Pension Conference Report

Pension Provisions

Title I. Reform of Funding Rules for Single Employer Defined Benefit Pension Plans.

Sections 101, 102, 111, 112. Minimum funding standards for single-employer defined benefit plans. Under current law, employers have considerable flexibility in choosing the assumptions and methods used to calculate minimum funding requirements. However, employers generally must fund plans that are not at least 90% funded on a more accelerated basis under the Deficit Reduction Contribution (DRC) requirements, using specified interest and mortality assumptions. If employers make contributions in excess of the minimum required, the excess is added to the plan's "credit balance." The credit balance is increased each year by earnings at the interest rate assumed by the plan. The accumulated credit balance can be applied toward future years' minimum contribution requirements.

Under the proposal, plan liabilities are determined using a 3-segment yield curve developed from a 24-month average of the yield on the top three grades of corporate bonds. Assets can be averaged over 24 months, but the result is limited to 105% of market value as of the plan's valuation date. As under the current law DRC rules, Treasury establishes the standard mortality table. However, the proposal permits large companies to develop and use plan-specific mortality tables for minimum contribution calculations.

A plan's credit balance under the old rules becomes the beginning balance of the "carryover" account under the new rules. Contributions in excess of the minimum required under the new rules are added to a new "prefunding" balance. Both the carryover and prefunding balances are credited with the plan's actual rate of return each year. The employer can elect to use the carryover and prefunding balances (carryover first) to reduce the minimum required contribution only if the plan's funding target attainment percentage is at least 80%. (For the 80% test, the funding target attainment percentage is determined by subtracting only the prefunding balance from plan assets.)

The liability for benefits earned under the plan in past years is the plan's "target liability." The liability for benefit accruals in the current year is the plan's "normal cost." The plan's minimum contribution requirement for a year is the normal cost plus amounts required to amortize any funding shortfall over seven years. For the first year under the new rules, the funding shortfall is the target liability minus assets. In subsequent years, a new shortfall amortization base is established to reflect gains or losses during the preceding year. Generally, both the carryover and prefunding balances are deducted from assets to calculate the funding shortfall.

Liabilities are increased if the plan is "at-risk." A plan is "at-risk" if the plan's funding target attainment percentage is both less than 80% without regard to at-risk liabilities and less than 70% counting at-risk liabilities. The funded percentage is determined by subtracting both the carryover and prefunding balances from assets. The 80% test is phased in at 65% in 2008, 70% in 2009, 75% in 2010 and 80% for 2011 and thereafter. The plan determines the at-risk liabilities by assuming that workers eligible to retire in the next ten years will retire as early as possible. (There is an exception for auto companies and suppliers that excludes anyone offered an early retirement in 2006.) The

additional at-risk liability is phased in at 20% per year for each consecutive year the plan is at-risk. If a plan is at-risk for the current year and two out of the previous four years, a load of 4% of liability plus $700 per participant is added to the at-risk liability. Plans with 500 or fewer participants are not subject to at-risk liability.

The proposed rules apply to plan years beginning after 2007. There is no collective bargaining delay. The estimated gain is $4.739 billion over five years and the estimated cost is $2.456 billion over ten years.

Sections 103 and 113. Benefit limitations under single-employer plans. Under current law, employers in bankruptcy may not make a benefit increase effective until the employer reorganizes. Also, where a plan's new current liability funding percentage is less than 60%, an increase generally may not be effective until the employer has brought funding up to 60%. The proposal provides stronger limitations based on the plan's "adjusted funding target attainment percentage." The funding target attainment percentage is the ratio of assets (minus carryover and prefunding balances) to target liability (without regard to at-risk status). The adjusted percentage is determined by adding the amount of annuity purchases for non-highly compensated employees in the last two years to both assets and liabilities.

If the adjusted funding target attainment percentage is below 60% for a plan year, the proposal prohibits the plan from triggering shutdown benefits, prohibits accelerated payments (including lump sums) during the year, and freezes benefit accruals. If the percentage is below 80%, the plan may not have benefit increases. Between 60% and 80%, lump sum payments are limited to the lesser of the present value of the participant's PBGC guaranteed benefit and 50% of the lump sum the participant would otherwise receive. (The balance of the benefit would be payable in the form of an annuity.) The restrictions do not apply if the plan is 100% funded without reducing assets for credit balances. Collectively bargained plans must convert carryover and prefunding balances to assets if the conversion will eliminate a restriction. Special rules apply to new plans and to plans of employers in bankruptcy.

The benefit limitations are generally effective for plan years beginning in 2008. There is a special collective bargaining rule that delays the effective date until the earlier of the expiration of the contract or plan years beginning in 2010. The estimates are included in the section 101 estimates.

Sections 104, 105, 106 and 115. Special rules for multiple employer plans of certain cooperatives; Temporary relief for certain PBGC settlement plans; and special rules for plan certain government contractors; and Modification of transition rule to pension funding requirement.

The proposal delays the effective date of the funding and benefit limitation rules for rural electric, agricultural, and telephone multiple employer plans until 2017, defense contractors until the earlier of when the CAS Board allows recovery of the new contribution rates or 2011, and until 2014 plans of employers that took over sponsorship of the plan so that PBGC did not have to terminate the plan. In addition, the proposal modifies existing special rules for an urban bus company. The estimates are included in the section 101 estimates.

Section 116. Restrictions on funding of nonqualified deferred compensation plans by employers maintaining underfunded or terminated single-employer plans.

Under current law, Employers may set aside or reserve money to pay nonqualified deferred compensation as long as the plan is not considered "funded." The proposal amends Code section 409A to prevent such a set aside or reserve for certain executives if the employer or a member of its controlled group is bankrupt, has an "at-risk" plan (generally less than 80% funded) or a plan that has terminated without having sufficient assets to pay all benefits. The proposal also denies an employer a deduction for "gross ups" intended to cover penalties incurred by prohibited funding of nonqualified arrangements. These provisions apply as of date of enactment. The estimated gain of this provisions is $33 million over five years and $64 million over ten years.

Title II. Funding Rules for Multiemployer Defined Benefit Plans and Related Provisions.

Sections 201 and 211. Funding rules for multiemployer defined benefit plans. Under current law, multiemployer plans are subject to the same general funding rules as single employer plans. However, longer amortization periods apply to multiemployer plans than to single employer plans, and there is no DRC. Plans may apply for amortization extensions of up to 10 years. The interest rate for extensions is the greater of 150% of the Federal mid-term rate or the plan rate. The proposal retains the funding-standard-account approach of current law but reduces longer amortization periods to 15 years and eliminates the shortfall method. A plan can get an automatic five-year amortization extension, and another five years with approval of IRS. The amortization extension interest rate is the funding rate but the old rate is grandfathered for extensions and modifications under applications filed before June 30, 2005. The section is effective for plan years beginning in 2008. The estimated cost is $69 million over five years and $287 million over ten years.

Sections 202 and 212. Additional funding rules for multiemployer plans in endangered or critical status. The proposal adds new funding rules for multiemployer plans that are in endangered, seriously endangered, or critical status, including some relief from excise taxes for an accumulated funding deficiency. Status is generally based on current funding percentages and projected accumulated funding deficiencies. In general, a plan less than 80% funded is in endangered or seriously endangered status and a plan less than 65% funded is in critical status. Endangered (and seriously endangered) plans must develop funding improvement plans that will increase the plan's funding percentage over 10 or 15 years. Endangered plans' goals are an improvement of 1/3 of underfunding within 10 years (and no accumulated funding deficiency). Seriously endangered plans' goals generally are an improvement of 1/5 of underfunding over 15 years.

A critical status plan must adopt a rehabilitation plan that sets goals for how the plan will get out of critical status within 10 years. A critical status plan may provide for benefit cutbacks (other than for normal retirement benefits) after notice and may impose a 5% surcharge on employer contributions. The trustees develop the funding improvement plan or rehabilitation plan and submit it to the collective bargaining parties for adoption. Failure to timely adopt the plan and meet other deadlines is subject to $1,100 a day penalties under ERISA or an excise tax under the Code in certain cases.

The multiemployer provisions are effective generally for plan years beginning in 2008. The estimated cost is included in the section 201 estimate.

Sections 203 and 213. Measures to forestall insolvency of multiemployer plans. Under current law, multiemployer plans in reorganization must determine whether they will be insolvent within three years. The proposal expands the time to 5 years. The estimated cost is included in the section 201 estimate.

Section 204. Withdrawal liability reforms. Employers withdrawing from multiemployer pension plans are subject to withdrawal liability. The law contains various exceptions and special rules. The proposal repeals the limitation on the withdrawal liability of insolvent employers and updates the rules relating to limitations on withdrawal liability based on the company's net worth, effective for sales beginning in 2007. The proposal also addresses withdrawal liability if work is contracted out (effective for work after enactment), makes the "free look" employer participation rules available for building and construction trade plans, amends the "fresh start" option rules for calculating withdrawal liability (effective for withdrawals after 2006), and changes the withdrawal liability payment rules in cases where the plan alleges a transaction was undertaken to evade or avoid withdrawal liability (effective for withdrawal liability notices after enactment relating to transactions after 1998). The estimated cost is included in the section 201 estimate.

Section 205. Prohibition on retaliation against employers exercising their rights to petition the federal government. ERISA prohibits retaliation against participants for enforcing their ERISA rights. The proposal extends that prohibition to contributing employers of multiemployer plans (effective on enactment). The proposal has no revenue effect.

Section 206. Special rules for certain benefits funded under an agreement approved by the Pension Benefit Guaranty Corporation. The proposal provides an exception from the new multiemployer plan rules for benefit increases made pursuant to an agreement with the PBGC prior to June 30, 2005, as long as the increases are funded in accordance with the agreement. The estimated cost is included in the section 201 estimate.

Section 214. Exemption from excise taxes for certain multiemployer pension plans. Multiemployer plans that have an accumulated funding deficiency are subject to an excise tax. The proposal exempts a small, fishery-related multiemployer plan from any excise taxes that accumulate prior to the earlier of the plan adopting a rehabilitation plan or 2009. The estimated cost is less than $500,000 over both 5 years and 10 years.

Section 221. Sunset of additional funding rules. The endangered/critical status provisions and the automatic five-year extension for multiemployer plans sunset in 2014. However, any plan already in endangered or critical status continues to follow its plan. The estimated cost is included in the section 201 estimate.

Title III. Interest Rate Assumptions.

Section 301. Extension of replacement of 30-year Treasury rates. Current law requires the use of a 30-year Treasury rate for certain calculations. For 2004 and 2005, a long-term corporate bond

interest rate was substituted for the 30-year Treasury rate for plan funding and PBGC premiums. The proposal extends the 2004 and 2005 temporary rates to 2006 and 2007. No separate revenue estimate.

Section 302. Interest rate assumption for determination of lump sum distributions. A plan's lump sum payment to a participant or beneficiary must be no less than the present value of the annuity to which the participant or beneficiary would have been entitled. For this calculation, the plan must use specified interest and mortality assumptions. The interest rate is the rate on 30-year Treasury bonds. The proposal requires that the plan calculate lump sum values using the three-segment yield curve. The yield curve value is phased in over 5 years at 20% per year (the remainder is based on the existing methodology). The phase in starts in 2008 and the yield curve is fully phased-in in 2012. The yield curve is based on a monthly interest rate not the funding yield curve's 24-month average. The proposal is effective for 2008 plan years. The proposal has negligible revenue effect.

Section 303. Interest rate assumption for applying benefit limitations to lump sum distributions. The maximum benefit a participant may accrue and receive is stated in terms of an annuity. The Code specifies a minimum interest rate that may be used for conversion to other forms of payment. The permanent rate is the same as the rate for minimum lump sums. However, there is a temporary provision (through 2005) that allows the conversion at 5.5%. The proposal provides, starting for 2006 distributions, the rate cannot be less than the greatest of 5.5%, 105% of the minimum distribution interest rate, or the rate specified in the plan. The proposal has negligible revenue effect.

Title IV. PBGC Guarantee and Related Provisions.

Section 401. PBGC premiums. Single-employer plans that have unfunded vested benefits must pay the PBGC a variable rate premium (VRP) equal to $9 per $1,000 of unfunded vested benefits. The plan owes no VRP if the plan is at the full funding limit. For 2004 and 2005, the unfunded vested benefits were valued using 85% of a rate based on investment-grade corporate bonds. The proposal in section 301 specifies the extension of that methodology in 2006 and 2007. The Deficit Reduction Act of 2005 created a temporary (five year) termination premium. The proposal, starting in 2008, requires use of the yield curve's segment rates for the premium calculation. The yield curve is based on the monthly corporate rate applicable to the plan year. The proposal eliminates the full funding exception to the variable rate premium and makes the termination premium permanent. The estimate will be provided by CBO.

Section 402. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.

The proposal includes relief for the airlines in the form of a longer amortization period and a higher amortization interest rate. Somewhat different rules apply for airlines that freeze their plans and those that do not. In addition, the termination premium paid to the PBGC is increased. The proposal's cost has not yet been determined.

Section 403. Limitation on PBGC guarantee of shutdown and other benefits. If a plan is amended to increase benefits, the PBGC guarantee of the increased benefits is phased in over five years from the date of the plan amendment. A shutdown benefit is generally based on a provision already in the plan, so the shutdown occurring does not trigger a phase-in period. The proposal treats a shutdown or other contingent event as an amendment that triggers the phase-in of guaranteed benefits, effective for events occurring after July 26, 2005. The estimate will be provided by CBO.

Section 404. Rules relating to bankruptcy of employer. PBGC guarantees and asset allocations are tied to the date a plan terminates. Under the proposal, if a plan terminates after the employer goes into bankruptcy, the bankruptcy date is treated as the plan's termination date for purposes of (1) the determination of the applicable maximum guarantee and the five-year phase in of the guarantee and (2) the determination of who, and what benefit, is in asset allocation priority category 3 (those who retired or could have retired three years before the termination date). This provision is effective for bankruptcies initiated 30 days after enactment. The estimate will be provided by CBO.

Section 405. PBGC premiums for small plans. Pension plans pay a variable rate premium to the PBGC equal to $9 per $1,000 of unfunded vested benefits. There is no special premium for small plans. The proposal provides that an employer with 25 or fewer employees pays a special reduced variable rate premium for each participant equal to $5 times the number of participants in the plan. (The total variable premium therefore would be $5 x [(the number of participants) squared].) The proposal is effective in 2007. The estimate will be provided by CBO.

Section 406. Authorization for PBGC to pay interest on premium overpayment refunds. PBGC charges interest on underpayments but is not authorized to pay interest on overpayments. The proposal authorizes PBGC to pay interest on premium overpayments but only interest accruing for periods beginning after enactment. The estimated cost is $31 million over 5 years and $31 million over 10 years.

Section 407. Rules for substantial owner benefits in terminated plans. Ten percent owners are designated as "substantial owners" and special rules apply to them with respect to guaranteed benefits. The proposal simplifies the rules by substituting majority owner rules (50% or more owners) for substantial owner rules and the applying the special guarantee limitation (now on majority owners) only to the plan's first 10 years. There is also a change in the allocation of assets rules relating to majority owners. The changes are effective for notices of intent to terminate or notices of determination given after 2005. The proposal has negligible outlay effect.

Section 408. Acceleration of PBGC computation of benefits attributable to recoveries from employers. PBGC shares recoveries from the employer with participants based on the proportional losses of the PBGC (unfunded guaranteed benefits) and the participants (unfunded non-guaranteed benefits). Smaller terminations use an average recovery ratio (the "SPARR") to accelerate processing (i.e., rather than applying separate ratios for each plan, PBGC annually calculates an average ratio based on the last five years). Before doing the allocation PBGC must split the recovery between return of due and unpaid contributions (DUEC) and recovery of employer liabilities. The

proposal changes the SPARR rules so that the most immediate two years are not counted in the five-year averaging period. In addition, a similar averaging ratio is created for DUEC. The proposal is effective for notices of intent to termination or notices of determination given at least 30 days after enactment. The estimate will be provided by CBO.

Section 409. Treatment of certain plans where cessation or change in membership of a controlled group. Where a plan spins off part of the plan, the allocation of assets and liabilities between the parties generally is done using the PBGC termination assumptions. The proposal provides a special rule allowing the plan's interest rate to be used instead for certain corporate transactions involving fully-funded plans and investment-grade employers. The proposal is effective for transactions after enactment. The estimate will be provided by CBO.

Section 410. Missing participants. PBGC conducts a missing participant program for PBGC-covered terminating defined benefit plans. The proposal expands the PBGC program to cover terminating multiemployer plans, terminating defined benefit plans of small professional plans (which the PBGC does not cover for guarantee purposes), and terminating defined contribution plans. The proposal has negligible outlay effect.

Section 411. Director of the Pension Benefit Guaranty Corporation. The PBGC Executive Director is appointed by the Secretary of Labor. The position is not subject to Senate confirmation. The proposal make the PBGC Director's position a presidential appointment subject to Senate confirmation by both the Finance Committee and the HELP Committee. The proposal has no revenue effect.

Section 412. Inclusion of information in the PBGC annual report. The proposal requires the PBGC annual report to include additional information on the PBGC's microsimulation forecasting model ("Pension Insurance Modeling System") including the specific parameters used for the PBGC forecast and the impact on the PBGC deficit or surplus if PBGC's investments had earned during the year reported 60% of the average return on investment in the Standard and Poor's 500 Index, plus 40% of the average return on investment for such year in the Lehman Aggregate Bond index (or similar fixed index). This proposal has no revenue effect.

Title V. Disclosure

Section 501. Defined benefit plan funding notice. Plan administrators must provide participants a summary of the annual report (SAR) 60 days after the annual report is filed. Plan administrators of certain underfunded single-employer defined benefit plans must send a funding notice to participants and beneficiaries pursuant to section 4011 of ERISA at the same time as they send the SAR. All multiemployer defined benefit plans have to provide a notice under ERISA section 101(f) 60 days after the annual report. The proposal creates a new funding notice for multiemployer and single-employer defined benefit plans due 120 days after the beginning of the plan year. (For plans with 100 or fewer participants the notice is dues with the filing of the annual report.) Plan administrator must send the notice to PBGC, participants, beneficiaries, unions, and, in the case of multiemployer plans, employers contributing to the plan. The notice must include detailed information on plan funding and a multiemployer must provide additional information including whether the plan is in endangered or critical status and information on how to get a copy of the funding improvement or

rehabilitation plan. The notice under ERISA section 4011 and the SAR for defined benefit plans are eliminated. The proposal is generally effective for plan years beginning after 2007. The proposal has no revenue effect.

Section 502. Access to multiemployer plan information. The proposal expands the ability of participants, beneficiaries, unions, and contributing employers to get plan actuarial and financial information and estimates of potential withdrawal liability from multiemployer plans. The proposal is effective for plan years beginning after 2007. The proposal has no revenue effect.

Section 503. Additional annual reporting requirements. Pension plans file an annual report with schedules and attachments each year providing financial, actuarial and other information about the plan. The proposal requires limited additional information from single-employer defined benefit plans and extensive additional information from multiemployer defined benefit plans. A multiemployer plan must provide a summary of this information to contributing employers and to employee organizations within 30 days after the annual report is due. The proposal is effective for plan years beginning after 2007. The proposal has no revenue effect.

Section 504. Electronic display of annual report information. The proposal requires the Secretary of Labor to electronically display annual report information in electronic form within 90 days after receiving it. Employers with intranets must also display the information on their intranets. The proposal is effective for plan years beginning after 2007. The proposal has no revenue effect.

Section 505. Section 4010 filings with the PBGC.

Current Law. Employers with plans with aggregate underfunding of $50 million or more must provide financial and actuarial information (as provided in regulations) to the PBGC annually. Section 4010 information is confidential and the PBGC may not make it public. A Congressional committee may request the information. The proposal eliminates the $50 million in the aggregate filing requirement and substitutes a requirement that all plans that have a funding target attainment percentage less than 80% must file plan actuarial and employer financial information. In addition to the current requirement of actuarial and financial data, the provision specifies that the employer must provide additional funding information, including termination liabilities, and requires that the PBGC annually submit to the labor and tax committees of the House and Senate a summary report of the information submitted to the PBGC. The proposal is effective for filings for years beginning in 2008. The proposal has no revenue effect.

Section 506. Disclosure of termination information to plan participants. Participants in plans terminating in a distress termination or in an involuntary termination instituted by the PBGC do not receive copies of information the employer files with the PBGC. The proposal requires the plan administrator or plan sponsor in a distress or involuntary termination to provide to participants information provided to PBGC within 15 days of filing it with the PBGC. The bill also requires PBGC to make the administrative record of the involuntary termination decision available. The Act includes confidentiality limitations. The proposal is effective for notices of intent to terminate or notices of determinations after enactment. The proposal has no revenue effect.

Section 507. Notice of freedom to divest employer securities. The proposal adds a new requirement that the plan administrator provide a divestiture notice 30 days before the first date on which the individual could divest employer securities. The Secretary of Treasury is to issue a model notice within 180 days of enactment. The proposal is effective for plan years beginning in 2008. The proposal has no revenue effect.

Section 508. Periodic pension benefit statements. Participants are not required to be given benefit statements on a regular basis. The proposal sets out specific requirements for single and multiemployer plans to provide periodic benefit statements. Defined benefit plans must provide individual benefit notices every three years or upon request. The proposal allows the defined benefit requirement to be met in an alternative way by notifying participants annually how a participant can get the required detailed information. Defined contribution plans must provide individual benefit notices annually; however, where there is individual investment direction, the plan must provide the notice quarterly. Failure to give the notice is subject to a penalty under ERISA. The Secretary of Labor is to provide model notices within 180 days of enactment. The proposal generally applies to plan years beginning after 2006; there is a delay for collectively bargained plans that could delay the effective date until 2009. The proposal extends the period for correcting excess contributions to 6 months for a 401(k) plan using the automatic enrollment provisions. The proposal has no revenue effect.

Section 509. Notice to participants or beneficiaries of blackout periods. The Sarbanes-Oxley Act of 2002 required blackout notices if participants could not self direct investments for a period. The proposal removes the notice requirement for one person and partner-only (and spouses) plans retroactive to the original requirement date. The proposal has no revenue effect.

Title VI. Investment Advice, Prohibited Transactions, and Fiduciary Rules

Section 601. Investment Advice. Under current law, a fiduciary must act in a prudent manner and solely in the interest of participants and beneficiaries. Parties in interest are prohibited from dealing with the plan except pursuant to a statutory, class, or individual exemption. A party-in-interest may provide investment advice using an objective computer model of investment alternatives subject to certain limitations as discussed in the Department of Labor's Sun America opinion. The proposal would create a prohibited transaction exemption for investment advice provided to employer-sponsored retirement plans through a computer model that is certified by an independent party. An exemption for advice provided by an adviser whose compensation does not vary with the investments selected would be available to both employer-sponsored plans and IRAs.

The Department of Labor, in consultation with Treasury, would be directed to determine whether or not a computer model is available that would be appropriate for the broader range of investment options common to IRAs (stocks and bonds as well as mutual funds). The Department of Labor's determination must be made by the end of 2007. If the Department of Labor determines an appropriate model is available for IRAs, a certified computer model will be an option for providing investment advice to IRAs. If the Department of Labor determines that an appropriate model is not available, the Department of Labor will issue a prohibited transaction exemption that protects IRA account holders from biased advice without requiring fee-leveling or a computer model. This

exemption will sunset on the later of two years after an appropriate IRA computer model becomes available, or three years after issuance of the exemption. No revenue estimate yet.

Section 611. Prohibited transaction rules relating to financial investments. Transactions between a plan and a party-in-interest are prohibited unless there is a statutory class, or individual exemption. The bill provides statutory prohibited transaction exemptions for certain transactions involving block trading (in blocks of at least 10,000 shares with a market value of at least $200,000), regulated electronic communication networks, service providers who are not fiduciaries with respect to the assets involved, foreign exchange transactions, and cross trading (for plans with over $100 million in assets). The proposal also provides relief from certain bonding requirements for broker-dealers subject to other bonding requirements and removes foreign and governmental plans from the numerator for purposes of determining whether more than 25% of a fund is from pension plan assets. The proposal is generally effective for transactions after enactment. The proposal has negligible revenue effect.

Section 612. Correction period for certain transactions involving securities and commodities. The proposal amends the correction period for prohibited transactions involving certain securities and commodities to 14 days after the party discovers or should have discovered that the transaction was prohibited. The proposal applies to any transaction where the party discovers or should have discovered the violation after enactment. The proposal has negligible revenue effect.

Section 621. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments. A plan fiduciary is protected from some liability in self-directed plans. The proposal eliminates the fiduciary's protection during blackout periods when a participant cannot self direct unless certain specified requirements regarding reasonable blackout periods are satisfied. The proposal is effective for plan years after 2007 (with a collective bargaining delay till as late as plan years beginning in 2010). The proposal has no revenue effect.

Section 622. Increase in maximum bond amount. Fiduciaries of plans and others who handle plan money must be bonded for at least $500,000. The proposal increases the fiduciary bond requirement to $1 million for plans that holds employer securities. The proposal is effective for plan years after 2007. The proposal has no revenue effect.

Section 623. Increase in penalties for coercive interference with exercise of ERISA rights. The Act increases penalties for coercive interference with ERISA rights from a $10,000 fine and one year in prison to a $100,000 fine and three years in prison. The proposal is effective upon enactment. The proposal has no revenue effect.

Section 624. Treatment of investment of assets by plan were participant fails to exercise investment election. Employers have some fiduciary protections where participants self direct their accounts. The proposal extends similar fiduciary protections in situations where the participant does not make an investment choice and the plan sponsor makes a default investment consistent with Department of Labor regulations (to be issued within six months of enactment). The proposal is effective for plan years beginning after 2006. The proposal has no revenue effect.

Section 625. Clarification of fiduciary rules. The Department of Labor has provided guidance that applies a "safest annuity available" standard to all annuity investments by a fiduciary. The proposal requires the Department of Labor to issue within one year of enactment regulations making clear that the "safest annuity available" requirement does not apply to annuities paid as an optional distribution from a defined contribution plan. The proposal is effective upon enactment. The proposal has negligible revenue effect.

Title VII. Benefit Accrual Standards

Section 701. Benefit accrual standards. Application of the age discrimination rules of the Code, ERISA and the ADEA to the design of hybrid defined benefit plans and to conversion of traditional final-pay plans into a hybrid plan have been the subject of much litigation. The amount of the minimum lump sum that a hybrid plan must pay has also been the subject of litigation. The proposal provides rules for testing defined benefit plans, including hybrid plans, for age discrimination under the Code, ERISA, and the ADEA. A hybrid plan must meet certain conditions for vesting and for investment credits. The "wearaway" of benefits the participant has earned at the time of conversion is prohibited in a conversion to a hybrid plan. These provisions are prospective only, with no inference for the past. Applicable defined benefit plans (basically hybrid plans) may treat the hypothetical account balance as the lump sum value for distributions after enactment. The proposal is generally effective for periods beginning on or after June 29, 2005, except the provision allowing distribution of the account balance is effective upon enactment. The vesting and interest credit requirements generally are effective for plan years beginning after 2007 (with a collective bargaining delay to as late as plan years beginning in 2010). The estimated cost is $121 million over 5 years and the estimated gain is $79 million over 10 years.

Section 702. Regulations relating to mergers and acquisitions. The proposal instructs the Secretary of the Treasury to issue regulations within 12 months to deal with situations where the conversion to a cash balance plan is made with respect to employees who become employees pursuant to a merger or acquisition. The estimated cost and gain is included in section 701.

Title VIII. Pension Related Revenue Provisions

Section 801. Increase in deduction limit for single-employer plans. Generally, plans can deduct contributions up to 100% of the plan's current liability. Contributions in excess of the limit are subject to a 10% excise tax. Because the plan's liability on termination is generally higher than its current liability, there is an exception that allows a deductible contribution equal to 100% of the plan's termination liability, but only in the year of termination. The proposal increases the deductible limit for single-employer plans to the year's normal cost (generally the cost of benefits accrued in the year) plus the amount necessary to fully fund the funding target. In addition, employers can contribute and deduct a cushion. The cushion is 50% of the funding target plus additional amounts reflecting projections of the participants' compensation and the statutory compensation limits. (The proposal allows plans to contribute and deduct the maximum at risk liability for both target and normal if this is more.) The proposal is effective for contributions after 2007. For 2006 and 2007, the deduction limit is increased from 100% to 150% of the plan's current liability. The estimated cost is included in section 101

Section 802. Deduction limits for multiemployer plans. The proposal increases the deduction limit for multiemployer plans to140% of the plan's current liability. The proposal is effective for contributions for years beginning in 2008. The estimated cost is included in section 201.

Section 803. Updating deduction rules for combination of plans. Employers that sponsor both defined benefit plans and defined contribution plans face a combined limit on deductible contributions. The limit is the greater of the amount of the required minimum contribution to the defined benefit plan or 25% of compensation paid or accrued to plan participants during the year. The proposal provides that contributions to a PBGC-covered defined benefit plan (single-employer plans and multiemployer plans) are deductible without affecting the combined limit. For other plans, only contributions in excess of 6% of compensation counts towards the combined limit. The proposal is effective for contributions for taxable years beginning after 2005. The estimated cost is included in sections 101 and 201.

Section 811. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent. The proposal makes the EGTRRA provisions affecting retirement plans and IRAs permanent by eliminating the 2010 sunset. The estimated cost is $2.642 billion over 5 years and $36.197 billion over 10 years.

Section 812. Saver's Credit. The proposal makes the EGTRRA provisions relating to the Saver's Credit permanent by eliminating the sunset after 2006. The estimated cost is $ 4.329 billion over 5 years and $10,076 billion over 10 years.

Section 821. Clarifications regarding purchase of permissive service credits. The Code has restrictions on the purchase of pension benefits for service with another employer. However, special rules allow qualified retirement plans of state and local governments to allow participants to make after-tax contributions to purchase service credit under the plan for certain periods for which no credit had been given, including service with prior government employers and for up to five years with non-government employers. Current law does not allow the purchase of additional credits for years in which service credit has been given. The rules also allow trustee-to-trustee transfers from 403(b) or 457 plans to purchase service credit, without tax consequences to the individual. The proposal allows purchase of additional service credits even for years when service credit was given and provides more flexibility on prior educational service (elementary or secondary education) that will be treated as permissive service for purposes of buying credit. The proposal also provides more flexibility on trustee-to-trustee transfers so that the participant is not liable for income tax if the transferee plan improperly allows service purchase and allows the transfer between plans of unrelated employers. The provisions are retroactively effective as if they were enacted in the Taxpayer Relief Act of 1997 and EGTRRA 2001. The proposal has negligible revenue effect.

Section 822. Allow rollover of after-tax amounts in annuity contracts. An individual may not roll over after-tax amounts in 403(b) annuity contracts to a qualified plan. The proposal eliminates this restriction effective for taxable years beginning after 2006. The proposal has negligible revenue effect.

Section 823. Clarification of minimum distribution rules for governmental plans.
Governmental plans are subject to the same rules as nongovernmental plans for commencing

minimum distributions at age 70-1/2. The proposal requires Treasury to issue regulations providing relief from the minimum distribution rules for governmental plans as long as the plan complies with a reasonable good faith interpretation of the statute. It is intended that the regulations apply retroactively. The proposal has no revenue effect.

Section 824. Allow direct rollovers from retirement plans to Roth IRAs. Individuals with AGI less than $100,000 may roll over money from a traditional IRA to a Roth IRA. The money is subject to tax, but it is exempt from the 10% early withdrawal tax. Taxpayers who want to do such a rollover from a qualified plan, 403(b) annuity, or 457 plan must first roll the money to a traditional IRA, and then do a second rollover to the Roth IRA. The proposal allows such direct rollovers effective for distributions after 2007. The proposal has negligible revenue effect.

Section 825. Eligibility for participation in retirement plans. Certain individuals who received a prior distribution from a plan may not participate in an eligible deferred compensation plan under section 457. The proposal eliminates the prohibition on an individual participating in an eligible deferred compensation plan merely because of a distribution from the plan before SBJPA of 1996 was effective. The estimated cost is $5 million over 5 years and $14 million over 10 years.

Section 826. Modification of rules governing hardships and unforeseen financial emergencies. The current regulations on hardship distribution address hardship of the participant, spouse, or dependent. The proposal requires Treasury to issue regulations within 180 days after enactment to expand "hardship" to include hardship of a beneficiary under the plan (even if it is not a spouse or dependent). The proposal has a gain of under $500,000. The estimated revenue gain is less than $500,000 over both 5 and 10 years.

Section 827. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days. The Code section 72(t) 10% premature distribution tax applies to distributions from plans and IRAs before age 59-1/2, subject to specified exceptions. The proposal creates a new exception from the premature distribution tax for distributions to a reservist (called up between September 11, 2001 and before December 31, 2007 for more than 179 days). The proposal applies to distributions after September 11, 2001, and allows for the money to be paid back in within the later of two years after the end of active service or enactment of the proposal. The estimated cost is $5 million over 5 years and $5 million over 10 years.

Section 828. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees. Generally, there is a 10% premature distribution tax for distributions before age 59-1/2. There are several exceptions, including distributions on separation after age 55. The proposal allows public safety officers to avoid the early distribution penalty for distributions based on separation from service if the officer is at least 50 (rather than 55) effective on the date of enactment. The proposal is effective for distributions after enactment. The estimated cost is $23 million over 5 years and $58 million over 10 years.

Section 829. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions. Generally, participants and surviving spouses may roll over amounts from qualified plans, 403(b) annuities, and IRAs to another plan or IRA. Nonspouse beneficiaries may not roll over inherited amounts. The proposal allows nonspouse beneficiaries to roll over to an IRA or other plan

structured for that purpose amounts inherited as a designated beneficiary. Thus, if the nonspouse beneficiary is required by the plan to take an immediate distribution, the nonspouse beneficiary can delay immediate taxation through the rollover. The rules governing minimum distributions at age 70-1/2 for non-spouse beneficiaries are unchanged. The proposal is effective for distributions after 2006. The estimated cost is $157 million over 5 years and $291 million over 10 years.

Section 830. Direct payment of refunds to individual retirement plans. The proposal requires the IRS to make available a form for a taxpayer to file with the IRS directing the IRS to send the refund directly to the taxpayer's IRA. The proposal requires IRS to provide the form for taxable years beginning after 2006. The proposal has no revenue effect.

Section 831. Allowance of additional IRA payments in certain bankruptcy cases. Individuals 50 and older may make catch-up IRA contributions. Contributions for a year must be made by April 15th of the following year. The proposal allows individuals who worked for a bankrupt employer whose officers were indicted and whose employer had a least a 50% match in the form of employer stock in its 401(k) plan to make an additional IRA catch-up contribution (three times the otherwise applicable catch-up amount). The contributions can be made for each of 2007, 2008, and 2009. the estimated cost is $26 million over 5 years and $36 million over 10 years.

Section 832. Determination of average compensation for 415 limits. IRS has issued guidance that would allow only compensation earned while an individual is a participant in the plan to be counted towards the defined benefit plan benefit limits. The proposal provides that the relevant test is compensation while working for the employer, not only when a participant. The proposal is effective for plan years after 2005. The estimated cost is $19 million over 5 years and $40 million over 10 years.

Section 833. Inflation indexing of gross income limitations on certain retirement savings incentives. The proposal provides for indexing the adjusted gross income levels for the Saver's Credit and IRAs for taxable years after 2006. The estimated cost of the IRA indexing is $504 million over 5 years and $2.212 over 10 years; the estimated cost of the Saver's Credit indexing is included in section 812.

Section 841. Use of excess pension assets for future retiree health benefits and collectively bargained retiree health benefits. Generally, pension assets must be kept in the pension trust to pay retirement benefits for participants and beneficiaries. Internal Revenue Code Section 420 provides an exception ("420 transfers") that allows "excess assets" to be transferred from an ongoing defined benefit plan to a 401(h) health account (within the defined benefit plan) to be used for retiree health costs for retirees covered by the plan. Excess assets are equal to 125% of the plan's current liability minus the lesser of the market or actuarial value of assets. The transfer is limited to the lesser of excess assets or the cost of retiree health benefits for the year. The proposal allows a pension plan with assets in excess of 120% of the plan's current liability (or funding target) to transfer two or more years of estimated retiree medical costs to a health account under the plan. The maximum amount that can be transferred is the lesser of ten years of estimated retiree medical costs or assets in excess of 120% of current liability. For all years for which a transfer has been made, the employer must make contributions sufficient to maintain the plan's 120% funding level (or transfer assets back from the health to the pension account. There is also a cost maintenance requirement that

applies throughout the transfer period and four years thereafter. For employers meeting certain criteria, the cost maintenance requirement for multiyear transfers made pursuant to a collective bargaining agreement may be modified through the collective bargaining agreement. The proposal is effective for transfers made in taxable years beginning after 2006. The estimated cost is $96 million over 5 years and the estimated gain is $24 million over 10 years.

Section 842. Transfer of excess assets to multiemployer health plan. Single-employer pension plans may transfer excess assets from a pension plan to a related health plan under section 420 of the Code. The proposal expands the right to transfer excess assets to a health plan under section 420 of the Code to multiemployer pension plans. The proposal has negligible revenue effect.

Section 843. Allowance of reserve for medical benefits of plan sponsored by bona fide associations. The proposal allows a plan maintained by a bona fide association to accumulate reserves of up to 35% of annual costs for medical benefits (other than post-retirement medical benefits) under 419A. The proposal is effective for taxable years ending after 12/31/2005. The estimated cost is $173 million over 5 years and $460 million over 10 years.

Section 844. Treatment of annuity and life insurance contracts with a long-term care insurance feature. Under current law, annuity contracts may not have a long-term care (LTC) rider. Life insurance contracts may have a LTC rider but LTC benefits cannot reduce the cash value of the LTC riders. Code section 1035 tax-free transfers are not available between contracts without riders and those with riders. The proposal permits LTC riders on annuity contracts and provides special tax treatment for the LTC component of a life insurance or annuity contract including allowing the cash value of such contracts to pay the LTC benefit, making LTC payments to a reduction in basis, allowing tax-free section 1035 transfers between annuity contracts even if one has a LTC rider (with similar rules for life insurance contracts), and providing special rules treating the LTC rider as a separate contract for certain purposes under Code section 7702. The proposal also sets forth new reporting requirements. The proposal is generally effective for contracts issued after 1996 but only with respect to taxable years beginning after 2009. It is effective for exchanges after 2009. The estimated cost is $289 million over 5 years and $6.348 billion over 5 years.

Section 845. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers. Pretax contributions for health insurance are only permitted out of wages. The proposal allows public safety officers to elect to defer some of their retirement income to pay for health or long-term care benefits on a pretax basis. The limit is $3,000 per year. The proposal is effective for distributions in taxable years after 2006. The estimated cost is $1.429 billion over 5 years and $3.419 billion over 5 years.

Section 851. Cost-of-living adjustments for Tax Court judicial survivor annuities. Currently, annuities paid to survivors of Federal employees, other than survivors of Tax Court judges, are adjusted based upon the cost-of-living. Annuities paid to survivors of Tax Court judges are subject to a method of indexing. The proposal requires annuities paid to survivors of Tax Court judges to be adjusted based upon the cost-of-living increases in benefits paid under the Civil Service Retirement System (CSRS). The proposal is effective for increases in CSRS benefits taking effect after enactment. The provision has negligible revenue effect. The Tax Court Modernization provisions

(section 851 – 860) have an estimated cost of less than $500 million over 5 years and a cost of $1 billion over 10 years.

Section 852. Cost of life insurance coverage for Tax Court judges age 65 or over. The proposal authorizes the Tax Court to pay on behalf of Tax Court judges age 65 or over any increase in employee premiums under the Federal Employee Group Life Insurance (FEGLI) program that occurs after enactment. The provision has negligible revenue effect.

Section 853. Participation of Tax Court judges in the Thrift Savings Plan. Tax Court judges are not eligible to participate in the Thrift Savings Plan. The proposal allows Tax Court judges to participate in Thrift Savings Plan. The proposal is effective on enactment. The provision has negligible revenue effect.

Section 854. Annuities to surviving spouses and dependent children of Special Trial Judges of the Tax Court. The proposal allows special trial judges of the Tax Court to elect to participate in the survival annuity plan for Tax Court judges. The proposal is effective on enactment. The provision has negligible revenue effect.

Section 855. Jurisdiction of Tax Court over collection due process cases. Currently, if a taxpayer's underlying tax liability does not relate to income taxes or a type of tax over which the Tax Court normally has deficiency jurisdiction, there is no opportunity for Tax Court review and the taxpayer must file in a District Court to obtain review. The proposal modifies the jurisdiction of the Tax Court by providing that all appeals of collection due process are to be made in the Tax Court. The proposal applies to determinations 60 or more days after enactment. The provision has negligible revenue effect.

Section 856. Provisions for recall. The proposal provides rules under which a retired special trial judge may be recalled by the Chief Judge to perform services for up to 90 days a year. The proposal is effective on the date of enactment. The proposal has negligible revenue effect.

Section 857. Authority for special trial judges to hear and decide certain employment status cases. The proposal clarifies that the Tax Court may authorize its special trial judges to enter decisions in employment status cases that are subject to small case proceedings under section 7436(c). The proposal applies to any decisions that have not become final prior to enactment. The proposal has negligible revenue effect.

Section 858. Confirmation of authority of Tax Court to apply doctrine of equitable recoupment. The common-law principle of equitable recoupment permits a party to assert an otherwise time-barred claim to reduce or defeat an opponent's claim if both claims arise from the same transaction. This proposal confirms statutorily that the Tax Court may apply equitable recoupment principles to the same extent as District Courts and the Court of Federal Claims. The proposal applies to any decisions that have not become final prior to enactment. The proposal has negligible revenue effect.

Section 859. Tax Court filing fee in all cases commenced by filing petition. This provision clarifies, in keeping with current Tax Court procedure, that the Tax Court is authorized to impose a

$60 filing fee for all cases commenced by petition. The proposal eliminates the need to amend section 7451 each time the Tax Court is granted new jurisdiction. The proposal is effective on enactment. The proposal has negligible revenue effect.

Section 860. Expanded use of Tax Court practice fee for pro se taxpayers. The Tax Court is authorized to charge practitioners a fee of up to $30 per year and to use these fees to pursue disciplinary matters. The proposal expands the use of these fees to provide services to *pro se* taxpayers that will assist such taxpayers in controversies before the Court. For example, fees could be used for programs to educate *pro se* taxpayers on the procedural requirements for contesting a tax deficiency before the Court. The proposal is effective on enactment. The proposal has no revenue effect.

Section 861. Extension to all governmental plans of current moratorium on application of certain nondiscrimination rules applicable to State and local plans. There is a moratorium on IRS disqualifying a government plan because of violation of the nondiscrimination rules. The proposal extends the moratorium on treating a government plan as nondiscriminatory under the Code to other government plans such as federal plans. The proposal is effective for any year after enactment. The estimated cost is less than $500 million over 5 years and is $1 billion over 10 years.

Section 862. Elimination of aggregate limit for usage of excess funds from black lung disability trust fund. Coal employers make deductible contributions to tax-exempt black lung trusts. The trusts are used, among other things, to pay accident and health benefits (or premiums related to accident and health benefits). There is a yearly and aggregate cap on the amount of the trust that can be used for this purpose. The proposal eliminates the aggregate limit on transfers allowing companies to transfer more for accident and health benefits. The proposal is effective for taxable years after 2006. The estimated gain is $55 million over 5 years and $59 million over 10 years.

Section 863. Treatment of death benefits from corporate-owned life insurance (COLI). Payments of life insurance after the covered party's death are generally not taxable to the recipient. The proposal requires businesses to treat proceeds from COLI as income unless the insured was an employee within 12 months of death, proceeds are paid to the insured's beneficiary used to buy back any equity interest owned by the insured at the time of death; or the insured was a "highly compensated employee". Highly compensated employees are more than 5% owners, directors and anyone else in the top 35% of employees ranked by pay. The COLI provision also includes notice and consent requirements, and reporting requirements. The proposal is generally effective for contracts issued after enactment. The proposal has negligible revenue effect.

Section 864. Treatment of test room supervisors and proctors who assist in the administration of college entrance and placement exams. The proposal treats test room proctors as independent contractors for service performed and remuneration paid after 2006. The proposal has an estimated cost of $23 million over 5 years and $45 million over 10 years.

Section 865. Grandfather rule for church plans which self-annuitize. The proposal provides that a church plan which self-annuitizes distributions does not fail the minimum distribution requirements as long as the plan satisfies the rules applicable to section 403(b) plans. The proposal is effective for plan years ending after April 17, 2002. The proposal has negligible revenue effect.

Section 866. Exemption for income from leveraged real estate held by church plans. Under current law, qualified retirement plans are generally exempt from unrelated business income tax (UBIT) for leveraged investment in real estate. The proposal extends the exemption to church annuity plans effective for taxable years after enactment. The estimated cost is $2 million over 5 years and $5 million over 10 years.

Section 867. Church Plan Rule. The Code limits the maximum benefit that participants can receive from defined benefit plans to highest-three year average compensation. The proposal eliminates this limit for non-highly compensated employees covered by church plans. The proposal is effective for plan years beginning after 2006. The proposal has negligible revenue effect.

Title IX. Increase in Pension Plan Diversification and Participation and Other Pension Provisions.

Section 901. Defined contribution plans required to provide employees with freedom to invest their plan assets. Some plans allow participants to invest in employer stock, or receive employer contributions in the form of employer stock. Under current law, plans may restrict the ability of the participant to sell the stock. The proposal requires the plan to allow the participant to diversify immediately any employee contributions or elective contributions invested in employer securities. With respect to employer contributions, plans must allow participants to diversify out of employer stock at any time after the employee has been in the plan for three years. The diversification requirement applies to plans with publicly-traded employer securities. There is an exception for ESOPs that do not have elective, employee or matching contributions. Existing plans may phase the diversification in over three years. The proposal generally is effective for plan years beginning after 2006 (with a collective bargaining delay to as late as after 2008). The proposal has negligible revenue effect.

Section 902. Increasing participation through automatic contribution arrangements. Current law allows automatic enrollment (where the employer withholds contributions out of the participant's pay unless the participant opts out of the program), but employers have been discouraged from implementing automatic enrollment because of state garnishment laws and a concern about fiduciary liability. The proposal addresses the concerns and provides incentives for automatic enrollment. The proposal provides an ERISA exemption from state payroll withholding laws, fiduciary relief for investment of participant account balances in certain default investments, and 90 days from the initial payroll reduction for participants to opt out and receive penalty-free return of automatic elective contributions. Eligible automatic contribution arrangements would have 180 days after the end of the year to make corrective distributions instead of the current law 2 ½ months.

A special matching safe harbor for nondiscrimination testing will be available to qualified automatic contribution arrangements. To have a qualified automatic contribution arrangement:

- Any participant who has not made a written election in the past to participate or not to participate must be automatically enrolled in the arrangement. The required entry-level contribution is 3%, increasing in annual 1% increments to 6% of pay. Plans may provide for

automatic increases in contributions up to 10% of pay. The plan must provide notice of the ability to opt out (of contributions or automatic increases).

- The employer must match 100% of the first 1% of pay contributed by the participant, plus 50% of the next five percent of pay, for a maximum match of 3-1/2% of compensation to each employee. (The alternative of non-elective contributions of 3% of pay for all eligible employees would also be available.)

- The employer non-elective and matching contributions safe harbor contributions must be 100% vested after two years of service.

The proposal is generally effective for plan years beginning after 2007. The estimated cost is $1.578 billion over 5 years and $5.586 billion over 10 years.

Section 903. Treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements. A 401(k) arrangement may not be combined with a defined benefit plan. They must be structured as two separate plans, and the defined benefit accrual may not be conditioned on elective contributions to the 401(k) arrangement. The proposal allows a small employer (500 employees or fewer) to establish a combined defined benefit–401(k) plan. The plan is governed by one document and there is specific accounting for the defined benefit and defined contribution portions of the trust. In general, the defined benefit rules apply to the defined benefit portion of the plan and the defined contribution rules apply to the defined contribution portions of the plan. The defined benefit component has to satisfy minimum accrual requirements. If the defined benefit component is a cash balance plan, the accrual must be in the form of minimum pay credits. The 401(k) component must have automatic enrollment and must meet minimum matching contribution requirements. The proposal is effective for plan years beginning after 2009. No revenue estimate .

Section 904. Faster vesting of employer nonelective contributions. Plans generally must vest participant's benefits no later than 100% after five years or 20% a year starting with year three. There is accelerated vesting in defined contribution plans but only for matching employer contributions. They must be vested 100% after three years or 20% a year starting with year two. (Employee contributions are always 100% vested.) The proposal applies the accelerated three-year cliff or two-to-six year phased vesting to all employer contributions in a defined contribution plan (non-elective employer contributions as well as matching contributions). The proposal is effective for plan years beginning after 2006 with a delay for ongoing collective bargained plans to as late as after 2008. There is a special exception for S Corp ESOPs that delays the effective date until ESOP loans are repaid. The estimated cost is $31 million over 5 years and $71 million over 10 years.

Section 905. Distributions during working retirement. Defined benefit plans are prohibited from allowing in-service distributions prior to normal retirement age. The proposal allows in-service distributions once the participant is age 62. The proposal is effective for distributions in plan years beginning after 2006. The estimated gain is $91 million over 5 years and $255 million over 10 years.

Section 906. Treatment of certain pension plans of Indian tribal governments. The pension law includes exceptions for plans of state and local governments. For this purpose, plans of Indian tribal

governments are not included. The proposal would treat the defined benefit and defined contribution plans of Indian tribal governments as governmental plans for plans covering workers doing governmental functions. The proposal has negligible revenue effect.

Title X. Provisions Relating to Spousal Pension Protection

Section 1001. Regulations on time and order of issuance of domestic relations orders. The proposal requires the Department of Labor to issue regulations within one year of enactment providing that a domestic relations order shall not be treated as not being a QDRO merely because it is issued after, or revises, another order, or because of the time it is issued. The proposal has negligible revenue effect.

Section 1002. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee. The proposal provides for entitlement of a divorced spouse to railroad retirement annuities independent of the actual entitlement of the employee. The proposal is effective one year after enactment. The proposal has negligible revenue effect.

Section 1003. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorces agreements. The proposal provides that the surviving spouse's annuity under tier II railroad retirement benefits, which he or she is receiving pursuant to a divorce decree, shall not be terminated because of the death of the participant (unless the divorce order so provides). The proposal is effective one year after enactment. The estimated cost is $2 million over 5 years and $12 million over 10 years.

Section 1004. Requirement for additional survivor annuity options. Many pension plans are required to provide benefits in the form of a qualified joint and survivor annuity. The monthly survivor benefit must be at least 50% of the joint benefit. The proposal requires plans that are required to offer the qualified joint and survivor annuity to offer as an option a joint and survivor benefit that provides at least a 75% survivor benefit. The proposal is effective for plan years beginning after 2007, with a delay for collectively bargained plans until as late as after 2008. The proposal has negligible revenue effect.

Title XI. Administrative Provisions

Section 1101. Employee plans compliance resolution system. The proposal gives IRS authority to design and modify, and waive income or excise taxes, with respect to the Employee Plans Compliance Resolution System (EPCRS) or any successor program. The proposal has negligible revenue effect.

Section 1102. Notice and consent period regarding distributions. Generally, an election of a form other than a joint and survivor annuity must be made no earlier than 90 days before the benefit's annuity starting date. The proposal changes the consent period for joint and survivor notices and consents from "no earlier than 90 days" to "no earlier than 180 days" before the benefit's annuity starting date. The proposal is generally effective for plan years beginning after 2006. The proposal has negligible revenue effect.

Section 1103. Reporting Simplification. Plans must annually file a Form 5500 providing Labor, IRS and PBGC with plan information. One-person plans may file a Form 5500-EZ, which is a one-page form, and if plan assets are under a specified amount (set by IRS guidance as not more than $100,000) they do not have to file any form. In addition, there is reduced reporting for plans with no more than 100 participants. The proposal requires Treasury to eliminate annual reporting requirement (Form 5500) for one person plans with less than $250,000 in assets. It requires Labor and Treasury to provide simplified reporting for plans with fewer than 25 participants. The proposal is generally effective for plan years beginning after 2006. The proposal has no revenue effect.

Section 1104. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities. Some educational agencies provide voluntary early retirement incentive plans and employment retention plans that are taxable to the employee because of the way the benefit is paid. These payments would not be immediately taxable if paid under a 457 plan or a defined benefit plan. They also would benefit from the exemption from the ADEA. Severance plans can be either welfare or pension benefits under ERISA depending on their composition. Welfare plans are subject mainly to reporting requirements. The proposal provides that certain voluntary early retirement incentive plans and employment retention plans of educational agencies shall be exempt from immediate taxation as if they were in qualified defined benefit plans but shall be treated as severance plans subject to ERISA's welfare plan rules. The proposal is effective on enactment, with no inference for prior actions. The estimated cost is $29 million over 5 years and $87 million over 10 years.

Section 1105. No reduction in unemployment compensation as a result of pension rollovers. The proposal prohibits states from reducing unemployment compensation for pension distributions that were rolled over and thus are not taxable. The proposal is effective on enactment. The estimated cost is $100 million over 5 years and $107 million over 10 years.

Section 1106. Provisions relating to plan amendments. The proposal provides plans with protection from the anti-cutback rules for amendments to comply with the proposal and related regulations if the amendment is made before the end of the first plan years beginning on or after January 1, 2009. The estimates are included in the proposals to which the change relates.

Revised multiemployer elections. Certain plans that were treated as single employer plans before the Multiemployer Pension Plan Amendments Act of 1980 were allowed to elect to remain single-employer plans even though they met the new definition of multiemployer plans in the 1980 Act. The proposal would allow these plans a one-time election to treat themselves as multiemployer plans in the future under certain circumstances. The proposal is effective on enactment. No revenue estimate is available.

Tax Court Modernization Proposals in the Pension Bill

Cost-of-living adjustments for Tax Court judicial survivor annuities. Currently, annuities paid to survivors of Federal employees, other than survivors of Tax Court judges, are adjusted based upon the cost-of-living. Annuities paid to survivors of Tax Court judges are subject to a method of indexing. This proposal will require annuities paid to survivors of Tax Court judges to be adjusted based upon the cost-of-living increases in benefits paid under the Civil Service Retirement System. This proposal applies with respect to increases in Civil Service Retirement benefits taking effect after the date of enactment. The proposal has negligible revenue effect.

Cost of life insurance coverage for Tax Court judges age 65 or over. This proposal authorizes the Tax Court to pay on behalf of Tax Court judges age 65 or over, any increase in employee premiums under the Federal Employee Group Life Insurance (FEGLI) program that occur after the date of enactment. The proposal has negligible revenue effect.

Participation of Tax Court judges in the Thrift Savings Plan. Tax Court judges are currently not eligible to participate in the Thrift Savings Plan. The proposal would permit Tax Court judges to participate in Thrift Savings Plan. The proposal is effective on the date of enactment. The proposal has negligible revenue effect.

Annuities to surviving spouses and dependent children of Special Trial Judges of the Tax Court. The proposal would allow special trial judges of the Tax Court to elect to participate in the survivors' annuity plan for Tax Court judges. The proposal is effective on the date of enactment. The proposal has negligible revenue effect.

Jurisdiction of Tax Court over collection due process cases. Currently, if a taxpayer's underlying tax liability does not relate to income taxes or a type of tax over which the Tax Court normally has deficiency jurisdiction, there is no opportunity for Tax Court review and the taxpayer must file in a District Court to obtain review. This proposal modifies the jurisdiction of the Tax Court by providing that all appeals of collection due process determinations are to be made to the United States Tax Court. The proposal applies to determinations made after the date which is 60 days after the date of enactment. The proposal has negligible revenue effect.

Authority for special trial judges to hear and decide certain employment status cases. This proposal clarifies that the Tax Court may authorize its special trial judges to enter decisions in employment status cases that are subject to small case proceedings under section 7436(c). The proposal is effective for any action or proceeding in the Tax Court with respect to which a decision has not become final as of the date of enactment. The proposal has negligible revenue effect.

Confirmation of authority of Tax Court to apply doctrine of equitable recoupment. The common-law principle of equitable recoupment permits a party to assert an otherwise time-barred claim to reduce or defeat an opponent's claim if both claims arise from the

same transaction. This proposal confirms statutorily that the Tax Court may apply equitable recoupment principles to the same extent as District Courts and the Court of Federal Claims. The proposal is effective for any action or proceeding in the Tax Court with respect to which a decision has not become final as of the date of enactment. The proposal has negligible revenue effect.

Tax Court filing fee in all cases commenced by filing petition. This proposal clarifies, in keeping with current Tax Court procedure, that the Tax Court is authorized to impose a $60 filing fee for all cases commenced by petition. The proposal would eliminate the need to amend section 7451 each time the Tax Court is granted new jurisdiction. The proposal is effective on the date of enactment. The proposal has negligible revenue effect.

Expanded use of Tax Court practice fee for pro se taxpayers. The Tax Court is authorized to charge practitioners a fee of up to $30 per year and to use these fees to pursue disciplinary matters. The proposal expands the use of these fees to provide services to *pro se* taxpayers that will assist such taxpayers in controversies before the Tax Court. For example, fees could be used for programs to educate *pro se* taxpayers on the procedural requirements for contesting a tax deficiency before the Tax Court. The proposal is effective on the date of enactment. The proposal has no revenue effect.

Proposals for recall. The proposal provides rules under which a retired special trial judge may be recalled by the Chief Judge to perform services for up to 90 days a year. The proposal is effective on the date of enactment. The proposal has negligible revenue effect.

1. Suspension of duties on liquid crystal device (LCD) panel assemblies for use in LCD direct view televisions

Present Law

Present law provides for a 4.5 percent ad valorem customs duty on imported liquid crystal device (LCD) panel assemblies for use in LCD direct view televisions from all sources (provided for in subheading 9013.80.90 of the Harmonized Tariff Schedule of the United States).

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The provision suspends the present customs duty applicable to LCD panel assemblies for use in LCD direct view televisions through December 31, 2009.

Effective date.–The provision applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment.

2. Suspension of duties on ceiling fans

Present Law

Present law provides for a 4.7-percent ad valorem customs duty on imported ceiling fans from all sources (provided for in subheading 8414.51.00 of the Harmonized Tariff Schedule of the United States), but that duty is currently suspended for all imports until December 31, 2006.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The provision extends the current suspension of the customs duty applicable to ceiling fans through December 31, 2009.

Effective date.–The provision applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment.

3. Suspension of duties on nuclear steam generators, reactor vessel heads and pressurizers

Present Law

Nuclear steam generators, as classified under heading 9902.84.02 of the Harmonized Tariff Schedule of the United States, enter the United States duty free until December 31, 2008. After December 31, 2008, the duty on nuclear steam generators returns to the column 1 rate of 5.2 percent under subheading 8402.11.00 of the Harmonized Tariff Schedule of the United States.

Nuclear reactor vessel heads and pressurizers, as classified under heading 9902.84.03 of the Harmonized Tariff Schedule of the United States, enter the United States duty free until December 31, 2008. After December 31, 2008, the duty on nuclear reactor vessel heads and pressurizers returns to the column 1 rate of 3.3 percent under subheading 8401.40.00 of the Harmonized Tariff Schedule of the United States.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

With respect to imported nuclear steam generators, reactor vessel heads, and pressurizers, that are purchased pursuant to a contract entered into on or before July 31, 2006, the provision extends the present-law suspension of applicable customs duty through December 31, 2010.

Effective date.–The provision is effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment.

4. Suspension of new shipper bonding privilege

Present Law

Once an antidumping or countervailing duty order is in place, importers of subject merchandise are required to post cash deposits to cover the estimated duties. An exception is made for importers of subject merchandise from new shippers (foreign producers or exporters) who were not selling to the United States at the time of the original investigation and who have requested a review of their shipments to determine individual dumping margins or countervailing duty rates. During the pendency of such a review, an importer of subject merchandise from a new shipper may choose to post a bond or security in lieu of a cash deposit of estimated duties.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The provision temporarily suspends the ability of importers of subject merchandise from new shippers to choose to post a bond or security in lieu of a cash deposit of estimated duties during the period beginning on April 1, 2006, through June 30, 2009.

The provision requires the Secretary of the Treasury, in consultation with the Secretary of Commerce and the Secretary of Homeland Security, to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report describing: (1) any major problem encountered in the collection of duties, including any fraudulent activity intended to avoid the payment of duties; (2) an estimate of duties that were uncollected and a description of why the duties were uncollected; and (3) recommendations on any additional action needed to address problems related to the collection of duties.

In addition, the provision requires the Secretary of the Treasury, in consultation with the Secretary of Commerce, the United States Trade Representative, and the Secretary of Homeland Security, to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing: (1) recommendations on whether the temporary suspension of the new shipper bonding privilege should be extended beyond June 30, 2009; (2) an assessment of the effectiveness of any administrative measure taken to address problems encountered in the collection of duties from importers of subject merchandise from new shippers; and (3) an assessment of any burden imposed on legitimate trade and commerce by the temporary suspension of the new shipper bonding privilege.

Effective date.–The provision is effective on the date of enactment, and it applies to imports from new shippers during the period beginning on April 1, 2006, through June 30, 2009.

5. Wool Trust Fund and Wool Fabric Duty Suspension

Present Law

Present law enacted in the Trade Act of 2002 and extended in the Miscellaneous Trade Bill of 2004 provides for temporary duty reductions or duty suspensions of certain fabrics made from worsted wool and for payments made under the wool trust fund. The fund consists of three special refund pools for importers of wool fabric, wool yarn, and wool fiber and top, and identifies all persons eligible for the refunds including U.S. manufacturers of these products. The program expires in 2007.

House Bill

No provision.

Senate Bill

No provision.

Conference Agreement

The provision extends the current program for an additional two years until 2009.

Effective date.–The provision is effective on the date of enactment.

6. Miscellaneous Trade and Technical Corrections Provisions

Present Law

Under present law, imports of the goods described in Title I of Division B of the bill enter under the specified Harmonized Tariff Schedule subheading with the associated tariff rate.

House Bill

No provision.

Senate Bill

No provision.

Conference Agreement

The conference agreement includes certain provisions taken from the House-passed H.R. 4944, the Miscellaneous Trade and Technical Corrections Act of 2006, for which there are Senate companions introduced, which suspend or reduce the tariff rate on certain selected products. The provisions also correct government errors or authorize reliquidations of duties related to certain products.

Effective date.–The effective date is the 15th day after the date of enactment.

7. Vessel Repair Duties

Present law

Under present law, section 466(h) of the Tariff Act of 1930 (19 U.S.C. 1466(h)), the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, is excluded from a 50 percent ad valorem duty.

House Bill

No provision.

Senate Bill

No provision.

Conference Agreement

This provision clarifies that the 50 percent ad valorem duty on vessel repairs excludes the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor.

Effective date.–The provision is effective on the date of enactment, and it applies to vessel equipment, repair parts, and materials installed on or after April 25, 2001.

8. CAFTA-DR provisions related to agreement implementation

Present Law

Present law enacted in the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) Implementation Act allows the President to exercise proclamation authority to implement provisions of the Agreement including tariffs and rules of origin changes, except for rules of origin changes for certain textile and apparel items. Also, current law was drafted under the assumption at the time of enactment of this legislation that the entry into force for all CAFTA-DR countries would be identical including for the purpose of determining the rule of origin covering co-produced products.

House Bill

No provision.

Senate Bill

No provision.

Conference Agreement

The provision extends narrow proclamation authority to the President to implement specific proposed changes to the rules of origin for certain apparel items and certain trade preference level administrative changes as embodied in letters of understanding between the United States and several of the CAFTA-DR countries. For those countries that have not implemented the Agreement and have not negotiated letters of understanding with the United States for rules of origin changes, the provision grants limited proclamation authority to the President to proclaim changes yet to be agreed upon related to rules of origin for articles containing pocketing material, but the President's authority is subject to consultation and layover requirements and Congressional disapproval action. These limitations are considered appropriate given the extraordinary nature of granting open-ended proclamation authority to a President in this sensitive product area.

In addition, the provision includes a technical change in section ___ that clarifies that retroactive application for certain liquidations and reliquidations under current law applies to entries that were made on or after January 1, 2004, and before the date of entry into force of the Agreement with respect to that country "or any other CAFTA-DR country." This provision clarifies current law to cover under the Agreement products that are co-produced in several CAFTA countries but for which the Agreement did not enter into force on a single date for each of those countries.

Effective date.–The effective date is the date of enactment, and the apparel proclamation authority extends until December 31, 2007.

TITLE XIV – COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service ("IRS") and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the "Code") and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

Charity Provisions in Pension Bill (all incentives for two years)

1. IRA Rollover. IRA distributions tax-free for individuals over 70 1/2. Distributions may not exceed $100,000 per taxpayer per year. Distributions only for public charities – similar to limitations in Katrina. Filing requirements for split=interest trusts.

2. Food donation. Prior to the Hurricane Katrina relief legislation, only C-Corps could claim an enhanced deduction for donations of food. The enhanced deduction is equal to the lesser of the cost of producing the food item (or basis) plus ½ of the items appreciated value; or twice basis. Non C-Corps (S-Corps, Partnerships, and Sole Props) were limited to claiming a deduction equal to their basis in the food item. The Katrina legislation expanded the deduction for non C corps through December 31, 2005. The conference report extends the expanded enhanced deduction through December 31, 2007.

3. S Corporation. The amount of a shareholder's basis reduction in the stock of an S Corporation by reason of a charitable contribution made by the corporation will be equal to the shareholder's pro rata share of the adjusted basis of the contributed property.

4. Book inventory. Expands the enhanced deduction for book donations to include public schools. .

5. Modify payments to certain controlling exempt organizations (512(b)(13). : In general, rental payments received by a tax exempt organization are not subject to tax (unrelated business income tax) because it is a form of passive income. Other forms of income that are excluded from tax include dividends and interest. However, if rental payments are made to a tax exempt organization from a controlled subsidiary of the tax exempt organization those rental payments are subject to tax. This limitation is in place to prevent a tax exempt organization from "washing" otherwise taxable income producing activities through a for-profit sub and accepting the revenue from this activity as rent. For example, without the limit a charity could drop a for profit subsidiary to sell cars. If the charity sold cars that income would be subject to tax. But the sub could sell cars and pay the charity the proceeds in the form of rental payments which are exempt from taxation. The Conference report contains a proposal that would exempt these rental payments from tax, so long as the rental payments reflected the fair market value and an existing arrangement is already in place. Rental payments that exceed fair market value would be subject to a penalty tax of 20% (on top of the normal tax due). The fair market value rule prevents "washing" abuse by requiring that the rental payments reflect fair market value - thus preventing the disguising of unrelated business income as rent. Penalties and reporting requirements.

6.. Land/Conservation. The Conference report includes a proposal to allow ranchers and farmers to write off 100% of their AGI over a 15 year period for donations of qualified conservation easements to qualified conservation organizations and state and local governments. In addition, the proposal allows all taxpayers to claim up to 50% of their

AGI over 15 years for such donations. Currently, taxpayers are limited to writing off 30% of their AGI for donations of conservation easements. The proposal is effective from December 31, 2005 through December 31, 2007. Requirement that land available for agriculture purposes.

7. Excise tax for blood collector organizations. The provision exempts qualified blood collector organizations from certain retail and manufacturers excise taxes (fuel, telecommunication, heavy truck, tires, vaccines, etc.) to the extent such items are for the exclusive use of such an organization for the distribution or collection of blood.

8. Life insurance contracts/Public Charities. Require charities to report to the IRS if they enter into certain insurance contracts that have raised tax policy concerns. Require Treasury report on these insurance contracts on their appropriateness and whether consistent with tax-exempt status.

9. Increase the amount of penalty excise taxes relating to public charities, social welfare organizations and private foundations. Doubling current penalties for self-dealing, excess benefit transactions and other similar penalties.

10. Façade easement reform. Easement must be for entire structure – not just façade. Must have qualified appraisal submitted and charity recipient must attest to certain best practices. Filing fee. Limitation on taxpayer being able to receive tax benefit for both rehabilitation credit as well as easement.

11. Taxidermy donations and exempt use reforms. The deduction for contributions of taxidermy property created by the taxpayer generally is limited to the taxpayer's direct cost of the taxidermy. Travel and other indirect costs are not deduction. In addition, for all contributions of tangible personal property intended for an exempt use, there is a recapture of the deduction if the property is not used for an exempt use.

12. Substantiation requirements and Clothing/Household goods donations. Conform substantiation requirements for cash donations to be same as donations of property (receipt, cancelled check, etc. required). Deduction allowed for charitable contribution of clothing or household items if clothing or household is in good used condition or better. Secretary has regulatory authority to deny deductions for items with minimal monetary value (example, used underwear and socks). Exception if item over $500 and not in good used condition, can get appraisal.

13. Fractional Donation reform. First, if donor makes an initial fractional contribution, must complete the donation earlier of 10 years or donor's death. Valuation rules based on time of initial gift. Rules for multiple donors with fractional interest in same gift. Requirement for charity to take possession during the time period above.

14. Penalties relation to appraiser and substantial and gross overstatements of valuations of property for both charity donations and gift and estate. Same as Senate good government bill.

15. Credit Counseling Organizations. To be exempt as a 501(c)(3) or a 501(c)(4) credit counseling organization, the organization must be primarily educational in nature, have a reasonable fee policy, waive fees for those unable to pay, have an independent board, and limit credit repair services and loans. Section 501(c)(3) organizations in addition may not have more than 50% of revenues attributable to debt management plan activity (phased in from 80% over four years). Section 501(c)(4) organizations must apply for exemption with the IRS.

16. Make UBIT return public for 501(c)(3) organizations. The unrelated business income tax return (Form 990-T) of section 501(c)(3) organizations is made publicly available, subject to redaction of sensitive information.

17. Treasury study of donor advised funds and supporting organizations. Treasury shall report within one year on a number of issues relating to donor advised funds and supporting organizations, including whether contributions to donor advised funds and supporting organizations are appropriate considering the use of the assets contributed, whether donor advised funds should be subject to a payout, whether the retention of advisory privileges should result in denial of deduction in some cases, and the extent to which issues such as these are raised in the context of other charitable organizations.

18. Donor Advised Funds. Donor advised funds are defined in the Code, with certain exceptions for scholarship funds advised by committee and endowment funds. Certain transactions between a donor advised fund and its donors (i.e., compensation, grants), donor advisors, and related parties are subject to excise taxes. Donor advised funds making distributions for noncharitable purposes are subject to tax. Donor advised fund managers and donors advising grants that result in distributions of more than incidental benefit to the donor are subject to tax. Donor advised funds are subject to excess business holdings rules (these rules only apply to securities – example, not land, etc.). Donors, donor advisors, and related persons are made disqualified persons with respect to their donor advised funds (but not to the sponsoring charity) -- so all transactions must be at fair value. Investment advisors of donor advised funds are made disqualified persons with respect to the sponsoring charity (so all there transactions must be at fair value). Charities must report more detailed information about their donor advised funds to the IRS.

19. Supporting Organizations. Payments from a supporting organization to a substantial contributor are subject to excise tax. Loans by a supporting organization to insiders of the organization (disqualified persons) are subject to an excise tax. Treasury is directed to revise the current regulations that require a payout by Type III supporting organizations to provide for a payout that will result in a significant amount going to charity. The private foundation excess business holdings rules are applied to Type III supporting organizations (other than "functionally integrated" Type III supporting organizations, as currently defined in regulations), certain previous state attorney general directives are allowed, and allowance for secretary to waive with consideration of new state attorney general directives. Type III supporting organizations may not support a

foreign organization. Treasury must revise the standard for exemption of Type III supporting organizations that are charitable trusts within one year. Private foundations may, in general, make distributions without penalty to a supporting organization unless the supporting organization is a Type III supporting organization (other than a functionally integrated one), or a disqualified person of the foundation has control over the supporting organization (or its supported charities). New reporting requirements apply to supporting organizations.

20. Disclosure to state official of tax information related to section 501(c) organizations. Reform of Section 6103 to allow sharing of tax information to state officials.

21. Private foundation excise tax – loophole closer. Same as Senate reconciliation bill with modification to exclude from tax capital gains from the exchange of like property.

22. Definition of convention or association of churches. Same as Senate reconciliation bill.

23. Notification requirement for exempt entities not currently required to file (postcard notification). Same as Senate reconciliation bill.

I. Extender Tax Proposals

Tuition Deduction. The 2001 tax act created a new above-the-line tax deduction for qualified higher education expenses (defined in the same manner as the HOPE credit) paid during tax years 2002 through 2005. The maximum deduction under the credit in 2005 was $4,000 for taxpayers with AGI of $65,000 or less ($130,000 for married couples) or $2,000 for taxpayers with AGI of $80,000 or less ($160,000 for married couples). The proposal would extend the deduction through the end of 2007.

New Markets Tax Credit. The proposal extends the new markets tax credit for one year (through the end of 2008), permitting a $3.5 billion maximum annual amount of qualified equity investments. The proposal also requires that the Secretary prescribe regulations to ensure that non-metropolitan counties receive a proportional allocation of qualified entity investments.

State and Local General Sales Taxes. The American Jobs Creation Act provided that for tax years 2004 and 2005, a taxpayer may elect to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction permitted for State and local income taxes. Taxpayers were given two options for determining deductible sales tax: (i) actual sales tax paid if receipts are maintained for IRS verification or (ii) approximate sales tax paid as estimated in tables provided by the Secretary of the Treasury plus sales tax on certain additional items that may be added to the table amount. The proposal would extend the deduction through the end of 2007.

Extension of the Research Tax Credit. The proposal would extend the present-law research credit (which expired at the end of 2005) to qualified amounts paid or incurred during 2006 and 2007, but would also enhance the credit for amounts paid or incurred in 2007 by (i) increasing the rates of the alternative incremental credit and (ii) creating a new alternative simplified credit that does not use gross receipts as a factor.

Extension and Modification of the Work Opportunity Tax Credit (WOTC) and Welfare to Work (WTW). The proposal would extend WOTC and WTW in their current form for 2006 and combine the tax credits in 2007. Modifications of the combined credit would include expanded eligibility for WOTC (raised age ceiling for food stamp recipients from 25 to 40), revised eligibility requirements for ex-felons (without regard to family income), and extends the paperwork filing deadline from 21 days to 28 days.

Combat Pay Treated as Earned Income for Purposes of the Earned Income Tax Credit (EIC). Pursuant to the Working Families Tax Relief Act of 2004, combat pay may count as income for purposes of calculating the EITC. The provision expires in 2006. The proposal extends the provision through 2007.

Qualified Zone Academy Bonds (QZABs). The proposal extends the provision for two years and authorizes states to issue up to $400 million of QZABs for 2006 and 2007. The

proposal applies yield restriction and arbitrage rebate requirements in accordance with section 148. It imposes a requirement that the issuer reasonably expects to and actually spends the proceeds on QZAB property within five years of the date of issue. Finally, the proposal imposes reporting requirements.

Deduction for Certain Expenses of Elementary and Secondary School Teachers. In 2002, Congress began permitting elementary and secondary school teachers and certain other school professionals to deduct $250 (above-the-line) for expenses paid or incurred for books, supplies (other than non-athletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services), other equipment, and supplementary materials used by the educator in the classroom. This provision expired at the end of 2005, and the proposal would extend the deduction for an additional two years through 2007.

Brownfield Remediation Expensing. The provision that permits expensing of costs associated with cleaning up hazardous ("brownfield") sites expired on December 31, 2005. The proposal would extend the provision through the end of 2007. In addition, it provides that petroleum products may be treated as hazardous substances and permits the expensing of payments made or incurred to abate contamination related thereto during 2006 and 2007.

Tax Incentives for Investment in the District of Columbia. The proposal extends for two additional years four provisions intended to encourage redevelopment, capital investment, and homeownership in financially-distressed areas of D.C.: (1) designation of D.C. enterprise zone; employment tax credit; additional expensing; (2) tax-exempt D.C. empowerment zone bonds; (3) zero-percent capital gains rate for investment in D.C. property acquired by 12/31/03; for gains through 1/1/08; and (4) tax credit for first-time D.C. homebuyers.

Indian Employment Tax Credit. A business tax credit available for the employer of qualified employees that work and live on or near an Indian reservation expired at the end of 2005. The credit was for wages and health insurance costs paid to qualified employees (up to $20,000) in the current year over the amount paid in 1993. Wages for which the work opportunity tax credit is available are not qualified wages for the Indian employment tax credit. The proposal would extend the credit an additional two years through 2007.

Accelerated Depreciation for Business Property on Indian Reservations. A special depreciation recovery period applies to qualified Indian reservation property placed in service before January 1, 2006. In general, qualified Indian reservation property is property used predominantly in the active conduct of a trade or business within an Indian reservation, which is not used outside the reservation on a regular basis and was not acquired from a related person. The proposal would extend the provision an additional two years for property placed in service through 2007.

15 Year Depreciation. In the American Jobs Creation Act of 2004, Congress shortened the cost recovery of certain leasehold improvements and restaurant property from 39 to 15 years for the remainder of 2004 and 2005. The proposal would extend that provision through the end of 2007.

Rum Cover Over. A $13.50 per proof gallon excise tax is imposed on distilled spirits produced in or imported (or brought) into the United States. The excise tax does not apply to distilled spirits that are exported from the United States, including exports to U.S. possessions. The Code provides for cover over (payment) to Puerto Rico and the Virgin Islands of the excise tax imposed on rum imported (or brought) into the United States, without regard to the country of origin. The amount of the cover over is limited to $10.50 per proof gallon ($13.25 per proof gallon during the period July 1, 1999 through December 31, 2005). The proposal temporarily suspends the $10.50 per proof gallon limitation on the amount of excise taxes on rum covered over to Puerto Rico and the Virgin Islands. Under the proposal, the cover over amount of $13.25 per proof gallon is extended for rum brought into the United States after December 31, 2005 and before January 1, 2008.

Mental Health Parity. The proposal extends the Code, ERISA, and PHSA provisions relating to mental health parity to benefits for services furnished after the date of enactment and before January 1, 2008. Thus, the excise tax on failures to meet the requirements imposed by the Code, ERISA, and PHSA provisions does not apply after December 31, 2005, and before the date of enactment.

Enhanced Deduction for Corporate Contributions of Computer Equipment for Educational Purposes. The proposal would extend a provision that encourages businesses to contribute computer equipment software to elementary, secondary, and post-secondary schools by allowing an enhanced deduction for such contributions. This proposal would extend the computer deduction provisions through the end of 2007.

Availability of Medical Savings Accounts. Within limits, contributions to an Archer medical savings account ("Archer MSA") are deductible in determining adjusted gross income if made by an eligible individual and are excludable from gross income and wages for employment tax purposes if made by the employer of an eligible individual. Earnings on amounts in an Archer MSA are not currently taxable. Distributions from an Archer MSA for medical expenses are not includible in gross income. Distributions not used for medical expenses are includible in gross income. The proposal extends the availability of Archer MSAs through December 31, 2007.

Extend Suspension of 100 Percent-of-Net-Income Limitation on Percentage Depletion for Oil and Gas from Marginal Wells. The proposal extends the suspension provision that allows producers and royalty owners of domestic stripper wells producing 15 barrels or less per day of crude oil and natural gas and producers of heavy oil the percentage depletion method (similar to depreciation in buildings) not to be limited by the taxable income of that property. The proposal would extend the suspension through the end of 2007.

Economic Development Credit for American Samoa. The proposal provides a temporary, 2-year credit for possessions corporations operating in American Samoa. The credit is generally based on the amount of wages paid in American Samoa and depreciation deductions with respect to property located in American Samoa. Effective for the first two taxable years beginning after December 31, 2005 and before January 1, 2008.

Restructure New York Liberty Zone Incentives for Transportation Infrastructure. The proposal would repeal several Liberty Zone incentives including special "bonus" depreciation, accelerated leasehold improvement recovery and increased section 179 expensing. The proposal would provide a credit against tax imposed against New York State and City for the lesser of qualifying expenditures or the amount allocated to that governmental unit for the calendar year. The aggregate limit that may be allocated for all calendar years is $1.75 billion.

GO Zone Bonus Depreciation. The proposal extends the placed-in-service deadline for certain GO Zone property in specified portions of the Go Zone to qualify for bonus depreciation. The placed in service deadline is extended to December 31, 2009 for nonresidential real property or residential rental property. The placed in service deadline is extended for personal property if substantially all the use of such property is in such building and such personal property is placed in service within 90 days of the date the building is placed in service. The specified portions of the GO Zone to which the proposal applies are defined as those portions of the GO Zone which are in a county or parish which is identified as being a county or parish with damage to more than 40 percent of the housing units in the county or parish.

One-Year Extension of Authority for Undercover Operations. This proposal extends through 2007 IRS authority to use the income earned by an undercover operation to pay additional expenses incurred in the undercover operation. Surpluses are required to be deposited into the General Fund and the IRS must conduct a detailed financial audit of such undercover operations and provide an annual audit report to the Congress on all such undercover operations.

Disclosures to Facilitate Combined Employment Tax Reporting. Extends through 2007 IRS authority to disclose taxpayer identity information and signatures to States to allow for the filing of a federal employment tax form to be used by the appropriate state (thus eliminating the taxpayer's requirement to file a separate form with the state).

Disclosures Relating to Terrorist Activities. Extends through 2007 authority to disclose confidential tax information to certain Federal law enforcement agency and Federal intelligence agency officers and employees for purposes of investigating terrorist incidents, threats, or activities and for analyzing intelligence concerning such activities.

Disclosures Relating to Student Loans. Extends through 2007 authority to disclose certain taxpayer information (i.e., taxpayer name, mailing address, taxpayer identifying number, filing status and adjusted gross income) to the Department of Education needed by the Department to determine income contingent repayment of student loans.

II. Other Proposals

Domestic Production Activities Deduction Expanded to Puerto Rico. The proposal amends section 199 to provide that, for 2-years, U.S. companies operating in Puerto Rico are able to claim the manufacturing deduction with respect to income attributable to domestic production activities in Puerto Rico. Effective for the first two taxable years beginning after December 31, 2005 and before January 1, 2008.

Incentive Stock Option AMT Proposal. The proposal allows taxpayers an expanded use of an individuals minimum tax credit "AMT refundable credit amount" of 20 percent per year (for the next five years). The AMT refundable credit amount is for long-term unused minimum tax credit – credits held over three years. The credit phases out for taxpayers at the same adjusted gross income levels provided for phaseout of personal exemptions. The additional credit allowable by reason of this proposal is refundable.

Partial Expensing for Advanced Mine Safety Equipment. This amendment would provide increased expensing for certain expenditures related to safety equipment for underground mines located in the United States. This proposal will encourage mining companies to invest in safety equipment that goes above and beyond current safety equipment requirements. Fifty percent of the advanced mine safety equipment cost could be expensed in the year of purchase through December 31, 2008.

Mine Rescue Team Training Credit. This proposal provides for a general business credit for training program costs of each qualified mine rescue team employee (sunset 12/31/08).

Whistleblower reforms. The proposal reforms the reward program for individuals who provide information regarding violations of the tax laws to the secretary that involve tax, penalties and interest of over $2 million dollars . Generally, the proposal establishes a reward floor of 15% of the collected proceeds (including penalties, interest, additions to tax and additional amounts) if the IRS moves forward with an administrative or judicial action based on information brought to the IRS's attention by an individual. The proposal caps the available reward at 30% of the collected proceeds. Under certain specified circumstances, the proposal permits awards of lesser amounts. The proposal provides an above-the-line deduction for attorneys' fees and costs paid by, or on behalf of, the individual in connection with any award for providing information regarding violations of the tax laws. The proposal allows the whistleblower to appeal the award determination with the Tax Court. The proposal also creates a Whistleblower Office within the IRS within one year from the date of enactment to administer the reward program. The Whistleblower Office can seek assistance from the individual providing information or from his or her legal representative, and may reimburse the costs incurred by any legal representative out of the amount of the reward. To the extent the disclosure of returns or return information is required to render such assistance, the disclosure must be pursuant to an IRS tax administration contract. The proposal requires a yearly study and report by the Secretary of the Treasury. The proposal is effective for information provided on or after the date of enactment.

Frivolous Submissions. The proposal modifies the IRS-imposed penalty by increasing the amount of the penalty from $500 to $5,000 and by applying it to all taxpayers and to all types of Federal taxes. The proposal also modifies present law with respect to certain submissions that raise frivolous arguments or that are intended to delay or impede tax administration. The submissions to which the proposal applies are requests for a collection due process hearing, installment agreements, offers-in-compromise, and taxpayer assistance orders. First, the proposal permits the IRS to disregard such requests. Second, the proposal permits the IRS to impose a penalty of up to $5,000 for such requests, unless the taxpayer withdraws the request after being given an opportunity to do so. The proposal requires the IRS to publish a list of positions, arguments, requests, and submissions determined to be frivolous for purposes of these proposals.

Meningitis and HPV Vaccines. This proposal adds permanently the menoningococcal and human papillomavirus vaccines to the list of taxable vaccines in section 4132(a)(1) and is effective one month after date of enactment.

Make Permanent Modifications to Taxation of Certain Settlement Funds. Makes permanent a provision enacted in TIPRA which provides that certain settlement funds established in consent decrees for the sole purpose of resolving claims under CERCLA are to be treated as beneficially owned by the United States government and therefore not subject to Federal income tax.

Make Permanent the Modifications to the Active Business Test in Corporate Spin-off Transactions. The proposal makes permanent a temporary provision enacted in TIPRA that simplified the active business test for tax-free corporate spin-offs by looking at all corporations in the distributing corporation's and the spun-off subsidiary's respective affiliated group to determine if the active business test is satisfied.

Expansion of Low Income Mortgage Bonds for all Veterans. The proposal would modify the mortgage revenue bond program to provide one waiver of the first time homebuyer requirement for veterans who have served in active duty. The proposal would apply to proceeds of bonds issued after date of enactment and before January 1, 2008.

Make Permanent Capital Gains Treatment for Certain Self-Created Musical Works. The proposal makes permanent a temporary provision enacted in TIPRA, which provided that at the election of a taxpayer, the sale or exchange of musical compositions or copyrights in musical works created by the taxpayer's personal efforts is treated as the sale or exchange of a capital asset.

Make Permanent Modification to Vessel Tonnage Limit. The tonnage tax is an alternative tax regime for U.S.-flagged vessels that participate in commercial foreign trade. The proposal makes permanent a temporary provision enacted in TIPRA that lowered from 10,000 to 6,000 deadweight tons the limitation on vessels qualifying to elect into the tonnage tax regime.

Make Permanent Modification of Bond Rule for Certain University Funds. The proposal makes permanent the grandfather exception from the arbitrage bond rules for certain permanent university funds. The limitation on the aggregate amount of bonds which may benefit from the exception remains at 20 percent for the value of the Fund.

Great Lakes Domestic Shipping. The proposal permanently modifies the treatment of shipping within the Great Lakes to permit vessel operators in the region to qualify for the alternative tonnage tax regime. Effective for taxable years beginning after date of enactment.

Make Permanent the Expansion the Qualified Veterans' Mortgage Bond Program for Alaska, Oregon, and Wisconsin. The proposal makes permanent a provision enacted in TIPRA which expanded the definition of eligible veterans. It also makes permanent the TIPRA provision amending State volume limitations. The proposal does not amend present law as it relates to qualified veterans' mortgage bonds issued by the States of California and Texas.

Exclusion of Gain from Sale of a Principal Residence by Certain Employees of the Intelligence Community. Under the proposal, specified employees of the intelligence community may elect to suspend the running of the five-year test period during any period in which they are serving on extended duty. To qualify, a specified employee must move from one duty station to another and the new duty station must be located outside of the United States. As under present law, the five-year period may not be extended more than 10 years. The proposal is effective for sales and exchanges after the date of enactment and before January 1, 2011.

Modification of credit for the production of coke or coke gas. The Energy Act of 2005 provided a new tax credit for the production of coke to be used as a fuel. Coke is typically used in the production of metallurgical steel or foundry metal. The new credit allows qualified facilities a 4 year credit beginning January 1, 2006 with a capacity cap per facility. The proposal repeals the phase out limitation and clarified that qualifying facilities did not include the production of petroleum based coke or coke gas.

Deferral of Capital Gains for Federal Judges Who Sell Property to Avoid Conflicts of Interest. The proposal extends to Federal judges the ability, currently available to executive branch employees, to elect to defer capital gains on property sold to avoid conflicts of interest to the extent the proceeds are reinvested in other permitted property. Effective for divestitures after date of enactment.

Mortgage Insurance. The proposal establishes an itemized deduction for the cost of mortgage insurance on a qualified personal residence. The deduction is phased-out ratably by 10% for each $1,000 by which the taxpayer's AGI exceeds $100,000. Thus, the deduction is unavailable for a taxpayer with an AGI in excess of $110,000. The proposal is effective for amounts paid or accrued (and applicable to the period) after December 31, 2006 and before January 1, 2008 for mortgage contracts issued after December 31, 2006.

Extend permanently and modify the enhanced savings provisions under § 529. In the tax bill of 2001 a number of changes were made to qualified tuition programs, generally referred to as 529 Plans. The provisions of present law §529 are scheduled to expire December 31, 2010. The proposal makes the qualified tuition rules permanent but with several modifications. The modification simplifies changes in designated beneficiaries and modifies income tax treatment to beneficiary changes. Additional estate tax and gift tax rules have been clarified. In addition, abusive distribution patterns have been addressed and a maximum duration limit has been established (to address previous definitional concerns).

Aviation Fuel. This proposal permanently amends the Ultimate Vendor refund rules changed in the Highway Act. It would treat the aviation fuel purchaser of nontaxable noncommercial aviation fuel as the Ultimate Purchaser who would be allowed to file for a refund on their exempt fuel purchases. The refund claim would be quarterly.

Deduction for Qualified Timber Gain. The proposal would allow taxpayers to elect a deduction equal to 60 percent of qualified timber gain, with the remaining 40 percent treated as ordinary income. Thus, for a corporation or individual in the 35 percent tax bracket, the effective tax rate on qualified timber gain would be reduced from 35 percent under present law to 14 percent under the proposal. Effective for sales or exchanges made after date of enactment and before January 1, 2008.

Technical Correction Related to CFC-Look-through Provision Enacted in TIPRA. The proposal conforms the TIPRA look-through rule to its purpose of allowing U.S. companies to redeploy their active foreign earnings without an additional U.S. tax burden in appropriate circumstances. In order to qualify for this exception from Subpart F, a related party payment must not be attributable to income of the payor that is effectively connected with the conduct of a U.S. trade or business. The proposal also clarifies Treasury's regulatory authority.

Technical Correction Related to Interest Suspension Rules for Certain Listed Transactions, as Modified by the GO Zone Act. The proposal clarifies that the Secretary of the Treasury may delegate his authority to permit interest suspension where taxpayers have acted reasonably and in good faith.

Surface Mining Control and Reclamation Act Amendments of 2006

The Abandoned Mine Land Trust Fund needs to be fixed. Reclamation of the highest priority abandoned coal mines is woefully under funded. This lack of funding has placed lives at risk. States who were promised money for mining done in their state have not received that funding, and benefits that were promised to retired coal miners are on the verge of being cut. The Surface Mining Control and Reclamation Act Amendments are our opportunity to provide a long-term solution. This bill:

- Reauthorizes the Abandoned Mine Land (AML) program for 15 years and reduces the AML fees from Fiscal Years 2008-2012 by 10%; from FY2013-FY2021, the fee is reduced by a total of 20%. Fees are currently $.35 per ton for surface coal; $.15 per ton for underground coal; and $.10 per ton for lignite. In fiscal year 2008, fees will be reduced to $.31.5 for surface coal, $.13.5 for underground coal, and $.09 for lignite coal. In fiscal year 2013, fees will be $.28 for surface coal, $.12 for underground coal, and $.08 for lignite.

- Provides for direct spending of the following payments to states:
  - Modifies the AML formulas in order to provide historic production states that have the most serious reclamation problems with higher allocations; mandates that minimum program states receive at least $3 million. Distributions are phased in so that 50% is paid in FY08; 50% in FY09; 75% in FY10; 75% in FY11; and 100% thereafter.
  - The general fund, capped at $490 million per year, will be used to pay states their unappropriated balance of state share collections over 7 years.
  - Certified states will continue to receive future state share allocations from the general fund monies, also subject to the $490 million per year cap.
  - The general fund cap is based on coal royalties and revenues paid by coal companies. This legislation takes care of a coal problem using coal money.

- Provides the following annual transfers to the Combined Benefit Fund (CBF), 1992, and 1993 Plans:
  - Amends current law to require annual transfers of AML Fund interest to the CBF, 1992, and 1993 Plans to pay the health benefits of retirees whose companies have gone out of business (orphans).
  - Removes the annual cap on the amount of interest to be transferred to the CBF, 1992, and 1993 Plans. For calendar years 2008-2010, the transfers to the 1992 and 1993 Plans are limited to 25%, 50% and 75% of amounts that would otherwise be required. The CBF is 100% funded in FY07.
  - Transfers to the 1993 Plan are limited to the cost of providing benefits to orphan beneficiaries enrolled as of 12/31/06.

- Provides mandatory payments from the general fund to the health funds; these payments are also subject to the $490 million annual cap.
  - Phased in for the 1992 and 1993 Plans over four years as noted above.
  - Phased in for the "reachback" companies' CBF retirees over four years starting in FY08.
  - Payment to "final judgment" companies equal to unreimbursed premiums and interest owed by the CBF in three-$9 million installments in FY08-10.

- **In the event that proceeds from AML Fund interest and the general fund are insufficient, ongoing orphan obligations for the CBF and 1992 Plan will be paid by the 1988 operators.**