

AMERICAN BENEFITS COUNCIL – SUMMARY AND COMPARISON OF SELECT RETIREMENT LEGISLATIVE PROPOSALS¹

Item	Current Law	Bush Administration Proposal	House-Passed Bill (H.R. 3762)	Senate Bills
LIMITATIONS ON ACQUIRING OR HOLDING EMPLOYER STOCK				
Defined Contribution (DC) Plans – Overall Caps and Limitations	No overall provision.	No change.	No change.	Kennedy/HELP S. 1992: ERISA would be amended to limit the ability of most plans to offer employer stock as an investment option. In particular, individual account plan participants who exercise control over plan assets would be prohibited from investing elective deferrals in employer stock if the plan (or any other plan maintained by the employer) requires employer contributions to be invested in employer stock. An exception would be provided for individual account plans maintained by an employer who also maintains a “qualified defined benefit plan,” i.e., a plan which covers at least 90 percent of the employees covered by the individual account plan and which provides an accrued benefit at least equal to a percentage of the participant’s final average pay equal to 1.5% multiplied by the number of years of service (not greater than 20) of the participant. No other exceptions would be provided.
DC Plans – Diversification of Employee Elective Deferrals	Participants generally cannot be required to invest more than 10 percent of elective deferrals in employer stock. However, the following exceptions apply: <ul style="list-style-type: none"> • The rule does not apply to ESOPs. • The rule does not apply to an individual account plan if (by the terms of the plan) the portion of an employee’s elective deferrals 	Employee elective deferrals would be subject to the new diversification requirements described below (e.g., participants generally would have to be allowed to divest themselves of any employer securities upon the completion of 3 years of plan participation).	Participants generally could not be required to invest any of their own elective deferrals in employer stock. The rule would be phased-in, and would not apply to employer stock that is not readily tradeable on an established market.	Kennedy/HELP: Participants who exercise control over account assets could not be required to allocate any portion of their elective deferrals to employer stock (or any other investment option). Participant-directed sales of employer stock would have to be effectuated within 30 days. The rule would apply

¹ This chart provides a summary and comparison of current law, the Bush Administration’s proposal, the House-passed bill (H.R. 3762), and leading Senate bills. The summary of the Bush Administration proposal reflects materials from the Bush Administration and H.R. 3762 as introduced by Congressmen John Boehner (R-OH) and Sam Johnson (D-TX) and S. 1969 by Senator Tim Hutchinson (R-AR). The House passed a modified version of H.R. 3762 on April 11 by a vote of 255-167, including provisions incorporated from the Ways and Means Committee-reported bill originally introduced by Congressman Rob Portman (R-OH) and Ben Cardin (D-MD). The Senate bills reflected in this chart are S. 1992, as reported by the Health, Education, Labor, & Pensions (HELP) Committee (“**Kennedy/HELP**”), S. 1971, introduced by Finance Committee Ranking Member Charles Grassley (R-IA) (“**Grassley**”), and S. 2190, introduced by Senate Finance Committee members John Kerry (D-MA) and Olympia Snowe (R-ME) (“**Kerry/Snowe**”).

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	<p>required to be invested in employer stock may not exceed 1 percent of a participant's compensation.</p> <ul style="list-style-type: none"> The rule does not apply to an individual account plan if the FMV of the assets of all individual account plans maintained by the employer does not exceed 10 percent of the FMV of the assets of all retirement plans maintained by the employer. <p>See ERISA section 407(b)(2).</p>			<p>only to the extent employer stock is readily tradeable on an established market. Special ESOP rules would apply (see below).</p> <p>Grassley S. 1971: Participants would have the right to invest any elective deferral contributed to the participant's account in the form of publicly traded employer securities in any other investment option under the plan.</p> <p>Kerry/Snowe S. 2190: Defined contribution plans (other than ESOPs) would be prohibited from requiring that employee elective deferrals be invested in employer securities. In addition, participants would have a right to divest themselves of any publicly-traded employer securities that are attributable to employee elective deferrals at any time. Special ESOP rules would apply to the divestment of amounts attributable to employee elective deferrals (see below).</p>
DC Plans – Diversification Requirements	<p>Employer matching and non-elective contributions may be made in a variety of forms, including in the form of company stock. In addition, some companies require that contributions in company stock continue to be held as company stock for some period of time (e.g., until the participant attains a certain age or has a certain number of years of service).</p>	<p>Participants or beneficiaries would have to be allowed to divest themselves of any employer securities upon the completion of 3 years of plan participation (or if the plan so provides, 3 years of service). In addition, the plan would have to offer at least 3 diversified investment options to which the participant may direct the proceeds from the divestment of employer securities. ESOPs that do not accept employer matching or employee contributions (“stand-alone ESOPs”) would be excepted (see discussion below).</p>	<p>Similar to Bush Administration proposal, except that (1) employers would be given an option to apply the diversification requirements to allocations of employer stock 3 years after an employee receives such stock (i.e., a 3-year “rolling” diversification option), and (2) the diversification requirements would be phased-in through 2007 in 20 percent increments. The 3-year rolling diversification requirement would apply on a quarterly basis so that all employer stock allocated during any calendar quarter would be subject to diversification 3 years after the end of such quarter. Plans maintained by employers that do not issue publicly-traded stock (and that do not have affiliates that issue publicly-traded stock) would be excepted. Stand-alone ESOPs would be excepted (see discussion below).</p>	<p>Kennedy/HELP: Similar to Bush Administration proposal, except that (1) the requirements would apply after 3 years of service, (2) notice to participants would be required 30 days prior to the application of their ability to diversify and would include the importance of diversifying, and (3) participant-directed sales of employer stock would have to be effectuated within 30 days.</p> <p>Grassley: Similar to Bush Administration proposal, except that the diversification requirements would apply after completion of 3 years of service and would apply only to publicly traded employer securities. In addition, plans would not be allowed to impose restrictions or conditions on the investment of publicly traded employer securities which are not imposed on the investment of other plan assets.</p> <p>Kerry/Snowe: In the case of non-</p>

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				<p>elective employer contributions, defined contribution plan participants would have the right to divest themselves of publicly-traded employer securities after completing 5 years of service (or after December 31, 2002, if later). However, under this rule, the maximum number of employer securities that a participant could divest before completing 7 years of service could not exceed 50 percent of the greatest number of employer securities held at any time over the number of securities the participant elected to divest for all preceding plan years. In the case of employer matching contributions, the same rule would apply except that the right to divest would begin after 3 years of service and the 50 percent divestment limitation applicable until completion of 5 years of service. In addition, upon attaining age 55, participants would have a right to divest themselves of any publicly-traded employer securities. Defined contribution plans would be required to provide participants who are 55 or older an annual notice of their rights to divest employer securities, including a statement advising them to seek professional investment advice if employer securities exceed 20 percent of total account assets. Plans would be allowed to provide that divestment may only occur during prescribed time periods under the plan, so long as such limitation also applies to divestment of all other plan assets. Employers would be allowed to deduct certain dividends paid on employer securities divested by participants.</p>
Special ESOP and Other Exceptions	By law, ESOPs are designed to be invested primarily in employer securities. However, participants who have attained age 55 with 10 years of service must be permitted to direct the investments of a portion of their account balances. Under these diversification requirements, the right to diversify ESOP shares applies to 25 percent of shares at age 55, and then 50 percent of shares at age 60.	ESOPs that do not accept employer matching contributions or employee elective deferrals (i.e., "stand-alone" ESOPs involving only non-elective employer contributions) would be excepted.	Plans maintained by employers that do not issue publicly traded stock (and that do not have affiliates that issue publicly-traded stock) would be excepted. Stand-alone ESOPs would be excepted.	<p>Kennedy/HELP: Stand-alone ESOPs and plans which hold company stock that is not readily tradeable on an established market would be excepted from the new diversification requirements, but not from the cap described above.</p> <p>Grassley: Similar to Bush Administration proposal, except that plans which hold company stock that is</p>

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				<p>not readily tradeable on an established market also would be excepted.</p> <p>Kerry/Snowe: The divestiture and diversification rules would apply only to publicly-traded employer securities. In addition, with respect to the divestiture of amounts attributable to employee elective deferrals, stand-alone ESOPs would follow the divestiture rules for non-elective employer contributions. [Note: the application of this rule is somewhat unclear as stand-alone ESOPs do not accept employee elective deferrals.]</p>

BLACKOUTS, LOCKDOWNS, & OTHER TRANSACTION RESTRICTIONS (“BLACKOUTS”)

<p>Disclosure Regarding Transaction Restrictions (Blackouts, Lockdowns, Etc.)</p>	<p>ERISA imposes broad obligations and requirements on retirement plan fiduciaries, including the duty to act for the exclusive benefit of participants and beneficiaries. From time to time, employers, plan sponsors, and other fiduciaries need to impose “blackouts” (i.e., suspensions or restrictions on participants’ ability to change investment options or execute other transactions (sometimes also referred to as a “lockdown”)) due to a variety of reasons, e.g., a change of third-party administrator, routine computer system maintenance, mergers of plans of acquired companies, etc. ERISA’s fiduciary rules require plan fiduciaries to perform their fiduciary duties in the interest of plan participants, including the imposition of a transaction restriction. Although under no specific duty to inform participants in advance of the imposition of a blackout, many employers and plan fiduciaries do provide advance notice of blackouts.</p>	<p>Participants would have to be notified at least 30 days before the imposition of a blackout. For these purposes, a blackout would be “any suspension, limitation, or restriction on the participant’s ability to direct or diversify assets in their account.” The notice would be required to specify the reason and duration of the suspension, limitation, or restriction, and the investments affected. An updated notice would have to be provided to affected participants if there is a change in the expected period of the suspension, limitation, or restriction. The 30-day period would not apply if notice is furnished as soon as reasonably possible and the plan fiduciary determines that deferral of the suspension, limitation, or restriction would violate ERISA section 404(a) or the inability to meet the 30-day period is beyond the control of the plan administrator. A civil penalty of up to \$100 per day would be imposed for each participant or beneficiary who is not provided the notice.</p>	<p>Similar to Bush Administration proposal, but with a number of material differences. Different blackout notice regimes would apply to different types of plans under ERISA and the Code. Under ERISA, individual account plans that are subject to ERISA (other than stand-alone ESOPs) would be required to provide a notice similar to that under the Bush Administration proposal 30 days in advance of a blackout. For these purposes, a “blackout” generally would mean a suspension, limitation, or restriction of longer than 3 consecutive business days. Exceptions would be provided for certain situations, including restrictions consistent with plan terms, restrictions occurring by reason of securities laws, unforeseeable circumstances beyond the reasonable control of the plan administrator, and a case where a fiduciary determines that delay in the blackout would be a fiduciary violation. In addition, in the case of limited blackouts affecting only certain participants pursuant to a qualified domestic relations order (QDRO) or due to a merger, acquisition, or similar transaction, the notice requirement would be satisfied if provided as soon as reasonably practicable. In addition to these ERISA</p>	<p>Kennedy/HELP: Similar to Bush Administration proposal except that the term “blackout” would be defined differently and no blackout could be imposed without advance notice. For these purposes, a blackout would be referred to as a “lockdown,” and would mean any suspension, restriction, or similar limitation which is imposed on the ability of a participant or beneficiary to exercise control over the assets in his or her account as otherwise generally provided under the terms of the plan. An exception would be provided for limitations or restrictions described in the summary plan description or materials describing specific investment alternatives under the plan.</p> <p>Grassley: Similar to House-passed bill, except that (1) the requirements of the notice would be less detailed, (2) enforcement would only be through excise taxes imposed under the Code and (3) a different definition of “blackout” would apply. For these purposes, a blackout would be referred to as a “transaction restriction period,” meaning a temporary or indefinite period of at least 2 consecutive business days during which there is a substantial reduction (other than by reason of the application</p>
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			<p>requirements, the Code would be amended so that section 401(a), section 403(a), section 403(b), and governmental section 457 plans would be subject to 30-day advance blackout notice requirements in cases where participants have the right to direct investments. For Code purposes, a blackout would mean a period of at least 3 days during which participants ability to direct investments, obtain loans, or obtain distributions from such plans. [Note: this definition is not identical to the ERISA definition.] Special rules would apply for major corporate dispositions. An excise tax of \$100 would be imposed for each participant or beneficiary who is not provided the notice. The excise tax would not apply to a failure to provide notice if the employer (or other applicable plan fiduciary) exercised reasonable diligence regarding the notice requirement and provided the notice as soon as practicable after such failure. In the case of unintentional failures, the total excise tax for any year could not exceed \$500,000. The payment of excise tax could be waived by the government where there is reasonable cause for not providing the notice. The notice requirements under ERISA and the Code would only apply to individuals affected by the blackout, and could be satisfied by giving the notice electronically.</p>	<p>of securities laws) in the rights of 1 or more participants to direct investments in a DC plan.</p> <p>Kerry/Snowe: Similar to Bush Administration proposal, but with a number of material differences. The requirements would be enforced through parallel Code (excise tax) and ERISA (civil liability) provisions. A "blackout" would be defined as any temporary or indefinite period of 3 or more consecutive business days during which there is a substantial reduction (other than by reason of application of securities laws) in the rights of 1 or more participants to direct investments in a DC plan. Penalty exceptions similar to those in the House-passed bill would be included. In addition, in the case of blackouts involving data transfers from one plan administrator to another, the transferor plan administrator would be required to transfer all necessary data in usable form within 30 days from the beginning of the blackout period.</p>
<p>Limitations on Trading in Company Stock by Executives and Reporting of Executive Stock Sales</p>	<p>Federal securities laws and other rules regulate the trading of company stock by corporate insiders and executives. The Code and ERISA generally do not provide special rules or restrictions linking executives' sale of company stock to retirement plans.</p>	<p>The federal securities laws would be amended so that it would be unlawful for individuals subject to section 16 of the Securities Exchange Act of 1934 (i.e., generally 10% owners, officers, or directors) to trade in company stock during a "pension plan suspension period." For these purposes, the term "pension plan suspension period" would be used to refer to a blackout, meaning, with respect to a security, any period during which the ability of a participant under an individual account plan maintained by the issuer to direct the investment of assets in his or her individual account away from such equity</p>	<p>It would be unlawful for any person who is directly or indirectly the owner of more than 10 percent of any class of equity security registered under section 12 of the 34 Act or who is a director or an officer of the issuer of such security to sell or purchase any equity security of any issuer during any blackout period with respect to such equity security. Any profit realized by such individual from a violation of this rule would be recoverable by the issuer. For these purposes, a "blackout" would mean, with respect to the equity securities of any issuer, any period during which the ability</p>	<p>Kennedy/HELP: Generally any sale of securities by an officer or director that is required to be reported to the SEC also would have to be reported to employees within 2 business days after disclosure to the SEC via an internal website (if available) and via written, electronic, or other appropriate means (if an internal website is not available).</p> <p>Grassley: An excise tax (under Code section 4999 related to "golden parachute" payments) equal to 20 percent of the amount realized would be imposed on the sale of employer stock by certain</p>

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		<p>security is suspended by the issuer or a fiduciary of the plan. An exception would be provided in the case of a limitation or restriction governing the frequency of transfers between investment vehicles to the extent such limitation and restriction is disclosed to participants and beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.</p>	<p>of 50 percent of the participant or beneficiaries under all individual account plans maintained by the issuer to purchase, acquire, sell, or otherwise transfer an interest in any equity of such issuer is suspended by the issuer or a fiduciary of the plan. Exceptions are provided for restrictions based on plan terms that are disclosed to participants, and restrictions that are imposed solely by reason of a corporate merger, acquisition, divestiture, or similar transaction.</p>	<p>"corporate insiders" (i.e., generally 10% owners, officers, or directors, as defined in the Securities Exchange Act of 1934) during a blackout. For these purposes, a blackout would mean a temporary or indefinite period of at least 2 consecutive business days during which there is a substantial reduction (other than by reason of the application of securities laws) in the rights of 1 or more participants to direct investments in a DC plan.</p> <p>Kerry/Snowe: The 34 Act would be amended so that it would be unlawful for 10% owners, directors, or officers of an issuer to sell or purchase any equity security of such issuer during any blackout period of a defined contribution plan which permits participants to exercise control over account assets with respect to such equity security. Any profit realized by such individual from a violation of this rule would be recoverable by the issuer. For these purposes, a "blackout" would be defined the same as for the blackout notice requirements described above.</p>
<p>Limitations on Transaction Restrictions</p>	<p>ERISA imposes broad obligations and requirements on retirement plan fiduciaries, including the duty to act for the exclusive benefit of participants and beneficiaries.</p>	<p>No change. Administrative proceedings are underway regarding fiduciary obligations in connection with transaction restriction periods.</p>	<p>No change.</p>	<p>Kennedy/HELP: Blackouts could not continue for an unreasonable period.</p>
<p>ERISA Section 404(c)</p>	<p>ERISA section 404(c) provides some relief to plan sponsors from responsibilities with respect to investments in situations where the participant exercises control over the assets in the account. A plan may offer company stock as one of the investment options under the section 404(c) safe harbor, provided that the plan also offers three other investment options of materially different risk and return characteristics and the employer's shares are publicly traded in a recognized market.</p>	<p>ERISA section 404(c) protections for plan sponsors would not apply during a blackout period unless the blackout is disclosed through the summary plan description or materials describing specific investment alternatives under the plan. For these purposes, a blackout would mean "any suspension, limitation, or restriction on the participant's ability to direct or diversify assets in their account."</p>	<p>Similar to Bush Administration proposal, except that it would be provided explicitly that persons meeting the requirements of title I of ERISA in connection with authorizing a blackout would not be liable for any loss occurring during a blackout as a result of a participant's exercise of control over assets prior to the blackout. Matters to be considered in determining whether a person has satisfied ERISA's requirements include whether such person (1) has considered the reasonableness of the expected period of the blackout, (2) has provided the</p>	<p>Kennedy/HELP: Similar to Bush Administration proposal, except that the DOL would be specifically directed to issue safe harbor guidelines making it easier for plan sponsors to determine whether they are complying with their fiduciary responsibilities during a blackout.</p> <p>Grassley: Similar to Bush Administration proposal, except that the DOL would be specifically directed to issue safe harbor guidelines making it easier for plan sponsors to comply with their fiduciary responsibilities during a</p>

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			required blackout notice, and (3) has acted in accordance with the fiduciary obligations imposed by ERISA (e.g., acting solely in the interest of participants and beneficiaries) in entering the blackout. [Note: for these purposes, a blackout would be much broader than for purposes of the notice requirements (described above) because a number of exceptions to the definition used for purposes of the notice requirements would not appear to apply.] Instead, in the case of ERISA section 404(c), a blackout would be, with respect to a participant or beneficiary, any period during which the ability of such participant or beneficiary to direct the investment of the assets in his or her account is suspended by a plan sponsor or beneficiary.	blackout.

DISCLOSURE REQUIREMENTS RE: PLAN BENEFITS AND INVESTMENTS

Benefits Statements and Disclosure Re: Investment Education	Upon the request of a participant, the plan administrator must provide a summary of the participant's benefits under the plan. A participant is not entitled to more than one benefits statement during any one 12-month period. There are no specific requirements to disclose to plan participants the risks of a non-diversified portfolio of investments, including the risks of a heavy concentration of investment in company stock, although most employers provide some type of investment education.	Participants in DC plans (other than "stand-alone" ESOPs) subject to ERISA would be given quarterly benefits statements. In particular, the statement would have to inform participants of total benefits accrued and the nonforfeitable benefit which has accrued and the earliest date on which benefits will become nonforfeitable. In addition, the statement would be required to provide the value of assets held in the form of employer securities and an explanation of any restrictions on the right to direct an investment. As part of the statement, participants also would be provided with an explanation of the importance of diversification.	Similar to Bush Administration proposal, except that the quarterly benefits statement also would have to include a discussion of the risk of holding more than 25 percent of a portfolio in any single entity. In addition, "investment education notices" that include information regarding principles of risk management and diversification would have to be given to participants upon enrollment in the plan and annually thereafter. The investment education notices would be required for any retirement plan (including both defined contribution and defined benefit plans) which permit a participant to direct investments or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant.	<p>Kennedy/HELP: Similar to Bush Administration proposal, except that, in the case of accounts in which employer securities exceed 20 percent of total assets, the statement would include a warning that the account may be overinvested in employer securities.</p> <p>Grassley: Similar to Bush Administration proposal.</p> <p>Kerry/Snowe: Defined contribution plans that permit participants to exercise control over account assets would be required to provide (1) a model form regarding basic investment guidelines, and (2) in the case of plans with at least 100 participants, a personalized benefits statement. The model form regarding basic investment guidelines would be developed by the Treasury Department and DOL and would include information on the benefits of diversification, information on the differences in terms of risk and reward among stocks, bonds, mutual funds, and money market investments, information on investment</p>
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				<p>allocations based on age and other factors, resources from which participants may obtain additional information, and resources and a worksheet which participants may use to calculate projected retirement benefits. The personalized benefits statement would include information regarding total benefits accrued and the nonforfeitable benefit which has accrued and the earliest date on which benefits will become nonforfeitable, and the fair market value and overall percentage of the participant's assets in each investment option under the plan. The requirements would be enforced through parallel Code (excise tax) and ERISA (civil liability) provisions.</p>

INVESTMENT ADVICE

<p>Access to Investment Advice</p>	<p>ERISA establishes general standards of fiduciary responsibility. In addition to these general fiduciary standards, ERISA and the Code contain sweeping provisions that identify certain "prohibited transactions" between retirement plans and parties in interest, and then provide a series of exemptions from those sweeping prohibitions if specified conditions are met. As a result of the rigid application of the prohibited transaction rules, employers and plan sponsors have been unable to arrange for the delivery of investment advice needed by plan participants and beneficiaries to make prudent decisions regarding their retirement plan assets.</p>	<p>Incorporates provisions of the investment advice bill that previously passed the House (see next column), providing limited plan sponsor protection and prohibited transaction relief if certain conditions are satisfied.</p>	<p>A new exemption would be added to the prohibited transaction rules of ERISA and the Code in order to facilitate the provision of investment advice to participants and beneficiaries in employer-provided retirement plans. In order to qualify for the new exemption, certain specific requirements and participant protections would have to be satisfied. In particular, only persons meeting specific requirements to serve as a "fiduciary adviser" could provide investment advice under the exemption. In addition, such fiduciary advisers would be required to satisfy specific disclosure requirements, including disclosure of conflicts of interest and the availability of third-party advice providers. DOL would be directed to draft model disclosure forms to assist compliance with the disclosure requirements. Fiduciary advisers affiliated with banks must work in a trust department that is regularly examined by a state or federal agency. In addition to the prohibited transaction exemption, the fiduciary responsibilities of the plan sponsor (or other plan fiduciary) in connection with arranging for the provision of investment</p>	<p>Kennedy/HELP: No specific relief from the prohibited transaction rules would be provided. Instead, a limited safe harbor from the fiduciary duty provisions of ERISA would be provided to plan sponsors and other fiduciaries where such plan sponsor or fiduciary designates and monitors a "qualified investment adviser" and the arrangement with the "qualified investment adviser."</p> <p>Kerry/Snowe: Similar to Kennedy/HELP.</p>
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			advice would be clarified.	
Tax Incentives for Retirement Planning and Education	Employees, retirement plan participants, and beneficiaries generally must pay for retirement planning and investment advice and education expenses with after-tax dollars. Such expenses generally are not deductible or excludable from income.	No change.	Employees would be able to pay for "qualified retirement planning services" on a pre-tax basis through a payroll deduction arrangement. Such a program would have to be available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's retirement plan.	No change. [S. 2087, introduced by Senators Jeff Bingaman (D-NM) and Susan Collins (R-ME) would provide a modest employer income tax credit for the provision of independent investment advice by certain employers.]

NEW CAUSES OF ACTION

Changes in Fiduciary Rules	ERISA imposes broad obligations and requirements on retirement plan fiduciaries, including the duty to act for the exclusive benefit of participants and beneficiaries. In addition, ERISA provides rules that directly or indirectly govern the investment of plan assets in employer securities. ERISA fiduciary rules require prudent investment of retirement plan assets, and ERISA also contains a diversification requirement that applies in certain cases. Although there is an exception from the ERISA diversification requirement for investments in employer securities by individual account plans, there is no comparable exception from the prudence rules.	No specific new provision. DOL has ongoing enforcement efforts underway.	The DOL would be directed to establish a program under which information and educational resources would be available on an ongoing basis to employee benefit plan fiduciaries to assist them in diligently and effectively carrying out their fiduciary duties.	Kennedy/HELP: Plan fiduciaries would have a duty to ensure that each participant and beneficiary is provided with all material investment information relevant to the participant's control over account assets to the extent that such information is required to be disclosed to investors under applicable securities laws. The provision of any misleading information would be a violation of this requirement.
Additional Remedies/ Enforcement	Depending on the provision involved, the DOL and/or plan participants or beneficiaries may bring an action for a violation of ERISA. Under ERISA section 409, plan fiduciaries may be personally liable to the plan for a breach of fiduciary duty. ERISA and Code penalties apply for violations of the prohibited transaction rules. The Code generally is enforced by the Treasury Department and Internal Revenue Service. In the case of a failure to meet the Code's requirements related to qualified retirement plans, plan disqualification may result. In certain cases, excise taxes are imposed.	No specific new provision. DOL has ongoing enforcement efforts underway.	The DOL would be directed to establish a program under which information and educational resources would be available on an ongoing basis to employee benefit plan fiduciaries to assist them in diligently and effectively carrying out their fiduciary duties.	Kennedy/HELP: A new ERISA section 409A would provide that fiduciaries of a plan containing a CODA who breach any of their fiduciary duties would (1) be personally liable to the plan and its participants for such breach, (2) be liable to restore to the plan any profits which have been made through the use of plan assets, and (3) be subject to other equitable or remedial relief as a court may deem appropriate, including removal or prohibiting acting as a fiduciary. In addition, ERISA section 409 remedies would be extended so that a non-fiduciary could be held personally liable for a fiduciary breach of duty if such non-fiduciary had notice of a breach and participated in concealing such breach.

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				<p>Participants and beneficiaries (in addition to plans) would be entitled to recovery under ERISA section 409 for losses. Fiduciaries (and non-fiduciaries described above) who violate their duties could be prohibited by a court from acting as a fiduciary to any employee benefit plan. Moreover, ERISA section 502 would be amended so that participants and beneficiaries would have expanded rights to courts to recover retirement plan losses (e.g., limitations on mandatory alternative dispute resolution) and additional equitable relief. Moreover, an "Office of Pension Participant Advocacy" (OPPA) would be created within the DOL. The OPPA would evaluate private and public sector efforts in assisting and protecting participants, promote the expansion of retirement plan coverage, pursue claims on behalf of participants, advocate for participants, and provide information to plan participants.</p> <p>Kerry/Snowe: Would create an OPPA similar to Kennedy/HELP.</p>
NEW ADMINISTRATIVE AND OTHER BURDENS				
Employee Control of Plan Administration	There are no express provisions in the Code or ERISA requiring employee participation in the administration and oversight of employer-provided retirement plans.	No change.	No change.	Kennedy/HELP: Generally, in the case of a single-employer, individual account plan that includes employee contributions and covers more than 100 participants, assets of such plan would have to be held in a trust administered by a joint board of trustees consisting of at least two trustees representing on an equal basis the interests of the employer maintaining the plan and the interests of the participants and beneficiaries.
Bonding and Insurance Requirements	ERISA section 412 requires plan fiduciaries to be bonded in certain cases. There are a number of exceptions that limit the scope of the requirement. For example, no bond is required of a fiduciary who is a corporation or who is an officer, director, or employee of such corporation. Similarly, no bond is required of a fiduciary who is authorized to	No change.	No change.	Kennedy/HELP: Each fiduciary of an individual account plan covering more than 100 participants would be required to be insured, in accordance with DOL regulations, in an amount sufficient to ensure coverage of financial losses due to any breach of duty by such fiduciary. In addition, the Pension Benefit Guaranty

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	exercise trust powers or to conduct an insurance business or who is subject to supervision or examination by federal or state authority. The amount of any required bond is capped at \$500,000.			Corporation (PBGC) would be directed to conduct a study on the feasibility and available options for establishing an insurance system for DC plans. PBGC would be directed to report the results of the study within 3 years from the date of enactment.
PLAN FUNDING				
Temporary Plan Funding Relief	Certain plan funding and other requirements are calculated using the interest rate for 30-year Treasuries. Because 30-year Treasury has been discontinued, the rate has become distorted resulting in inflated funding obligations. The economic stimulus bill (H.R. 3090) enacted earlier this year provided temporary funding relief for 2002 and 2003. In those years, plans will be able to determine current liability valuations for funding purposes by using an expanded corridor of up to 120 percent of the four-year weighted average of the 30-year Treasury rate (rather than 105 percent under prior law). In addition, relief is provided for purposes of determining variable premium payments to the PBGC.	No change.	The temporary plan funding relief enacted as part of the economic stimulus bill would be extended to plan funding valuations performed for 2001.	No change.
STATUTORY STOCK OPTIONS				
Employment Tax Treatment of Statutory Stock Options	Reversing 30 years of rulings and practice, the Treasury Department and IRS have issued proposed regulations that would impose employment taxes when stock options are exercised under incentive stock option plans (ISOs) or employee stock purchase programs (ESPPs), even though no income is realized at such time.	No change.	It would be clarified that employment taxes are not owed when stock options are exercised under ISOs or ESPPs.	No change.
BYRD DROPPINGS				
Reporting Simplification	"One-participant retirement plans" are exempt from the annual report filing requirement for a plan year if they did not hold more than \$100,000 in total plan assets at the end of that plan year or any preceding plan year beginning on or after January 1, 1994. A one-participant plan that is not exempt from the annual report filing requirement is only required to file a	No change.	The Secretary of the Treasury would be directed to provide that a one-participant retirement plan with assets of \$250,000 or less as of the close of the plan year (and all prior plan years) would be exempt from the annual report filing requirement for that plan year. In addition, the Secretary of the Treasury and the Secretary of Labor would be	No change.

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	simplified form, <i>i.e.</i> , Form 5500-EZ. A one-participant plan is a plan that covers and benefits only certain owners (or such owners and their spouses) of the sponsoring employer and meets certain requirements.		directed to provide simplified reporting requirements for certain plans with fewer than 25 employees.	
Improvement to Employee Plans Compliance Resolution System	Failure to satisfy all applicable requirements of section 401(a) or section 403(b) may disqualify a plan or annuity from the intended tax-favored treatment. The 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. The basic elements of the programs that comprise EPCRS are self-correction, voluntary correction with IRS approval, and correction on audit. The IRS has expressed its intent that EPCRS be updated and improved periodically in light of experience and comments from those who use it.	No change.	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 for significant compliance failures, (4) expanding the ability to correct insignificant compliance failures using self-correction 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 failure.	No change.
Safety Valve from Mechanical Rules	The nondiscrimination rules applicable to qualified plans and section 403(b) arrangements under section 401(a)(4) consist of a series of complicated mechanical tests. Prior to 1994, these rules were not mechanical but rather were applied based on all the facts and circumstances.	No change.	Directs Treasury to issue regulations by December 31, 2003, to provide that a plan meets section 401(a)(4) if it meets the pre-1994 facts and circumstances tests, meets any new Treasury limits on the pre-1994 test, and is submitted to Treasury for a determination (to the extent provided by Treasury).	No change.
Reform of the Line of Business Rules	Technically, an employer that wishes to test retirement plans on a "Separate Line of Business" basis may do so. However, the current Separate Line of Business rules impose testing and employee allocation requirements that make them unworkable. Moreover, before using the Separate Line of Business test, the employer must pass a "gateway test" that applies on an employer-wide basis, thus defeating the purpose of the Separate Line of Business rules.	No change.	Directs Treasury to issue regulations by December 31, 2003 to modify existing regulations to expand (as Treasury deems appropriate) the ability of a plan to meet line of business requirements based on a facts and circumstances test even though the plan does not meet the mechanical tests. Gateway test is not repealed.	No change.

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Coverage Test Flexibility	The section 410(b) coverage rules applicable to qualified plans and section 403(b) arrangements consist of a series of complicated mechanical tests. Prior to 1989, the rules were generally not mechanical, but rather were applied based on all the facts and circumstances.	No change.	A plan would comply with the minimum coverage requirements of section 410(b) if the plan satisfies the pre-1989 coverage rules, meets any new Treasury limits on the pre-1989 test, and is submitted to Treasury for a determination (to the extent provided by Treasury) as to whether the plan satisfies the pre-1989 coverage rules.	No change.
Uniform Treatment of Governmental Plans	The Taxpayer Relief Act of 1997 exempted governmental plans maintained by State or local governments from various nondiscrimination rules. Governmental plans maintained by an international organization were only exempted from the rule requiring a nondiscriminatory group to be covered.	No change.	All governmental plans (as defined in section 414(d)) would be exempt from the nondiscrimination and minimum participation rules.	No change.
Notice and Consent Period Regarding Distributions	If a participant has a vested benefit in excess of \$5,000, that benefit cannot be distributed prior to the later of age 62 or normal retirement age unless the participant consents no more than 90 days before benefit commencement. Such consent is not valid unless the participant receives an explanation of his or her distribution options, including an explanation of the right to defer distributions, no more than 90 days before benefit commencement. In addition, in the case of an eligible rollover distribution, the plan administrator must provide an explanation to the recipient of certain rules regarding the tax treatment of such distribution. This explanation must be provided no more than 90 days before the date of distribution. If a participant in certain types of plans has a vested benefit in excess of \$5,000, that benefit must be distributed in the form of a qualified joint and survivor annuity unless such participant and his or her spouse consent to another form no more than 90 days before the annuity starting date. In this regard, a plan must provide a participant with an explanation of his or her distribution options no more than 90 days before the annuity starting date.	No change.	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.	No change.

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Annual Report Dissemination	ERISA generally requires plan administrators to file an annual report concerning the plan with the Secretary of Labor within 7 months after the end of the plan year. Within 9 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.	No change.	The plan administrator would be permitted to furnish information to participants and beneficiaries by making such information reasonably available through electronic means or other new technology.	No change.
SAVER Act Modifications	The Savings Are Vital to Everyone's Retirement (SAVER) Act initiated a public-private partnership to educate American workers about retirement savings, and directed the Department of Labor (DOL) to maintain an ongoing program of public information and outreach. The SAVER Act also called for national retirement savings summits in 1998, 2001, and 2005.	No change.	The month of future retirement summits would be clarified, and a new summit would be added for 2009. In addition, a number of new delegate slots would be created. Further direction would be given to the DOL regarding the summit.	No change.
Missing Participants	In the case of certain single employer defined benefit plans, the Pension Benefit Guaranty Corporation will act as a clearinghouse for benefits due to participants who cannot be located ("missing participants"). Under the program, when a defined benefit pension plan terminates and the plan is unable to locate former workers who are entitled to benefits, the terminating plan is allowed to transfer these benefits to the PBGC which then works to locate the employees in question. The missing participant program is limited to certain defined benefit plans.	No change.	The PBGC's missing participant program would be expanded but only to cover multiemployer defined benefit plans. If a plan covered by the new program has missing participants when the plan terminates, at the option of the employer, the missing participants' benefits could be transferred to the PBGC along with related information.	No change.
Reduced PBGC Premiums For New, Small Employer Plans	Defined benefit plans are required to pay the PBGC a flat annual premium of \$19 per participant plus a variable premium based on their funding status. In addition, PBGC insurance protection for defined benefit plans generally phases-in over a five-year period. Underfunded defined benefit plans are subject to an additional PBGC variable rate premium (VRP) based on the extent of a plan's underfunding. There is no VRP for the first year of a defined benefit plan.	No change.	A new defined benefit pension plan adopted by a small employer (100 or fewer employees) would only pay an annual premium of \$5 per participant for the first five years. In the case of a newly created defined benefit plan, any applicable VRP would be phased-in over a six-year period as follows: 0% in year one; 20% in year two; 40% in year three; 60% in year four; 80% in year five; and 100% in year six. In addition, for certain small employer plans (25 or fewer employees), the VRP would be capped at \$5 times the number of plan participants.	No change.

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Authorization for PBGC to Pay Interest on Premium Overpayment Refunds	ERISA contains no specific authorization for the PBGC to pay interest on premium overpayment refunds.	No change.	The PBGC would be authorized to pay, subject to regulations prescribed by the PBGC, interest on the amount of any premium overpayment refund.	No change.
Rules for Substantial Owners Relating to Plan Terminations	ERISA contains complicated rules for determining the benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC) for an individual who owns more than ten percent of a business (a “substantial owner”) and who is a participant in the business terminating plan.	No change.	The five-year PBGC guarantee phase-in that currently applies to a participant who is not a substantial owner would apply to a substantial owner with less than a 50% ownership interest. For a substantial owner with a 50% or more ownership interest (a “majority owner”), the phase-in would depend on the number of years the plan has been in effect, rather than on the number of years the owner has been a participant and the initial plan benefit.	No change.
Benefit Suspension Notice	Employees in a defined benefit plan who work past age 65 must receive a detailed notice regarding the fact that they will not receive benefit payments from the plan while they are still working.	No change.	The notice would still be required, but it would be simplified and could be included in the summary plan description.	No change.