
5 disappear. Others insisted on a 30-page bill because
6 they cannot have a tax bill of less than 30 pages.
7 [Laughter]. And intervention.
8 Senator Mack. Mr. Chairman?
9 The Chairman. Yes. The Senator from Florida.
10 Senator Mack. I offered this amendment, not for the
11 purpose of getting us back engaged in a debate about one
12 page or one sentence versus 30 pages.
13 The reality is, we have a proposal before us this
14 morning that deals with the issue of savings and how we
15 can increase savings and how we can improve pensions.
16 It seems to me, given the scope of this bill, that
17 this is a logical amendment to offer, so again, I would
18 ask for its adoption.
19 The Chairman. I would ask Mr. Sweetham or Ms.
20 Paull, what would be the cost of this amendment?
21 Ms. Paull. Unfortunately, we have the cost of the
22 provision permanent against the bill, and of course the
23 bill has a sunset in it, so I do not have the provision
24 estimated against the sunset. But a permanent provision
25 like this against this bill would be $784 million over 5

1 years, and $4.4 billion over 10.

2 But, of course, with this sunset that $4.4 billion

3 would be reduced somewhat. I am not sure how much

4 because, of course, whatever additional contributions are

5 made earlier, we will continue to have revenue loss in

6 the out years because of the inside build-up. I am sorry

7 I do not have a precise number for you.

8 The Chairman. Any further comments?

9 [No response]

10 The Chairman. Those in favor, say aye.

11 [A chorus of ayes]

12 The Chairman. Those opposed, nay?

13 [No response]

14 The Chairman. The ayes have it. The amendment is

15 agreed to.

16 Are there any further amendments?

17 Senator Hatch. Mr. Chairman, Senator Baucus and I

18 have an amendment marked number four. This amendment,

19 which we will not offer today, highlights an important

20 set of tax provisions that deserve the consideration of

21 the committee and the Senate as a whole.

22 Now, Mr. Chairman, I again congratulate you and

23 Senator Moynihan for your excellent leadership of this

24 committee and for this excellent Chairman's mark dealing

25 with these very important retirement savings issues. I

1 am very pleased with the mark and I will strongly support
2 it here and on the floor.
3 However, I do not believe that we should limit this
4 second reconciliation bill to retirement savings items
5 only. Rather, Mr. Chairman, I believe this
6 reconciliation bill should also include some much-needed
7 provisions dealing with our current energy crisis and
8 important environmental issues.
9 What the Hatch-Baucus amendment does, is to package
10 together the most important bipartisan tax provisions in
11 these two areas into one amendment. This amendment
12 includes non-controversial provisions supported by nearly
13 every member of this committee.
14 These provisions were the subject of two hearings we
15 held in the Taxation Subcommittee in July. The message
16 from those hearings is that there is strong bipartisan
17 consensus and support from the administration for a
18 package of energy and environmental tax provisions this
19 year. Therefore, we will be offering this amendment on
20 the Senate floor.
21 Of course, we believe it is something that the
22 committee and the Senate should give great consideration
23 to. But with that, we will not offer it here today.
24 Senator Baucus. Mr. Chairman?
25 The Chairman. Senator Baucus?

1 Senator Baucus. Mr. Chairman, I thank my good
2 friend from Utah in sponsoring this amendment, and I am
3 very pleased to join in with him.
4 Quality of life includes, certainly, one's income.
5 The more income, the more options, the more choices in
6 life, education, vacations, health care, and so forth.
7 But quality of life also includes open space, it includes
8 clean air, clean water, environmental conservation
9 matters.
10 This is an amendment to address that side of the
11 attempt to help improve our quality of life in our
12 country. I am not going to go into great detail, but it
13 is designed to help provide and encourage open space in
14 our country. We all know the problem of urban sprawl,
15 and it occurs in urban areas, but I might say it also
16 occurs in rural areas. It is very much a problem in my
17 State of Montana, as well as in many urban States.
18 In addition, there are some energy credits here to
19 help address the price spikes in gasoline and other
20 energy prices our country seems to face with excessive
21 reliance on OPEC countries. But when the bill does come
22 to the floor, it will be an opportunity for us to explain
23 it in much more detail.
24 In the meantime, I hope that my colleagues will look
25 at it and familiarize themselves with it so that, when it

1 does come up at the appropriate time, you are in a better
2 position to know what we are talking about and maybe have
3 some suggestions as to how we can improve it.
4 But I thank my colleague very much.
5 The Chairman. Are there any further amendments?
6 Senator Moynihan. Mr. Chairman, if there are no
7 further amendments, I would like to offer one before we
8 proceed to vote on the Chairman's substitute.
9 The Chairman's mark contains a proposal to allow a
10 new kind of 401(k) account, which I believe is called
11 401(k) Plus, is that right, Lindy, Mr. Sweetham? Yes.
12 There would be no deduction for contributions to
13 these accounts, but withdrawals would be tax-free. This
14 would remind any of us of a very popular retirement
15 vehicle called the Roth IRA.
16 I think it would be a fitting tribute to your
17 leadership, sir, and a commitment to retirement security
18 to rename the new 401(k) Plus accounts as Roth 401(k)
19 accounts, and I so move.
20 The Chairman. Well, what do I say? [Laughter].
21 Senator Baucus. Thank you.
22 The Chairman. Yes. Well, I thank you, Senator
23 Moynihan.
24 Senator Moynihan. Let us put it to the yeas and
25 nays.

1 The Chairman. Yes, sir. [Laughter].
2 Those in favor of the Moynihan amendment, please
3 signify by saying aye.
4 [A chorus of ayes]
5 The Chairman. In the negative, nay.
6 [No response]
7 The Chairman. The ayes have it. It is now the Roth
8 401(k). Thank you very much.
9 Well, if we have no further amendments, I now move to
10 approve the modified Chairman's mark as a substitute to
11 the H.R. 1102. Those in favor, signify by saying aye.
12 [A chorus of ayes]
13 The Chairman. Those opposed, nay.
14 [No response]
15 The Chairman. So I now move to favorably report to
16 the Senate H.R. 1102, as amended, and the Clerk will call
17 the roll.
18 The Clerk. Mr. Grassley?
19 Senator Grassley. Aye.
20 The Clerk. Mr. Hatch?
21 Senator Hatch. Aye.
22 The Clerk. Mr. Murkowski?
23 The Chairman. Aye, by proxy.
24 The Clerk. Mr. Nickles?
25 Senator Nickles. Aye.

1 The Clerk. Mr. Gramm, of Texas?
2 Senator Gramm. Aye.
3 The Clerk. Mr. Lott?
4 The Chairman. Aye, by proxy.
5 The Clerk. Mr. Jeffords?
6 Senator Jeffords. Aye.
7 The Clerk. Mr. Mack?
8 Senator Mack. Aye.
9 The Clerk. Mr. Thompson?
10 Senator Thompson. Aye.
11 The Clerk. Mr. Moynihan?
12 Senator Moynihan. Aye.
13 The Clerk. Mr. Baucus?
14 Senator Baucus. Aye.
15 The Clerk. Mr. Rockefeller?
16 Senator Rockefeller. Aye.
17 The Clerk. Mr. Breaux?
18 Senator Breaux. Aye.
19 The Clerk. Mr. Conrad?
20 Senator Conrad. Aye.
21 The Clerk. Mr. Graham, of Florida?
22 Senator Moynihan. Aye, by proxy.
23 The Clerk. Mr. Bryan?
24 Senator Bryan. Aye.
25 The Clerk. Mr. Kerrey?

1 Senator Kerrey. Aye.
2 The Clerk. Mr. Robb?
3 Senator Robb. Aye.
4 The Clerk. Mr. Chairman?
5 The Chairman. Aye.
6 The Clerk. Mr. Chairman, there are 16 ayes, zero
7 nays.
8 Senator Moynihan. I believe the votes were all in
9 favor as well.
10 The Clerk. That is correct.
11 Senator Moynihan. So, in effect, we have a
12 unanimous committee.
13 The Chairman. I thank both the Republican and
14 Democratic colleagues for its unanimous support. I think
15 it is a major step forward. We now favorably report
16 Senate H.R. 1102, as amended, to the Senate.
17 I now would like to turn to our second item for this
18 morning, the consideration of the Retired Coal Miners
19 Health Benefits Security Act.
20 The United Mine Workers' Combined Benefit Fund
21 provides health benefits for certain retired mine workers
22 and their dependents. This important program is within
23 the jurisdiction of this committee and Senator
24 Rockefeller has a special interest in the financial well-
25 being of this fund and the continued provision of health

1 benefits to the beneficiaries of the fund.
2 So I will now turn to Senator Rockefeller for any
3 statement he would like to make.
4 Senator Rockefeller. Mr. Chairman, I basically want
5 to make my statement after we vote, but I wanted to
6 simply say that I had put forward, and the Chairman's
7 mark had put forward, more importantly, a solution to
8 this problem which probably would have virtually solved
9 all of it.
10 At about 6:30 last night, it collapsed. I have to
11 deal, because every day of every week I have to deal with
12 the problem of trying to keep this going so miners'
13 benefits are not cut.
14 So it strikes me that, in that the 10-year thing does
15 not have the votes, the next best solution is the one
16 that Senator Nickles will propose, which is a one-year
17 fix, which puts it right back in our laps again next
18 year, but that is as life will determine it for the time
19 being. So, I would hope that my colleagues could support
20 what Senator Nickles is going to propose.
21 I thank the Chairman.
22 Are there any amendments to the Chairman's mark?
23 Senator Nickles?
24 Senator Nickles. Mr. Chairman, Senator Rockefeller
25 is correct, I do have an amendment. The amendment would

1 strike the bill and just basically authorize the transfer
2 of general revenue fund to the combined benefit fund of
3 $57 million for the year 2001. It is a stop-gap
4 solution. It solves it for a year.
5 We have big, big problems. Senator Conrad knows
6 there are problems. There are problems with reach-back,
7 there are problems with taxpayers. I mentioned to
8 Senator Rockefeller, in my opinion, some of these
9 benefits are too generous.
10 There is full prescription drugs, for example. The
11 cost greatly exceeds Medigap, Medigap policies that other
12 employers provide for their employees that are retired.
13 This is much, much more expensive, over $1,263 more
14 expensive than Medigap policies, say, for example, in
15 West Virginia. So, it is very expensive.
16 Last year, we did a stop-gap. Some money was put in
17 an appropriations bill. It was not authorized. This
18 committee did not review it, this committee did not study
19 it. It was put in an appropriations bill. I think this
20 committee has jurisdiction. This committee needs to
21 review it. We have got a big problem. We need to
22 wrestle with it. We do not have time to do that in the
23 next few weeks.
24 So the amendment I have, Mr. Chairman, is to
25 authorize the transfer for one year. Let me just say, I

1 hope that this committee will roll up its sleeves and
2 consider Senator Rockefeller's proposal, Senator Conrad's
3 proposal, some of the suggestions that I have. I will
4 just outline a couple of them.
5 One, companies should pay 100 percent of the costs
6 for their employees or their retired employees. One
7 hundred percent of the costs, especially for any
8 employees that were members or signatories to these
9 contractors. Those are their obligations. They are not
10 obligations to the U.S. taxpayer, and I feel very
11 strongly about that. I hope we can get the votes to do
12 that.
13 I also think the government's liability or limitation
14 should be strictly for orphan retirees, not for retirees
15 that actually worked in companies that are still in
16 existence.
17 So, Mr. Chairman, I know we have to do something, I
18 know time is limited. I will offer my amendment. I do
19 not know what the number is, but just to authorize a one-
20 year payment transfer.
21 Senator Conrad. Mr. Chairman?
22 The Chairman. The Senator from North Dakota.
23 Senator Conrad. Mr. Chairman, I would like to offer
24 an amendment in the second degree to the Nickles
25 amendment that would provide for a 50 percent reduction

1 in the assessments for retiree health benefits levied on
2 the tier-two reach-back companies under the Coal Act of
3 1992, and adjust the general revenue transfer provided
4 for in the underlying amendment accordingly. That would
5 add $17 million.
6 I, frankly, think we ought to have a complete
7 moratorium on the tier-two reach-back companies as a
8 matter of principle and as a matter of equity. I salute
9 Senator Rockefeller for what he has done to secure the
10 health benefits of retirees. They ought to be
11 maintained.
12 He has been right to pursue it. His original
13 proposal to do so did not include the reach-back
14 mechanism. Frankly, I believe the reach-back mechanism
15 is unAmerican. I believe it is unconstitutional. I
16 think it is an anathema and it reflects badly on this
17 committee.
18 I do not think we fully appreciate what is being done
19 to big companies and small, and I would especially stress
20 the small ones who are being bankrupted by our action, a
21 thoughtless, heedless action to solve a problem, but to
22 do it in the wrong way.
23 Mr. Chairman and members of the committee, in the GAO
24 report that Senator Nickles requested the details are
25 outlined. We have now bankrupted 65 companies, little

1 companies, because we assigned them workers, we assigned
2 them retirees for benefits when they never had a
3 contractual obligation for them. Now, the courts have
4 reviewed this matter. In Eastern, they threw out 150 of
5 these reach-back companies and said it is
6 unconstitutional.
7 Frankly, I think that precise rationale ought to
8 apply to all of the reach-backs. But they did not. They
9 said it is barely constitutional with respect to the rest
10 of them. I would like to quote, just very quickly, from
11 a judge's finding.
12 Judge Alder said, "I am conscious that, in light of
13 the view that we take here, the handwriting is on the
14 wall, that a kind of hydraulic pressure will generate
15 economic disasters in companies whose financial
16 circumstances are similar to Unity and Barnes and
17 Tucker."
18 In the Unity case, a little company that has got an
19 $85,000 building a parking lot, they have got $1 million
20 of assessments. They were not a signatory since 1981.
21 We are making a mistake here. We are crushing little
22 companies that did not deserve to be hit with a
23 sledgehammer. We should have solved this problem in
24 another way.
25 Mr. Chairman, he goes on to say, "without additional

1 and more realistic Congressional intervention, we may see
2 a phenomenon of the last man standing as companies
3 disappear from the economic scene and responsibility for
4 paying benefits shifts to surviving companies.
5 If this case is any example and a forerunner of
6 things to come, the operation of the present statutory
7 solution to the vexing health benefit problem of retirees
8 and their dependents may serve as a full employment
9 program for bankruptcy lawyers of companies unable to
10 make prescribed payments.
11 I would just urge my colleagues, for God's sake, let
12 us take the first step in cleaning up this mess we have
13 created and give a 50 percent reduction to these reach-
14 back companies that should never have had this liability
15 put on them in the first place.
16 Senator Gramm. Mr. Chairman?
17 The Chairman. Senator Gramm.
18 Senator Gramm. Mr. Chairman, I want to identify
19 myself with the comments of Senator Nickles and Senator
20 Conrad. I would have to say that, of all of the bills
21 that have passed in the last 20 years in Congress, I am
22 not saying this is the most harmful, it clearly is not,
23 it just was not big enough to get that title, but in
24 terms of unfairness it takes the blue ribbon. It takes
25 the blue ribbon because basically we made a political

1 decision that these benefits that coal companies had
2 guaranteed employees to be paid way out into the future
3 when they had no ability to pay the benefits, when the
4 benefits were out of all proportion to benefits that were
5 being paid to American workers in other industries, we
6 made a decision in this reach-back provision originally
7 to collectivize the problem, but rather than imposing the
8 problem collectively--I was not for collectivizing it--
9 but having made that decision, rather than having
10 everybody pay it, we singled out companies that, in many
11 cases, had absolutely nothing to do with the problem.
12 They just happened to be in industries that we fingered
13 to pick up this cost.
14 The Supreme Court ruled that it violated the takings
15 provision to the Fifth Amendment of the constitution. As
16 Senator Conrad pointed out, they struck down part of the
17 provision. They, in my opinion, did not go far enough in
18 striking it down.
19 So I believe that, at an absolute minimum, first of
20 all, if we decide that these benefits ought to be paid
21 and that we're going to make somebody pay them other than
22 the people that signed these contracts, then we have an
23 obligation to pay those benefits. We do not have a right
24 to steal people's property and forcing them to pay
25 benefits when they did not sign these contracts.

1 Now, my view is, if the taxpayer is going to pay
2 these benefits on a permanent basis, that we ought to go
3 back and renegotiate them so they reflect the benefits
4 that ordinary workers in America, extraordinary workers,
5 are getting so they come into line with benefits that
6 other people are getting.
7 So I think both of these amendments are important. I
8 am not for this bill, in general, and my guess is it is
9 not going to become law. But I think these principles,
10 that, one, if we are going to do it without any wholesale
11 reform, it ought to be done only for one year; and two,
12 the Conrad amendment that we need to begin to look at
13 these tier-two, or tier B, these people were not at the
14 scene of the crime. They did not commit the crime. They
15 just had the misfortune of being in industries that we
16 decided was easier reaching in their pocket than it was
17 in the taxpayers' pocket.
18 So this is a terrible wrong that was done, and this
19 is a teeny, teeny little step in fixing it, but I am very
20 much in favor of taking this teeny little step.
21 Senator Rockefeller. Mr. Chairman?
22 The Chairman. Senator Rockefeller?
23 Senator Rockefeller. Mr. Chairman, I strongly
24 oppose the Conrad amendment, for a variety of reasons. I
25 would just say that, first of all, a teeny, teeny

1 amendment, once passed, gets larger as time goes on,
2 congressional nature being what it is.
3 If we were to give complete relief, for example,
4 under the Chairman's original mark to reach-back
5 companies, it would cost about $400 million, which would
6 be $400 million out of the $541 million total dollars,
7 which would mean that the benefits, all of that, would
8 collapse.
9 Second, no matter how one looks at it, one has to
10 deal with this fact, that any company that signed either
11 the 1974, the 1978, the 1988, whatever, anything after
12 the 1974 Bituminous Wage Agreement, agreed to, knew they
13 agreed to, fully understood they agreed to, the
14 following: "Such pensioner will be entitled to retain his
15 health services card for life. Upon his death, his widow
16 will retain a health services card until her death or
17 remarriage."
18 Everybody understood that. They understood it. Some
19 of them just do not want to pay it. I can understand
20 that. In the case of one company, North American Coal,
21 which has kind of been at the leading edge of all of
22 this, they signed the 1978 agreement. This language is
23 in there for them, too. They know that. Of course, they
24 do not want to pay it, but that is the law that was
25 passed.

1 There were particular problems at the time. When
2 President Bush was talking about, "Read my lips, no more
3 taxes," it prevented us from doing something else that we
4 wanted to do which would have been preferable to me. But
5 once having said that, we could not take that approach,
6 so we came up with this approach because it was the only
7 way to keep the benefits from ceasing.
8 Senator Conrad referred to, and I say this
9 constructively, obscurely to the Eastern Associated
10 amendment. This is something that Fred Thompson is
11 interested in. It gets very technical, but it has to do
12 with final judgment.
13 Eastern Associated is a tier-three company. The
14 Supreme Court ruled them out because of that, and others
15 have the right, I think, also, if they fit into that, not
16 to have to pay this. But tier one and tier two, they
17 have to, and they have always known they had to. They
18 just do not want to, so they are trying to get out of it.
19 It sets up a very interesting double standard, and I
20 will close with this. That is that, for example, LTV,
21 which is part of wanting this amendment--it is a steel
22 company--and they want to get out of paying their
23 promised obligation to retired miners. If they got out,
24 that would be nice for them. But USX, formerly U.S.
25 Steel, Wheeling-Pittsburgh Steel, they are signatories

1 and they are not trying to get out of it.

2 So you would get some who would be paying and others
3 who would not be paying who are in the same category.
4 That also is not fair.

5 I end on the note that every single one of these
6 companies that signed the 1974, 1978, thereafter, et
7 cetera, the evergreen clause--that is technical; I will
8 not go into that now--knew what they were doing. They
9 understood what they were doing. Believe me, I have been
10 through coal wage negotiations many, many times following
11 many strikes.

12 We simply cannot pass this amendment, because if we
13 start trying to give relief a little bit now, it will be
14 a little bit more later. The sharks will smell the
15 blood, and pretty soon there will not be money for the
16 miners' benefits. I strongly urge--strongly urge--my
17 colleagues to vote against this amendment.

18 The Chairman. Senator Conrad seeks recognition
19 again. I would ask that we try to bring this to a close
20 because we do have the legislation on the floor.

21 Senator Conrad. Mr. Chairman, Senator Graham has a
22 quick unanimous consent request and I would be happy to
23 yield to him for that.

24 Senator Graham. Mr. Chairman, I would ask unanimous
25 consent to be recorded "aye" on the first vote.

1 The Chairman. Without objection, so ordered.
2 Senator Conrad. Mr. Chairman, if I might respond to
3 Senator Rockefeller, again, who I respect very much for
4 what he has done to protect the health benefits of the
5 miners he represents. Nobody has been more of a lion in
6 fighting for those folks. But in terms of what people
7 signed up to, there we have a real difference.
8 The retiree health obligations that were taken on in
9 the agreements that the reach-back companies did sign,
10 the pre-1988 agreements, were based on the assumption
11 that companies would remain in the bituminous coal mining
12 business.
13 The formula that established what they would have to
14 pay was based on the tons of bituminous coal mined and
15 the number of hours worked by bituminous coal miners.
16 Clearly, those agreements could not have intended to
17 impose these obligations once a signatory left the
18 business.
19 The formula is based on being in the business. We
20 have gone back here on people who did not sign the 1988
21 agreement, signed back in 1974 on the basis that they
22 would be obligated as long as they were in the bituminous
23 coal mining business.
24 We have got companies that have not been in the
25 business for 20 years who we went back to, little

1 companies. He mentioned a couple of big companies. Yes,
2 in truth there are a couple of big companies.
3 There are 200 little companies and we are crushing
4 them. We are crushing them on the basis of assigning
5 obligations to them they never contractually agreed to.
6 That is wrong. That is not America. That is not the way
7 we function. We should never have applied this
8 principle.
9 In fairness to Senator Rockefeller, it is not the
10 proposal that he offered. But I tell you, for us to go
11 to a little company and to say to them as we have done to
12 Unity that has got an $85,000 apartment building and a
13 little parking lot and sock them with $1 million of
14 obligations when they did not sign since 1981, this is
15 not right. It is not right.
16 Senator Rockefeller. Mr. Chairman?
17 The Chairman. Thirty seconds.
18 Senator Rockefeller. Thirty seconds.
19 In response to that, every single federal judge that
20 has examined this question, including all nine members of
21 the Supreme Court, have found, without exception, that
22 any company that signed the 1974 or subsequent agreements
23 were bound by an explicit promise of lifetime benefits to
24 their employees, or former employees. It could not be
25 clearer. Again, North American Coal, which is of

1 particular interest to Senator Conrad for good reason,
2 knew it. They are in the contract. They signed it.
3 Senator Nickles. Was that the 1974 or 1978?
4 Senator Rockefeller. That was 1978.
5 Senator Nickles. Mr. Chairman, just for
6 clarification, because I have wrestled with this because
7 I think there are some inequities on reach-backs and
8 super reach-backs, and I think the dialogue and the
9 discussion has been helpful, and I think Senator Conrad
10 is agreeing, they signed the contract which obligated the
11 benefits, but the contract was assuming coal production
12 to pay for it. But the contract actually did promise the
13 benefit, is that correct?
14 Senator Conrad. Yes.
15 Senator Nickles. I have another amendment, as the
16 Senator may be aware of, that says companies that
17 actually promised lifetime benefits should be required to
18 pay for the full costs of those benefits. I am afraid
19 your amendment may be inconsistent with my second
20 amendment, and maybe Senator Rockefeller could help me
21 with that. I have always felt that companies should take
22 care of their own employees, and they did contractually
23 sign up for benefits that far exceed what most employees
24 have.
25 I think those companies should be responsible. I am

1 afraid, it is just a fundamental tenet of mine that I
2 think is fair, and I happen to think, Senator Conrad,
3 that your amendment is inconsistent with companies paying
4 for their own employees. I know that there are some
5 inequity arguments, but help me.
6 Senator Conrad. Mr. Chairman, if I might respond.
7 I would say this to my friend, Senator Nickles. They did
8 not promise lifetime benefits, they promised benefits as
9 long as they were in the coal business. That was the
10 basis of the formula that is in these agreements. They
11 went out of the business. We have now gone back and
12 assigned to them obligations that they did not agree to.
13 The people that did have an obligation were the
14 signatories to the follow-on agreements. Those people
15 did have an obligation to provide lifetime benefits.
16 The Senator from West Virginia references the courts.
17 What the courts have said, is those who were tier-three
18 reach-backs, they are out. It is unconstitutional, what
19 we did. They have said, with respect to the tier two, it
20 is barely constitutional, but it should not have been
21 done. It is a shabby way to do business. Congress,
22 clean this up.
23 That is the opportunity we have today to start the
24 process of cleaning this up, because the truth is, if you
25 pierce the veil here and you look at the individual

1 companies, what you find is dozens and dozens, if not
2 hundreds, of small companies that have gotten assigned to
3 them obligations they never had a contractual obligation
4 for. I will tell you, I cannot conceive how at this
5 juncture, with this question before us, we can continue
6 this without making a step at equity.
7 The Chairman. We have had an extended discussion.
8 I would like to call for a vote on the Conrad amendment.
9 Would you like a recorded vote?
10 Senator Conrad. I would.
11 The Chairman. The Clerk will call the roll.
12 The Clerk. Mr. Grassley?
13 Senator Grassley. Aye.
14 The Clerk. Mr. Hatch?
15 Senator Hatch. No.
16 The Clerk. Mr. Murkowski?
17 The Chairman. Aye, by proxy.
18 The Clerk. Mr. Nickles?
19 Senator Nickles. No.
20 The Clerk. Mr. Gramm, of Texas?
21 Senator Gramm. Aye.
22 The Clerk. Mr. Lott?
23 The Chairman. No, by proxy.
24 The Clerk. Mr. Jeffords?
25 Senator Jeffords. No.

1 The Clerk. Mr. Mack?

2 Senator Mack. Aye.

3 The Clerk. Mr. Thompson?

4 Senator Thompson. Aye.

5 The Clerk. Mr. Moynihan?

6 Senator Moynihan. No.

7 The Clerk. Mr. Baucus?

8 Senator Baucus. No.

9 The Clerk. Mr. Rockefeller?

10 Senator Rockefeller. No.

11 The Clerk. Mr. Breaux?

12 Senator Breaux. No.

13 The Clerk. Mr. Conrad?

14 Senator Conrad. Aye.

15 The Clerk. Mr. Graham, of Florida?

16 Senator Moynihan. No, by proxy.

17 The Clerk. Mr. Bryan?

18 Senator Bryan. No.

19 The Clerk. Mr. Kerrey?

20 Senator Kerrey. No.

21 The Clerk. Mr. Robb?

22 Senator Moynihan. No, by proxy.

23 The Clerk. Mr. Chairman?

24 The Chairman. No.

25 The Clerk. Mr. Chairman, we have 6 ayes, 13 nays.

1 The Chairman. The second degree amendment is not
2 agreed to.
3 Senator Grassley. I have got an amendment. I had
4 several amendments that I was going to offer to the other
5 bill if it had been offered, but I only have one that I
6 want to offer as a second degree to the amendment by the
7 Senator from Oklahoma.
8 It is amendment number one. It is co-sponsored by
9 Senators Thompson and Mack. The amendment provides that
10 the fund will repay the final judgment companies in full
11 for the premiums that were collected from them. The
12 Eastern court decision has been mentioned. That is a
13 Supreme Court case and it has been discussed in the
14 Conrad amendment. It caused companies that were
15 similarly situated to the final judgments to be released
16 from their obligations to contribute to the combined
17 fund. Those funds had their contributions returned to
18 them.
19 Now, the final judgment companies also deserve their
20 money back, and this amendment makes it possible to
21 overcome the technicalities that have prevented the
22 return of their money.
23 In other words, if the Supreme Court says that some
24 should get their money back, all should get their money
25 back. But there are a few companies that sued previously

1 and lost. Under judicial doctrine, they cannot cover
2 when other companies later on won on the same points.
3 So, this will treat these companies the same as the
4 companies that got their money back.
5 Senator Rockefeller. Mr. Chairman?
6 The Chairman. Senator Rockefeller?
7 Senator Rockefeller. Just very briefly. I would
8 oppose that amendment on the following grounds. Senator
9 Nickles has as the underlying amendment a bill which will
10 prevent benefits from being cut.
11 If Senator Nickles' amendment fails, the trustees of
12 the combined fund will meet in a couple of weeks and
13 decide how to cut benefits because of the shortfall, then
14 around January or February, the benefits will be cut.
15 The $57 million is not to be tampered with, because
16 that is the amount of the shortfall. That is the
17 difference that makes it possible.
18 The final judgment companies are something that we
19 can discuss, I think, when we are looking at a longer
20 term plan, and I think Senator Nickles might agree with
21 me on this. I have discussed this with Senator Thompson.
22 But in view of the fact that we are living on the
23 razor's edge without a 10-year plan or without a multi-
24 year plan, but just living from year to year to year, I
25 think it is a terrible mistake to start cutting out this

1 and that.

2 All the talk in these debates has been about

3 companies getting relief from this and that, and there

4 really has not been very much talk about 78-year-old

5 retired miners and their widows, et cetera, getting

6 benefits, which is why we passed the 1992 Coal Act, which

7 is in the Internal Revenue Code.

8 So I do not discount, together with a multi-year

9 solution, working constructively with the Senator from

10 Iowa, but I think it would absolutely be a danger to the

11 fund to do that this year, a danger to the benefits for

12 the miners.

13 Senator Grassley. Well, suppose we adjusted the

14 figures to accommodate my amendment accordingly, then it

15 would not affect the years that you are concerned about.

16 Would you accept it?

17 Senator Rockefeller. Senator Grassley, I just think

18 that, in view of the multi-year solution, which I think

19 you all want, I think everybody wants to do it to the

20 extent of getting either the problem out of the way, the

21 miners taken care of, or maybe if it is nothing more than

22 just getting me out of the way. [Laughter].

23 But I will not be out of the way until this is

24 solved. I just think it makes no sense to do anything

25 but pass the $57 million fix that Senator Nickles, I

1 think, wisely has put forward. I think these other
2 things can be left for a later multi-year discussion.
3 The Chairman. We are very close to a vote on the
4 Senate floor, so I am anxious to complete this.
5 Senator Gramm, I would recognize you, for 30 seconds.
6 Senator Gramm. Mr. Chairman, basically what
7 happened is, the Supreme Court ruled that there had been
8 unconstitutional takings, and they stopped those
9 companies from having to pay into this fund because they
10 had had nothing to do with the liability. Some of the
11 companies got money they had paid in, which had been in
12 unconstitutional takings back. Not all of the companies
13 got their money back.
14 What Senator Rockefeller is arguing is simply counter
15 to the takings provision of the Fifth Amendment. He is
16 saying that money was taken unconstitutionally, but it
17 was taken for a good purpose and, therefore, do not give
18 it back to them. I mean, the constitution says, "No
19 property shall be taken for public purpose, except
20 through compensation." So if you believe in the
21 constitution, this is a clear-cut yes vote.
22 The Chairman. Senator Thompson?
23 Senator Thompson. Mr. Chairman, I think Senator
24 Gramm states it very well. If it is fair and equitable
25 and the right thing to do for a multi-year solution, it

1 is fair and equitable and the right thing to do for a
2 one-year solution, and I would urge its adoption.
3 The Chairman. We are prepared for a vote.
4 Senator Nickles. Mr. Chairman?
5 The Chairman. Senator Nickles.
6 Senator Nickles. Just a clarification. I am trying
7 to figure out, the Grassley amendment, is it the author's
8 intention to add $22 million to pay for this?
9 Senator Grassley. I did not use the $22 million
10 figure, but it does add.
11 Senator Nickles. The staff can correct me, but I
12 think the judgment estimate was, what, $22 million?
13 Mr. Sweetham. Yes, Senator Nickles.
14 Senator Nickles. So it is the Senator's intention
15 to add $22 million to the amendment that I have. I do
16 not think it is clear, and that is what I am trying to
17 figure out.
18 Senator Rockefeller. Perhaps the Treasury
19 Department could express its view on this.
20 Mr. Talisman. We agree with Senator Rockefeller's
21 view that, with the one-year solution, that it would be
22 appropriate to take care of this problem, but given that
23 we are looking at a short-term solution, that we ought to
24 take care of the short-term solution and then focus on
25 all of the other problems in the longer term situation.

1 Senator Gramm. The constitution is a good thing,
2 but in its place. [Laughter].
3 The Chairman. We will call for the vote on the
4 Grassley amendment. He, under that amendment, adds $22
5 million.
6 The Clerk will call the roll.
7 The Clerk. Mr. Grassley?
8 Senator Grassley. Aye.
9 The Clerk. Mr. Hatch?
10 Senator Hatch. Aye.
11 The Clerk. Mr. Murkowski?
12 The Chairman. Aye, by proxy.
13 The Clerk. Mr. Nickles?
14 Senator Nickles. Aye.
15 The Clerk. Mr. Gramm, of Texas?
16 Senator Gramm. Aye.
17 The Clerk. Mr. Lott?
18 The Chairman. Aye, by proxy.
19 The Clerk. Mr. Jeffords?
20 Senator Jeffords. Aye.
21 The Clerk. Mr. Mack?
22 Senator Mack. Aye.
23 The Clerk. Mr. Thompson?
24 Senator Thompson. Aye.
25 The Clerk. Mr. Moynihan?

1 Senator Moynihan. No.

2 The Clerk. Mr. Baucus?

3 Senator Moynihan. No, by proxy.

4 The Clerk. Mr. Rockefeller?

5 Senator Rockefeller. No.

6 The Clerk. Mr. Breaux?

7 Senator Breaux. No.

8 The Clerk. Mr. Conrad?

9 Senator Conrad. Aye.

10 The Clerk. Mr. Graham, of Florida?

11 Senator Moynihan. No, by proxy.

12 The Clerk. Mr. Bryan?

13 Senator Bryan. No.

14 The Clerk. Mr. Kerrey?

15 Senator Moynihan. No, by proxy.

16 The Clerk. Mr. Robb?

17 Senator Moynihan. No, by proxy.

18 The Clerk. Mr. Chairman?

19 The Chairman. Aye.

20 The Clerk. Mr. Chairman, the tally is 11 ayes, 8

21 nays.

22 The Chairman. The second degree amendment is agreed

23 to.

24 Do you want a roll call vote?

25

1 OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S.
2 SENATOR FROM WEST VIRGINIA
3
4 Senator Rockefeller. Mr. Chairman, may I make just
5 a one-minute statement before we vote.
6 We asked, and the Chairman asked, Senator Nickles
7 asked, I asked, for a GAO report on the condition of the
8 fund. They basically told us, as have the trustees and
9 the actuary for the trustees, that there will be a $513
10 million shortfall in the coming years over the next 10
11 years.
12 We are the committee of jurisdiction. These are
13 miners who have done the hardest work on God's earth, as
14 far as I am concerned, and paid a terrible price for it.
15 Senator Moynihan. Under God's earth.
16 Senator Rockefeller. They live in every State.
17 People say, well, they just live in West Virginia. Well,
18 they live in every single State. We really have to deal
19 with this.
20 I would hope the Nickles amendment would pass,
21 because it is a one-year solution. But understand that,
22 as people were talking about predictability, companies
23 want predictability, so do 78-year-old people with lots
24 of health problems.
25 I hope that we would use this vote, which is our

1 first vote on this subject since 1995, to stimulate all
2 of us to get into this subject to come up with a long-
3 term solution that will protect the benefits of these
4 miners who so richly deserve it.
5 I thank the Chairman.
6 Senator Nickles. Mr. Chairman?
7 The Chairman. Yes?
8 Senator Nickles. I will echo what Senator
9 Rockefeller had, and also what Senator Conrad had,
10 because I still think Senator Conrad is right, there are
11 some inequities on the reach-backs that have not been
12 addressed. I knew that we were going to do the super
13 reach-backs.
14 I happen to concur with Senator Rockefeller. I would
15 hope that we would all roll up our sleeves next year and
16 address this, as the authorizing committee, to try and
17 make some solutions, some fixes, including some reforms.
18 I will be happy to work with you to try and make that
19 happen next year.
20 The Chairman. I would like to move on. I would
21 like to echo what you said, Senator Nickles. I think it
22 is important that the committee address this issue and do
23 it in a thorough manner.
24 Having said that, I now would move to favorably
25 report the Chairman's mark, as amended, as an original

1 bill.

2 Senator Moynihan. Sir, have we voted on the Nickles

3 substitute?

4 Senator Nickles. No, we have not.

5 The Chairman. We will vote on the Nickles

6 amendment. Those in favor, signify by saying aye.

7 [A chorus of ayes]

8 The Chairman. Opposed, nay.

9 [No response]

10 The Chairman. The ayes have it. The Nickles

11 amendment is agreed to.

12 We now move to favorably report the Chairman's mark,

13 as amended, as an original bill.

14 The Clerk will call the roll.

15 The Clerk. Mr. Grassley?

16 Senator Grassley. Aye.

17 The Clerk. Mr. Hatch?

18 Senator Hatch. Aye.

19 The Clerk. Mr. Murkowski?

20 [No response]

21 The Clerk. Mr. Nickles?

22 Senator Nickles. Aye.

23 The Clerk. Mr. Gramm, of Texas?

24 Senator Gramm. No.

25 The Clerk. Mr. Lott?

1 The Chairman. Aye, by proxy.

2 The Clerk. Mr. Jeffords?

3 Senator Jeffords. Aye.

4 The Clerk. Mr. Mack?

5 Senator Mack. Aye.

6 The Clerk. Mr. Thompson?

7 Senator Thompson. Aye.

8 The Clerk. Mr. Moynihan?

9 Senator Moynihan. Aye.

10 The Clerk. Mr. Baucus?

11 Senator Moynihan. Aye, by proxy.

12 The Clerk. Mr. Rockefeller?

13 Senator Rockefeller. Aye.

14 The Clerk. Mr. Breaux?

15 Senator Breaux. Aye.

16 The Clerk. Mr. Conrad?

17 Senator Conrad. Aye.

18 The Clerk. Mr. Graham, of Florida?

19 Senator Moynihan. Aye, by proxy.

20 The Clerk. Mr. Bryan?

21 Senator Bryan. Aye.

22 The Clerk. Mr. Kerrey?

23 Senator Moynihan. Aye, by proxy.

24 The Clerk. Mr. Robb?

25 Senator Moynihan. Aye, by proxy.

1 The Clerk. Mr. Chairman?

2 The Chairman. Aye.

3 The Clerk. Mr. Chairman, the tally is 12 ayes, one
4 nay.

5 The Chairman. The Chairman's mark, as amended, is
6 reported to the Senate favorably.

7 I ask that the committee staff be provided with
8 necessary technical and conforming drafting authority on
9 both bills. Without objection, so ordered.

10 Ms. Paull. Mr. Chairman, may I also ask, I think on
11 this last amendment on the coal, the concept is that $57
12 million net would go into the fund. These are CBO
13 estimates and we do not have firm estimates. If you
14 would give us a little authority to make sure that the
15 right dollar amount goes into the fund, we would
16 appreciate it.

17 The Chairman. Without objection, so ordered.

18 Senator Rockefeller. Mr. Chairman, can I just ask
19 Ms. Paull if the money that was voted for the final
20 judgment, that will not be subtracted from that.

21 Ms. Paull. That is what I meant.

22 Senator Rockefeller. That is your point. Yes.

23 Ms. Paull. We do not really have a firm estimate on
24 the final judgment piece.

25 Senator Rockefeller. It will not be subtracted,

1 whatever.

2 Ms. Paull. The notion there is that you want to
3 make sure that the net amount, they are going to get at
4 least $57 million into the fund after the final judgment,
5 yes.

6 Senator Rockefeller. Thank you.

7 Thank you, Mr. Chairman.

8 The Chairman. With no further business, the
9 committee is in recess.

10 [The prepared statement of Senator Moynihan appears
11 in the appendix.]

12 [Whereupon, at 12:01 p.m., the meeting was
13 concluded.]

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UNITED STATES SENATE
COMMITTEE ON FINANCE

Thursday, September 7, 2000
10:00 a.m.
215 Dirksen Senate Office Building

OPEN EXECUTIVE SESSION
AGENDA

I. Reconciliation Bill on the subject of retirement security

II. United Mine Workers of America Combined Benefit Fund

DESCRIPTION OF THE CHAIRMAN'S MARK OF THE "RETIREMENT SECURITY AND SAVINGS ACT OF 2000"

Scheduled for Markup

by the

SENATE COMMITTEE ON FINANCE

on September 7, 2000

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

September 5, 2000

JCX-89-00

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's mark of an original bill, the "Retirement Security and Savings Act of 2000," scheduled for markup by the Senate Committee on Finance on September 7, 2000. The Retirement Security and Savings Act of 2000 provides for reconciliation pursuant to section 104(a)(2) of the concurrent resolution on the budget for fiscal year 2001.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of the "Retirement Security and Savings Act of 2000"* (JCX-89-00), September 5, 2000.

I. INDIVIDUAL RETIREMENT ARRANGEMENTS ("IRAs")

Present Law

In general

There are two general types of individual retirement arrangements ("IRAs") under present law: traditional IRAs, to which both deductible and nondeductible contributions may be made, and Roth IRAs. The Federal income tax rules regarding each type of IRA (and IRA contribution) differ.

Traditional IRAs

Under present law, an individual may make deductible contributions to an IRA up to the lesser of $2,000 or the individual's compensation if neither the individual nor the individual's spouse is an active participant in an employer-sponsored retirement plan. In the case of a married couple, deductible IRA contributions of up to $2,000 can be made for each spouse (including, for example, a homemaker who does not work outside the home), if the combined compensation of both spouses is at least equal to the contributed amount. If the individual (or the individual's spouse) is an active participant in an employer-sponsored retirement plan, the $2,000 deduction limit is phased out for taxpayers with adjusted gross income ("AGI") over certain levels for the taxable year.

The AGI phase-out limits for taxpayers who are active participants in employer-sponsored plans are as follows.

Single Taxpayers

Taxable years beginning in:	*Phase-out range*
2000	32,000-42,000
2001	33,000-43,000
2002	34,000-44,000
2003	40,000-50,000
2004	45,000-55,000
2005 and thereafter	50,000-60,000

Joint Returns

Taxable years beginning in:	*Phase-out range*
2000	52,000-62,000
2001	53,000-63,000
2002	54,000-64,000
2003	60,000-70,000
2004	65,000-75,000
2005	70,000-80,000
2006	75,000-85,000
2007 and thereafter	80,000-100,000

The AGI phase-out range for married taxpayers filing a separate return is $0 to $10,000.

If the individual is not an active participant in an employer-sponsored retirement plan, but the individual's spouse is, the $2,000 deduction limit is phased out for taxpayers with AGI between $150,000 and $160,000.

To the extent an individual cannot or does not make deductible contributions to an IRA or contributions to a Roth IRA, the individual may make nondeductible contributions to a traditional IRA.

Amounts held in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal is a return of nondeductible contributions). Includible amounts withdrawn prior to attainment of age 59-1/2 are subject to an additional 10-percent early withdrawal tax, unless the withdrawal is due to death or disability, is made in the form of certain periodic payments, is used to pay medical expenses in excess of 7.5 percent of AGI, is used to purchase health insurance of an unemployed individual, is used for education expenses, or is used for first-time homebuyer expenses of up to $10,000.

Roth IRAs

Individuals with AGI below certain levels may make nondeductible contributions to a Roth IRA. The maximum annual contribution that may be made to a Roth IRA is the lesser of $2,000 or the individual's compensation for the year. The contribution limit is reduced to the extent an individual makes contributions to any other IRA for the same taxable year. As under the rules relating to IRAs generally, a contribution of up to $2,000 for each spouse may be made to a Roth IRA provided the combined compensation of the spouses is at least equal to the contributed amount. The maximum annual contribution that can be made to a Roth IRA is phased out for single individuals with AGI between $95,000 and $110,000 and for joint filers with AGI between $150,000 and $160,000.

Taxpayers with modified AGI of $100,000 or less generally may convert a traditional IRA into an Roth IRA. The amount converted is includible in income as if a withdrawal had been

made, except that the 10-percent early withdrawal tax does not apply and, if the conversion occurred in 1998, the income inclusion may be spread ratably over 4 years. Married taxpayers who file separate returns cannot convert a traditional IRA into a Roth IRA.

Amounts held in a Roth IRA that are withdrawn as a qualified distribution are not includible in income, nor subject to the additional 10-percent tax on early withdrawals. A qualified distribution is a distribution that (1) is made after the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA, and (2) which is made after attainment of age 59-1/2, on account of death or disability, or is made for first-time homebuyer expenses of up to $10,000.

Distributions from a Roth IRA that are not qualified distributions are includible in income to the extent attributable to earnings, and subject to the 10-percent early withdrawal tax (unless an exception applies).[2] The same exceptions to the early withdrawal tax that apply to IRAs apply to Roth IRAs.

Taxation of charitable contributions

Generally, a taxpayer who itemizes deductions may deduct cash contributions to charity, as well as the fair market value of contributions of property. The amount of the deduction otherwise allowable for the taxable year with respect to a charitable contribution may be reduced, depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.

For donations of cash by individuals, total deductible contributions to public charities may not exceed 50 percent of a taxpayer's adjusted gross income ("AGI") for a taxable year. To the extent a taxpayer has not exceeded the 50-percent limitation, contributions of cash to private foundations and certain other nonprofit organizations and contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's AGI. If a taxpayer makes a contribution in one year which exceeds the applicable 50-percent or 30-percent limitation, the excess amount of the contribution may be carried over and deducted during the next five taxable years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income in excess of a threshold amount, which is indexed annually for inflation. The threshold amount for 1999 is $126,600 ($63,300 for married individuals filing separate returns). For those deductions that are subject to the limit, the total amount of itemized deductions is reduced by 3 percent of AGI over the threshold amount, but not by more than 80 percent of itemized deductions subject to the limit. The effect of this reduction may be to limit a taxpayer's ability to deduct some of his or her charitable contributions.

---

[2] Early distribution of converted amounts may also accelerate income inclusion of converted amounts that are taxable under the 4-year rule applicable to 1998 conversions.

Description of Proposal

Increase in annual contribution limits

The proposal would increase the maximum annual dollar contribution limit for IRA contributions from $2,000 to $3,000 in 2001, $4,000 in 2002, and $5,000 in 2003. The limit would be indexed in $500 increments in 2004 and thereafter.

Increase in AGI limits for deductible IRA contributions

Under the proposal, the increases AGI phase-out limits for active participants in an employer-sponsored plan would be evened out. In addition, the phase-out range for married taxpayers filing separately would be conformed to the phase-out range for single filers. The AGI phase-out limits under the proposal would be as follows.

All Returns Other Than Joint Returns

Taxable years beginning in:	*Phase-out range*
2001	$36,000-46,000
2002	40,000-50,000
2003	44,000-54,000
2004	48,000-58,000
2005 and thereafter	50,000-60,000

Joint Returns

Taxable years beginning in:	*Phase-out range*
2001	$56,000-66,000
2002	60,000-70,000
2003	64,000-74,000
2004	68,000-78,000
2005	72,000-82,000
2006	76,000-86,000
2007 and thereafter	80,000-100,000

The present-law income phase-out range for an individual who is not an active participant, but whose spouse is, would remain at $150,000 to $160,000.

Additional catch-up contributions

The proposal would provide that individuals who have attained age 50 may make additional catch-up IRA contributions. The otherwise maximum contribution limit (before application of the AGI phase-out limits) for an individual who has attained age 50 before the end of the taxable year would be increased by 50 percent.

Deemed IRAs under employer plans

The proposal would provide that, if a qualified retirement plan or a section 403(b) annuity permits employees to make voluntary employee contributions to a separate account or annuity that (1) is established under the qualified plan, section 403(b) annuity, or eligible deferred compensation plan of a State or local government (a "governmental section 457 plan") and (2) meets the requirements applicable to either traditional IRAs or Roth IRAs the separate account or annuity would be deemed a traditional IRA or a Roth IRA for all purposes of the Code, as applicable. The deemed IRA, and contributions thereto, would not be subject to the Code rules pertaining to qualified plans, section 403(b) annuities, or governmental section 457 plans, as applicable. In addition, the deemed IRA, and contributions thereto, would not be taken into account in applying those rules to any other contributions under the qualified plan, section 403(b) annuity, or governmental section 457 plan. The deemed IRA, and contributions thereto, would be subject to the exclusive benefit and fiduciary rules of ERISA to the extent otherwise applicable to the plan or annuity, but would not be subject to the ERISA reporting and disclosure, participation, vesting, funding, and enforcement requirements that apply to pension plans.

Tax-free IRA withdrawals for charitable purposes

The proposal would provide an exclusion from gross income for qualified charitable distributions from an IRA: (1) to a charitable organization to which deductible contributions can be made; (2) to a charitable remainder annuity trust or charitable remainder unitrust; (3) to a pooled income fund (as defined in sec. 642(c)(5)); or (4) for the issuance of a charitable gift annuity. The exclusion would apply with respect to distributions described in (2), (3), or (4) only if no person holds an income interest in the trust, fund, or annuity attributable to such distributions other than the IRA owner, his or her spouse, or a charitable organization.

In determining the character of distributions from a charitable remainder annuity trust or a charitable remainder unitrust to which a qualified charitable distribution from an IRA was made, the charitable remainder trust would be required to treat as ordinary income the portion of the distribution from the IRA to the trust which would have been includible in income but for the provision, and as corpus any remaining portion of the distribution. Similarly, in determining the amount includible in gross income by reason of a payment from a charitable gift annuity purchased with a qualified charitable distribution from an IRA, the taxpayer would not be permitted to treat the portion of the distribution from the IRA that would have been taxable but for the provision and which is used to purchase the annuity as an investment in the annuity contract.

A qualified charitable distribution would be any distribution from an IRA which is made after age 70-1/2, which qualifies as a charitable contribution (within the meaning of sec. 170(c)), and which is made directly to the charitable organization or to a charitable remainder annuity trust, charitable remainder unitrust, pooled income fund, or charitable gift annuity (as described above).[3] A taxpayer would not be permitted to claim a charitable contribution deduction for amounts transferred from his or her IRA to charity or to a trust, fund, or annuity that, because of the provision, are excluded from the taxpayer's income. Conversely, if the amounts transferred would otherwise be nontaxable, e.g., a qualified distribution from a Roth IRA, the regularly applicable deduction rules would apply.

Effective Date

The proposal would generally be effective for taxable years beginning after December 31, 2000. The provision relating to deemed IRAs under employer plans would be effective for plan years beginning after December 31, 2001. The provision relating to tax-free withdrawals from IRAs for charitable purposes would be effective for distributions after December 31, 2000.

---

[3] It would be intended that, in the case of transfer to a trust, fund, or annuity, the full amount distributed from an IRA will meet the definition of a qualified charitable distribution if the charitable organization's interest in the distribution would qualify as a charitable contribution under section 170.

II. PENSION PROVISIONS

A. Expanding Coverage

1. Increase in benefit and contribution limits

Present Law

In general

Under present law, limits apply to contributions and benefits under qualified plans (sec. 415), the amount of compensation that may be taken into account under a plan for determining benefits (sec. 401(a)(17)), the maximum amount of elective deferrals that an individual may make to a salary reduction plan or tax sheltered annuity (sec. 402(g)), and deferrals under an eligible deferred compensation plan of a tax-exempt organization or a State or local government (sec. 457).

Limitations on contributions and benefits

Under present law, the limits on contributions and benefits under qualified plans are based on the type of plan. Under a defined contribution plan, the qualification rules limit the annual additions to the plan with respect to each plan participant to the lesser of (1) 25 percent of compensation or (2) $30,000 (for 2000). Annual additions are the sum of employer contributions, employee contributions, and forfeitures with respect to an individual under all defined contribution plans of the same employer. The $30,000 limit is indexed for cost-of-living adjustments in $5,000 increments.

Under a defined benefit plan, the maximum annual benefit payable at retirement is generally the lesser of (1) 100 percent of average compensation, or (2) $135,000 (for 2000). The dollar limit is adjusted for cost-of-living increases in $5,000 increments.

Under present law, in general, the dollar limit on annual benefits is reduced if benefits under the plan begin before the social security retirement age (currently, age 65) and increased if benefits begin after social security retirement age.

Compensation limitation

Under present law, the annual compensation of each participant that may be taken into account for purposes of determining contributions and benefits under a plan, applying the deduction rules, and for nondiscrimination testing purposes is limited to $170,000 (for 2000). The compensation limit is indexed for cost-of-living adjustments in $10,000 increments.

Elective deferral limitations

Under present law, under certain salary reduction arrangements, an employee may elect to have the employer make payments as contributions to a plan on behalf of the employee, or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals.

The maximum annual amount of elective deferrals that an individual may make to a qualified cash or deferred arrangement (a "section 401(k) plan"), a tax-sheltered annuity ("section 403(b) annuity") or a salary reduction simplified employee pension plan ("SEP") is $10,500 (for 2000). The maximum annual amount of elective deferrals that an individual may make to a SIMPLE plan is $6,000. These limits are indexed for inflation in $500 increments.

Section 457 plans

The maximum annual deferral under a deferred compensation plan of a State or local government or a tax-exempt organization (a "section 457 plan") is the lesser of (1) $8,000 (for 2000) or (2) 33-1/3 percent of compensation. The $8,000 dollar limit is increased for inflation in $500 increments. Under a special catch-up rule, the section 457 plan may provide that, for one or more of the participant's last 3 years before retirement, the otherwise applicable limit is increased to the lesser of (1) $15,000 or (2) the sum of the otherwise applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

Description of Proposal

Limits on contributions and benefits

The proposal would provide faster indexing of the $30,000 limit on annual additions to a defined contribution plan. Under the proposal this limit amount would be indexed in $1,000 increments.[4]

The proposal would increase the $135,000 annual benefit limit under a defined benefit plan to $160,000. The dollar limit would be reduced for benefit commencement before age 62 and increased for benefit commencement after age 65.

Compensation limitation

The proposal would increase the limit on compensation that may be taken into account under a plan to $200,000. This amount would be indexed in $5,000 increments.

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[4] The 25 percent of compensation limitation would be increased to 100 percent of compensation under another provision of the proposal.

Elective deferral limitations

In 2001, the proposal would increase the dollar limit on annual elective deferrals under section 401(k) plans, section 403(b) annuities and salary reduction SEPs to $11,000. In 2002 and thereafter, in limits would increase in $1,000 annual increments until the limits reach $15,000 in 2005, with indexing in $500 increments thereafter. Beginning in 2001, the proposal would increase the maximum annual elective deferrals that may be made to a SIMPLE plan in $1,000 annual increments until the limit reaches $10,000 in 2004. Beginning after 2004, the $10.000 dollar limit would be indexed in $500 increments.

Section 457 plans

The proposal would increase the dollar limit on deferrals under a section 457 plan to conform to the elective deferral limitation. Thus, the limit would be $11,000 in 2001, and would be increased in $1,000 annual increments thereafter until the limit reaches $15,000 in 2005. The limit would be indexed thereafter in $500 increments. The limit would be twice the otherwise applicable dollar limit in the three years prior to retirement.[5]

Effective Date

The proposal would be effective for years beginning after December 31, 2000.

2. Plan loans for subchapter S shareholders, partners, and sole proprietors

Present Law

The Internal Revenue Code prohibits certain transactions ("prohibited transactions") between a qualified plan and a disqualified person in order to prevent persons with a close relationship to the qualified plan from using that relationship to the detriment of plan participants and beneficiaries.[6] Certain types of transactions are exempted from the prohibited transaction rules, including loans from the plan to plan participants, if certain requirements are satisfied. In addition, the Secretary of Labor can grant an administrative exemption from the prohibited transaction rules if she finds the exemption is administratively feasible, in the interest of the plan and plan participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. Pursuant to this exemption process, the Secretary of Labor grants exemptions both with respect to specific transactions and classes of transactions.

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[5] Another proposal would increases the 33-1/3 percentage of compensation limit to 100 percent.

[6] Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), also contains prohibited transaction rules. The Code and ERISA proposals are substantially similar, although not identical.

The statutory exemptions to the prohibited transaction rules do not apply to certain transactions in which the plan makes a loan to an owner-employee.[7] Loans to participants other than owner-employees are permitted if loans are available to all participants on a reasonably equivalent basis, are not made available to highly compensated employees in an amount greater than made available to other employees, are made in accordance with specific provisions in the plan, bear a reasonable rate of interest, and are adequately secured. In addition, the Code places limits on the amount of loans and repayment terms.

For purposes of the prohibited transaction rules, an owner-employee means (1) a sole proprietor, (2) a partner who owns more than 10 percent of either the capital interest or the profits interest in the partnership, (3) an employee or officer of a Subchapter S corporation who owns more than 5 percent of the outstanding stock of the corporation, and (4) the owner of an individual retirement arrangement ("IRA"). The term owner-employee also includes certain family members of an owner-employee and certain corporations owned by an owner-employee.

Under the Internal Revenue Code, a two-tier excise tax is imposed on disqualified persons who engage in a prohibited transaction. The first level tax is equal to 15 percent of the amount involved in the transaction. The second level tax is imposed if the prohibited transaction is not corrected within a certain period, and is equal to 100 percent of the amount involved.

Description of Proposal

The proposal generally would eliminate the special present-law rules relating to plan loans made to an owner-employee. Thus, the general statutory exemption would apply to such transactions. Present law would continue to apply with respect to IRAs.

Effective Date

The proposal would be effective with respect to periods after December 31, 2000.

3. Modification of top-heavy rules

Present Law

In general

Under present law, additional qualification requirements apply to plans that primarily benefit an employer's key employees ("top-heavy plans"). These additional requirements provide (1) more rapid vesting for plan participants who are non-key employees and (2) minimum nonintegrated employer contributions or benefits for plan participants who are non-key employees.

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[7] Certain transactions involving a plan and Subchapter S shareholders are permitted.

Definition of top-heavy plan

In general, a top-heavy plan is a plan under which more than 60 percent of the contributions or benefits are provided to key employees. More precisely, a defined benefit plan is a top-heavy plan if more than 60 percent of the cumulative accrued benefits under the plan are for key employees. A defined contribution plan is top heavy if the sum of the account balances of key employees is more than 60 percent of the total account balances under the plan. For each plan year, the determination of top-heavy status generally is made as of the last day of the preceding plan year ("the determination date").

For purposes of determining whether a plan is a top-heavy plan, benefits derived both from employer and employee contributions, including employee elective contributions, are taken into account. In addition, the accrued benefit of a participant in a defined benefit plan and the account balance of a participant in a defined contribution plan includes any amount distributed within the 5-year period ending on the determination date.

An individual's accrued benefit or account balance is not taken into account in determining whether a plan is top-heavy if the individual has not performed services for the employer during the 5-year period ending on the determination date.

In some cases, two or more plans of a single employer must be aggregated for purposes of determining whether the group of plans is top-heavy. The following plans must be aggregated: (1) plans which cover a key employee (including collectively bargained plans); and (2) any plan upon which a plan covering a key employee depends for purposes of satisfying the Code's nondiscrimination rules. The employer may be required to include terminated plans in the required aggregation group. In some circumstances, an employer may elect to aggregate plans for purposes of determining whether they are top heavy.

SIMPLE plans are not subject to the top-heavy rules.

Definition of key employee

A key employee is an employee who, during the plan year that ends on the determination date or any of the 4 preceding plan years, is (1) an officer earning over one-half of the defined benefit plan dollar limitation of section 415 ($67,500 for 2000), (2) a 5-percent owner of the employer, (3) a 1-percent owner of the employer earning over $150,000, or (4) one of the 10 employees earning more than the defined contribution plan dollar limit ($30,000 for 2000) with the largest ownership interests in the employer. A family ownership attribution rule applies to the determination of 1-percent owner status, 5-percent owner status, and largest ownership interest. Under this attribution rule, an individual is treated as owning stock owned by the individual's spouse, children, grandchildren, or parents.

Minimum benefit for non-key employees

A minimum benefit generally must be provided to all non-key employees in a top-heavy plan. In general, a top-heavy defined benefit plan must provide a minimum benefit equal to the lesser of (1) 2 percent of compensation multiplied by the employee's years of service, or (2) 20 percent of compensation. A top-heavy defined contribution plan must provide a minimum annual contribution equal to the lesser of (1) 3 percent of compensation, or (2) the percentage of compensation at which contributions were made for key employees (including employee elective contributions made by key employees and employer matching contributions).

For purposes of the minimum benefit rules, only benefits derived from employer contributions (other than amounts employees have elected to defer) to the plan are taken into account, and an employee's social security benefits are disregarded (i.e., the minimum benefit is nonintegrated). Employer matching contributions may be used to satisfy the minimum contribution requirement; however, in such a case the contributions are not treated as matching contributions for purposes of applying the special nondiscrimination requirements applicable to employee elective contributions and matching contributions under sections 401(k) and (m). Thus, such contributions would have to meet the general nondiscrimination test of section 401(a)(4).[8]

Top-heavy vesting

Benefits under a top-heavy plan must vest at least as rapidly as under one of the following schedules: (1) 3-year cliff vesting, which provides for 100 percent vesting after 3 years of service; and (2) 2-6 year graduated vesting, which provides for 20 percent vesting after 2 years of service, and 20 percent more each year thereafter so that a participant is fully vested after 6 years of service.[9]

Qualified cash or deferred arrangements

Under a qualified cash or deferred arrangement (a "section 401(k) plan"), an employee may elect to have the employer make payments as contributions to a qualified plan on behalf of the employee, or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals. A special nondiscrimination test applies to elective deferrals under cash or deferred arrangements, which compares the elective deferrals of highly compensated employees with elective deferrals of nonhighly compensated employees. (This test is called the actual deferral percentage test or the "ADP" test). Employer matching contributions under

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[8] Tres. Reg. sec. 1.416-1 Q&A M-19.

[9] Benefits under a plan that is not top heavy must vest at least as rapidly as under one of the following schedules: (1) 5-year cliff vesting; and (2) 3-7 year graded vesting, which provides for 20 percent vesting after 3 years and 20 percent more each year thereafter so that a participant is fully vested after 7 years of service.

qualified defined contribution plans are also subject to a similar nondiscrimination test. (This test is called the actual contribution percentage test or the "ACP" test.)

Under a design-based safe harbor, a cash or deferred arrangement is deemed to satisfy the ADP test if the plan satisfies one of two contribution requirements and satisfies a notice requirement. A plan satisfies the contribution requirement under the safe harbor rule for qualified cash or deferred arrangements if the employer either (1) satisfies a matching contribution requirement or (2) makes a nonelective contribution to a defined contribution plan of at least 3 percent of an employee's compensation on behalf of each nonhighly compensated employee who is eligible to participate in the arrangement without regard to the permitted disparity rules (sec. 401(l)). A plan satisfies the matching contribution requirement if, under the arrangement: (1) the employer makes a matching contribution on behalf of each nonhighly compensated employee that is equal to (a) 100 percent of the employee's elective deferrals up to 3 percent of compensation and (b) 50 percent of the employee's elective deferrals from 3 to 5 percent of compensation; and (2), the rate of match with respect to any elective contribution for highly compensated employees is not greater than the rate of match for nonhighly compensated employees. Matching contributions that satisfy the design-based safe harbor for cash or deferred arrangements are deemed to satisfy the ACP test. Certain additional matching contributions are also deemed to satisfy the ACP test.

Description of Proposal

Definition of top-heavy plan

The proposal would provide that a plan consisting of a cash-or-deferred arrangement that satisfies the design-based safe harbor for such plans and matching contributions that satisfy the safe harbor rule for such contributions is not a top-heavy plan. Matching or nonelective contributions provided under such a plan could be taken into account in satisfying the minimum contribution requirements applicable to top-heavy plans.[10]

In determining whether a plan is top-heavy, the proposal would provide that distributions during the year ending on the date the top-heavy determination is being made are taken into account. The present-law 5-year rule would apply with respect to in-service distributions. Similarly, the proposal would provide that an individual's accrued benefit or account balance is not taken into account if the individual has not performed services for the employer during the 1-year period ending on the date the top-heavy determination is being made.

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[10] This proposal would not be intended to preclude the use of nonelective contributions that are used to satisfy the safe harbor rules from being used to satisfy other qualified retirement plan nondiscrimination rules, including those involving cross-testing.

Definition of key employee

The proposal would (1) provide that an employee is not considered a key employee by reason of officer status unless the employee earns more than the compensation limit for determining whether an employee is highly compensated ($85,000 for 2000)[11] and (2) repeal the top-10 owner key employee category. The proposal would repeal the 4-year lookback rule for determining key employee status and provide that an employee is a key employee only if he or she is a key employee during the preceding plan year.

Thus, under the proposal, an employee would be considered a key employee if, during the prior year, the employee was (1) an officer with compensation in excess of $85,000 (for 2000), (2) a 5-percent owner, or (3) a 1-percent owner with compensation in excess of $150,000. The present-law limits on the number of officers treated as key employees under (1) would continue to apply.

The family ownership attribution rule no longer would apply in determining whether an individual is a 5-percent owner of the employer for purposes of the top-heavy rules only.

Minimum benefit for nonkey employees

Under the proposal, matching contributions would be taken into account in determining whether the minimum benefit requirement has been satisfied.[12]

The proposal would provide that, in determining the minimum benefit required under a defined benefit plan, a year of service would not include any year in which no key employee benefits under the plan (as determined under sec. 410).

Effective Date

The proposal would be effective for years beginning after December 31, 2000.

4. Elective deferrals not taken into account for purposes of deduction limits

Present Law

Employer contributions to one or more qualified retirement plans are deductible subject to certain limits. In general, the deduction limit depends on the kind of plan.

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[11] The compensation limit would be determined without regard to the top-paid group election.

[12] Thus, this proposal would override the provision in Treasury regulations that, if matching contributions are used to satisfy the minimum benefit requirement, then they are not treated as matching contributions for purposes of the section 401(m) nondiscrimination rules.

In the case of a defined benefit pension plan or a money purchase pension plan, the employer generally may deduct the amount necessary to satisfy the minimum funding cost of the plan for the year. If a defined benefit pension plan has more than 100 participants, the maximum amount deductible is at least equal to the plan's unfunded current liabilities.

In the case of a profit-sharing or stock bonus plan, the employer generally may deduct an amount equal to 15 percent of compensation of the employees covered by the plan for the year.

If an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees (or a money purchase pension plan and another kind of defined contribution plan), the total deduction for all plans for a plan year generally is limited to the greater of (1) 25 percent of compensation or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year (or the amount of the plan's unfunded current liabilities, in the case of a plan with more than 100 participants).

For purposes of the deduction limits, employee elective deferral contributions to a section 401(k) plan are treated as employer contributions and, thus, are subject to the generally applicable deduction limits.

Subject to certain exceptions, nondeductible contributions are subject to a 10-percent excise tax.

Description of Proposal

Under the proposal, elective deferral contributions would not be subject to the deduction limits, and the application of a deduction limitation to any other employer contribution to a qualified retirement plan would not take into account elective deferral contributions.

Effective Date

The proposal would be effective for years beginning after December 31, 2000.

5. Repeal of coordination requirements for deferred compensation plans of State and local governments and tax-exempt organizations

Present Law

Compensation deferred under an eligible deferred compensation plan of a tax-exempt or State and local government employer (a "section 457 plan") is not includible in gross income until paid or made available. In general, the maximum permitted annual deferral under such a plan is the lesser of (1) $8,000 (in 2000) or (2) 33-1/3 percent of compensation. The $8,000 limit is increased for inflation in $500 increments. Under a special catch-up rule, a section 457 plan may provide that, for one or more of the participant's last 3 years before retirement, the otherwise applicable limit is increased to the lesser of (1) $15,000 or (2) the sum of the otherwise

applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

The $8,000 limit (as modified under the catch-up rule), applies to all deferrals under all section 457 plans in which the individual participates. In addition, in applying the $8,000 limit, contributions under a tax-sheltered annuity ("section 403(b) annuity"), elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan"), salary reduction contributions under a simplified employee pension plan ("SEP"), and contributions under a SIMPLE plan are taken into account. Further, the amount deferred under a section 457 plan is taken into account in applying a special catch-up rule for section 403(b) annuities.

Description of Proposal

The proposal would repeal the rules coordinating the section 457 dollar limit with contributions under other types of plans.[13]

Effective Date

The proposal would be effective for years beginning after December 31, 2000.

6. Eliminate IRS user fees for certain determination letter requests regarding employer plans

Present Law

An employer that maintains a retirement plan for the benefit of its employees may request from the Internal Revenue Service ("IRS") a determination as to whether the form of the plan satisfies the requirements applicable to tax-qualified plans (sec. 401(a)). In order to obtain from the IRS a determination letter on the qualified status of the plan, the employer must pay a user fee. The user fee may range from $125 to $1,250, depending upon the scope of the request and the type and format of the plan.[14]

Present law provides that plans that do not meet the qualification requirements will be treated as meeting such requirements if appropriate retroactive plan amendments are made during the remedial amendment period. In general, the remedial amendment period ends on the due date for the employer's tax return (including extensions) for the taxable year in which the event giving rise to the disqualifying provision occurred (e.g., a plan amendment or a change in the law). The Secretary may provide for general extensions for the remedial amendment period or for extensions

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[13] The limits on deferrals under a section 457 plan would be modified under other provisions of the proposal.

[14] User fees are statutorily authorized; however, the IRS sets the dollar amount of the fee applicable to any particular type of request.

in certain cases. For example, the remedial amendment period with respect to amendments relating to the qualification requirements affected by the General Agreements on Tariffs and Trade, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, and the Internal Revenue Service Restructuring and Reform Act of 1998 generally ends the last day of the first plan year beginning on or after January 1, 2001.[15]

Description of Proposal

A small employer (100 or fewer employees) would not be required to pay a user fee for a determination letter request with respect to the qualified status of a retirement plan that the employer maintains if the request is made before the later of (1) the last day of the fifth plan year of the plan or (2) the end of any applicable remedial amendment period with respect to the plan that begins before the end of the fifth plan year of the plan. The proposal would apply only to requests by employers for determination letters concerning the qualified retirement plans they maintain. Therefore, a sponsor of a prototype plan would be required to pay a user fee for a request for a notification letter, opinion letter, or similar ruling. A small employer that adopts a prototype plan, however, would not be required to pay a user fee for a determination letter request with respect to the employer's plan.

Effective Date

The proposal would be effective for determination letter requests made after December 31, 2000.

7. Deduction limits

Present Law

Employer contributions to one or more qualified retirement plans are deductible subject to certain limits. In general, the deduction limit depends on the kind of plan. Subject to certain exceptions, nondeductible contributions are subject to a 10-percent excise tax.

In the case of a defined benefit pension plan or a money purchase pension plan, the employer generally may deduct the amount necessary to satisfy the minimum funding cost of the plan for the year. If a defined benefit pension plan has more than 100 participants, the maximum amount deductible is at least equal to the plan's unfunded current liabilities.

In some cases, the amount of deductible contributions is limited by compensation. In the case of a profit-sharing or stock bonus plan, the employer generally may deduct an amount equal to 15 percent of compensation of the employees covered by the plan for the year.

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[15] Rev. Proc. 2000-27, 2000-26 I.R.B. 1272.

If an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees (or a money purchase pension plan and another kind of defined contribution plan), the total deduction for all plans for a plan year generally is limited to the greater of (1) 25 percent of compensation or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year (or the amount of the plan's unfunded current liabilities, in the case of a plan with more than 100 participants).

In the case of an employee stock ownership plan ("ESOP"), principal payments on a loan used to acquire qualifying employer securities are deductible up to 25 percent of compensation.

For purposes of the deduction limits, employee elective deferral contributions to a qualified cash or deferred arrangement ("section 401(k) plan") are treated as employer contributions and, thus, are subject to the generally applicable deduction limits.[16]

For purposes of the deduction limits, compensation means the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the plan, and the beneficiaries under a profit-sharing or stock bonus plan are the employees who benefit under the plan with respect to the employer's contribution.[17] An employee who is eligible to make elective deferrals under a section 401(k) plan is treated as benefitting under the arrangement even if the employee elects not to defer.[18]

For purposes of the deduction rules, compensation generally includes only taxable compensation, and thus does not include salary reduction amounts, such as elective deferrals under a section 401(k) plan or a tax-sheltered annuity ("section 403(b) annuity"), elective contributions under a deferred compensation plan of a tax-exempt organization or a State or local government ("section 457 plan"), and salary reduction contributions under a section 125 cafeteria plan. For purposes of the contribution limits under section 415, compensation does include such salary reduction amounts.

<u>**Description of Proposal**</u>

Under the proposal, the definition of compensation for purposes of the deduction rules would include salary reduction amounts treated as compensation under section 415. In addition, the annual limitation on the amount of deductible contributions to a profit-sharing or stock bonus plan would be increased from 15 percent to 25 percent of compensation of the employees covered by the plan for the year.

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[16] Another proposal would provide that elective deferrals are not subject to the deduction limits.

[17] Rev. Rul. 65-295, 1965-2 C.B. 148.

[18] Treas. Reg. sec. 1.410(b)-3.

Effective Date

The proposal would be effective for years beginning after December 31, 2000.

8. Option to treat elective deferrals as after-tax contributions

Present Law

A qualified cash or deferred arrangement ("section 401(k) plan") or a tax-sheltered annuity ("section 403(b) annuity") may permit a participant to elect to have the employer make payments as contributions to the plan or to the participant directly in cash. Contributions made to the plan at the election of a participant are elective deferrals. Elective deferrals must be nonforfeitable and are subject to an annual dollar limitation (sec. 402(g)) and distribution restrictions. In addition, elective deferrals under a section 401(k) plan are subject to special nondiscrimination rules. Elective deferrals (and earnings attributable thereto) are not includible in a participant's gross income until distributed from the plan.

Individuals with adjusted gross income below certain levels generally may make nondeductible contributions to a Roth IRA and may convert a deductible or nondeductible IRA into a Roth IRA. Amounts held in a Roth IRA that are withdrawn as a qualified distribution are not includible in income, nor subject to the additional 10-percent tax on early withdrawals. A qualified distribution is a distribution that (1) is made after the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA, and (2) is made after attainment of age 59-1/2, is made on account of death or disability, or is a qualified special purpose distribution (i.e., for first-time homebuyer expenses of up to $10,000). A distribution from a Roth IRA that is not a qualified distribution is includible in income to the extent attributable to earnings, and is subject to the 10-percent tax on early withdrawals (unless an exception applies).[19]

Description of Proposal

A section 401(k) plan or a section 403(b) annuity would be permitted to include a "qualified plus contribution program" that permits a participant to elect to have all or a portion of the participant's elective deferrals under the plan treated as designated plus contributions. Designated plus contributions would be elective deferrals that the participant designates as not excludable from the participant's gross income.

The annual dollar limitation on a participant's designated plus contributions would be the section 402(g) annual limitation on elective deferrals, reduced by the participant's elective deferrals that the participant does not designate as designated plus contributions. Designated plus contributions would be treated as any other elective deferral for purposes of nonforfeitability

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[19] Early distributions of converted amounts may also accelerate income inclusion of converted amounts that are taxable under the 4-year rule applicable to 1998 conversions.

requirements and distribution restrictions. Under a section 401(k) plan, designated plus contributions also would be treated as any other elective deferral for purposes of the special nondiscrimination requirements.

The plan would be required to establish a separate account, and maintain separate recordkeeping, for a participant's designated plus contributions (and earnings allocable thereto). A qualified distribution from a participant's designated plus contributions account would not be includible in the participant's gross income. A qualified distribution would be a distribution that is made after the end of a specified nonexclusion period and that is (1) made on or after the date on which the participant attains age 59-1/2, (2) made to a beneficiary (or to the estate of the participant) on or after the death of the participant, or (3) attributable to the participant's being disabled.[20] The nonexclusion period would be the 5-year-taxable period beginning with the earlier of (1) the first taxable year for which the participant made a designated plus contribution to any designated plus contribution account established for the participant under the plan, or (2) if the participant has made a rollover contribution to the designated plus contribution account that is the source of the distribution from a designated plus contribution account established for the participant under another plan, the first taxable year for which the participant made a designated plus contribution to the previously established account.

A distribution from a designated plus contributions account that is a corrective distribution of an elective deferral (and income allocable thereto) that exceeds the section 402(g) annual limit on elective deferrals would not be a qualified distribution.

A participant would be permitted to roll over a distribution from a designated plus contributions account only to another designated plus contributions account or a Roth IRA of the participant.

The Secretary of the Treasury would be directed to require the plan administrator of each section 401(k) plan or section 403(b) annuity that permits participants to make designated plus contributions to make such returns and reports regarding designated plus contributions to the Secretary, plan participants and beneficiaries, and other persons that the Secretary may designate.

Effective Date

The proposal would be effective for taxable years beginning after December 31, 2000.

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[20] A qualified special purpose distribution, as defined under the rules relating to Roth IRAs, does not qualify as a tax-free distribution from a designated plus contributions account.

9. Reduce PBGC premiums for small and new plans

Present Law

Under present law, the Pension Benefit Guaranty Corporation ("PBGC") provides insurance protection for participants and beneficiaries under certain defined benefit pension plans by guaranteeing certain basic benefits under the plan in the event the plan is terminated with insufficient assets to pay benefits promised under the plan. The guaranteed benefits are funded in part by premium payments from employers who sponsor defined benefit plans. The amount of the required annual PBGC premium for a single-employer plan is generally a flat rate premium of $19 per participant and an additional variable rate premium based on a charge of $9 per $1,000 of unfunded vested benefits. Unfunded vested benefits under a plan generally means (1) the unfunded current liability for vested benefits under the plan, over (2) the value of the plan's assets, reduced by any credit balance in the funding standard account. No variable rate premium is imposed for a year if contributions to the plan were at least equal to the full funding limit.

The PBGC guarantee is phased in ratably in the case of plans that have been in effect for less than 5 years, and with respect to benefit increases from a plan amendment that was in effect for less than 5 years before termination of the plan.

Description of Proposal

Reduced flat-rate premiums for new plans of small employers

Under the proposal, for the first five plan years of a new single-employer plan of a small employer, the flat-rate PBGC premium would be $5 per plan participant.

A small employer would be a contributing sponsor that, on the first day of the plan year, has 100 or fewer employees. For this purpose, all employees of the members of the controlled group of the contributing sponsor would be taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, employees of all contributing sponsors (and their controlled group members) would be taken into account in determining whether the plan is a plan of a small employer.

A new plan would mean a defined benefit plan maintained by a contributing sponsor if, during the 36-month period ending on the date of adoption of the plan, such contributing sponsor (or controlled group member or a predecessor of either) has not established or maintained a plan subject to PBGC coverage with respect to which benefits were accrued for substantially the same employees as are in the new plan.

Reduced variable PBGC premium for new and small employer plans

The proposal would provide that the variable premium is phased in for "new defined benefit plans" over a six-year period starting with the plan's first plan year. The amount of the

variable premium would be a percentage of the variable premium otherwise due, as follows: 0 percent of the otherwise applicable variable premium in the first plan year; 20 percent in the second plan year; 40 percent in the third plan year; 60 percent in the fourth plan year; 80 percent in the fifth plan year; and 100 percent in the sixth plan year (and thereafter).

A new defined benefit plan would be defined as under the flat-rate premium proposal relating to new small employer plans.

Effective Date

The proposals relating to new plans would be effective for plans established after December 31, 2000. The proposal reducing the PBGC variable premium for small plans would be effective for years after December 31, 2000.

10. Credit for low- and middle-income savers

Present Law

Present law provides favorable tax treatment for a variety of retirement savings vehicles, including employer-sponsored retirement plans and individual retirement arrangements ("IRAs").

Several different types of tax-favored employer-sponsored retirement plans exist, such as section 401(a) qualified plans (including plans with a section 401(k) qualified cash-or-deferred arrangement), section 403(a) qualified annuity plans, section 403(b) annuities, section 408(k) simplified employee pensions ("SEPs"), section 408(p) SIMPLE retirement accounts, and section 457(b) eligible deferred compensation plans. In general, an employer and, in certain cases, employees, contribute to the plan. Taxation of the contributions and earnings thereon is generally deferred until benefits are distributed from the plan to participants or their beneficiaries.[21] Contributions and benefits under tax-favored employer-sponsored retirement plans are subject to specific limitations.

Coverage and nondiscrimination rules also generally apply to tax-favored employer-sponsored retirement plans to ensure that plans do not disproportionately cover higher-paid employees and that benefits provided to moderate- and lower-paid employees are generally proportional to those provided to higher-paid employees.

IRAs include both traditional IRAs and Roth IRAs. In general, an individual makes contributions to an IRA, and investment earnings on those contributions accumulate on a tax-deferred basis. Total annual IRA contributions per individual are limited to $2,000 (or the compensation of the individual or the individual's spouse, if smaller). Contributions to a traditional IRA may be deducted from gross income if an individual's adjusted gross income

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[21] In the case of after-tax employee contributions, only earnings are taxed upon withdrawal.

("AGI") is below certain levels or the individual is not an active participant in certain employer-sponsored retirement plans. Contributions to a Roth IRA are not deductible from gross income, regardless of adjusted gross income. A distribution from a traditional IRA is includible in the individual's gross income except to the extent of individual contributions made on a nondeductible basis. A qualified distribution from a Roth IRA is excludable from gross income.

Taxable distributions made from employer retirement plans and IRAs before the employee or individual has reached age 59-1/2 are subject to a 10-percent additional tax, unless an exception applies.

Description of Proposal

The proposal would provide a temporary nonrefundable tax credit for contributions made by eligible taxpayers to a qualified plan. The maximum annual contribution eligible for the credit would be $2,000. The credit rate would depend on the adjusted gross income ("AGI") of the taxpayer. Only joint returns with AGI of $50,000 or less, head of household returns of $37,500 or less, and single returns of $25,000 or less would be eligible for the credit.[22] The credit would be in addition to any deduction or exclusion that would otherwise apply with respect to the contribution. The credit would offset minimum tax liability as well as regular tax liability. The credit would be available to individuals 18 or over and have not attained age 60, other than individuals who are full-time students or claimed as a dependent on another taxpayer's return.

The credit would be available with respect to elective contributions to a section 401(k) plan, tax-sheltered annuity, or eligible deferred compensation arrangement of a State or local government (a "sec. 457 plan"), SIMPLE, or SEP, contributions to a traditional or Roth IRA, and voluntary after-tax employee contributions to a qualified retirement plan. The present-law rules governing such contributions would continue to apply.

The amount of any contribution eligible for the credit would be reduced by taxable distributions received by the taxpayer and his or her spouse from any savings arrangement described above or any other qualified retirement plan during the taxable year for which the credit is claimed, the two taxable years prior to the year the credit is claimed, and during the period after the end of the taxable year and prior to the due date for filing the taxpayer's return for the year. In the case of a distribution from a Roth IRA, this rule would apply to any such distributions, whether or not taxable.

The credit rates based on AGI would be as follows.

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[22] The AGI limits applicable to single taxpayers would apply to married taxpayers filing separate returns.

Joint Filers	*Heads of Households*	*All Other Filers*	*Credit Rate*
0-$30,000	$0-$22,500	$0-$15,000	50%
$30,001-$40,000	$22,501-$30,000	$15,000-$20,000	25%
$40,001-$50,000	$30,001-$37,500	$20,001-$25,000	5%
Over $50,000	Over $37,500	Over $25,000	0

The proposal would direct the Secretary of the Treasury to report annually to the Senate Finance Committee and the House Committee on Ways and Means regarding the number of individuals who claim the credit.

Effective Date

The proposal would be effective for taxable years beginning after December 31, 2000, and before January 1, 2006.

11. Small business tax credit for qualified retirement plan contributions

Present Law

The timing of an employer's deduction for compensation paid to an employee generally corresponds to the employee's recognition of the compensation. However, an employer that contributes to a qualified retirement plan is entitled to a deduction (within certain limits) for the employer's contribution to the plan on behalf of an employee even though the employee does not recognize income with respect to the contribution until the amount is distributed to the employee.

Description of Proposal

The proposal would provide a nonrefundable income tax credit for small employers equal to 50 percent of certain qualifying employer contributions made to qualified retirement plans on behalf of nonhighly compensated employees.[23] For purposes of the proposal, a small employer would mean an employer with no more than 50 employees who received at least $5,000 of earnings in the preceding year. A nonhighly compensated employee would be defined as an employee who neither (1) was a five-percent owner of the employer at any time during the current

[23] The credit would not be available with respect to contributions to a SIMPLE IRA or SEP.

year or the preceding year, or (2) for the preceding year, had compensation in excess of $80,000 (indexed for inflation).[24] The credit would be available for the first three plan years of the plan.

The proposal would require a small employer to make nonelective contributions equal to at least one percent of compensation to qualify for the credit. The credit would apply to both qualifying nonelective employer contributions or qualifying employer matching contributions, but only up to a total of three percent of the nonhighly compensated employee's compensation. The credit would be available for 50 percent of qualifying benefit accruals under a nonintegrated defined benefit plan if the benefits are equivalent, as defined in regulations, to a three-percent nonelective contribution to a defined contribution plan.

To qualify for the credit, the nonelective and matching contributions to a defined contribution plan and the benefit accruals under a defined benefit plan would be required to vest at least as rapidly as under either a three-year cliff vesting schedule or a graded schedule that provides 20-percent vesting per year for five years. In order to qualify for the credit, contributions to plans other than pension plans would have to be subject to the same distribution restrictions that apply to qualified nonelective employer contributions to a section 401(k) plan, i.e., distribution only upon separation from service, death, disability, attainment of age 59-1/2, plan termination without a successor plan, or acquisition of a subsidiary or substantially all the assets of a trade or business that employs the participant.[25] Qualifying contributions to pension plans would be subject to the distribution restrictions applicable to such plans.

The plan to which the small employer makes the qualifying contributions (and any plan aggregated with that plan for nondiscrimination testing purposes) would be required to allocate any nonelective employer contributions proportionally to participants' compensation from the employer (or on a flat-dollar basis) and, accordingly, without the use of permitted disparity or cross-testing.

Forfeited nonvested qualifying contributions or accruals for which the credit was claimed generally would result in recapture of the credit at a rate of 35 percent. However, recapture would not apply to the extent that forfeitures of contributions are reallocated to nonhighly compensated employees or applied to future contributions on behalf of nonhighly compensated employees. The Secretary of the Treasury would be authorized to issue administrative guidance, including de minimis rules, to simplify or facilitate claiming and recapturing the credit.

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[24] The top paid group election, which under present law permits an employer to classify an employee as a nonhighly compensated employee if the employee had compensation in excess of $80,000 during the preceding year but was not among the top 20 percent of employees of the employer when ranked on the basis of compensation paid to employees during the preceding year, would not be taken into account in determining nonhighly compensated employees for purposes of the proposal.

[25] The rules relating to distribution upon separation from service would be modified under another provision of the proposal.

The credit would be a general business credit.[26] The 50 percent of qualifying contributions that are effectively offset by the tax credit would not be deductible; the other 50 percent of the qualifying contributions (and other contributions) would be deductible to the extent permitted under present law.

Effective Date

The credit would be effective for taxable years beginning after December 31, 2000, with respect to plans established after such date.

12. Small business tax credit for new retirement plan expenses

Present Law

The costs incurred by an employer related to the establishment and maintenance of a retirement plan (e.g., payroll system changes, investment vehicle set-up fees, consulting fees) generally are deductible by the employer as ordinary and necessary expenses in carrying on a trade or business.

Description of Proposal

The proposal would provide a nonrefundable income tax credit for 50 percent of the administrative and retirement-education expenses for any small business that adopts a new qualified defined benefit or defined contribution plan (including a section 401(k) plan), SIMPLE plan, or simplified employee pension ("SEP"). The credit would apply to 50 percent of the first $1,000 in administrative and retirement-education expenses for the plan for each of the first three years of the plan.

The credit would be available to an employer that did not employ, in the preceding year, more than 100 employees with compensation in excess of $5,000. In order for an employer to be eligible for the credit, the plan would have to cover at least one nonhighly compensated employee. In addition, if the credit is for the cost of a payroll deduction IRA arrangement, the arrangement would have to be made available to all employees of the employer who have worked with the employer for at least three months.

The credit would be a general business credit.[27] The 50 percent of qualifying expenses that are effectively offset by the tax credit would not be deductible; the other 50 percent of the qualifying expenses (and other expenses) would be deductible to the extent permitted under present law.

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[26] The credit could not be carried back to years before the effective date.

[27] The credit could not be carried back to years before the effective date.

Effective Date

The credit would be effective for taxable years beginning after December 31, 2000, with respect to plans established after such date.

B. Enhancing Fairness for Women

1. Additional salary reduction catch-up contributions

Present Law

Elective deferral limitations

Under present law, under certain salary reduction arrangements, an employee may elect to have the employer make payments as contributions to a plan on behalf of the employee, or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals.

The maximum annual amount of elective deferrals that an individual may make to a qualified cash or deferred arrangement (a "401(k) plan"), a tax-sheltered annuity ("section 403(b) annuity") or a salary reduction simplified employee pension plan ("SEP") is $10,500 (for 2000). The maximum annual amount of elective deferrals that an individual may make to a SIMPLE plan is $6,000. These limits are indexed for inflation in $500 increments.

Section 457 plans

The maximum annual deferral under a deferred compensation plan of a State or local government or a tax-exempt organization (a "section 457 plan") is the lesser of (1) $8,000 (for 2000) or (2) 33-1/3 percent of compensation. The $8,000 dollar limit is increased for inflation in $500 increments. Under a special catch-up rule, the section 457 plan may provide that, for one or more of the participant's last 3 years before retirement, the otherwise applicable limit is increased to the lesser of (1) $15,000 or (2) the sum of the otherwise applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

Description of Proposal

The proposal would provide that individuals who have attained age 50 would be permitted to make additional catch-up elective contributions to employer-sponsored retirement plans and additional catch-up IRA contributions.

In the case of employer-sponsored retirement plans, the proposal would apply to elective deferrals under a section 401(k) plan, section 403(b) annuity, SIMPLE, or deferrals under section 457 plan. Additional contributions could be made by an individual who has attained age 50 before

the end of the plan year and with respect to whom no other elective deferrals may otherwise be made to the plan for the year because of the application of any limitation of the Code (e.g., the annual limit on elective deferrals) or of the plan. Under the proposal, the additional amount of elective contributions that could be made by an eligible individual participating in such a plan would be the lesser of (1) the applicable percent of the maximum dollar amount of elective deferrals otherwise excludable from the gross income of the participant for the year (under sec. 402(g))or (2) the participant's compensation for the year reduced by any other elective deferrals of the participant for the year.[28] The applicable percent would be 10 percent in 2001, and would increase by 10 percentage points until the applicable percent is 50 in 2005 and thereafter.

Catch-up contributions made under the proposal would not be subject to any other contribution limits and would not be taken into account in applying other contribution limits. In addition, such contributions would not be subject to applicable nondiscrimination rules.[29]

An employer would be permitted to make matching contributions with respect to catch-up contributions. Any such matching contributions would be subject to the normally applicable rules.

The following examples illustrate the application of the proposal, after the catch-up is fully phased in:

Example 1: Employee A is a highly compensated employee who is over 50 and who participates in a section 401(k) plan sponsored by A's employer. The maximum annual deferral limit (without regard to the proposal) is $10,000. After application of the special nondiscrimination rules applicable to section 401(k) plans, the maximum elective deferral A may make for the year is $8,000. Under the proposal, A would be able to make additional catch-up salary reduction contributions of $5,000.

Example 2: Employee B, who is over 50, is a participant in a section 401(k) plan. B's compensation for the year is $30,000. The maximum annual deferral limit (without regard to the proposal) is $10,000. Under the terms of the plan, the maximum permitted deferral is 10 percent of compensation or, in B's case, $3,000. Under the proposal, B can contribute up to $8,000 for the year ($3,000 under the normal operation of the plan, and an additional $5,000 under the proposal).

Effective Date

The proposal would be effective for taxable years beginning after December 31, 2000.

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[28] In the case of a section 457 plans, this catch-up rule would not apply during the participant's last 3 years before retirement (in those years, the regularly applicable dollar limit is doubled).

[29] Another provision in the proposal would provide that elective contributions are deductible without regard to the otherwise applicable deduction limits.

2. **Equitable treatment for contributions of employees to defined contribution plans**

Present Law

Present law imposes limits on the contributions that may be made to tax-favored retirement plans.

Defined contribution plans

In the case of a tax-qualified defined contribution plan, the limit on annual additions that can be made to the plan on behalf of an employee is the lesser of $30,000 (for 2000) or 25 percent of the employee's compensation (sec. 415(c)). Annual additions include employer contributions, including contributions made at the election of the employee (i.e., employee elective deferrals), after-tax employee contributions, and any forfeitures allocated to the employee. For this purpose, compensation means taxable compensation of the employee, plus elective deferrals, and similar salary reduction contributions. A separate limit applies to benefits under a defined benefit plan.

For years before January 1, 2000, an overall limit applies if an employee is a participant in both a defined contribution plan and a defined benefit plan of the same employer.

Tax-sheltered annuities

In the case of a tax-sheltered annuity (a "section 403(b) annuity"), the annual contribution generally cannot exceed the lesser of the exclusion allowance or the section 415(c) defined contribution limit. The exclusion allowance for a year is equal to 20 percent of the employee's includible compensation, multiplied by the employee's years of service, minus excludable contributions for prior years under qualified plans, tax-sheltered annuities or section 457 plans of the employer.

In addition to this general rule, employees of nonprofit educational institutions, hospitals, home health service agencies, health and welfare service agencies, and churches may elect application of one of several special rules that increase the amount of the otherwise permitted contributions. The election of a special rule is irrevocable; an employee may not elect to have more than one special rule apply.

Under one special rule, in the year the employee separates from service, the employee may elect to contribute up to the exclusion allowance, without regard to the 25 percent of compensation limit under section 415. Under this rule, the exclusion allowance is determined by taking into account no more than 10 years of service.

Under a second special rule, the employee may contribute up to the lesser of: (1) the exclusion allowance; (2) 25 percent of the participant's includible compensation; or (3) $15,000.

Under a third special rule, the employee may elect to contribute up to the section 415(c) limit, without regard to the exclusion allowance. If this option is elected, then contributions to other plans of the employer are also taken into account in applying the limit.

For purposes of determining the contribution limits applicable to section 403(b) annuities, includible compensation means the amount of compensation received from the employer for the most recent period which may be counted as a year of service under the exclusion allowance. In addition, includible compensation includes elective deferrals and similar salary reduction amounts.

Treasury regulations include provisions regarding application of the exclusion allowance in cases where the employee participates in a section 403(b) annuity and a defined benefit plan. The Taxpayer Relief Act of 1997 directed the Secretary of the Treasury to revise these regulations, effective for years beginning after December 31, 1999, to reflect the repeal of the overall limit on contributions and benefits.

Section 457 plans

Compensation deferred under an eligible deferred compensation plan of a tax-exempt or State and local governmental employer (a "section 457 plan") is not includible in gross income until paid or made available. In general, the maximum permitted annual deferral under such a plan is the lesser of (1) $8,000 (in 2000) or (2) 33-1/3 percent of compensation. The $8,000 limit is increased for inflation in $500 increments.

Description of Proposal

Increase in defined contribution plan limit

The proposal would increase the 25 percent of compensation limitation on annual additions under a defined contribution plan to 100 percent.[30]

Conforming limits on tax-sheltered annuities

The proposal would repeal the exclusion allowance applicable to contributions to tax-sheltered annuities. Thus, such annuities would be subject to the limits applicable to tax-qualified plans.

The proposal also would direct the Secretary of the Treasury to revise the regulations relating to the exclusion allowance under section 403(b)(2) to render void the requirement that contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance. For taxable years beginning after December 31, 1999, the regulatory provisions regarding the exclusion allowance would be applied as if the requirement that

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[30] Another proposal would increase the defined contribution plan dollar limit.

contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance were void.

Section 457 plans

The proposal would increase the 33-1/3 percent of compensation limitation on deferrals under a section 457 plan to 100 percent of compensation.

Effective Date

The proposal generally would be effective for years beginning after December 31, 2000. The proposal regarding the regulations under section 403(b)(2) would be effective on the date of enactment.

3. Faster vesting of employer matching contributions

Present Law

Under present law, a plan is not a qualified plan unless a participant's employer-provided benefit vests at least as rapidly as under one of two alternative minimum vesting schedules. A plan satisfies the first schedule if a participant acquires a nonforfeitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon the completion of 5 years of service. A plan satisfies the second schedule if a participant has a nonforfeitable right to at least 20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent after 4 years of service, 60 percent after 5 years of service, 80 percent after 6 years of service, and 100 percent after 7 years of service.[31]

Description of Proposal

The proposal would apply faster vesting schedules to employer matching contributions. Under the proposal, employer matching contributions would have to vest at least as rapidly as under one of the following two alternative minimum vesting schedules. A plan would satisfy the first schedule if a participant acquires a nonforfeitable right to 100 percent of employer matching contributions upon the completion of 3 years of service. A plan would satisfy the second schedule if a participant has a nonforfeitable right to 20 percent of employer matching contributions for each year of service beginning with the participant's second year of service and ending with 100 percent after 6 years of service.

[31] The minimum vesting requirements are also contained in Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

Effective Date

The proposal would be effective for plan years beginning after December 31, 2000, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement. The proposal would not apply to any employee until the employee has an hour of service after the effective date. In applying the new vesting schedule, service before the effective date would be taken into account.

4. Simplify and update the minimum distribution rules

Present Law

In general

Minimum distribution rules apply to all types of tax-favored retirement vehicles, including qualified plans, individual retirement arrangements ("IRAs"), tax-sheltered annuities ("section 403(b) annuities"), and eligible deferred compensation plans of tax-exempt and State and local government employers ("section 457 plans"). In general, under these rules, distribution of minimum benefits must begin no later than the required beginning date. Minimum distribution rules also apply to benefits payable with respect to a plan participant who has died. Failure to comply with the minimum distribution rules results in an excise tax imposed on the individual plan participant equal to 50 percent of the required minimum distribution not distributed for the year. The excise tax can be waived if the individual establishes to the satisfaction of the Secretary that the shortfall in the amount distributed was due to reasonable error and reasonable steps are being taken to remedy the shortfall.

Distributions prior to the death of the individual

In the case of distributions prior to the death of the plan participant, the minimum distribution rules are satisfied if either (1) the participant's entire interest in the plan is distributed by the required beginning date, or (2) the participant's interest in the plan is to be distributed (in accordance with regulations), beginning not later than the required beginning date, over a permissible period. The permissible periods are (1) the life of the participant, (2) the lives of the participant and a designated beneficiary, (3) the life expectancy of the participant, or (4) the joint life and last survivor expectancy of the participant and a designated beneficiary. In calculating minimum required distributions, life expectancies of the participant and the participant's spouse may be recomputed annually.

In the case of qualified plans, tax-sheltered annuities, and section 457 plans, the required beginning date is the April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70-1/2 or (2) the calendar year in which the employee retires. However, in the case of a 5-percent owner of the employer, distributions are required to begin no later than the April 1 of the calendar year following the year in which the 5-percent owner attains age 70-1/2. If commencement of benefits is delayed beyond age 70-1/2 from a defined benefit

plan, then the accrued benefit of the employee must be actuarially increased to take into account the period after age 70-1/2 in which the employee was not receiving benefits under the plan.[32] In the case of distributions from an IRA other than a Roth IRA, the required beginning date is the April 1 following the calendar year in which the IRA owner attains age 70-1/2. The pre-death minimum distribution rules do not apply to Roth IRAs.

In general, under proposed regulations, in order to satisfy the minimum distribution rules, annuity payments under a defined benefit plan must be paid in period payments made at intervals not longer than one year over a permissible period, and must be nonincreasing, or increase only as a result of the following: (1) cost-of-living adjustments; (2) cash refunds of employee contributions; (3) benefit increases under the plan; or (4) an adjustment due to death of the employee's beneficiary. In the case of a defined contribution plan, the minimum required distribution is determined by dividing the employee's benefit by the applicable life expectancy.

<u>Distributions after the death of the plan participant</u>

The minimum distribution rules also apply to distributions to beneficiaries of deceased participants. In general, if the participant dies after minimum distributions have begun, the remaining interest must be distributed at least as rapidly as under the minimum distribution method being used as of the date of death. If the participant dies before minimum distributions have begun, then the entire remaining interest must generally be distributed within 5 years of the participant's death. The 5-year rule does not apply if distributions begin within 1 year of the participant's death and are payable over the life of a designated beneficiary or over the life expectancy of a designated beneficiary. A surviving spouse beneficiary is not required to begin distribution until the date the deceased participant would have attained age 70-1/2.

<u>Special rules for section 457 plans</u>

Eligible deferred compensation plans of State and local and tax-exempt employers ("section 457 plans") are subject to the minimum distribution rules described above. Such plans are also subject to additional minimum distribution requirements (sec. 457(d)(2)(b)).

Description of Proposal

<u>Modification of post-death distribution rules</u>

The proposal would apply the present-law rules applicable if the participant dies before distribution of minimum benefits has begun to all post-death distributions. Thus, in general, if the employee dies before his or her entire interest has been distributed, distribution of the remaining interest would be required to be made within 5 years of the date of death, or begin within one year of the date of death and paid over the life or life expectancy of a designated beneficiary. In the

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[32] State and local government plans and church plans are not required to actuarially increase benefits that begin after age 70-1/2.

case of a surviving spouse, distributions would not be required to begin until the surviving spouse attains age 70-1/2. Minimum distributions that have already begun would be permitted to be recalculated under the new rule.

Reduction in excise tax

The proposal would reduce the excise tax on failures to satisfy the minimum distribution rules to 10 percent of the amount that was required to be distributed but was not distributed.

Treasury regulations

The Treasury would be directed to update, simplify and finalize the regulations relating to the minimum distribution rules by December 31, 2001. The Treasury would be directed to reflect in the regulations current life expectancies and to revise the required distribution methods so that, under reasonable assumptions, the amount of the required distribution does not decrease over time. The regulations would permit recalculation of distributions for future years to reflect the change in the regulations, and to permit the election of a new designated beneficiary and method of calculating life expectancy. The regulations would apply regardless of whether minimum distributions had begun.

Section 457 plans

The proposal would repeal the special minimum distribution rules applicable to section 457 plans. Thus, such plans would be subject to the same minimum distribution rules applicable to other types of tax-favored arrangements.

Effective Date

In general, the proposal would be effective for years beginning after December 31, 2000. The provision regarding Treasury regulations would be effective on the date of enactment.

5. Clarification of tax treatment of division of section 457 plan benefits upon divorce

Present Law

Under present law, benefits provided under a qualified retirement plan for a participant may not be assigned or alienated to creditors of the participant, except in very limited circumstances. One exception to the prohibition on assignment or alienation rule is a qualified domestic relations order ("QDRO"). A QDRO is a domestic relations order that creates or recognizes a right of an alternate payee to any plan benefit payable with respect to a participant, and that meets certain procedural requirements.

Under present law, a distribution from a governmental plan or a church plan is treated as made pursuant to a QDRO if it is made pursuant to a domestic relations order that creates or

recognizes a right of an alternate payee to any plan benefit payable with respect to a participant. Such distributions are not required to meet the procedural requirements that apply with respect to distributions from qualified plans.

Under present law, amounts distributed from a qualified plan generally are taxable to the participant in the year of distribution. However, if amounts are distributed to the spouse (or former spouse) of the participant by reason of a QDRO, the benefits are taxable to the spouse (or former spouse). Amounts distributed pursuant to a QDRO to an alternate payee other than the spouse (or former spouse) are taxable to the plan participant.

Section 457 of the Internal Revenue Code provides rules for deferral of compensation by an individual participating in an eligible deferred compensation plan ("section 457 plan") of a tax-exempt or State and local government employer. The QDRO rules do not apply to section 457 plans.

Description of Proposal

The proposal would apply the taxation rules for qualified plan distributions pursuant to a QDRO to distributions made pursuant to a domestic relations order from a section 457 plan. In addition, a section 457 plan would not be treated as violating the restrictions on distributions from such plans due to payments to an alternate payee under a QDRO. The special rule applicable to governmental plans and church plans would apply for purposes of determining whether a distribution is pursuant to a QDRO.

Effective Date

The proposal would be effective for transfers, distributions, and payments made after December 31, 2000.

6. Modifications relating to hardship withdrawals

Present Law

Elective deferrals under a qualified cash or deferred arrangement (a "section 401(k) plan") may not be distributable prior to the occurrence of one or more specified events. One event upon which distribution is permitted is the financial hardship of the employee. Applicable Treasury regulations[33] provide that a distribution is made on account of hardship only if the distribution is made on account of an immediate and heavy financial need of the employee and is necessary to satisfy the heavy need.

The Treasury regulations provide a safe harbor under which a distribution may be deemed necessary to satisfy an immediate and heavy financial need. One requirement of this safe harbor is

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[33] Treas. Reg. sec. 1.401(k)-1.

that the employee be prohibited from making elective contributions and employee contributions to the plan and all other plans maintained by the employer for at least 12 months after receipt of the hardship distribution.

Under present law, hardship withdrawals of elective deferrals from a qualified cash or deferred arrangement (or 403(b) annuity) are not eligible rollover distributions. Other types of hardship distributions, e.g., employer matching contributions distributed on account of hardship, are eligible rollover distributions. Eligible rollover distributions that are not directly rolled over are subject to withholding at a flat rate of 20-percent.

Description of Proposal

The Secretary of the Treasury would be directed to revise the applicable regulations to reduce from 12 months to 6 months the period during which an employee must be prohibited from making elective contributions and employee contributions in order for a distribution to be deemed necessary to satisfy an immediate and heavy financial need.

The proposal would also provide that any hardship distribution made pursuant to the terms of a plan is not an eligible rollover distribution. The proposal would not modify the rules under which hardship distributions may be made. For example, as under present law, hardship distributions of qualified employer matching contributions may only be made under the rules applicable to elective deferrals.

Effective Date

The proposal relating to safe harbor hardship distributions would be effective for years beginning after December 31, 2000.

The proposal providing that hardship distributions are not eligible rollover distributions would be effective for distributions made after December 31, 2000. The Secretary would have the authority to issue transitional guidance with respect to this proposal to provide sufficient time for plans to implement the new rule.

7. Pension coverage for domestic and similar workers

Present Law

Under present law, within limits, employers may make deductible contributions to qualified retirement plans for employees. Subject to certain exception, a 10-percent excise tax applies to nondeductible contributions to such plans.

Employers of household workers may establish a pension plan for their employees. Contributions to such plans are not deductible and therefore are subject to the excise tax on nondeductible contributions.

Description of Proposal

Under the proposal, the 10-percent excise tax on nondeductible contributions would not apply to contributions to a SIMPLE plan or a SIMPLE individual retirement account which are nondeductible solely because the contributions are not a trade or business expense under section 162. Thus, for example, employers of household workers would be able to make contributions to such plans without imposition of the excise tax. As under present law, the contributions would not be deductible. The present-law rules applicable to such plans, e.g., contribution limits and nondiscrimination rules, would continue to apply. The proposal would not apply with respect to contributions on behalf of the individual and members of his or her family.

Effective Date

The proposal would be effective for taxable years beginning after December 31, 2000.

C. Increasing Portability for Participants

1. Rollovers of retirement plan and IRA distributions

Present Law

In general

Present law permits the rollover of funds from a tax-favored retirement plan to another tax-favored retirement plan. The rules that apply depend on the type of plan involved. Similarly, the rules regarding the tax treatment of amounts that are not rolled over depend on the type of plan involved.

Distributions from qualified plans

Under present law, an "eligible rollover distribution" from a tax-qualified employer-sponsored retirement plan may be rolled over tax free to a traditional individual retirement arrangement ("IRA")[34] or another qualified plan.[35] An "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified plan, except the term does not include (1) any distribution which is one of a series of substantially equal periodic payments made (a) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated

[34] A "traditional" IRA refers to IRAs other than Roth IRAs or SIMPLE IRAs. All references to IRAs refers only to traditional IRAs.

[35] An eligible rollover distribution may either be rolled over by the distributee within 60 days of the date of the distribution or, as described below, directly rolled over by the distributing plan.

beneficiary, or (b) for a specified period of 10 years or more, (2) any distribution to the extent such distribution is required under the minimum distribution rules, and (3) certain hardship distributions. The maximum amount that can be rolled over is the amount of the distribution includible in income, i.e., after-tax employee contributions cannot be rolled over. Qualified plans are not required to accept rollovers.

Distributions from tax-sheltered annuities

Eligible rollover distributions from a tax-sheltered annuity ("section 403(b) annuity") may be rolled over into an IRA or another section 403(b) annuity. Distributions from a section 403(b) annuity cannot be rolled over into a tax-qualified plan. Section 403(b) annuities are not required to accept rollovers.

IRA distributions

Distributions from a traditional IRA, other than minimum required distributions, can be rolled over into another IRA. In general, distributions from an IRA cannot be rolled over into a qualified plan or section 403(b) annuity. An exception to this rule applies in the case of so-called "conduit IRAs." Under the conduit IRA rule, amounts can be rolled from a qualified plan into an IRA and then subsequently rolled back to another qualified plan if the amounts in the IRA are attributable solely to rollovers from a qualified plan. Similarly, an amount may be rolled over from a section 403(b) annuity to an IRA and subsequently rolled back into a section 403(b) annuity if the amounts in the IRA are attributable solely to rollovers from a section 403(b) annuity.

Distributions from section 457 plans

A "section 457 plan" is an eligible deferred compensation plan of a State or local government or tax-exempt employer that meets certain requirements. In some cases, different rules apply under section 457 to governmental plans and plans of tax-exempt employers. For example, governmental section 457 plans are like qualified plans in that plan assets are required to be held in a trust for the exclusive benefit of plan participants and beneficiaries. In contrast, benefits under a section 457 plan of a tax-exempt employer are unfunded, like nonqualified deferred compensation plans of private employers.

Section 457 benefits can be transferred to another section 457 plan. Distributions from a section 457 plan cannot be rolled over to another section 457 plan, a qualified plan, a section 403(b) annuity, or an IRA.

Rollovers by surviving spouses

A surviving spouse that receives an eligible rollover distribution may roll over the distribution into an IRA, but not a qualified plan or section 403(b) annuity.

Direct rollovers and withholding requirements

Qualified plans and section 403(b) annuities are required to provide that a plan participant has the right to elect that an eligible rollover distribution be directly rolled over to another eligible retirement plan. If the plan participant does not elect the direct rollover option, then withholding is required on the distribution at a 20-percent rate.

Notice of eligible rollover distribution

The plan administrator of a qualified plan or a section 403(b) annuity is required to provide a written explanation of rollover rules to individuals who receive a distribution eligible for rollover. In general, the notice is to be provided within a reasonable period of time before making the distribution and is to include an explanation of (1) the provisions under which the individual may have the distribution directly rolled over to another eligible retirement plan, (2) the provision that requires withholding if the distribution is not directly rolled over, (3) the provision under which the distribution may be rolled over within 60 days of receipt, and (4) if applicable, certain other rules that may apply to the distribution. The Treasury Department has provided more specific guidance regarding timing and content of the notice.

Taxation of distributions

As is the case with the rollover rules, different rules regarding taxation of benefits apply to different types of tax-favored arrangements. In general, distributions from a qualified plan, section 403(b) annuity, or IRA are includible in income in the year received. In certain cases, distributions from qualified plans are eligible for capital gains treatment and averaging. These rules do not apply to distributions from another type of plan. Distributions from a qualified plan, IRA, and section 403(b) annuity generally are subject to an additional 10-percent early withdrawal tax if made before age 59-1/2. There are a number of exceptions to the early withdrawal tax. Some of the exceptions apply to all three types of plans, and others apply only to certain types of plans. For example, the 10-percent early withdrawal tax does not apply to IRA distributions for educational expenses, but does apply to similar distributions from qualified plans and section 403(b) annuities. Benefits under a section 457 plan are generally includible in income when paid or made available. The 10-percent early withdrawal tax does not apply to section 457 plans.

Description of Proposal

In general

The proposal would provide that eligible rollover distributions from qualified retirement plans, section 403(b) annuities, and governmental section 457 plans generally could be rolled over to any of such plans or arrangements.[36] Similarly, distributions from an IRA generally would be

[36] Hardship distributions from governmental section 457 plans would be considered eligible rollover distributions.

permitted to be rolled over into a qualified plan, section 403(b) annuity, or governmental section 457 plan. The direct rollover and withholding rules would be extended to distributions from a governmental section 457 plan, and such plans would be required to provide the written notification regarding eligible rollover distributions. The rollover notice (with respect to all plans) would be required to include a description of the provisions under which distributions from the plan to which the distribution is rolled over may be subject to restrictions and tax consequences different than those applicable to distributions from the distributing plan. Qualified plans, section 403(b) annuities, and section 457 plans would not be required to accept rollovers.

Some special rules would apply in certain cases. A distribution from a qualified plan would not be eligible for capital gains or averaging treatment if there was a rollover to the plan that would not have been permitted under present law. Thus, in order to preserve capital gains and averaging treatment for a qualified plan distribution that is rolled over, the rollover would have to be made to a "conduit IRA" as under present law, and then rolled back into a qualified plan. Amounts distributed from a section 457 plan would be subject to the early withdrawal tax to the extent the distribution consists of amounts attributable to rollovers from another type of plan. Section 457 plans would be required to separately account for such amounts.

<u>Rollover of after-tax contributions</u>

The proposal would provide that employee after-tax contributions may be rolled over into another qualified plan or a traditional IRA. In the case of a rollover from a qualified plan to another qualified plan, the rollover would be permitted to be accomplished only through a direct rollover. In addition, a qualified plan would not be permitted to accept rollovers of after-tax contributions unless the plan provides separate accounting for such contributions (and earnings thereon). After-tax contributions (including nondeductible contributions to an IRA) would not be permitted to be rolled over from an IRA into a qualified plan, tax-sheltered annuity, or section 457 plan.

In the case of a distribution from a traditional IRA that is rolled over into an eligible rollover plan that is not an IRA, the distribution would be attributed first to amounts other than after-tax contributions.

<u>Expansion of spousal rollovers</u>

The proposal would provide that surviving spouses may roll over distributions to a qualified plan, section 403(b) annuity, or governmental section 457 plan in which the spouse participates.

<u>Treasury regulations</u>

The Secretary would be directed to prescribe rules necessary to carry out the proposals. Such rules may include, for example, reporting requirements and mechanisms to address mistakes relating to rollovers. It would be anticipated that the IRS would develop forms to assist

individuals who roll over after-tax contributions to an IRA in keeping track of such contributions. Such forms could, for example, expand Form 8606 - Nondeductible IRAs, to include information regarding after-tax contributions.

Effective Date

The proposal would be effective for distributions made after December 31, 2001.

2. Waiver of 60-day rule

Present Law

Under present law, amounts received from an IRA or qualified plan may be rolled over tax free if the rollover is made within 60 days of the date of the distribution. The Secretary does not have the authority to waive the 60-day requirement.

Description of Proposal

The proposal would provide that the Secretary may waive the 60-day rollover period if the failure to waive such requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Effective Date

The proposal would apply to distributions made after December 31, 2000.

3. Treatment of forms of distribution

Present Law

An amendment of a qualified retirement plan may not decrease the accrued benefit of a plan participant. An amendment is treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) except as provided by Treasury regulations, eliminating an optional form of benefit (sec. 411(d)(6)).[37]

The prohibition against the elimination of an optional form of benefit applies to plan mergers, spinoffs, transfers, and transactions amending or having the effect of amending a plan or plans to transfer plan benefits. For example, if Plan A, a profit-sharing plan that provides for distribution of benefits in annual installments over ten or twenty years, is merged with Plan B, a

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[37] A similar provision is contained in Title I of ERISA.

profit-sharing plan that provides for distribution of benefits in annual installments over life expectancy at the time of retirement, the merged plan must preserve the ten- or twenty-year installment option with respect to benefits accrued under Plan A as of the date of the merger and the installments over life expectancy with respect to benefits accrued under Plan B as of the date of the merger. Similarly, for example, if a participant's benefit under a defined contribution plan is transferred to another defined contribution plan maintained by the same or a different employer, the optional forms of benefit available with respect to the participant's accrued benefit under the transferor plan must be preserved.[38]

Description of Proposal

A defined contribution plan to which benefits are transferred would not be treated as reducing a participant's or beneficiary's accrued benefit even though it does not provide all of the forms of distribution previously available under the transferor plan if (1) the plan receives from another defined contribution plan a direct transfer of the participant's or beneficiary's benefit accrued under the transferor plan, or the plan results from a merger or other transaction that has the effect of a direct transfer (including consolidations of benefits attributable to different employers within a multiple employer plan), (2) the terms of both the transferor plan and the transferee plan authorize the transfer, (3) the transfer occurs pursuant to a voluntary election by the participant or beneficiary that is made after the participant or beneficiary received a notice describing the consequences of making the election, (4) if the transferor plan provides for an annuity as the normal form of distribution in accordance with the joint and survivor annuity rules (sec. 417), the participant's spouse (if any) consents to the transfer in a manner similar to the consent required by section 417, and (5) the transferee plan allows the participant or beneficiary to receive distribution of his or her benefit under the transferee plan in the form of a single sum distribution.

Furthermore, the proposal would direct the Secretary of the Treasury to provide by regulations that the prohibitions against eliminating or reducing an early retirement benefit, a retirement-type subsidy, or an optional form of benefit do not apply to plan amendments that eliminate or reduce early retirement benefits, retirement-type subsidies, and optional forms of benefit that create significant burdens and complexities for a plan and its participants, but only if such an amendment does not adversely affect the rights of any participant in more than a de minimis manner.

It would be intended that the factors to be considered in determining whether an amendment has more than a de minimis adverse effect on any participant would include (1) all of the participant's early retirement benefits, retirement-type subsidies, and optional forms of benefits that are reduced or eliminated by the amendment, (2) the extent to which early retirement benefits, retirement-type subsidies, and optional forms of benefit in effect with respect to a participant after the amendment effective date provide rights that are comparable to the rights that are reduced or eliminated by the plan amendment, (3) the number of years before the participant attains normal retirement age under the plan (or early retirement age, as applicable), (4) the size of the

[38] Treas. Reg. sec. 1.411(d)-4, Q&A-2(a)(3)(i).

participant's benefit that is affected by the plan amendment, in relation to the amount of the participant's compensation, and (5) the number of years before the plan amendment is effective.

This provision of the proposal would not affect the rules relating to involuntary cash outs (sec. 411(a)(11))[39] or survivor annuity requirements (sec. 417).

The Secretary would be directed to issue, not later than December 31, 2001, final regulations under section 411(d)(6), including regulations required under the proposal.

Effective Date

The proposal would be effective for years beginning after December 31, 2000, except that the direction to the Secretary would be effective on the date of enactment.

4. Rationalization of restrictions on distributions

Present Law

Elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan"), tax-sheltered annuity ("section 403(b) annuity"), or an eligible deferred compensation plan of a tax-exempt organization or State or local government ("section 457 plan"), may not be distributable prior to the occurrence of one or more specified events. These permissible distributable events include "separation from service."

A separation from service occurs only upon a participant's death, retirement, resignation or discharge, and not when the employee continues on the same job for a different employer as a result of the liquidation, merger, consolidation or other similar corporate transaction. A severance from employment occurs when a participant ceases to be employed by the employer that maintains the plan. Under a so-called "same desk rule," a participant's severance from employment does not necessarily result in a separation from service.[40]

In addition to separation from service and other events, a section 401(k) plan that is maintained by a corporation may permit distributions to certain employees who experience a severance from employment with the corporation that maintains the plan but does not experience a separation from service because the employee continues on the same job for a different employer as a result of a corporate transaction. If the corporation disposes of substantially all of the assets used by the corporation in a trade or business, a distributable event occurs with respect to the accounts of the employees who continue employment with the corporation that acquires the assets.

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[39] Another provision of the proposal would provide that rollover amounts are not taken into account for purposes of the cash-out rules.

[40] Rev. Rul. 79-336, 1979-2 C.B. 187.

If the corporation disposes of its interest in a subsidiary, a distributable event occurs with respect to the accounts of the employees who continue employment with the subsidiary.

Description of Proposal

The proposal would modify the distribution restrictions applicable to section 401(k) plans, section 403(b) annuities, and section 457 plans to provide that distribution may occur upon severance from employment rather than separation from service. In addition, the provisions for distribution from a section 401(k) plan based upon a corporation's disposition of its assets or a subsidiary would be repealed; this special rule would no longer be necessary under the proposal.

Effective Date

The proposal would be effective for distributions after December 31, 2000, regardless of when the severance of employment occurred.

5. Purchase of service credit under governmental pension plans

Present Law

A qualified retirement plan maintained by a State or local government employer may provide that a participant may make after-tax employee contributions in order to purchase permissive service credit, subject to certain limits (sec. 415). Permissive service credit means credit for a period of service recognized by the governmental plan only if the employee voluntarily contributes to the plan an amount (as determined by the plan) that does not exceed the amount necessary to fund the benefit attributable to the period of service and that is in addition to the regular employee contributions, if any, under the plan.

In the case of any repayment of contributions and earnings to a governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan (or another plan maintained by a State or local government employer within the same State), any such repayment is not taken into account for purposes of the section 415 limits on contributions and benefits. Also, service credit obtained as a result of such a repayment is not considered permissive service credit for purposes of the section 415 limits.

A participant may not use a rollover or direct transfer of benefits from a tax-sheltered annuity ("section 403(b) annuity") or an eligible deferred compensation plan of a tax-exempt organization of a State or local government ("section 457 plan") to purchase permissive service credits or repay contributions and earnings with respect to a forfeiture of service credit.

Description of Proposal

A participant in a State or local governmental plan would not be required to include in gross income a direct trustee-to-trustee transfer to a governmental defined benefit plan from a

section 403(b) annuity or a section 457 plan if the transferred amount is used (1) to purchase permissive service credits under the plan, or (2) to repay contributions and earnings with respect to an amount previously refunded under a forfeiture of service credit under the plan (or another plan maintained by a State or local government employer within the same State).

Effective Date

The proposal would be effective for transfers after December 31, 2000.

6. Employers may disregard rollovers for purposes of cash-out rules

Present Law

If an qualified retirement plan participant ceases to be employed by the employer that maintains the plan, the plan may distribute the participant's nonforfeitable accrued benefit without the consent of the participant and, if applicable, the participant's spouse, if the present value of the benefit does not exceed $5,000. If such an involuntary distribution occurs and the participant subsequently returns to employment covered by the plan, then service taken into account in computing benefits payable under the plan after the return need not include service with respect to which a benefit was involuntarily distributed unless the employee repays the benefit.[41]

Generally, a participant may roll over an involuntary distribution from a qualified plan to an IRA or to another qualified plan.[42]

Description of Proposal

A plan would be permitted to provide that the present value of a participant's nonforfeitable accrued benefit is determined without regard to the portion of such benefit that is attributable to rollover contributions (and any earnings allocable thereto).

Effective Date

The proposal would be effective for distributions after December 31, 2000.

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[41] A similar provision is contained in Title I of ERISA.

[42] Other proposals expand the kinds of plans to which benefits may be rolled over.

D. Strengthening Pension Security and Enforcement

1. Phase in repeal of 155 percent of current liability funding limit; deduction for contributions to fund termination liability

Present Law

Under present law, defined benefit pension plans are subject to minimum funding requirements designed to ensure that pension plans have sufficient assets to pay benefits. A defined benefit pension plan is funded using one of a number of acceptable actuarial cost methods.

No contribution is required under the minimum funding rules in excess of the full funding limit. The full funding limit is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 155 percent of the plan's current liability, over (2) the value of the plan's assets (sec. 412(c)(7)).[43] In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability full funding limit is based on projected benefits. The current liability full funding limit is scheduled to increase as follows: 160 percent for plan years beginning in 2001 or 2002, 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2005 and thereafter.[44] In no event is a plan's full funding limit less than 90 percent of the plan's current liability over the value of the plan's assets.

An employer sponsoring a defined benefit pension plan generally may deduct amounts contributed to satisfy the minimum funding standard for the plan year. Contributions in excess of the full funding limit generally are not deductible. Under a special rule, an employer that sponsors a defined benefit pension plan (other than a multiemployer plan) which has more than 100 participants for the plan year may deduct amounts contributed of up to 100 percent of the plan's unfunded current liability.

Description of Proposal

Current liability full funding limit

The proposal would gradually increase and then repeal the current liability full funding limit. The current liability full funding limit would be 160 percent of current liability for plan years beginning in 2001, 165 percent for plan years beginning in 2002, and 170 percent for plan

[43] The minimum funding requirements, including the full funding limit, are also contained in title I of ERISA.

[44] As originally enacted in the Pension Protection Act of 1997, the current liability full funding limit was 150 percent of current liability. The Taxpayer Relief Act of 1997 increased the current liability full funding limit to 155 percent in 1999 and 2000, and adopted the scheduled increases described in the text.

years beginning in 2003. The current liability full funding limit would be repealed for plan years beginning in 2004 and thereafter. Thus, in 2004 and thereafter, the full funding limit would be the excess, if any, of (1) the accrued liability under the plan (including normal cost), over (2) the value of the plan's assets.

Deduction for contributions to fund termination liability

The special rule allowing a deduction for unfunded current liability generally would be extended to all defined benefit pension plans, i.e., the proposal would apply to multiemployer plans and plans with 100 or fewer participants. The special rule would not apply to plans not covered by the PBGC termination insurance program.[45]

The proposal also would modify the rule by providing that the deduction is for up to 100 percent of unfunded termination liability, determined as if the plan terminated at the end of the plan year. In the case of a plan with less than 100 participants for the plan year, termination liability would not include the liability attributable to benefit increases for highly compensated employees resulting from a plan amendment which was made or became effective, whichever is later, within the last two years.

Effective Date

The proposal would be effective for plan years beginning after December 31, 2000.

2. Excise tax relief for sound pension funding

Present Law

Under present law, defined benefit pension plans are subject to minimum funding requirements designed to ensure that pension plans have sufficient assets to pay benefits. A defined benefit pension plan is funded using one of a number of acceptable actuarial cost methods.

No contribution is required under the minimum funding rules in excess of the full funding limit. The full funding limit is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 155 percent of the plan's current liability, over (2) the value of the plan's assets (sec. 412(c)(7)). In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability full funding limit is based on projected benefits. The current liability full funding limit is scheduled to increase as follows: 160 percent for plan years beginning in 2001 or 2002, 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2005 and

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[45] The PBGC termination insurance program does not cover plans of professional service employers that have fewer than 25 participants.

thereafter.[46] In no event is a plan's full funding limit less than 90 percent of the plan's current liability over the value of the plan's assets.

An employer sponsoring a defined benefit pension plan generally may deduct amounts contributed to satisfy the minimum funding standard for the plan year. Contributions in excess of the full funding limit generally are not deductible. Under a special rule, an employer that sponsors a defined benefit pension plan (other than a multiemployer plan) which has more than 100 participants for the plan year may deduct amounts contributed of up to 100 percent of the plan's unfunded current liability.

Present law also provides that contributions to defined contribution plans are deductible, subject to certain limitations.

Subject to certain exceptions, an employer that makes nondeductible contributions to a plan is subject to an excise tax equal to 10 percent of the amount of the nondeductible contributions for the year. The 10-percent excise tax does not apply to contributions to certain terminating defined benefit plans. The 10-percent excise tax also does not apply to contributions of up to 6 percent of compensation to a defined contribution plan for employer matching and employee elective deferrals.

Description of Proposal

In determining the amount of nondeductible contributions, the employer would be permitted to elect not to take into account contributions to a defined benefit pension plan except to the extent they exceed the accrued liability full funding limit. Thus, if an employer elects, contributions in excess of the current liability full funding limit would not be subject to the excise tax on nondeductible contributions. An employer making such an election for a year would not be permitted to take advantage of the present-law exceptions for certain terminating plans and certain contributions to defined contribution plans.

Effective Date

The proposal would be effective for years beginning after December 31, 2000.

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[46] As originally enacted in the Pension Protection Act of 1997, the current liability full funding limit was 150 percent of current liability. The Taxpayer Relief Act of 1997 increased the current liability full funding limit to 155 percent in 1999 and 2000, and adopted the scheduled increases described in the text. Another proposal would gradually increase and then repeal the current liability full funding limit.

3. Notice of significant reduction in plan benefit accruals

Present Law

Section 204(h) of Title I of ERISA provides that a defined benefit pension plan or a money purchase pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice ("section 204(h) notice"), setting forth the plan amendment (or a summary of the amendment written in a manner calculated to be understood by the average plan participant) and its effective date. The plan administrator must provide the section 204(h) notice to each plan participant, each alternate payee under an applicable qualified domestic relations order ("QDRO"), and each employee organization representing participants in the plan. The applicable Treasury regulations[47] provide, however, that a plan administrator need not provide the section 204(h) notice to any participant or alternate payee whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, nor to an employee organization that does not represent a participant to whom the section 204(h) notice must be provided. In addition, the regulations provide that the rate of future benefit accrual is determined without regard to optional forms of benefit, early retirement benefits, retirement-type subsidiaries, ancillary benefits, and certain other rights and features.

A covered amendment generally will not become effective with respect to any participants and alternate payees whose rate of future benefit accrual is reasonably expected to be reduced by the amendment but who do not receive a section 204(h) notice. An amendment will become effective with respect to all participants and alternate payees to whom the section 204(h) notice was required to be provided if the plan administrator (1) has made a good faith effort to comply with the section 204(h) notice requirements, (2) has provided a section 204(h) notice to each employee organization that represents any participant to whom a section 204(h) notice was required to be provided, (3) has failed to provide a section 204(h) notice to no more than a de minimis percentage of participants and alternate payees to whom a section 204(h) notice was required to be provided, and (4) promptly upon discovering the oversight, provides a section 204(h) notice to each omitted participant and alternate payee.

The Internal Revenue Code does not require any notice concerning a plan amendment that provides for a significant reduction in the rate of future benefit accrual.

Description of Proposal

The proposal would add to the Internal Revenue Code a requirement that the plan administrator of a defined benefit pension plan furnish a written notice concerning a plan amendment that provides for a significant reduction in the rate of future benefit accrual, including

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[47] Treas. Reg. sec. 1.411(d)-6.

any elimination or reduction of an early retirement benefit or retirement-type subsidy.[48] The notice would be required to set forth: (1) the effective date of the amendment; (2) a statement that the amendment is expected to significantly reduce the rate of future benefit accrual; (3) a description of the classes of employees reasonably expected to be affected by the reduction in the rate of future benefit accrual; (4) examples illustrating the plan changes for these classes of employees; (5) in the event of an amendment that results in a conversion of a traditional defined benefit plan to a cash balance plan (described below), a notice that the plan administrator will provide, generally no later than 15 days prior to the effective date of the amendment, a "benefit estimation tool kit" (described below) that will enable employees who have completed at least 1 year of participation to personalize the illustrative examples; and (6) notice of each affected participant's right to request, and of the procedures for requesting, an annual benefit statement as provided under present law. The plan administrator would be required to provide the notice not less than 45 days before the effective date of the plan amendment.

The notice requirement would not apply to governmental plans or church plans with respect to which an election to have the qualified plan participation, vesting, and funding rules apply has not been made (sec. 410(d)).

The plan administrator would be required to provide this generalized notice to each affected participant and each affected alternate payee. For purposes of the proposal, an affected participant or alternate payee would be a participant or alternate payee to whom the significant reduction in the rate of future benefit accrual is reasonably expected to apply.

As noted above, the proposal would require the plan administrator to provide a benefit estimation tool kit, no later than 15 days prior to the amendment effective date, to a participant for whom the amendment may reasonably be expected to produce a significant reduction in the rate of future benefit accrual if the amendment has the effect of converting a traditional defined benefit plan to a cash balance plan. The plan administrator would not be required to provide this benefit estimation tool kit to any participant who has less than 1 year of participation in the plan. For purposes of the proposal, a "cash balance plan" would mean a defined benefit plan under which the accrued benefit is expressed in terms of an accumulation account, and any defined benefit plan, or portion of such a plan, that reaches results similar to a defined benefit plan under which the accrued benefit is expressed in terms of an accumulation account (as determined under Treasury regulations). If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of a conversion to a cash balance

[48] The proposal also would modify the present-law notice requirement contained in section 204(h) of Title I of ERISA to provide that an applicable pension plan may not be amended to provide for a significant reduction in the rate of future benefit accrual in the event of an egregious failure by the plan administrator to comply with a notice requirement similar to the notice requirement that the provision adds to the Internal Revenue Code. In addition, the proposal would expand the current ERISA notice requirement regarding significant reductions in normal retirement benefit accrual rates to early retirement benefits, retirement-type subsidies, and ancillary benefits.

plan, the proposal would treat the sponsor of the plan or plans providing for such coordination as having adopted such a conversion as of the date such coordination begins. If a plan sponsor represents in communications to participants and beneficiaries that a plan amendment has an effect equivalent to a cash balance conversion, such amendment would (to the extent provided in Treasury regulations) be treated as a cash balance conversion. In addition, the proposal would direct the Secretary of the Treasury to issue regulations under which a series of amendments would be treated as a single amendment to the extent necessary to prevent avoidance of the requirements of the proposal.

The benefit estimation tool kit would be designed to enable participants to estimate benefits under the old and new plan provisions. The proposal would permit the tool kit to be in the form of software (for use at home, at a workplace kiosk, or on a company intranet), worksheets, or calculation instructions, or other formats to be determined by the Secretary of the Treasury. The tool kit would be required to include any necessary actuarial assumptions and formulas and to permit the participant to estimate both a single life annuity at appropriate ages and, when available, a lump sum distribution. The tool kit would be required to disclose the interest rate used to compute a lump sum distribution and whether the value of early retirement benefits is included in the lump sum distribution.

The proposal would require the benefit estimation tool kit to accommodate employee-provided variables with respect to age, years of service, retirement age, covered compensation, and interest rate (when variable rates apply). The tool kit would be required to permit employees to recalculate estimated benefits by changing the values of these variables. The proposal would not require the tool kit to accommodate employee variables with respect to qualified domestic relations orders, factors that result in unusual patterns of credited service (such as extended time away from the job), special benefit formulas for unusual situations, offsets from other plans, and forms of annuity distributions.

In the case of a cash balance conversion that occurs in connection with a business disposition or acquisition transaction and within 1 year following the date of the transaction, the proposal would require the plan administrator to provide the benefit estimation tool kit prior to the end of the 2-year period following the date of the transaction to the affected participants who become participants as a result of the transaction.

The proposal would permit a plan administrator to provide any notice required under the proposal to a person designated in writing by the individual to whom it would otherwise be provided. In addition, the proposal would authorize the Secretary of the Treasury to allow any notice required under the proposal to be provided by using new technologies.

The proposal would impose on a plan administrator that fails to comply with the notice requirement an excise tax equal to $100 per day per omitted participant and alternate payee. For failures due to reasonable cause and not to willful neglect, the total excise tax imposed during a taxable year of the employer would not exceed $500,000. Furthermore, in the case of a failure due to reasonable cause and not to willful neglect, the Secretary of the Treasury would be authorized to

waive the excise tax to the extent that the payment of the tax would be excessive relative to the failure involved.

The proposal would add to the Internal Revenue Code and ERISA requirements designed to prevent the use of "wear away" provisions under which participants earn no additional benefits for a period of time after a conversion of a traditional defined benefit plan to a cash balance plan. These requirements are in addition to the provisions of the Internal Revenue Code that prohibit the reduction of a participant's accrued benefit by plan amendment (sec. 411(d)(6)). In the event of a conversion of a traditional defined benefit plan to a cash balance plan, the proposal would apply a minimum benefit requirement. This minimum benefit requirement would require a participant's accrued benefit under the cash balance plan to equal not less than (1) the benefit accrued for years of service prior to the conversion under the traditional defined benefit plan formula (not taking into account any early retirement benefit or retirement-type subsidy), plus (2) any benefit accrued for years of service after the conversion under the cash balance plan benefit formula. If the amendment provides that the accrued benefit initially credited to a participant's accumulation account (or its equivalent) on the effective date of the amendment is equal to the benefit accrued for years of service prior to the conversion under the traditional defined benefit plan formula (not taking into account any early retirement benefit or retirement-type subsidy), the plan would be treated as providing to the participant an accrued benefit that includes such pre-conversion accrued benefit at all times after the effective date of the amendment. The proposal would not apply the minimum benefit requirement designed to prevent "wear away" to a cash balance conversion amendment to the extent that the amendment permits a participant to continue to accrue benefits in the same manner as under the terms of the plan in effect prior to the amendment.

Under the proposal, a plan would be treated as satisfying the minimum benefit requirement designed to prevent "wear away" if a plan amendment provides that the present value of a participant's benefit accrued under a traditional defined benefit plan formula prior to a cash balance conversion is equal to the greater of the present value determined, as of the effective date of the amendment, either by (1) using the applicable mortality table and the applicable interest rate in effect under the plan on the effective date of the cash balance conversion, or (2) using the mortality and interest rate assumptions which, under the terms of the plan as in effect immediately before such effective date, are used for purposes of determining a lump sum distribution.

Except as provided in regulations, the proposal generally would require the present value of the accrued benefit of any participant under a cash balance plan to be equal to the balance in the participant's accumulation account (or its equivalent) as of the time of the present value determination.

Failure to comply with the requirements of the proposal designed to prevent "wear away" would result in the disqualification of the plan.

The proposal would direct the Secretary of the Treasury to define in regulations, within 12 months after the date of enactment, the terms "early retirement benefit" and "retirement-type subsidy." In addition, with respect to a participant who is eligible to accrue benefits under the terms of a defined benefit plan as in effect either before or after an amendment that results in a

conversion to a cash balance plan, the proposal would direct the Secretary of the Treasury to prescribe regulations under which (1) the plan would be treated as meeting the requirements of sec. 411(b)(1) if such requirements are met separately with respect to both of such methods of accruing benefits, and (2) the plan would not be treated as failing to meet the requirements of sec. 401(a)(4) merely because only participants as of the effective date of the amendment are so eligible, if the plan met the requirements of sec. 401(a)(4) under the terms of the plan as in effect before the amendment.

Under the proposal, no inference would be intended with respect to the law in effect prior to the effective date of the proposal. In addition, the proposal would not be intended to result in the treatment of a cash balance plan as a defined contribution plan, or to affect the rules relating to involuntary cash outs (sec. 411(a)(11))[49] or survivor annuity requirements (sec. 417).

Effective Date

The proposal would be effective for plan amendments taking effect on or after the date of enactment, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement. The period for providing any notice required under the proposal would not end before the last day of the 3-month period following the date of enactment. The notice requirements under the proposal would not apply to any plan amendment taking effect on or after the date or enactment if, before September 5, 2000, notice is provided to participants and beneficiaries adversely affected by the plan amendment (or their representatives) that is reasonably expected to notify them of the nature and effective date of the plan amendment.

4. Modifications to section 415 limits for multiemployer plans

Present Law

Under present law, limits apply to contributions and benefits under qualified plans (sec. 415). The limits on contributions and benefits under qualified plans are based on the type of plan.

Under a defined benefit plan, the maximum annual benefit payable at retirement is generally the lesser of (1) 100 percent of average compensation for the highest three years, or (2) $135,000 (for 2000). The dollar limit is adjusted for cost-of-living increases in $5,000 increments. The dollar limit is reduced in the case of retirement before the social security retirement age and increases in the case of retirement after the social security retirement age.

A special rule applies to governmental defined benefit plans. In the case of such plans, the defined benefit dollar limit is reduced in the case of retirement before age 62 and increased in the case of retirement after age 65. In addition, there is a floor on early retirement benefits. Pursuant to this floor, the minimum benefit payable at age 55 is $75,000.

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[49] Another provision of the proposal would provide that rollover amounts are not taken into account for purposes of the cash-out rules.

In the case of a defined contribution plan, the limit on annual is additions if the lesser of (1) 25 percent of compensation[50] or (2) $30,000 (for 2000). In applying the limits on contributions and benefits, plans of the same employer are aggregated.

Description of Proposal

Under the proposal, the 100 percent of compensation defined benefit plan limit would not apply to multiemployer plans. In addition, multiemployer plans would not be aggregated with single-employer defined benefit plans maintained by an employer contributing to the multiemployer plan for purposes of applying the 100 percent of compensation limit to such other plans.

Effective Date

The proposal would be effective for years beginning after December 31, 2000.

5. Investment of employee contributions in 401(k) plans

Present Law

The Employee Retirement Income Security Act of 1974, as amended ("ERISA") prohibits certain employee benefit plans from acquiring securities or real property of the employer who sponsors the plan if, after the acquisition, the fair market value of such securities and property exceeds 10 percent of the fair market value of plan assets. The 10-percent limitation does not apply to any "eligible individual account plans" that specifically authorize such investments. Generally, eligible individual account plans are defined contribution plans, including plans containing a cash or deferred arrangement ("401(k) plans").

The term "eligible individual account plan" does not include the portion of a plan that consists of elective deferrals (and earnings on the elective deferrals) made under section 401(k) if elective deferrals equal to more than 1 percent of any employee's eligible compensation are required to be invested in employer securities and employer real property. Eligible compensation is compensation that is eligible to be deferred under the plan. The portion of the plan that consists of elective deferrals (and earnings thereon) is still treated as an individual account plan, and the 10-percent limitation does not apply, as long as elective deferrals (and earnings thereon) are not required to be invested in employer securities or employer real property.

The rule excluding elective deferrals (and earnings thereon) from the definition of individual account plan does not apply if individual account plans are a small part of the employer's retirement plans. In particular, that rule does not apply to an individual account plan for a plan year if the value of the assets of all individual account plans maintained by the employer do not exceed 10 percent of the value of the assets of all pension plans maintained by the employer

[50] Another proposal increases this limit to 100 percent of compensation.

(determined as of the last day of the preceding plan year). Multiemployer plans are not taken into account in determining whether the value of the assets of all individual account plans maintained by the employer exceed 10 percent of the value of the assets of all pension plans maintained by the employer. The rule excluding elective deferrals (and earnings thereon) from the definition of individual account plan does not apply to an employee stock ownership plan as defined in section 4975(e)(7) of the Internal Revenue Code.

The rule excluding elective deferrals (and earnings thereon) from the definition of individual account plan applies to elective deferrals for plan years beginning after December 31, 1998 (and earnings thereon). It does not apply with respect to earnings on elective deferrals for plan years beginning before January 1, 1999.

Description of Proposal

The proposal would modify the effective date of the rule excluding certain elective deferrals (and earnings thereon) from the definition of individual account plan by providing that the rule does not apply to any elective deferral used to acquire an interest in the income or gain from employer securities or employer real property acquired (1) before January 1, 1999, or (2) after such date pursuant to a written contract which was binding on such date and at all times thereafter.

Effective Date

The proposal would be effective as if included in the section of the Taxpayer Relief Act of 1997 that contained the rule excluding certain elective deferrals (and earnings thereon).

6. Periodic pension benefit statements

Present Law

Title I of ERISA provides that a pension plan administrator must furnish a benefit statement to any participant or beneficiary who makes a written request for such a statement. This statement must indicate, on the basis of the latest available information, (1) the participant's or beneficiary's total accrued benefit, and (2) the participant's or beneficiary's vested accrued benefit or the earliest date on which the accrued benefit will become vested. A participant or beneficiary is not entitled to receive more than 1 benefit statement during any 12-month period. The plan administrator must furnish the benefit statement no later than 60 days after receipt of the request or, if later, 120 days after the close of the immediately preceding plan year.

In addition, the plan administrator must furnish a benefit statement to each participant whose employment terminates or who has a 1-year break in service. For purposes of this benefit statement requirement, a "1-year break in service" is a calendar year, plan year, or other 12-month period designated by the plan during which the participant does not complete more than 500 hours of service for the employer. A participant is not entitled to receive more than 1 benefit statement

with respect to consecutive breaks in service. The plan administrator must provide a benefit statement required upon termination of employment or a break in service no later than 180 days after the end of the plan year in which the termination of employment or break in service occurs.

Description of Proposal

A plan administrator of a defined contribution plan generally would be required to furnish a benefit statement to each participant at least once annually and to a beneficiary upon written request.

In addition to providing a benefit statement to a beneficiary upon written request, the plan administrator of a defined benefit plan generally would be required either (1) to furnish a benefit statement at least once every 3 years to each participant who has a vested accrued benefit and who is employed by the employer at the time the plan administrator furnishes the benefit statements to participants, or (2) to annually furnish written, electronic, telephonic, or other appropriate notice to each participant of the availability of and the manner in which the participant may obtain the benefit statement.

The plan administrator of a multiemployer plan or a multiple employer plan would be required to furnish a benefit statement only upon written request of a participant or beneficiary.[51]

The plan administrator would be required to write the benefit statement in a manner calculated to be understood by the average plan participant and would be permitted to furnish the statement in written, electronic, telephonic, or other appropriate form.

Effective Date

The proposal would be effective for plan years beginning after December 31, 2000.

7. Extension of PBGC missing participants program

Present Law

The plan administrator of a defined benefit pension plan that is subject to Title IV of ERISA, is maintained by a single employer, and terminates under a standard termination is required to distribute the assets of the plan. With respect to a participant whom the plan administrator cannot locate after a diligent search, the plan administrator satisfies the distribution requirement only by purchasing irrevocable commitments from an insurer to provide all benefit liabilities under the plan or transferring the participant's designated benefit to the Pension Benefit Guaranty Corporation ("PBGC"), which holds the benefit of the missing participant as trustee until the PBGC locates the missing participant and distributes the benefit.

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[51] A multiple employer plan is a plan that is maintained by 2 or more unrelated employers but that is not maintained pursuant to a collective-bargaining agreement (sec. 413(c)).

The PBGC missing participant program is not available to multiemployer plans or defined contribution plans and other plans not covered by Title IV of ERISA.

Description of Proposal

The proposal would direct the PBGC to prescribe for terminating multiemployer plans rules similar to the present-law missing participant rules applicable to terminating single employer plans that are subject to Title IV of ERISA.

Effective Date

The proposal would be effective for distributions from terminating plans that occur after the PBGC has adopted final regulations implementing the proposal.

8. Prohibited allocations of stock in an S corporation ESOP

Present Law

The Small Business Job Protection Act of 1996 allowed qualified retirement plan trusts described in section 401(a) to own stock in an S corporation. That Act treated the plan's share of the S corporation's income (and gain on the disposition of the stock) as includible in full in the trust's unrelated business taxable income ("UBTI").

The Tax Relief Act of 1997 repealed the provision treating items of income or loss of an S corporation as UBTI in the case of an employee stock ownership plan ("ESOP"). Thus, the income of an S corporation allocable to an ESOP is not subject to current taxation.

Present law provides a deferral of income on the sales of certain employer securities to an ESOP (sec. 1042). A 50-percent excise tax is imposed on certain prohibited allocations of securities acquired by an ESOP in a transaction to which section 1042 applies. In addition, such allocations are currently includible in the gross income of the individual receiving the prohibited allocation.

Explanation of Provision

In general

Under the proposal, if there is a nonallocation year with respect to an ESOP maintained by an S corporation: (1) the amount allocated in a prohibited allocation to an individual who is a disqualified person would be treated as distributed to such individual (i.e., the value of the prohibited allocation is includible in the gross income of the individual receiving the prohibited allocation); (2) an excise tax would be imposed on the S corporation equal to 50 percent of the

amount involved in a prohibited allocation; and (3) an excise tax would be imposed on the S corporation with respect to any synthetic equity owned by a disqualified person.[52]

It is intended that the provision will limit the establishment of ESOPs by S corporations to those that provide broad-based employee coverage and that benefit rank-and-file employees as well as highly compensated employees and historical owners.

<u>Definition of nonallocation year</u>

A nonallocation year would mean any plan year of an ESOP holding shares in an S corporation if, at any time during the plan year, disqualified persons own at least 50 percent of the number of outstanding shares of the S corporation.

A person would be a disqualified person if the person is either (1) a member of a "deemed 20-percent shareholder group" or (2) a "deemed 10-percent shareholder." A person would be a member of a "deemed 20-percent shareholder group" if the aggregate number of deemed-owned shares of the person and his or her family members is at least 20 percent of the number of deemed-owned shares of stock in the S corporation.[53] A person would be a deemed 10-percent shareholder if the person is not a member of a deemed 20-percent shareholder group and the number of the person's deemed-owned shares is at least 10 percent of the number of deemed-owned shares of stock of the corporation.

In general, "deemed-owned shares" would mean: (1) stock allocated to the account of an individual under the ESOP, and (2) an individual's share of unallocated stock held by the ESOP. An individual's share of unallocated stock held by an ESOP would be determined in the same manner as the most recent allocation of stock under the terms of the plan.

For purposes of determining whether there is a nonallocation year, ownership of stock generally would be attributed under the rules of section 318,[54] except that: (1) the family attribution rules would be modified to include certain other family members, as described below, (2) option attribution would not apply (but instead special rules relating to synthetic equity described below would apply), and (3) "deemed-owned shares" held by the ESOP would be treated as held by the individual with respect to whom they are deemed owned.

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[52] The plan would not be disqualified merely because an excise tax is imposed under the provision.

[53] A family member of a member of a "deemed 20-percent shareholder group" with deemed owned shares would also be treated as a disqualified person.

[54] These attribution rules also apply to stock treated as owned by reason of the ownership of synthetic equity.

Under the proposal, family members of an individual would include (1) the spouse[55] of the individual, (2) an ancestor or lineal descendant of the individual or his or her spouse, (3) a sibling of the individual (or the individual's spouse) and any lineal descendant of the brother or sister, and (4) the spouse of any person described in (2) or (3).

The proposal contains special rules applicable to synthetic equity interests. Except to the extent provided in regulations, the stock on which a synthetic equity interest is based would be treated as outstanding stock of the S corporation and as deemed-owned shares of the person holding the synthetic equity interest if such treatment would result in the treatment of any person as a disqualified person or the treatment of any year as a nonallocation year. Thus, for example, disqualified persons for a year would include those individuals who are disqualified persons under the general rule (i.e., treating only those shares held by the ESOP as deemed-owned shares) and those individuals who are disqualified individuals if synthetic equity interests are treated as deemed-owned shares.

"Synthetic equity" would mean any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also would include a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.[56]

Ownership of synthetic equity would be attributed in the same manner as stock would be attributed under the proposal (as described above). In addition, ownership of synthetic equity would be attributed under the rules of section 318(a)(2) and (3) in the same manner as stock.

<u>Definition of prohibited allocation</u>

An ESOP of an S corporation would be required to provide that no portion of the assets of the plan attributable to (or allocable in lieu of) S corporation stock may, during a nonallocation year, accrue (or be allocated directly or indirectly under any qualified plan of the S corporation) for the benefit of a disqualified person. A "prohibited allocation" would refer to violations of this provision. A prohibited allocation would occur, for example, if income on S corporation stock held by an ESOP is allocated to the account of an individual who is a disqualified person.

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[55] As under section 318, an individual's spouse is not treated as a member of the individual's family if the spouses are legally separated.

[56] The provisions relating to synthetic equity would not modify the rules relating to S corporations, e.g., the circumstances in which options or similar interests are treated as creating a second class of stock.

Application of excise tax

In the case of a prohibited allocation, the S corporation would be liable for an excise tax equal to 50 percent of the amount of the allocation. For example, if S corporation stock is allocated in a prohibited allocation, the excise tax would equal to 50 percent of the fair market value of such stock.

A special rule would apply in the case of the first nonallocation year, regardless of whether there is a prohibited allocation. In that year, the excise tax also would apply to the fair market value of the deemed-owned shares of any disqualified person held by the ESOP, even though those shares are not allocated to the disqualified person in that year.

As mentioned above, the S corporation also would be liable for an excise tax with respect to any synthetic equity interest owned by any disqualified person in a nonallocation year. The excise tax would be 50 percent of the value of the shares on which synthetic equity is based.

Treasury regulations

The Treasury Department would be given the authority to prescribe such regulations as may be necessary to carry out the purposes of the provision.

Effective Date

The proposal generally would be effective with respect to plan years beginning after December 31, 2001. In the case of an ESOP established after July 11, 2000, or an ESOP established on or before such date if the employer maintaining the plan was not an S corporation on such date, the proposal would be effective with respect to plan years ending after July 11, 2000.

E. Reducing Regulatory Burdens

1. Modification of timing of plan valuations

Present Law

Under present law, plan valuations are generally required annually for plans subject to the minimum funding rules. Under proposed Treasury regulations, except as provided by the Commissioner, the valuation must be as of a date within the plan year to which the valuation refers or within the month prior to the beginning of that year.[57]

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[57] Prop. reg. sec. 1.412(c)(9)-1(b)(1).

Description of Proposal

The proposal would incorporate into the statute the proposed regulation regarding the date of valuations. The proposal would also provide, as an exception to this general rule, that the valuation date with respect to a plan year may be any date within the immediately preceding plan year if, as of such date, plan assets are not less than 125 percent of the plan's current liability. Information determined as of such date would be required to be adjusted actuarially, in accordance with Treasury regulations, to reflect significant differences in plan participants. An election to use a prior plan year valuation date, once made, could only be revoked with the consent of the Secretary.

Effective Date

The proposal would be effective for plan years beginning after December 31, 2000.

2. ESOP dividends may be reinvested without loss of dividend deduction

Present Law

An employer is entitled to deduct certain dividends paid in cash during the employer's taxable year with respect to stock of the employer that is held by an employee stock ownership plan ("ESOP"). The deduction is allowed with respect to dividends that, in accordance with plan provisions, are (1) paid in cash directly to the plan participants or their beneficiaries, (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or (3) used to make payments on loans (including payments of interest as well as principal) that were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

The Secretary may disallow the deduction for any ESOP dividend if he determines that the dividend constitutes, in substance, an evasion of taxation (sec. 404(k)(5)).

Description of Proposal

In addition to the deductions permitted under present law for dividends paid with respect to employer securities that are held by an ESOP, an employer would be entitled to deduct dividends that, at the election of plan participants or their beneficiaries, are (1) payable in cash directly to plan participants or beneficiaries, (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or (3) paid to the plan and reinvested in qualifying employer securities.

As under present law, the Secretary could disallow the deduction for any ESOP dividend if he determines that the dividend constitutes, in substance, an evasion of taxation (sec. 404(k)(5)).

Effective Date

The proposal would be effective for taxable years beginning after December 31, 2000.

3. Repeal transition rule relating to certain highly compensated employees

Present Law

Under present law, for purposes of the rules relating to qualified plans, a highly compensated employee is generally defined as an employee[58] who (1) was a 5-percent owner of the employer at any time during the year or the preceding year or (2) either (a) had compensation for the preceding year in excess of $85,000 (for 2000) or (b) at the election of the employer, had compensation in excess of $85,000 for the preceding year and was in the top 20 percent of employees by compensation for such year.

Under a rule enacted in the Tax Reform Act of 1986, a special definition of highly compensated employee applies for purposes of the nondiscrimination rules relating to qualified cash or deferred arrangements ("section 401(k) plans") and matching contributions. This special definition applies to an employer incorporated on December 15, 1924, that meets certain specific requirements.

Description of Proposal

The proposal would repeal the special definition of highly compensated employee under the Tax Reform Act of 1986. Thus, the present-law definition would apply.

Effective Date

The proposal would be effective for plan years beginning after December 31, 2000.

4. Employees of tax-exempt entities

Present Law

The Tax Reform Act of 1986 provided that nongovernmental tax-exempt employers were not permitted to maintain a qualified cash or deferred arrangement ("section 401(k) plan"). This prohibition was repealed, effective for years beginning after December 31, 1996, by the Small Business Job Protection Act of 1996.

Treasury regulations provide that, in applying the nondiscrimination rules to a section 401(k) plan (or a section 401(m) plan that is provided under the same general arrangement as the

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[58] An employee includes a self-employed individual.

section 401(k) plan), the employer may treat as excludable those employees of a tax-exempt entity who could not participate in the arrangement due to the prohibition on maintenance of a section 401(k) plan by such entities. Such employees may be disregarded only if more than 95 percent of the employees who could participate in the section 401(k) plan benefit under the plan for the plan year.[59]

Tax-exempt charitable organizations may maintain a tax-sheltered annuity (a "section 403(b) annuity") that allows employees to make salary reduction contributions.

Description of Proposal

The Treasury Department would be directed to revise its regulations under section 410(b) to provide that employees of a tax-exempt charitable organization who are eligible to make salary reduction contributions under a section 403(b) annuity may be treated as excludable employees for purposes of testing a section 401(k) plan, or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan of the employer if (1) no employee of such tax-exempt entity is eligible to participate in the section 401(k) or 401(m) plan and (2) at least 95 percent of the employees who are not employees of the charitable employer are eligible to participate in such section 401(k) plan or section 401(m) plan.

The revised regulations would be effective for years beginning after December 31, 1996.

Effective Date

The proposal would be effective on the date of enactment.

5. Treatment of employer-provided retirement advice

Present Law

Under present law, certain employer-provided fringe benefits are excludable from gross income (sec. 132) and wages for employment tax purposes. These excludable fringe benefits include working condition fringe benefits and de minimis fringes. In general, a working condition fringe benefit is any property or services provided by an employer to an employee to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction as a business expense. A de minimis fringe benefit is any property or services provided by the employer the value of which, after taking into account the frequency with which similar fringes are provided, is so small as to make accounting for it unreasonable or administratively impracticable.

In addition, if certain requirements are satisfied, up to $5,250 annually of employer-provided educational assistance is excludable from gross income (sec. 127) and wages. This

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[59] Treas. Reg. sec. 1.410(b)-6(g).

exclusion expires with respect to courses beginning after December 31, 2001.[60] Education not excludable under section 127 may be excludable as a working condition fringe.

There is no specific exclusion under present law for employer-provided retirement planning services. However, such services may be excludable as employer-provided educational assistance or a fringe benefit.

Description of Proposal

Qualified retirement planning services provided to an employee and his or her spouse by an employer maintaining a qualified plan would be excludable from income and wages. The exclusion would not apply with respect to highly compensated employees unless the services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified plan. The exclusion would be intended to allow employers to provide advice and information regarding retirement planning. The exclusion would not be limited to information regarding the qualified plan, and, thus, for example, would apply to advice and information regarding retirement income planning for an individual and his or her spouse and how the employer's plan fits into the individual's overall retirement income plan. On the other hand, the exclusion would not be intended to apply to services that may be related to retirement planning, such as tax preparation, accounting, legal or brokerage services.

Effective Date

The proposal would be effective with respect to taxable years beginning after December 31, 2000.

6. Reporting simplification

Present Law

A plan administrator of a pension, annuity, stock bonus, profit-sharing or other funded plan of deferred compensation generally must file with the Secretary of the Treasury an annual return for each plan year containing certain information with respect to the qualification, financial condition, and operation of the plan. Title I of ERISA also may require the plan administrator to file annual reports concerning the plan with the Department of Labor and the Pension Benefit Guaranty Corporation ("PBGC"). The plan administrator must use the Form 5500 series as the format for the required annual return.[61] The Form 5500 series annual return/report, which consists of a primary form and various schedules, includes the information required to be filed with all three agencies. The plan administrator satisfies the reporting requirement with respect to each

[60] The exclusion does not apply with respect to graduate-level courses.

[61] Treas. Reg. sec. 301.6058-1(a).

agency by filing the Form 5500 series annual return/report with the Internal Revenue Service ("IRS"), which forwards the form to the Department of Labor and the PBGC.

The Form 5500 series consists of 3 different forms: Form 5500, Form 5500-C/R, and Form 5500-EZ. Form 5500 is the most comprehensive of the forms and requires the most detailed financial information. Form 5500-C/R requires less information than Form 5500, and Form 5500-EZ, which consists of only 1 page, is the simplest of the forms.

The size of the plan determines which form a plan administrator must file. If the plan has more than 100 participants at the beginning of the plan year, the plan administrator generally must file Form 5500. If the plan has fewer than 100 participants at the beginning of the plan year, the plan administrator generally may file Form 5500-C/R. A plan administrator generally may file Form 5500-EZ if (1) the only participants in the plan are the sole owner of a business that maintains the plan (and such owner's spouse), or partners in a partnership that maintains the plan (and such partners' spouses), (2) the plan is not aggregated with another plan in order to satisfy the minimum coverage requirements of section 410(b), (3) the employer is not a member of a related group of employers, and (4) the employer does not receive the services of leased employees. If the plan satisfies the eligibility requirements for Form 5500-EZ and the total value of the plan assets as of the end of the plan year and all prior plan years does not exceed $100,000, the plan administrator is not required to file a return.

Description of Proposal

The Secretary of the Treasury would be directed to modify the annual return filing requirements with respect to plans that satisfy the eligibility requirements for Form 5500-EZ to provide that if the total value of the plan assets of such a plan as of the end of the plan year and all prior plan years does not exceed $250,000, the plan administrator is not required to file a return.

Effective Date

The proposal would be effective on the date of enactment.

7. Improvement to Employee Plans Compliance Resolution System

Present Law

A retirement plan that is intended to be a tax-qualified plan provides retirement benefits on a tax-favored basis if the plan satisfies all of the requirements of section 401(a). Similarly, an annuity that is intended to be a tax-sheltered annuity provides retirement benefits on a tax-favored basis if the program satisfies all of the requirements of section 403(b). Failure to satisfy all of the applicable requirements of section 401(a) or section 403(b) may disqualify a plan or annuity for the intended tax-favored treatment.

The Internal Revenue Service ("IRS") has established the Employee Plans Compliance Resolution System ("EPCRS"), which is a comprehensive system of correction programs for sponsors of retirement plans and annuities that are intended, but have failed, to satisfy the requirements of section 401(a) and section 403(b), as applicable.[62] EPCRS permits employers to correct compliance failures and continue to provide their employees with retirement benefits on a tax-favored basis.

The IRS has designed EPCRS to (1) encourage operational and formal compliance, (2) promote voluntary and timely correction of compliance failures, (3) provide sanctions for compliance failures identified on audit that are reasonable in light of the nature, extent, and severity of the violation, (4) provide consistent and uniform administration of the correction programs, and (5) permit employers to rely on the availability of EPCRS in taking corrective actions to maintain the tax-favored status of their retirement plans and annuities.

The basic elements of the programs that comprise EPCRS are self-correction, voluntary correction with IRS approval, and correction on audit. The Administrative Policy Regarding Self-Correction ("APRSC") permits a plan sponsor that has established compliance practices to correct certain insignificant failures at any time (including during an audit), and certain significant failures within a 2-year period, without payment of any fee or sanction. The Voluntary Compliance Resolution ("VCR") program, the Walk-In Closing Agreement Program ("Walk-In CAP"), and the Tax-Sheltered Annuity Voluntary Correction ("TVC") program permit an employer, at any time before an audit, to pay a limited fee and receive IRS approval of a correction. For a failure that is discovered on audit and corrected, the Audit Closing Agreement Program ("Audit CAP") provides for a sanction that bears a reasonable relationship to the nature, extent, and severity of the failure and that takes into account the extent to which correction occurred before audit.

The IRS has expressed its intent that EPCRS will be updated and improved periodically in light of experience and comments from those who use it.

Description of Proposal

The Secretary of the Treasury would be directed to continue to update and improve EPCRS, giving special attention to (1) increasing the awareness and knowledge of small employers concerning the availability and use of EPCRS, (2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures, (3) extending the duration of the self-correction period under APRSC for significant compliance failures, (4) expanding the availability to correct insignificant compliance failures under APRSC during audit, and (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

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[62] Rev. Proc. 98-22, 1998-12 I.R.B. 11, as modified by Rev. Proc. 99-13, 1999-5, I.R.B. 52.

Effective Date

The proposal would be effective on the date of enactment.

8. Repeal of the multiple use test

Present Law

Elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan") are subject to a special annual nondiscrimination test ("ADP test"). The ADP test compares the actual deferral percentages ("ADPs") of the highly compensated employee group and the nonhighly compensated employee group. The ADP for each group generally is the average of the deferral percentages separately calculated for the employees in the group who are eligible to make elective deferrals for all or a portion of the relevant plan year. Each eligible employee's deferral percentage generally is the employee's elective deferrals for the year divided by the employee's compensation for the year.

The plan generally satisfies the ADP test if the ADP of the highly compensated employee group for the current plan year is either (1) not more than 125 percent of the ADP of the nonhighly compensated employee group for the prior plan year, or (2) not more than 200 percent of the ADP of the nonhighly compensated employee group for the prior plan year and not more than 2 percentage points greater than the ADP of the nonhighly compensated employee group for the prior plan year.

Employer matching contributions and after-tax employee contributions under a defined contribution plan also are subject to a special annual nondiscrimination test ("ACP test"). The ACP test compares the actual deferral percentages ("ACPs") of the highly compensated employee group and the nonhighly compensated employee group. The ACP for each group generally is the average of the contribution percentages separately calculated for the employees in the group who are eligible to make after-tax employee contributions or who are eligible for an allocation of matching contributions for all or a portion of the relevant plan year. Each eligible employee's contribution percentage generally is the employee's aggregate after-tax employee contributions and matching contributions for the year divided by the employee's compensation for the year.

The plan generally satisfies the ACP test if the ACP of the highly compensated employee group for the current plan year is either (1) not more than 125 percent of the ACP of the nonhighly compensated employee group for the prior plan year, or (2) not more than 200 percent of the ACP of the nonhighly compensated employee group for the prior plan year and not more than 2 percentage points greater than the ACP of the nonhighly compensated employee group for the prior plan year.

For any year in which (1) at least one highly compensated employee is eligible to participate in an employer's plan or plans that are subject to both the ADP test and the ACP test, (2) the plan subject to the ADP test satisfies the ADP test but the ADP of the highly compensated

employee group exceeds 125 percent of the ADP of the nonhighly compensated employee group, and (3) the plan subject to the ACP test satisfies the ACP test but the ACP of the highly compensated employee group exceeds 125 percent of the ACP of the nonhighly compensated employee group, an additional special nondiscrimination test ("multiple use test") applies to the elective deferrals, employer matching contributions, and after-tax employee contributions. The plan or plans generally satisfy the multiple use test if the sum of the ADP and the ACP of the highly compensated employee group does not exceed the greater of (1) the sum of (A) 1.25 times the greater of the ADP or the ACP of the nonhighly compensated employee group, and (B) 2 percentage points plus (but not more than 2 times) the lesser of the ADP or the ACP of the nonhighly compensated employee group, or (2) the sum of (A) 1.25 times the lesser of the ADP or the ACP of the nonhighly compensated employee group, and (B) 2 percentage points plus (but not more than 2 times) the greater of the ADP or the ACP of the nonhighly compensated employee group.

Description of Proposal

The proposal would repeal the multiple use test.

Effective Date

The proposal would be effective for years beginning after December 31, 2000.

9. Flexibility in nondiscrimination and line of business rules

Present Law

A plan is not a qualified retirement plan if the contributions or benefits provided under the plan discriminate in favor of highly compensated employees (sec. 401(a)(4)). The applicable Treasury regulations set forth the exclusive rules for determining whether a plan satisfies the nondiscrimination requirement. These regulations state that the form of the plan and the effect of the plan in operation determine whether the plan is nondiscriminatory and that intent is irrelevant.

Similarly, a plan is not a qualified retirement plan if the plan does not benefit a minimum number of employees (sec. 410(b)). A plan satisfies this minimum coverage requirement if and only if it satisfies one of the tests specified in the applicable Treasury regulations. If an employer is treated as operating separate lines of business, the employer may apply the minimum coverage requirements to a plan separately with respect to the employees in each separate line of business (sec. 414(r)). Under a so-called "gateway" requirement, however, the plan must benefit a classification of employees that does not discriminate in favor of highly compensated employees in order for the employer to apply the minimum coverage requirements separately for the employees in each separate line of business. A plan satisfies this gateway requirement only if it satisfies one of the tests specified in the applicable Treasury regulations.

Description of Proposal

The Secretary of the Treasury would be directed to modify, on or before December 31, 2000, the existing regulations issued under section 414(r) in order to expand (to the extent that the Secretary may determine to be appropriate) the ability of a plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

The Secretary of the Treasury would be directed to provide by regulation applicable to years beginning after December 31, 2000, that a plan is deemed to satisfy the nondiscrimination requirements of section 401(a)(4) if the plan satisfies the pre-1994 facts and circumstances test, satisfies the conditions prescribed by the Secretary to appropriately limit the availability of such test, and is submitted to the Secretary for a determination of whether it satisfies such test (to the extent provided by the Secretary).

Similarly, a plan would comply with the minimum coverage requirement of section 410(b) if the plan satisfies the pre-1989 coverage rules, is submitted to the Secretary for a determination of whether it satisfies the pre-1989 coverage rules (to the extent provided by the Secretary), and satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of the pre-1989 coverage rules.

Effective Date

The proposal would be effective on the date of enactment.

10. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local government plans

Present Law

A qualified retirement plan maintained by a State or local government is exempt from the rules concerning nondiscrimination (sec. 401(a)(4)) and minimum participation (sec. 401(a)(26)). All other governmental plans are not exempt from the nondiscrimination and minimum participation rules.

Description of Proposal

The proposal would exempt all governmental plans (as defined in sec. 414(d)) from the nondiscrimination and minimum participation rules.

Effective Date

The proposal would be effective for plan years beginning after December 31, 2000.

11. Notice and consent period regarding distributions

Present Law

Notice and consent requirements apply to certain distributions from qualified retirement plans. These requirements relate to the content and timing of information that a plan must provide to a participant prior to a distribution, and to whether the plan must obtain the participant's consent to the distribution. The nature and extent of the notice and consent requirements applicable to a distribution depend upon the value of the participant's vested accrued benefit and whether the joint and survivor annuity requirements (sec. 417) apply to the participant.[63]

If the present value of the participant's vested accrued benefit exceeds $5,000, the plan may not distribute the participant's benefit without the written consent of the participant. The participant's consent to a distribution is not valid unless the participant has received from the plan a notice that contains a written explanation of (1) the material features and the relative values of the optional forms of benefit available under the plan, (2) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (3) the rules concerning the taxation of a distribution. If the joint and survivor annuity requirements apply to the participant, this notice also must contain a written explanation of (1) the terms and conditions of the qualified joint and survivor annuity ("QJSA"), (2) the participant's right to make, and the effect of, an election to waive the QJSA, (3) the rights of the participant's spouse with respect to a participant's waiver of the QJSA, and (4) the right to make, and the effect of, a revocation of a waiver of the QJSA. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

If the participant's vested accrued benefit does not exceed $5,000, the terms of the plan may provide for distribution without the participant's consent. The plan generally is required, however, to provide to the participant a notice that contains a written explanation of (1) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (2) the rules concerning the taxation of a distribution. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

Description of Proposal

A qualified retirement plan would be required to provide the applicable distribution notice no less than 30 days and no more than 180 days before the date distribution commences. The Secretary of the Treasury would be directed to modify the applicable regulations to reflect the extension of the notice period to 180 days and to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

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[63] Similar provisions are contained in Title I of ERISA.

Effective Date

The proposal would be effective for years beginning after December 31, 2000.

12. Rules for substantial owner benefits in terminated plans

Present Law

Under present law, the Pension Benefit Guaranty Corporation ("PBGC") provides participants and beneficiaries in a defined benefit pension plan with certain minimal guarantees as to the receipt of benefits under the plan in case of plan termination. The employer sponsoring the defined benefit pension plan is required to pay premiums to the PBGC to provide insurance for the guaranteed benefits. In general, the PBGC will guarantee all basic benefits which are payable in periodic installments for the life (or lives) of the participant and his or her beneficiaries and are non-forfeitable at the time of plan termination. The amount of the guaranteed benefit is subject to certain limitations. One limitation is that the plan (or an amendment to the plan which increases benefits) must be in effect for 60 months before termination for the PBGC to guarantee the full amount of basic benefits for a plan participant, other than a substantial owner. In the case of a substantial owner, the guaranteed basic benefit is phased in over 30 years beginning with participation in the plan. A substantial owner is one who owns, directly or indirectly, more than 10 percent of the voting stock of a corporation or all the stock of a corporation. Special rules restricting the amount of benefit guaranteed and the allocation of assets also apply to substantial owners.

Description of Proposal

The proposal would provide that the 60 month phase-in of guaranteed benefits would apply to a substantial owner with less than 50 percent ownership interest. For a substantial owner with a 50 percent or more ownership interest ("majority owner"), the phase-in would depend on the number of years the plan has been in effect. The majority owner's guaranteed benefit would be limited so that it could not be more than the amount phased in over 60 months for other participants. The rules regarding allocation of assets would apply to substantial owners, other than majority owners, in the same manner as other participants.

Effective Date

The proposal would be effective for plan terminations with respect to which notices of intent to terminate are provided, or for which proceedings for termination are instituted by the PBGC after December 31, 2000.

13. Annual report dissemination

Present Law

Title I of ERISA generally requires the plan administrator of each employee pension benefit plan and each employee welfare benefit plan to file an annual report concerning the plan with the Secretary of Labor within seven months after the end of the plan year. Within nine months after the end of the plan year, the plan administrator generally must provide to each participant and to each beneficiary receiving benefits under the plan a summary of the annual report filed with the Secretary of Labor for the plan year.

Description of Proposal

Within nine months after the end of each plan year, the plan administrator would be required to make available for examination a summary of the annual report filed with the Secretary of Labor for the plan year. In addition, the plan administrator would be required to furnish the summary to a participant, or to a beneficiary receiving benefits under the plan, upon request.

Effective Date

The proposal would be effective for reports for years beginning after December 31, 1999.

F. Provisions Relating to Plan Amendments

Present Law

Plan amendments to reflect amendments to the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs.

Description of Proposal

Any amendments to a plan or annuity contract required to be made by the proposal would not be required to be made before the last day of the first plan year beginning on or after January 1, 2003. In the case of a governmental plan, the date for amendments would be extended to the last day of the first plan year beginning on or after January 1, 2005. The delayed amendment date would not apply to any amendment required or permitted by the proposal unless, during the period beginning on the date the applicable section of the proposal takes effect and ending on the delayed amendment date, (1) the plan or annuity contract is operated as if such amendment were in effect, and (2) such amendment applies retroactively for such period.

Effective Date

The proposal would be effective on the date of enactment.

III. COMPLIANCE WITH CONGRESSIONAL BUDGET ACT

Present Law

Reconciliation is a procedure under the Congressional Budget Act of 1974 (the "Budget Act") by which the Congress implements spending and tax policies contained in a budget resolution. The Budget Act contains numerous rules enforcing the scope of items permitted to be considered under the budget reconciliation process. One such rule, the so-called "Byrd rule," was incorporated into the Budget Act in 1990. The Byrd rule, named after its principal sponsor, Senator Robert C. Byrd, is contained in section 313 of the Budget Act. The Byrd rule is generally interpreted to permit members to make a motion to strike extraneous provisions (those which are unrelated to the deficit reduction goals of the reconciliation process) from either a budget reconciliation bill or a conference report on such bill.

Under the Byrd rule, a provision is considered to be extraneous if it:

(1) does not produce a change in outlays or revenues;
(2) produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
(3) is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
(4) produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision;
(5) would increase the deficit for a fiscal year beyond those covered by the revenue measure; or
(6) recommends a change in Social Security.

Description of Proposal

To ensure compliance with the Budget Act, all provisions of, and amendments made by, the proposal would cease to apply for years beginning after December 31, 2004.

Effective Date

The provision would be effective on the date of enactment.

JOINT COMMITTEE ON TAXATION
September 6, 2000
JCX-91-00

ESTIMATED REVENUE EFFECTS OF THE CHAIRMAN'S MARK OF THE "RETIREMENT SECURITY AND SAVINGS ACT OF 2000," INCLUDING CONGRESSIONAL BUDGET ACT SUNSET FOR YEARS AFTER DECEMBER 31, 2004, SCHEDULED FOR MARKUP BY THE COMMITTEE ON FINANCE ON SEPTEMBER 7, 2000

Fiscal Years 2001 - 2010

[Millions of Dollars]

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
Individual Retirement Arrangement Provisions													
1. Modification of IRA Contribution Limits - increase the maximum contribution limit for traditional and Roth IRAs to: $3,000 in 2001, $4,000 in 2002, $5,000 in 2003, and index for inflation thereafter	tyba 12/31/00	-395	-1,194	-2,013	-2,726	-2,050	-1,088	-1,113	-1,135	-1,155	-1,173	-8,378	-14,042
2. Increase AGI limits for deductible IRA contributions, including for married filing separately	tyba 12/31/00	-103	-357	-475	-411	-199	-17	-13	-8	-1	[1]	-1,544	-1,584
3. Increase maximum contribution limits for IRAs for individuals age 50 and above by 50%	yba 12/31/00	-178	-305	-236	-214	-135	-59	-58	-56	-54	-53	-1,068	-1,348
4. Deemed IRAs under employer plans	tyba 12/31/01	Negligible Revenue Effect											
5. Allow tax-free withdrawals from IRAs for charitable purposes	tyba 12/31/00	-168	-340	-347	-416	-259	-37	-38	-38	-39	-40	-1,530	-1,722
Total of Individual Retirement Arrangement Provisions		**-844**	**-2,196**	**-3,071**	**-3,767**	**-2,643**	**-1,201**	**-1,222**	**-1,237**	**-1,249**	**-1,266**	**-12,520**	**-18,696**
Provisions for Expanding Coverage													
1. Increase contribution and benefit limits:													
a. Increase limitation on exclusion for elective deferrals to: $11,000 in 2001, $12,000 in 2002, $13,000 in 2003, $14,000 in 2004, and $15,000 in 2005; index thereafter [2] [3]	yba 12/31/00	-130	-310	-452	-557	-235	-84	-82	-79	-75	-71	-1,684	-2,075
b. Increase limitation on SIMPLE elective contributions to: $7,000 in 2001, $8,000 in 2002, $9,000 in 2003, and $10,000 in 2004; index thereafter [2] [3]	yba 12/31/00	-4	-14	-21	-26	-11	-4	-4	-4	-3	-3	-76	-94
c. Increase defined benefit dollar limit to $160,000	yba 12/31/00	-18	-31	-40	-45	-14	---	---	---	---	---	-148	-148
d. Lower early retirement age to 62; lower normal retirement age to 65	yba 12/31/00	-3	-4	-4	-4	-1	---	---	---	---	---	-17	-17
e. Increase indexing on limitation for defined contribution plans in $1,000 increments [2]	yba 12/31/00	---	-2	-4	-5	-2	-1	-1	-1	-1	-1	-13	-16
f. Increase qualified plan compensation limit to $200,000 [2]	yba 12/31/00	-43	-74	-84	-91	-40	-17	-16	-16	-15	-14	-333	-410
g. Increase limits on deferrals under deferred compensation plans of State and local governments and tax-exempt organizations to: $11,000 in 2001, $12,000 in 2002, $13,000 in 2003, $14,000 in 2004, and $15,000 in 2005; index thereafter [2] [3]	yba 12/31/00	-52	-91	-104	-114	-50	-20	-20	-19	-18	-17	-410	-503

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
2. Plan loans for subchapter S owners, partners, and sole proprietors	pa 12/31/00	-18	-30	-33	-35	-12	-2	-2	-2	-2	-2	-128	-138
3. Modification of top-heavy rules	yba 12/31/00	-4	-9	-11	-12	-5	-2	-2	-2	-2	-2	-41	-50
4. Elective deferrals not taken into account for purposes of deduction limits	yba 12/31/00	-40	-75	-87	-94	-51	-22	-21	-20	-19	-20	-324	-426
5. Repeal of coordination requirements for deferred compensation plans of State and local governments and tax-exempt organizations	yba 12/31/00	-16	-22	-22	-22	-10	-4	-4	-4	-4	-3	-92	-110
6. Elimination of user fee for certain requests regarding small employer pension plans; extend waiver of user fees for determination letters to the later of the end of the 5th plan year after the plan is established or the remedial amendment period [4]	rma 12/31/00	-7	-8	-9	---	---	---	---	---	---	---	-24	-24
7. Definition of compensation for purposes of deduction limits [2]	yba 12/31/00	-1	-2	-3	-3	-2	-1	-1	-1	-1	[1]	-11	-15
8. Increase stock bonus and profit sharing plan deduction limit from 15% to 25%	tyba 12/31/00	-6	-12	-14	-15	-8	-3	-3	-3	-3	-3	-51	-66
9. Option to treat elective deferrals as after-tax contributions	tyba 12/31/00	50	100	131	144	-73	-169	-171	-172	-171	-170	352	-500
10. Reduce PBGC premium for new plans of small employers [4]	pea 12/31/00	---	[1]	[1]	[1]	[1]	---	---	---	---	---	-2	-2
11. Phase-in additional PBGC premium for new plans; include additional variable premium relief for small employers [4]	ya 12/31/00	---	-3	-3	-3	-1	---	---	---	---	---	-11	-11
12. Nonrefundable credit to certain individuals for elective deferrals and IRA contributions	tyba 12/31/00	-1,091	-2,488	-2,378	-2,286	-1,314	-79	-71	-69	-66	-64	-9,557	-9,906
13. Small business (50 or fewer employees) tax credit for new qualified retirement plan contributions - first 3 years of the plan	[5]	-43	-264	-580	-895	-728	-601	-599	-582	-552	-510	-2,511	-5,355
14. Small business (100 or fewer employees) tax credit for new retirement plan expenses	[5]	-22	-31	-33	-32	-28	-19	-9	-2	-1	---	-146	-177
Total of Provisions for Expanding Coverage		**-1,448**	**-3,370**	**-3,751**	**-4,095**	**-2,585**	**-1,028**	**-1,006**	**-976**	**-933**	**-880**	**-15,227**	**-20,043**
Provisions for Enhancing Fairness for Women													
1. Additional catch-up contributions for individuals age 50 and above - increase maximum contribution limits for pension plans by 10% annually beginning in 2001, not to exceed 50%	yba 12/31/00	-8	-23	-39	-57	-24	-7	-7	-6	-6	-5	-151	-181
2. Equitable treatment for contributions of employees to defined contribution plans [2]	yba 12/31/00	-51	-78	-84	-91	-40	-17	-16	-16	-15	-14	-344	-421
3. Faster vesting of certain employer matching contributions	pyba 12/31/00	*Negligible Revenue Effect*											
4. Simplify and update the minimum distribution rules - modify post-death distribution rules, reduce the excise tax on failures to make minimum distributions to 10%, and direct the Treasury to simplify and finalize regulations relating to the minimum distribution rules	yba 12/31/00	-118	-212	-239	-268	-107	-39	-36	-34	-32	-30	-944	-1,115
5. Clarification of tax treatment of division of section 457 plan benefits upon divorce	tdapma 12/31/00	*Negligible Revenue Effect*											

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
6. Modification of safe harbor relief for hardship withdrawals from 401(k) plans; modify definition of hardship for rollover purposes	yba 12/31/00	*Negligible Revenue Effect*											
7. Eliminate the excise tax on employers who make nondeductible contributions to SIMPLE plans on behalf of domestic and similar workers	tyba 12/31/00	[1]	[1]	-1	-3	-4	-5	-5	-5	-5	-5	-8	-35
Total of Provisions for Enhancing Fairness for Women		**-177**	**-313**	**-363**	**-419**	**-175**	**-68**	**-64**	**-61**	**-58**	**-54**	**-1,447**	**-1,752**
Provisions for Increasing Portability for Participants													
1. Rollovers allowed among governmental section 457 plans, section 403(b) plans, and qualified plans	dma 12/31/01	---	27	-5	-5	-35	-2	-2	-1	-1	-1	-18	-25
2. Rollovers of IRAs to workplace retirement plans	dma 12/31/01	*Negligible Revenue Effect*											
3. Rollovers of after-tax retirement plan contributions	dma 12/31/01	*Negligible Revenue Effect*											
4. Waiver of 60-day rule	dma 12/31/00	*Negligible Revenue Effect*											
5. Treatment of forms of qualified plan distributions	yba 12/31/00	*Negligible Revenue Effect*											
6. Rationalization of restrictions on distributions	da 12/31/00	*Negligible Revenue Effect*											
7. Purchase of service credit in governmental defined benefit plans	ta 12/31/00	*Negligible Revenue Effect*											
8. Employers may disregard rollovers for cash-out amounts	da 12/31/00	*Negligible Revenue Effect*											
9. Minimum distribution requirements for section 457 plans	da 12/31/00	*Considered in Other Provisions*											
Total of Provisions for Increasing Portability for Participants		**[6]**	**27**	**-5**	**-5**	**-35**	**[6]**	**[6]**	**[6]**	**[6]**	**[6]**	**-18**	**-25**
Provisions for Strengthening Pension Security and Enforcement													
1. Phase in repeal of 155% of current liability funding limit; extend maximum deduction rule	pyba 12/31/00	---	-14	-20	-36	-9	---	---	---	---	---	-79	-79
2. Excise tax relief for sound pension funding	yba 12/31/00	-2	-3	-3	-3	-1	---	---	---	---	---	-12	-12
3. Notice of significant reduction in plan benefit accruals and wear-away prevention	pateo/a DOE	-1	-4	-7	-9	-2	---	---	---	---	---	-23	-23
4. Modification of section 415 aggregation rules for multiemployer plans	yba 12/31/00	-1	-1	-1	-1	[1]	---	---	---	---	---	-4	-4
5. Repeal 100% of compensation limit for multiemployer plans	yba 12/31/00	-2	-4	-4	-4	-2	---	---	---	---	---	-16	-16
6. Investment of employee contributions in 401(k) plans	aiii TRA'97	*Negligible Revenue Effect*											
7. Periodic pension benefit statements	pyba 12/31/00	*No Revenue Effect*											
8. Extension of PBGC missing plan participants program [4]	[7]	[8]	[8]	[8]	[8]	[8]	---	---	---	---	---	[1]	[1]
9. Prohibited allocations of stock in an ESOP of an S corporation	[9]	1	4	5	6	2	---	---	---	---	---	18	18
Total of Provisions for Strengthening Pension Security and Enforcement		**-5**	**-22**	**-30**	**-47**	**-12**	**---**	**---**	**---**	**---**	**---**	**-117**	**-117**
Provisions for Reducing Regulatory Burdens													
1. Modification of timing of plan valuations	pyba 12/31/00	*Negligible Revenue Effect*											

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
2. ESOP dividends may be reinvested without loss of dividend deduction	tyba 12/31/00	-19	-44	-56	-61	-31	---	---	---	---	---	-211	-211
3. Repeal transition rule relating to certain highly compensated employees	pyba 12/31/00	-2	-3	-3	-3	-1	-1	[1]	[1]	[1]	[1]	-12	-14
4. Employees of tax-exempt entities [10]	DOE	Negligible Revenue Effect											
5. Treatment of employer-provided retirement advice	tyba 12/31/00	Negligible Revenue Effect											
6. Pension plan reporting simplification [10]	DOE	Negligible Revenue Effect											
7. Improvement to Employee Plans Compliance Resolution System [10]	DOE	Negligible Revenue Effect											
8. Repeal of the multiple use test	yba 12/31/00	Considered in Other Provisions											
9. Flexibility in nondiscrimination, coverage, and line of business rules [10]	DOE	Negligible Revenue Effect											
10. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local government plans	pyba 12/31/00	Negligible Revenue Effect											
11. Notice and consent period regarding distributions	yba 12/31/00	No Revenue Effect											
12. Rules for substantial owner benefits in terminated plans [4]	noitta 12/31/00	[1]	[1]	[1]	[1]	[1]	---	---	---	---	---	-2	-2
13. Annual report dissemination	yba 12/31/99	No Revenue Effect											
Total of Provisions for Reducing Regulatory Burdens		-22	-48	-60	-65	-33	-1	[1]	[1]	[1]	[1]	-225	-227
Provisions Relating to Plan Amendments	**DOE**	**No Revenue Effect**											
Congressional Budget Act Sunset of the "Retirement Security and Savings Act of 2000" for Years Beginning After 12/31/04	**DOE**	**Considered in Each Individual Provision**											
NET TOTAL		-2,496	-5,922	-7,280	-8,398	-5,483	-2,300	-2,294	-2,275	-2,241	-2,201	-29,554	-40,860

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:

aiii TRA'97 = as if included in the Taxpayer Relief Act of 1997
da = distributions after
dma = distributions made after
DOE = date of enactment
noitta = notice of intent to terminate after
pa = periods after
pateo/a = plan amendments taking effect on or after
pea = plans established after
pyba = plan years beginning after
rma = requests made after
ta = transfers after
tdapma = transfers, distributions, and payments made after
tyba = taxable years beginning after
ya = years after
yba = years beginning after

[Footnotes for JCX-91-00 appear on the following page]

Footnotes for JCX-91-00:

[1] Loss of less than $500,000.
[2] Provision includes interaction with other provisions in Provisions for Expanding Coverage.
[3] Provision includes interaction with the Individual Retirement Arrangement provisions.
[4] Estimate provided by the Congressional Budget Office.
[5] Effective for taxable years beginning after 12/31/00, with respect to plans established after such date.
[6] Negligible revenue effect.
[7] Effective for distributions from terminating plans that occur after the PBGC has adopted final regulations implementing provision.
[8] Loss of less than $100,000.
[9] Generally effective with respect to years beginning after December 31, 2001. In the case of an ESOP established after July 11, 2000, or an ESOP established on or before such date if the employer maintaining the plan was not an S corporation on such date, the proposal would be effective with respect to plan years ending after July 11, 2000.
[10] Directs the Secretary of the Treasury to modify rules through regulations.

Joint Committee on Taxation
September 7, 2000
JCX-92-00

DESCRIPTION OF MODIFICATION TO THE CHAIRMAN'S MARK OF THE "RETIREMENT SECURITY AND SAVINGS ACT OF 2000"

The Senate Committee on Finance has scheduled a markup of a Chairman's Mark of the "Retirement Security and Savings Act of 2000"[1] on September 7, 2000. This document, prepared by the staff of the Joint Committee on Taxation, contains a description of a modification to the Chairman's Mark.[2]

The modification to the Chairman's Mark would substitute for the provisions of H.R. 1102, as passed by the House of Representatives on July 19, 2000, the provisions of the Chairman's Mark, modified as described below. H.R. 1102, as modified by the Chairman's Mark and this modification, would provide for reconciliation pursuant to section 104(a)(2) of the concurrent resolution on the budget for fiscal year 2001.

I. MODIFICATIONS TO PROVISIONS IN THE CHAIRMAN'S MARK

Individual retirement arrangements

The provisions in the Chairman's Mark relating to individual retirement arrangements ("IRAs") would be modified by adding a provision eliminating the marriage penalty in conversions of Roth IRAs to traditional IRAs. Under the modification, the income limit for such conversions would be $200,000 for married taxpayers and $100,000 for all other taxpayers (including married taxpayers filing a separate return). This proposal would be effective for taxable years beginning after December 31, 2000.

Credit for low- and middle-income savers

The provision in the Chairman's Mark providing a tax credit for low- and middle-income taxpayers would be modified by substituting the following credit rates for the rates described in

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[1] A description of the Chairman's Mark may be found in Joint Committee on Taxation, *Description of the Chairman's Mark of the "Retirement Security and Savings Act of 2000"* (JCX-89-00), September 5, 2000.

[2] This document may be cited as follows: Joint Committee on Taxation, *Description of Modifications to the Chairman's Mark of the "Retirement Security and Savings Act of 2000"* (JCX-92-00), September 7, 2000.

the Chairman's Mark:

Joint Filers	*Heads of Households*	*All Other Filers*	*Credit Rate*
$0-$20,000	$0-$15,000	$0-$10,000	50%
$20,001-$25,000	$15,001-$18,750	$10,001-$12,500	30%
$25,001-$30,000	$18,751-$22,500	$12,501-$15,000	25%
$30,001-$35,000	$22,501-$26,250	$15,001-$17,500	20%
$35,001-$40,000	$26,250-$30,000	$17,501-$20,000	15%
$40,001-$45,000	$30,001-$33,750	$20,001-$22,500	10%
$45,001-$50,000	$33,751-$37,500	$22,501-$25,000	5%
Over $50,000	Over $37,500	Over $25,000	0%

In addition, the provision of the proposal limiting eligibility for the credit to individuals age 60 and younger would be deleted. Thus, the credit would be available to persons who are age 18 or older, other than individuals who are full-time students or claimed as a dependent on another taxpayer's return.

The modification would expand the provision in the Chairman's Mark requiring the Secretary of Treasury to report annually the number of individuals who claim the credit by requiring, in addition, that the Secretary report to the Senate Committee on Finance and the House Committee on Ways and Means regarding the effect of the bill on pension coverage, including any expansion of coverage for low- and moderate-income workers, levels of pension benefits, quality of coverage, worker's access to and participation in plans, and retirement security. This new report would be required to be submitted no later than four years after the date of enactment.

Treatment of employer-provided retirement advice

The provision of the proposal relating to the treatment of employer-provided retirement advice would be modified to add a direction to the Secretary of the Treasury to conduct a study of the present-law rules that permit individuals to access their IRA or qualified retirement plan benefits prior to retirement, including analyses of the use of the existing rules and the extent to which such rules undermine the goal of accumulating adequate resources for retirement. In addition, the Secretary of the Treasury would be directed to conduct a study of the types of investment decisions made by IRA owners and participants in self-directed qualified retirement plans, including analyses of the existing restrictions on investments and the extent to which additional restrictions would facilitate the accumulation of adequate income for

retirement. The studies would be required to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means no later than January 1, 2002.

Notice and consent period regarding distributions

The provision of the proposal relating to the required notice and consent period regarding distributions would be modified to add a requirement that a plan notify participants of the existence of certain differences between the values of optional forms of benefit. If a lump sum distribution is not the actuarial equivalent of an annuity form of distribution available under a plan, the proposal would require the plan to include in the applicable distribution notice, in a manner calculated to be understood by the average participant, a notification that there is a difference in the values of the optional forms of benefit. This provision would be effective for years after December 31, 2000.

II. ADDITIONAL PROVISIONS

The following provisions would be added to the Chairman's Mark.

1. Time of inclusion of benefits under section 457 plans

Present Law

A "section 457 plan" is an eligible deferred compensation plan of a State or local government or tax-exempt employer that meets certain requirements. For example, amounts deferred under a section 457 plan cannot exceed certain limits. Amounts deferred under a section 457 plan are generally includible in income when paid or made available. Amounts deferred under a plan of deferred compensation of a State or local government or tax-exempt employer that does not meet the requirements of section 457 are includible in income when the amounts are not subject to a substantial risk of forfeiture, regardless of whether the amounts have been paid or made available.[3]

The limits on section 457 plans were first applied to plans of tax-exempt employers pursuant to the Tax Reform Act of 1986 (the "1986 Act"), generally effective for taxable years beginning after December 31, 1986. The limitations of section 457 do not apply to amounts deferred under a plan of a tax-exempt employer by an individual covered under such a plan on August 16, 1986, if the amounts (1) were deferred from taxable years beginning before January 1, 1987, or (2) are deferred from taxable years beginning after December 31, 1986, pursuant to an agreement that was in writing on August 16, 1986, and on such date provided for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula. The provision in (2) ceases to apply if there is any modification to the agreement or formula.

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[3] This rule of inclusion does not apply to amounts deferred under a tax-qualified retirement plan or similar plans.

Description of Proposal

The proposal would provide that amounts deferred under a section 457 plan of a State or local government would be includible in income when paid.

In addition, the proposal would modify the transition rule adopted in the 1986 Act relating to deferred compensation plans of tax-exempt employers. Under the proposal, the transition rule would apply to agreements providing cost-of-living adjustments to benefits that otherwise satisfy the requirements of the transition rule. As under present law, the grandfather rule would cease to apply if any other modifications are made.

Effective Date

The proposal relating to governmental section 457 plans would be effective for years beginning after December 31, 2000. The proposal relating to plans of tax-exempt organizations would be effective on the date of enactment for cost-of-living increases after September 1993.

2. Modifications to the SAVER Act

Present Law

The Savings Are Vital to Everyone's Retirement ("SAVER") Act[4] initiated a public-private partnership to educate American workers about retirement savings and directed the Department of Labor to maintain an ongoing program of public information and outreach. The Act also convened a National Summit on Retirement Savings held June 4-5, 1998, and to be held again in 2001 and 2005, co-hosted by the President and the bipartisan Congressional leadership. The National Summit brings together experts in the fields of employee benefits and retirement savings, key leaders of government, and interested parties from the private sector and general public. The delegates are selected by the Congressional leadership and the President. The National Summit is a public-private partnership, receiving substantial funding from private sector contributions. The goals of the National Summits are to: (1) advance the public's knowledge and understanding of retirement savings and facilitate the development of a broad-based, public education program; (2) identify the barriers which hinder workers from setting aside adequate savings for retirement and impede employers, especially small employers, from assisting their workers in accumulating retirement savings; and (3) develop specific recommendations for legislative, executive, and private sector actions to promote retirement income savings among American workers.

Description of Proposal

The proposal would make amendments to the SAVER Act regarding the administration

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[4] Pub. L. No. 105-92.

of future statutorily created National Summits on Retirement Savings. It would clarify that such National Summits are to be held in the month of September in 2001 and 2005, and would add an additional National Summit in 2009. To facilitate the administration of future National Summits, the Department of Labor would be given authority to enter into cooperative agreements (pursuant to the Federal Grant and Cooperative Agreement Act of 1977) with its 1999 summit partner, the American Savings Education Council.

Six new statutory delegates would be added to future National Summits: the Chairman and Ranking Member of the House Ways and Means Committee, the Senate Finance Committee, and the Subcommittee on Employer-Employee Relations of the House Committee on Education and the Workforce. Further, the President, in consultation with the Congressional leadership, could appoint up to three percent of the delegates (not to exceed 10) from a list of nominees provided by the private sector partner in Summit administration. The proposal would also clarify that new delegates are to be appointed for each future National Summit (as was the intent of the original legislation) and would set deadlines for their appointment.

The proposal would also set deadlines for the Department of Labor to publish the Summit agenda, give the Department of Labor limited reception and representation authority, and mandate that the Department of Labor consult with the Congressional leadership in drafting the post-Summit report.

Effective Date

The proposal would be effective on the date of enactment.

III. DELETIONS OF PROVISIONS OUTSIDE THE SCOPE OF RECONCILIATION INSTRUCTIONS

The modification to the Chairman's Mark would delete the following provisions that are outside the scope of reconciliation instructions:

- Eliminate IRS user fees for certain determination letter requests regarding employer plans
- Reduce PBGC premiums for small and new plans
- Extension of PBGC missing participants program
- Rules for substantial owner benefits in terminated plans

JOINT COMMITTEE ON TAXATION
September 7, 2000
JCX-93-00

ESTIMATED REVENUE EFFECTS OF A MODIFICATION TO THE CHAIRMAN'S MARK OF THE "RETIREMENT SECURITY AND SAVINGS ACT OF 2000," INCLUDING CONGRESSIONAL BUDGET ACT SUNSET FOR YEARS AFTER DECEMBER 31, 2004, SCHEDULED FOR MARKUP BY THE COMMITTEE ON FINANCE ON SEPTEMBER 7, 2000

Fiscal Years 2001 - 2010

[Millions of Dollars]

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
Individual Retirement Arrangement Provisions													
1. Modification of IRA Contribution Limits - increase the maximum contribution limit for traditional and Roth IRAs to: $3,000 in 2001, $4,000 in 2002, $5,000 in 2003, and index for inflation thereafter	tyba 12/31/00	-395	-1,194	-2,013	-2,726	-2,050	-1,088	-1,113	-1,135	-1,155	-1,173	-8,378	-14,042
2. Increase AGI limits for deductible IRA contributions, including for married filing separately	tyba 12/31/00	-103	-357	-475	-411	-199	-17	-13	-8	-1	[1]	-1,544	-1,584
3. Increase maximum contribution limits for IRAs for individuals age 50 and above by 50%	yba 12/31/00	-178	-305	-236	-214	-135	-59	-58	-56	-54	-53	-1,068	-1,348
4. Deemed IRAs under employer plans	tyba 12/31/01	Negligible Revenue Effect											
5. Allow tax-free withdrawals from IRAs for charitable purposes	tyba 12/31/00	-168	-340	-347	-416	-259	-37	-38	-38	-39	-40	-1,530	-1,722
6. Increase the income limit for conversions of an IRA to a Roth IRA to $200,000 for joint filers	tyba 12/31/00	396	1,021	658	63	-870	-1,489	-1,244	-812	-354	-377	1,268	-3,008
Total of Individual Retirement Arrangement Provisions		**-448**	**-1,175**	**-2,413**	**-3,704**	**-3,513**	**-2,690**	**-2,466**	**-2,049**	**-1,603**	**-1,643**	**-11,252**	**-21,704**
Provisions for Expanding Coverage													
1. Increase contribution and benefit limits:													
a. Increase limitation on exclusion for elective deferrals to: $11,000 in 2001, $12,000 in 2002, $13,000 in 2003, $14,000 in 2004, and $15,000 in 2005; index thereafter [2] [3]	yba 12/31/00	-130	-310	-452	-557	-235	-84	-82	-79	-75	-71	-1,684	-2,075
b. Increase limitation on SIMPLE elective contributions to: $7,000 in 2001, $8,000 in 2002, $9,000 in 2003, and $10,000 in 2004; index thereafter [2] [3]	yba 12/31/00	-4	-14	-21	-26	-11	-4	-4	-4	-3	-3	-76	-94
c. Increase defined benefit dollar limit to $160,000	yba 12/31/00	-18	-31	-40	-45	-14	---	---	---	---	---	-148	-148
d. Lower early retirement age to 62; lower normal retirement age to 65	yba 12/31/00	-3	-4	-4	-4	-1	---	---	---	---	---	-17	-17
e. Increase indexing on limitation for defined contribution plans in $1,000 increments [2]	yba 12/31/00	---	-2	-4	-5	-2	-1	-1	-1	-1	-1	-13	-16
f. Increase qualified plan compensation limit to $200,000 [2]	yba 12/31/00	-43	-74	-84	-91	-40	-17	-16	-16	-15	-14	-333	-410

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
g. Increase limits on deferrals under deferred compensation plans of State and local governments and tax-exempt organizations to: $11,000 in 2001, $12,000 in 2002, $13,000 in 2003, $14,000 in 2004, and $15,000 in 2005; index thereafter [2] [3]	yba 12/31/00	-52	-91	-104	-114	-50	-20	-20	-19	-18	-17	-410	-503
2. Plan loans for subchapter S owners, partners, and sole proprietors	pa 12/31/00	-18	-30	-33	-35	-12	-2	-2	-2	-2	-2	-128	-138
3. Modification of top-heavy rules	yba 12/31/00	-4	-9	-11	-12	-5	-2	-2	-2	-2	-2	-41	-50
4. Elective deferrals not taken into account for purposes of deduction limits	yba 12/31/00	-40	-75	-87	-94	-51	-22	-21	-20	-19	-20	-324	-426
5. Repeal of coordination requirements for deferred compensation plans of State and local governments and tax-exempt organizations	yba 12/31/00	-16	-22	-22	-22	-10	-4	-4	-4	-4	-3	-92	-110
6. Definition of compensation for purposes of deduction limits [2]	yba 12/31/00	-1	-2	-3	-3	-2	-1	-1	-1	-1	[1]	-11	-15
7. Increase stock bonus and profit sharing plan deduction limit from 15% to 25%	tyba 12/31/00	-6	-12	-14	-15	-8	-3	-3	-3	-3	-3	-51	-66
8. Option to treat elective deferrals as after-tax contributions	tyba 12/31/00	50	100	131	144	-73	-169	-171	-172	-171	-170	352	-500
9. Nonrefundable credit to certain individuals for elective deferrals and IRA contributions	tyba 12/31/00	-911	-2,052	-1,994	-1,947	-1,111	-72	-65	-64	-64	-62	-8,016	-8,344
10. Small business (50 or fewer employees) tax credit for new qualified retirement plan contributions - first 3 years of the plan	[4]	-43	-264	-580	-895	-728	-601	-599	-582	-552	-510	-2,511	-5,355
11. Small business (100 or fewer employees) tax credit for new retirement plan expenses	[4]	-22	-31	-33	-32	-28	-19	-9	-2	-1	---	-146	-177
Total of Provisions for Expanding Coverage		**-1,261**	**-2,923**	**-3,355**	**-3,753**	**-2,381**	**-1,021**	**-1,000**	**-971**	**-931**	**-878**	**-13,649**	**-18,444**
Provisions for Enhancing Fairness for Women													
1. Additional catch-up contributions for individuals age 50 and above - increase maximum contribution limits for pension plans by 10% annually beginning in 2001, not to exceed 50%	yba 12/31/00	-8	-23	-39	-57	-24	-7	-7	-6	-6	-5	-151	-181
2. Equitable treatment for contributions of employees to defined contribution plans [2]	yba 12/31/00	-51	-78	-84	-91	-40	-17	-16	-16	-15	-14	-344	-421
3. Faster vesting of certain employer matching contributions	pyba 12/31/00	*Negligible Revenue Effect*											
4. Simplify and update the minimum distribution rules - modify post-death distribution rules, reduce the excise tax on failures to make minimum distributions to 10%, and direct the Treasury to simplify and finalize regulations relating to the minimum distribution rules	yba 12/31/00	-118	-212	-239	-268	-107	-39	-36	-34	-32	-30	-944	-1,115
5. Clarification of tax treatment of division of section 457 plan benefits upon divorce	tdapma 12/31/00	*Negligible Revenue Effect*											
6. Modification of safe harbor relief for hardship withdrawals from 401(k) plans; modify definition of hardship for rollover purposes	yba 12/31/00	*Negligible Revenue Effect*											

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
7. Eliminate the excise tax on employers who make nondeductible contributions to SIMPLE plans on behalf of domestic and similar workers	tyba 12/31/00	[1]	[1]	-1	-3	-4	-5	-5	-5	-5	-5	-8	-35
Total of Provisions for Enhancing Fairness for Women		**-177**	**-313**	**-363**	**-419**	**-175**	**-68**	**-64**	**-61**	**-58**	**-54**	**-1,447**	**-1,752**
Provisions for Increasing Portability for Participants													
1. Rollovers allowed among governmental section 457 plans, section 403(b) plans, and qualified plans	dma 12/31/01	---	27	-5	-5	-35	-2	-2	-1	-1	-1	-18	-25
2. Rollovers of IRAs to workplace retirement plans	dma 12/31/01	*Negligible Revenue Effect*											
3. Rollovers of after-tax retirement plan contributions	dma 12/31/01	*Negligible Revenue Effect*											
4. Waiver of 60-day rule	dma 12/31/00	*Negligible Revenue Effect*											
5. Treatment of forms of qualified plan distributions	yba 12/31/00	*Negligible Revenue Effect*											
6. Rationalization of restrictions on distributions	da 12/31/00	*Negligible Revenue Effect*											
7. Purchase of service credit in governmental defined benefit plans	ta 12/31/00	*Negligible Revenue Effect*											
8. Employers may disregard rollovers for cash-out amounts	da 12/31/00	*Negligible Revenue Effect*											
9. Minimum distribution and inclusion requirements for section 457 plans	da 12/31/00	*Considered in Other Provisions*											
Total of Provisions for Increasing Portability for Participants		**---**	**27**	**-5**	**-5**	**-35**	**-2**	**-2**	**-1**	**-1**	**-1**	**-18**	**-25**
Provisions for Strengthening Pension Security and Enforcement													
1. Phase in repeal of 155% of current liability funding limit; extend maximum deduction rule	pyba 12/31/00	---	-14	-20	-36	-9	---	---	---	---	---	-79	-79
2. Excise tax relief for sound pension funding	yba 12/31/00	-2	-3	-3	-3	-1	---	---	---	---	---	-12	-12
3. Notice of significant reduction in plan benefit accruals and wear-away prevention	pateo/a DOE	-1	-4	-7	-9	-2	---	---	---	---	---	-23	-23
4. Modification of section 415 aggregation rules for multiemployer plans	yba 12/31/00	-1	-1	-1	-1	[1]	---	---	---	---	---	-4	-4
5. Repeal 100% of compensation limit for multiemployer plans	yba 12/31/00	-2	-4	-4	-4	-2	---	---	---	---	---	-16	-16
6. Investment of employee contributions in 401(k) plans	aiii TRA'97	*Negligible Revenue Effect*											
7. Periodic pension benefit statements	pyba 12/31/00	*No Revenue Effect*											
8. Prohibited allocations of stock in an ESOP of an S corporation	[5]	1	4	5	6	2	---	---	---	---	---	18	18
9. Amendments to the SAVER Act	DOE	*No Revenue Effect*											
Total of Provisions for Strengthening Pension Security and Enforcement		**-5**	**-22**	**-30**	**-47**	**-12**	**[6]**	**[6]**	**[6]**	**[6]**	**[6]**	**-116**	**-116**
Provisions for Reducing Regulatory Burdens													
1. Modification of timing of plan valuations	pyba 12/31/00	*Negligible Revenue Effect*											
2. ESOP dividends may be reinvested without loss of dividend deduction	tyba 12/31/00	-19	-44	-56	-61	-31	---	---	---	---	---	-211	-211
3. Repeal transition rule relating to certain highly compensated employees	pyba 12/31/00	-2	-3	-3	-3	-1	-1	[1]	[1]	[1]	[1]	-12	-14
4. Employees of tax-exempt entities [7]	DOE	*Negligible Revenue Effect*											

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-05	2001-10
5. Treatment of employer-provided retirement advice	tyba 12/31/00	Negligible Revenue Effect											
6. Pension plan reporting simplification [7]	DOE	Negligible Revenue Effect											
7. Improvement to Employee Plans Compliance Resolution System [7]	DOE	Negligible Revenue Effect											
8. Repeal of the multiple use test	yba 12/31/00	Considered in Other Provisions											
9. Flexibility in nondiscrimination, coverage, and line of business rules [7]	DOE	Negligible Revenue Effect											
10. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local government plans	pyba 12/31/00	Negligible Revenue Effect											
11. Notice and consent period regarding distributions	yba 12/31/00	No Revenue Effect											
12. Annual report dissemination	yba 12/31/99	No Revenue Effect											
Total of Provisions for Reducing Regulatory Burdens		-21	-47	-59	-64	-32	-1	[1]	[1]	[1]	[1]	-223	-225
Provisions Relating to Plan Amendments	**DOE**	***No Revenue Effect***											
Congressional Budget Act Sunset of the "Retirement Security and Savings Act of 2000" for Years Beginning After 12/31/04	**DOE**	***Considered in Each Individual Provision***											
NET TOTAL		-1,912	-4,453	-6,225	-7,992	-6,148	-3,782	-3,532	-3,082	-2,593	-2,576	-26,705	-42,266

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:
- aiii TRA'97 = as if included in the Taxpayer Relief Act of 1997
- da = distributions after
- dma = distributions made after
- DOE = date of enactment
- pa = periods after
- pateo/a = plan amendments taking effect on or after
- pyba = plan years beginning after
- ta = transfers after
- tdapma = transfers, distributions, and payments made after
- tyba = taxable years beginning after
- yba = years beginning after

[1] Loss of less than $500,000.
[2] Provision includes interaction with other provisions in Provisions for Expanding Coverage.
[3] Provision includes interaction with the Individual Retirement Arrangement provisions.
[4] Effective for taxable years beginning after 12/31/00, with respect to plans established after such date.
[5] Generally effective with respect to years beginning after December 31, 2001. In the case of an ESOP established after July 11, 2000, or an ESOP established on or before such date if the employer maintaining the plan was not an S corporation on such date, the proposal would be effective with respect to plan years ending after July 11, 2000.
[6] Negligible revenue effect.
[7] Directs the Secretary of the Treasury to modify rules through regulations.

DESCRIPTION OF THE CHAIRMAN'S MARK OF THE "RETIRED COAL MINERS HEALTH BENEFIT SECURITY ACT"

Scheduled for Markup

by the

SENATE COMMITTEE ON FINANCE

on September 7, 2000

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

September 5, 2000

JCX-90-00

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I. INTRODUCTION 1

II. DESCRIPTION OF THE RETIRED COAL MINERS HEALTH BENEFIT SECURITY ACT 2

I. INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's mark of an original bill, the "Retired Coal Miners Health Benefit Security Act" scheduled for markup by the Senate Committee on Finance on September 7, 2000.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of the "Retired Coal Miners Health Benefit Security Act"* (JCX-90-00), September 5, 2000.

Grassley Amendment # 1 to the Coal Act re: relief for the "final judgement" companies

Current law:

When the Coal Act was enacted, several of the so-called super reachback companies sued to be taken out of coverage by the Act. They took this action based on the theory that they had not signed either the most recent National Bituminous Coal Wage Agreement (NBCWA) nor any similar agreement for many years. They felt they should not have been pulled back under a collective bargaining agreement from which they had lawfully withdrawn. While lower courts did not agree with the first few companies that sued and lost, the Supreme Court in the *Eastern Enterprises* case did agree with the plaintiff and ruled that companies similarly situated to Eastern Enterprises (super reachbacks) should not have been covered under the Coal Act. Those companies were released from liabilities and contributions made to the Fund were remitted to them. Because the Final Judgement companies had sued and lost, under *res judicata* they could not recover the payments that were unlawfully taken from them.

The Amendment.

The Amendment directs the Fund to pay the final judgement companies in full for the premiums unlawfully collected from the nine "final judgement companies".

The Purpose of the Amendment.

The purpose of the amendment is to recover the funds improperly assessed against and collected from the "final judgement" companies.

(2)

Grassley Amendment #2 to the Coal Act. Re: Board of Directors of the Combined Fund

Current law:

Under the Coal Industry Retiree Health Benefits Act the Combined Fund is directed by a Board of Directors. Current law allows the BCOA and the UMWA to each have one director on the Board. Another union is given a seat and a "non-BCOA" company gets one seat. There is also a Chairman. So, there are five directors on the Board of Directors. None of the Directors necessarily represents the reachback companies.

The Amendment.

Require that three reachback companies be represented on the Board of Directors in addition to the BCOA, the UMWA and other union. This would require that there would be a total of six Directors, including three reachback companies, the BCOA, the UMWA and the other union. The neutral Chairman have to be agreed upon by all the Directors.

Purpose of the Amendment

The Board of Directors was originally drafted to allow the BCOA and the UMWA to shift more costs onto the former signatories to the National Bituminous Coal Wage Agreement (NBCWA) i.e. the reach back and super reachback companies. The UMWA had allowed many of those same companies out of the NBCWA so long as they remained unionized ("sweetheart deals"). But the BCOA resented those sweetheart deals because they increased their cost for the 1950 and 1974 UMWA Health Caare Funds (the predecessor funds to the Combined Fund). The BCOA wanted to reduce the cost of the retiree health care benefits they had promised for so many "orphan" miners. To accomplish this, they would need to shift costs back to the reachback companies. When the legislation was drafted, the UMWA, and the BCOA controlled the Board of Directors so they could, through an alliance with the UMWA and the other union, outvote any "non-BCOA" company on the Board. (Only three Directors are needed to constitute a quorum for conducting business.) Since reachback companies legitamately withdrew from both the NBCWA and the BCOA, they should enjoy equal representation on the Board of Directors of the Fund.

(3)

Grassley Amendment # 3 to the Coal Act re: Board of Trustees of the Fund

Current law

The Coal Industry Retiree Health Benefits Act allows the settlors to the National Bituminous Coal Wage Agreement (NBCWA) to change the Board of Trustees of the Combined Fund at any time for any reason.

The Amendment

Require that the Board of Directors must vote to change a member of the Board of Trustees.

Reason for the Amendment

The amendment is self-explanatory.

(4)

Grassley Amendment #4 re: Strike the language reversing *Chater*.

Current law:

In April 1996 the United States Court of Appeals for the 11th Circuit affirmed in Alabama district court ruling in National Coal Association v. Chater that the Social Security Administration had improperly construed the Coal Act when it calculated contributions owed to the Combined Benefit Fund. The court directed that future contributions be recalculated to reflect Medicare reimbursements obtained by the Combined Benefit Fund from the Health Care Financing Administration ("HCFA") resulting in approximately a 10 percent reduction in contributions for each beneficiary asigned to a coal company under the Act.

The Amendment.

The amendment would strike the language in the Chairman's mark that would reverse the effects of National Coal Association v. Chater by providing that contributions to the Combined Benefit Fund would be calculated without reflecting Medicare reimbursements obtained by the Combined Benefit Fund from HCFA.

The Purpose of the Amendment.

The purpose of the Amendment is to control costs of the contributors to the Fund by requiring that the Fund take into consideration Medicare reimbursements when calculating contributions.

5

Grassley Amendment #5 to the Coal Act bill re: strike the language reversing *Dixie Fuels*

Current Law:

In March 1999, the United States Court of Appeals for the 6th Circuit rules in _Dixie Fuel Company versus the Commissioner of Social Security_ that, because the Coal Act required the Social Security Administration to assign each beneficiary to a current or former signatory coal operator priorto October 1, 1993 and that any assignments of beneficiaries after September 30, 1993 were invalid.

The Amendment.

The Amenment strikes the language in the Chairman's mark that would reverse the decision in _Dixie Fuel_.

Purpose of the Amendment

To control costs of the progam for contributing signatory coal operators by preventing further reassignments of plan beneficiaries.

(6)

Grassley Amendment # 6 to the Coal Act re: Relief for "stranded interim" companies

Current law

The Coal Industry Retiree Health Benefits Act required former unionized coal companies to pay premiums into the Combined Benefit Fund prior to the time when they were assigned "orphan" miners on whose behalf they would pay retiree health care benefits until the death of the miner and all its dependents. Some former unionized coal companies that were retroactively covered by the Act were assigned no orphans by the deadline by which the Act required all miners to be assigned to a company. The companies to whom no miners were assigned were not required to pay more into the Fund but they did not receive reimbursement of their payments.

The Amendment

The amendment would reimburse the so-called "stranded interim" companies their actual costs to the Fund.

Reason for the Amendment.

To provide relief to the "stranded interim" companies.

Grassley Amendment #7 – Black Lung trusts
Current law

Congress passed the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act") to stabilize funding for and provide accident and health benefits to retired coal miners and their dependents. Among other things, the Coal act allowed excess assets in qualified black lung trusts to be used to pay such accident and health benefits (or premiums for insurance for such benefits.)

The amount of assets available for this purpose is subject to both a yearly limit (Code section 501(c)(21)(C)(i) and an aggregate limit (section 501(c)(21)(C)(ii)). The yearly limit is the amount of assets in excess of 110 percent of the present value of the liability for black lung benefits determined as of the close of the preceding taxable year of the trust. The aggregate limit is the amount os assets in excess of 110 percent of the present value of liability for black lung benefits determined as of the close of the taxable year of the trust ending prior to the effective date of the Coal Act, i.e. December 31, 1991, plus interest since December 31, 1991, less all amounts previously used to pay retiree medical expenses.

The purpose of these provisions was to allow excess black lung trust funds, which were otherwise idle to provide much-needed benefit to retired coal miners and to help relieve the financial burden placed o n mining companies by the Coal Act. Allowing the excess black lung trust funds to be used for accident and health benefits removed the "penalty" associated with black lung trust, i.e. coal operators that had elected to establish and conservatively fund a secure trust for black lung liabilities would lose any excess funding in their trusts (which would revert to the Federal government) while those that had chosen to pay black lung liabilities on a "pay-as-you-go" basis could use other assets to pay health care costs of retired miners.

Reason for the Amendment

Tying the aggregate limitation on the use of excess black lung trust funds to the account of a company's black lung liability as of December 31, 1991, has proven to be too conservative. Better than expected mat performance of black lung trust assets and the administration of black lung claims under applicable laws have contributed to a situation where many coal operators have significant additional unanticipated excess assets in their black lung trusts. The consequence ois that employers who established secure black lung benefit trusts are penalized because any excess assets remaining in the trusts after all black lung liabilities have been satisfied must revert to the Federal government.

The decision in *Eastern Enterprises* further exacerbates this problem. In *Eastern Enterprises* the Supreme Court ruled that coal operators who were not signatories to the National Bituminous Coal Wage Agreements of 1974 could not be assigned any Coal Act obligations for retired miners. The effect of the Court's decision will be that current coal operators who were signatories to the 1974 and later National Bituminous Coal Wage Agreements must absorb a later proportion of the Coal Act's costs attributable to retired miners, including "orphaned" miners who were employed by companies that are no longer in existence and also those of "super rechback"

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companies protected by the *Eastern Enterprises* decision.

The Court's decision makes it even more important to permit coal operators to be able to use excess funds in the black lung trusts to satisfy Coal Act liabilities. Eliminating the aggregate limitation will enable coal operators to commit more funds to the payment of accident and health benefits of retired coal miners currently, while still retaining a safe and secure level of assets necessary to pay any future black lung liabilities. In particular, this proposed change could help avoid bankruptcies among some coal operators who otherwise cannot afford to ;pay their Coal Act expenses, including the additional costs that have resulted from the *Eastern Enterprises* decision.

8

Grassley Amendment #8 re: Encouraging pre-Funding of Coal Act Liability
Current Law

In 1992 the Coal Act was enacted a funding obligation on certain coal operators and related persons for various trust funds providing health benefits to retired coal miners and their dependents. The Act makes the signatory operators and any related persons jointly and severally liable for premium payments. The Coal Act contains no exceptions to the related party liability rules. The Act also imposes liability without regard to any transaction whose principal purposes is to evade or avoid liability under the Act (the co-called sham transaction rule).

Employers are permitted to establish voluntary employees beneficiary associations (VEBAs) to fund certain employee benefits, including medical care. The tax code provides numerous limitations with respect to the amount and timing of deductions and permits the establishment of a tax exempt trust (IRC section 501(c)(9)). The tax rules also effectively limit the allowable reserves that can be built up and subject earnings of the trust in excess of necessary reserves to unrelated business income taxation. Welfare benefit plans under a collectively bargained plan are not subject to these various reserve limitations. Under these rules, it is possible to fully pre-fund retiree medical costs. These plans are also subject to various ERISA rules.

The IRS has taken the position that a tax-exempt VEBA may be established by an operator with liability under the Coal Act to pre-fund the obligation and that such VEBA would be considered established pursuant to a collective bargaining agreement. (IRS letter ruling 9649037,September 9, 1996)

The Amendment

The proposed amendment to the Act would create an exemption for related party liability if a VEBA were established with assets that equal or exceed the present value of the operator's liability to the Combined Fund and 1992 UMWA Benefit Plan. The VEBA would be deemed established pursuant to a collective bargaining agreement, treatment that would merely codify current IRS rulings. The normal tax rules governing VEBAs would not be changed.

Reason for the Amendment

To provide better funding of liabilities under the Coal Act through VEBAs. To encourage pre-funding of those liabilities and to help contributing companies quantify their liabilities to the Fund.

(9)

Grassley Amendment #9 re: re-enrollment of beneficiaries and eliminating potential fraud

The Problem

Prior to the enactment of the Coal Act, the U.S. Department of Labor established a Coal Commission to examine the problem of providing health care benefits to retired coal miners. Among the deliberations of the Coal Commission was consensus finding that beneficiaries should be "re-enrolled" to "ensure that benefits are directed only to those entitled to receive them." This was a reference to a conclusion by the members of the Coal Commission that the predecessor health benefit funds had experienced extensive fraudulent use services by individuals who were not covered by the fund. The Coal Act, as enacted, included language directing the board of trustees to re-certify and re-enroll retirees and beneficiaries as eligible to participant in the plan.

The Amendment

The amendment directs the Combined Fund to examine the problem of fraudulent use of the services of the Fund. The Fund is to report to Congress within 18 months of the date of enactment of this amendment on the steps they are taking to eliminate fraudulent use of these services and their continuing oversight to combat health care fraud and whether their actions have been adequate to hold responsible perpetrators of fraud. The Fund is also directed to enumerate the extent to which they believe services of the Fund are being misused or may be misused.

Purpose of the Amendment

The amendment is self-explanatory.

10

Grassley Amendment # 10 to the Coal Act re: Subjecting the Combined Fund to the Government Performance and Results Act.

Current law

The Government Performance and Results Act (GPRA) is changing in the way the Federal bureaucracy does business. This law, conceived by Senator William Roth of Delaware, required Federal departments and agencies to measure program performance and tie their performance goals to annual budget requests. GPRA aims to ensure that egregious examples of mismanagement, waste and fraud will not be accepted as "business as usual". GPRA applies to all government agencies and government-sponsored entities. The Office of Management and Budget has asked agencies subject to the Act to identify steps that can be taken on a multi-agency basis to coordinate and harmonize programs with common and multi-agency basis and to coordinate programs with common and cross-cutting goals and objectives.

The Amendment

Apply the Government Performance and Results Act to the Combined Fund. Require the Fund to provide GPRA reports to Congress on their performance progress whenever a transfer is made or requested from the general fund.

Reason for the Amendment

Given the millions of dollars from the general fund that the Chairman's mark contemplates being transferred to the Combined Fund, the amendment would require the Fund to file strategic plans and performance plans, required by the Government Performance and Results Act, with its Committees of jurisdiction in Congress and to consult with its stakeholders in writing plans and setting goals for its performance. In view of the close coordination of the Fund with Medicare, the Fund should utilize the GPRA to report to Congress that it is not duplicating services, that retirees and their dependents are receiving the benefits to which they are entitled, that the Fund is making payments on time and collecting its debts in full and performing all other such managerial and administrative tasks that are required to operate the Fund in the most efficient manner that is possible. The GPRA and the reports required by it are the best tool to help Congress understand and oversee the management of the Fund.

(11)

AMENDMENT BY SENATOR NICKLES
RETIRED COAL MINERS HEALTH BENEFITS SECURITY ACT

SUBSTITUTE AMENDMENT

1) Coal companies are responsible for the full cost of retiree health benefits for their own employees and former employees.

2) Federal government contributions to the Combined Benefit Fund will be limited to the cost of orphaned coal miners.

PURPOSE
The Nickles amendment is a complete substitute for the Chairman's Mark. The amendment requires coal companies to pay for the full cost of their own retirees.

The federal government contribution to the Combined Benefit Fund would be limited to the cost of orphaned coal miner benefits.

AMENDMENT BY SENATOR NICKLES
RETIRED COAL MINERS HEALTH BENEFITS SECURITY ACT

SUBSTITUTE AMENDMENT

1) Authorize a transfer of general revenue to the Combined Benefit Fund of $57 million for fiscal year 2001.

2) Direct the General Accounting Office to submit recommendations to the Senate Committee on Finance for long-term reform of the Coal Act prior to March 1, 2001.

PURPOSE

The Nickles amendment is a complete substitute for the Chairman's Mark. The amendment reflects the reality that there is currently no consensus in Congress, or among the affected parties, for long-term reform of the Coal Act.

Instead of enacting flawed policies which will cost the federal government hundreds of millions of dollars over the next 10 years, the Nickles amendment:

1) extends the solvency of the Combined Benefit Fund for one year,
2) ensures retired coal miners benefits are paid, and
3) does not raise premiums on companies that pay into the Combined Fund.

GAO is already working on recommendations to reform the Coal Act at Senator Nickles request. They have stated that these recommendations will not be ready until early next year.

Rockefeller Amendment #1 to the Chairman's Mark of the Retired Coal Miners Health Benefit Security Act

Strike Section 5, clarification of determination of health benefit premium, and in Section 2 move $12 million from FY2010 to FY2001's mandatory revenue transfer.

Explanation:

The mark is intended to restore the Act's original premium rate formula requiring companies to pay the base premium rate directed by the Coal Act when passed. It will effectively overturn a 1996 decision made by the 11th Circuit called National Coal Association v. Chater (81 F.3d 1077 (11th Cir. 1996)) which reduced the base premium for all payors into the Combined Fund by approximately 10%. Adding $12 million to the first year's general revenue transfer will not increase the total amount of the general revenue transfer provided for in the mark, but will ensure there are sufficient resources to prevent a benefit cut.

Rationale:

While this court decision wrongly interpreted the specific language of the Act, the decision has been in place for four years and companies have been anticipating that they would continue to pay at the current lower premium rate. With the United States' mining industry experiencing tough economic times and with adequate surplus dollars available, increasing companies' premiums is not necessary to stabilize the retired miners' health fund. The primary provisions of the mark should be sufficient to maintain miners' health benefits without asking every company with Coal Act obligations to pay higher premium rates. We do not need to overturn this court decision to preserve miners' promised health benefits.

Cost Estimate – $86 million over ten years in reduced premium payments to the Combined Fund from the companies.

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Rockefeller Amendment #2 to the Chairman's Mark of the Retired Coal Miners Health Benefit Security Act

Strike Section 3. Clarification of Authority to Assign Eligible Beneficiaries.

Explanation:

The mark clarifies that the Social Security Administration was permitted to make assignments to companies after October 1, 1993 (SSA did not receive an appropriation for this activity until July, 1993 and had incomplete information on the work history of beneficiaries at the time). The mark will effectively overturn a 1999 court decision made by the 6th Circuit which wrongly held assignments of eligible beneficiaries were invalid because Social Security had to make all assignments before October 1, 1993. There is conflict in the courts and the government is appealing.

Rationale:

There is a split in the courts about how to handle Dixie cases. The government and the Fund are currently appealing. The outcome of Dixie cases will not effect the financial stability of the Combined Fund because there are provisions in the Coal Act that provide for payment of orphan miners' benefits. With no direct effect on the financial stability of the Combined Fund, we should let the courts determine the outcome of Dixie Fuel.

Cost Estimate – This has no scoreable revenue effect.

Rockefeller Amendment #3 to the Chairman's Mark of the Retired Coal Miners Health Benefit Security Act

Add a new Section 7 to the Chairman's Mark to reimburse the so-called final judgement and interim stranded companies for the premium payments they have made to the Combined Fund. To ensure miners' benefits are protected, add $40 million to the first year's mandatory general revenue transfer (moving $12 million from the annual revenue transfer provided for in 2010 and adding $28 million in new general revenue dollars 2001).

Rationale:

Final judgement companies are a set of nine super reachback companies that exhausted their legal remedies prior to the Supreme Court's 1998 decision in *Eastern Enterprises* which relieved similarly situated super reachback companies of their premium obligations under the Act. They argue that, but for the timing of the conclusion of their court cases, they would have been relieved of their obligations to pay premiums under the Act when the Supreme Court ruled in *Eastern*.

Stranded interim companies are companies that were required to pay for the Combined Fund's benefits during the February to October 1993 transition period. For this period, the Coal Act directed the 1988 signatory companies would pay the expenses of the Combined Fund (CBF) based on their percentage of contributions to the two prior UMWA pension funds that were merged to create the CBF. The companies were then to receive a credit for these payments to be used in the October 1993 billings, which would retroactively bill all companies for the transition period based on the number of retirees assigned to them.

There were over 250 companies who made payments to the Fund, but who did not have any beneficiaries assigned to them. As a result, these companies have been unable to use their credits and receive a refund for the money they advanced to the Combined Benefit Fund for the transition period.

Sufficient revenue is available to reimburse both the final judgement and stranded interim companies over time without jeopardizing retired miners' promised benefits.

Cost Estimate – $22 million to reimburse final judgement companies and $6 million to reimburse interim stranded companies. Total cost of amendment – $28 million.

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Rockefeller Amendment #4 to the Chairman's Retired Miners Health Benefit Security Act

Strike Section 6 which provides for a six year AML fee extension from 2004 through September 30, 2010.

Rationale: The AML fee does not expire until 2004. It is the Energy Committee's jurisdiction. We can defer consideration of the AML extension.

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Rockefeller Amendment #5 to the Chairman's Retired Coal Miners Health Benefit Security Act

Permit AML interest dollars to be used to offset any shortfall in any Combined Benefit Fund account.

Explanation: Under current law, AML interest monies pay for the health care costs of orphaned miners, (miners who do not have a former employer to pay for their health benefit premiums). As a fallback mechanism to ensure miners' health benefits will be maintained, we should allow AML interest dollars to offset any shortfall in the Combined Benefit Fund. This would allow us to be conservative about the amount of annual mandatory general fund transfer needed to maintain benefits, and still have confidence that miners' benefits will be protected even if actuarial projections slightly vary.

CONRAD AMENDMENT #1 (SUBSTITUTE)

Chairman's Mark
The Chairman's mark includes four provisions: 1) annual transfers of general revenue to the Combined Benefit Fund in the aggregate amount of $455 million through fiscal year 2010, 2) reversal of the federal court decision in *National Coal Association* v. *Chater*, 3) amending the Internal Revenue Code to eliminate the October 1, 1993 deadline for the assignment of beneficiaries, and 4) extending the authorization of the AML Fund to collect fees at their current levels for an additional six years, through September 30, 2010.

Conrad Substitute
The language of S. 2729 would be substituted. The provisions include:

- clarification that companies liable for contributions to the Combined Benefit Fund are those which signed the 1988 National Bituminous Coal Wage Agreement, with corresponding reforms in the beneficiary assignment process
- premium adjustments that would become effective depending on the Combined Fund's ability to maintain a 90-day surplus
- permission for companies to set up a VEBA if they choose to do so
- refund of assessments paid by "stranded interim" and "final judgment" companies
- transfer of all accumulated and future interest from the Abandoned Mine Land Fund to the Combined Benefit Fund
- extension of the Abandoned Mine Reclamation fee, which under current law expires in 2004, through 2010, at reduced rates
- authorization of transfers of up to $38 million per year in general revenues to the Combined Benefit Fund
- annual audit of the Combined Benefit Fund by the Comptroller General.

Rationale
The Coal Act imposed liabilities on companies that had not incurred a contractual obligation to provide benefits. Because signatories of certain agreements prior to the 1988 agreement obligated themselves to pay for retiree benefits based on a formula taking into account the tons of bituminous coal mined and the number of hours worked by miners, companies that left the bituminous coal mining business prior to 1992 were not held liable for assessments after leaving the business until the Coal Act was enacted in 1992. The substitute clarifies that only signatories of the 1988 agreement obligated themselves to pay retiree benefits even if they later abandoned the bituminous coal mining business.

19

Conrad Amendment #2

Proposal
Provide a 20 percent reduction in assessments for the Combined Benefit Fund imposed on companies that were not signatories of the 1988 wage agreement between the Bituminous Coal Operators Association and the United Mine Workers of America.

Rationale
Only the 1988 wage agreement contained a provision requiring payments for retiree health benefits for signatories that later withdrew from the multi-employer bargaining unit. The Coal Act resulted in an imposition of the 1988 agreement's liability on companies that were not only not signatories to that agreement, but that were not even in the bituminous coal mining business in 1988. This retroactive liability represents an unfair burden on the affected companies. The amendment would provide partial relief.

JC

CONRAD AMENDMENT #3

Proposal

Strike from the Chairman's mark the provision reversing the court decision in *National Coal Association* v. *Chater*. Adjust the amounts in the general fund transfer provision accordingly.

Rationale

The provision in the Chairman's mark to reverse the *Chater* decision would result in cost increases for all payers into the Combined Benefit Fund. This increase would be particularly unfair to "reachback" companies, which were never contractually obligated to pay for retiree health benefits once they left the bituminous coal mining business.

(21)

Conrad Amendment #4

Proposal

Strike from the Chairman's mark the provision amending the Internal Revenue Code to eliminate the October 1, 1993, deadline for the assessment of beneficiaries.

Rationale

The provision in the Chairman's mark to correct a decision by the United States Court of Appeals for the 6th Circuit in *Dixie Fuel Company* v. *Commissioner of Social Security* would result in the possible assignment of additional beneficiaries, and therefore increased costs, for all payers into the Combined Benefit Fund. These increases would be particularly unfair to "reachback" companies, which were never contractually obligated to pay for retiree health benefits once they left the bituminous coal mining business.