

**DEFINED CONTRIBUTION PLAN ISSUES IN
PENSION REFORM LEGISLATION: MISCELLANEOUS ISSUES**

Prepared by:
American Benefits Council
American Council of Life Insurers
Business Roundtable
The ERISA Industry Committee
The Financial Services Roundtable
Investment Company Institute
National Association of Manufacturers
Securities Industry Association
U.S. Chamber of Commerce

The pending pension reform legislation contains critical reforms of the rules relating to defined benefit plan funding, hybrid plans, and defined contribution plans. In response to suggestions from the Hill, the business groups listed above have assembled the following list of issues with respect to the provisions of the bills regarding miscellaneous defined contribution issues. The list does not address fundamental policy issues. Instead, the list is intended to serve as a checklist of technical issues and other issues where input may be helpful.

Similar lists addressing other defined contribution plan issues have been or will be sent shortly.

Direct rollovers from Retirement Plans to Roth IRAs (section 1007 of the Senate bill):

1. Current law should be clarified to state that the \$1,000 rollover rule applies separately to Roth 401(k)/403(b) amounts and non-Roth amounts, since these two amounts are required to be rolled over into separate vehicles. Otherwise, the law could force a rollover of less than \$1,000, which is contrary to the intent of Code section 401(a)(31).
2. Proposed Roth 401(k) regulations should be clarified to provide that a hardship distribution from a Roth 401(k) is simply a return of basis, and not a pro-rata distribution of basis and income. This is consistent with the rule limiting hardship distributions to the contributions without earnings.

Transfer to the PBGC of Involuntary Distributions (Lost Participants) (section 1011 of the Senate bill):

1. Charges imposed by the PBGC for costs associated with orphaned accounts should be applied against the specific transferred account, and not to plan assets as a whole.

2. Current law provides a fiduciary safe harbor with respect to automatic rollovers to an IRA. A similar fiduciary safe harbor should apply with respect to transfers to the PBGC under this provision.
3. A conforming change is needed to Code section 401(a)(34) clarifying that transfers under this provision will not cause a plan to fail to qualify under Code section 401.

Saver's Credit (section 902 of the House bill):

Provision permitting the transfer of Saver's Credit amounts directly to an IRA limits the transfer to an "overpayment under section 6401(b)". An "overpayment under section 6401(b)" equals the excess of any refundable tax credits over the tax otherwise due. Since the Saver's Credit is not currently refundable, the transfer provision is not workable.

Tribal Plans (sections 1311 and 1313 of the Senate bill):

Conforming changes are needed to sections 905 and 1003 of the House bill and section 1004 of the Senate bill that will clarify that tribal governments are to be treated in the same manner as state or local governments relating to certain exemptions and distributions.

Excess Contributions (section 1339 of the Senate bill):

The provision extends the period for distributing excess contributions from 2½ months after the end of the year to 6 months after the year-end, but only for automatic contribution arrangements. The limitation to automatic contribution arrangements should be deleted. The problem is that the 2½ month period is too short and results in unnecessary errors and inaccuracies. This problem exists without regard to whether the plan contains an automatic contribution feature.

Safest Available Annuity (section 309 of the House bill and section 1110 of the Senate bill):

The legislative history should clarify that the fiduciary standard applicable to the choice of an annuity provider is the generally applicable fiduciary standard rather than a heightened standard. The clarification should also state that the six factors listed in DOL Interpretive Bulletin 95-1 reflect the type of heightened standard that is not intended. (A separate paper is available on this issue).

QDRO Reforms (section 901 of the Senate bill):

The Senate bill permits QDROs (1) to be issued after, or revise, another domestic relations order or QDRO, and (2) to be valid regardless of when issued. It should be clarified that such QDROs are to be applied prospectively.

Flexible Spending Accounts (section 1002 of the House bill):

Changes are needed to clarify that the FSA extension/rollover would be an optional plan provision.