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## **SUMMARY OF HR 3762, THE PENSION SECURITY ACT OF 2002, AS PASSED BY THE HOUSE OF REPRESENTATIVES ON APRIL 11, 2002**

**APRIL 12, 2002**

### **SECTION 101 – PERIODIC PENSION BENEFIT STATEMENTS**

#### ERISA section 105

Defined benefit plans to provide a benefit statement indicating total benefits accrued, nonforfeitable benefits, and the date when forfeitable benefits will become nonforfeitable to active vested participants once every three years or notify participant of availability of statement once each year. Participants and beneficiaries will be provided statement upon request, NTE once every twelve months.

All defined contribution plans must annually provide participants a benefit statement indicating total benefits accrued, nonforfeitable benefits, and the date when forfeitable benefits will become nonforfeitable. Beneficiaries will be provided a statement upon request, NTE once every 12 months. All defined contribution plans, except ESOPs not holding 401(k) elective deferrals or matching contributions, must comply with these requirements on a quarterly basis

In addition, all defined contribution plans, except ESOPs not holding IRC 401(k)(3) elective deferrals or 401(m)(2) matching contributions, must furnish to participants, at least quarterly, a statement of the value of investments allocated to the individual account, including the value of any assets held as employer securities, and an explanation of any limitations or restrictions on the right of the participant/beneficiary to direct investment, and an explanation of the importance of a well-balanced and diversified portfolio, including a discussion of the risk of holding more than 25% of a portfolio in the security of any one entity, such as employer securities. This requirement, and the requirements in the preceding paragraph, shall be treated as met if the quarterly statement is available electronically in reasonably accessible form, and the participant or beneficiary is provided at least once each year a notice that such statement is available in such form. Such notice shall be in written, electronic, or other appropriate reform. One participant plans are exempt from the quarterly notice requirements. \$1,000 per day penalty for failure to provide quarterly statements.

The value of any employer securities that are not readily tradable on an established securities market may be determined by using the most recent valuation.

Secretary to issue initial guidance and model notice language.

IRC section 414

Upon enrollment and quarterly thereafter, a plan administrator shall provide notice of generally accepted investment principles, including risk management and diversification and a discussion of the risk of holding substantial portions of a portfolio in the security of any one entity, such as employer securities. To be provided to participant, alternate payee under QDRO, beneficiary of deceased participant w/accrued benefit who can direct investments. Applies to all participant directed 401(a), 403(a) and 403(b) plans plus gov't 457 plans. Does not apply to one participant plans. Does not apply to any plan subject to ERISA section 105 (see above). \$100 per day per participant, NTE \$50,000.

Treasury to issue model notice.

**SECTION 102 - PROTECTION FROM SUSPENSIONS, LIMITATIONS, OR RESTRICTIONS ON ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT OR DIVERSIFY PLAN ASSETS**

ERISA section 101

30 day notice. Applies to all defined contribution plans except ESOPs not holding 401(k) elective deferrals or matching contributions. A suspension is an event having the effect of temporarily suspending, limiting, or restricting the ability of participants or beneficiaries which is otherwise available under the plan. Applies only for suspension periods exceeding three consecutive business days. A business day is a trading day for securities on the principal securities market for such security and a calendar day for securities not traded on an established security market. Exceptions for unplanned events.

Plan administrator must determine that suspension period is reasonable under ERISA part 4 and notify plan participants and beneficiaries who are affected by such action. Notice must include reason, identification of assets involved, expected period of suspension, a statement that administrator has evaluated reasonableness, a statement that participant or beneficiary should evaluate current investments, and other matters as determined by Secretary.

30 day rule does not apply to QDRO situations or in connection with a merger, acquisition, divestiture, or similar event – notice must be provided as soon as reasonable. Secretary may provide other exceptions by regulation.

Secretary to issue initial guidance and model notice. \$100 per day per individual penalty.

ERISA section 404(c)(1)(B) (redesignated as 404(c)(A)(ii)) relief (“no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant’s or beneficiary’s exercise of control”) shall not apply for any period during which the ability of a participant or beneficiary to direct the investments of assets in his or her individual account is suspended by a plan sponsor or fiduciary – unless the fiduciary meets the requirements of this section and has considered the reasonableness of the expected period of suspension, has provided the proper notice, and has acted solely in the interest of plan participants and beneficiaries

Any limit or restriction that may govern the frequency of transfers between investment vehicles shall not be treated as a suspension to the extent such limitation or restriction is disclosed to participants through a SPD or other materials.

IRC section 4980H (new)

30-day notice to affected participants, beneficiaries, and QDRO alternates. Applies to 401(a), 403(a) annuity, 403(b), and 457 governmental plans that are participant directed. Person disposing of stock assets has burden of providing notice “of the possibility” of a suspension period. Exempts one-participant plans.

Suspension period defined as not more than two consecutive days in which one or more individual’s ability to direct investments, obtain loans, or obtain a distribution are substantially reduced. For employer securities, a day means a business day. A business day is a trading day for securities on the principal securities market for such security and a calendar day for securities not traded on an established security market. Exceptions for unplanned events.

\$100 per day per individual, NTE \$500,000 for unintentional failures.

**SECTION 103 – INFORMATIONAL AND EDUCATIONAL SUPPORT FOR PENSION PLANS**

The Secretary of Labor shall establish a program to inform and educate plan fiduciaries to assist them in carrying out their duties.

**SECTION 104 – DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES**

ERISA section 204

Applies only to defined contribution plans with employer stock unless there is no class of stock issued by any employer maintaining the plan (or by a corporation which is an affiliate of any such employer, as defined in section 407(d)(7) as in effect on the date of enactment of this subsection) that is readily tradable on an established securities market. Additionally, all ESOPs that do not hold stock attributable to 401(k) elective deferrals or matching contributions are exempt.

100% diversification rights on employer stock after 3 years of service (see transition rule)

**or**

100% diversification rights on employer stock not later than 3 years after the end of a plan year in which the stock is allocated to the individual account.

100% diversification rights for employee contributions (elective deferrals).

Transition rule – Diversification rights are prospective. Previously acquired employer-contributed stock may be diversified in 20% increments, beginning in 2003, reaching 100% in 2007. All elective deferrals can be diversified on effective date.

Must offer three investment alternatives in addition to employer securities and an opportunity to diversify no less frequently than quarterly.

Secretary of the Treasury to prescribe regulations in consultation with the Secretary of Labor.

IRC section 401(a)

Parallel language except affiliate ownership criteria is 80% under IRC vs. 50% under ERISA 407(d)(7). Also, employer securities held in an ESOP that are subject to this requirement may be diversified at the greater of the rate under the transition rule or existing ESOP diversification rules under 401(a)(28).

**SECTION 105 – PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE**

Includes HR 2269, the Boehner advice bill, (with minor adjustments). Employers could voluntarily offer professional investment advice through the plan's service provider as long as the service provider discloses all fees and any potential conflicts of interest.

**SECTION 106 – STUDY REGARDING IMPACT ON RETIREMENT SAVINGS OF PARTICIPANTS AND BENEFICIARIES BY REQUIRING CONSULTANTS TO ADVISE PLAN FIDUCIARIES ON INDIVIDUAL ACCOUNT PLANS.**

Study on requiring independent fiduciary advisors to provide investment advice to fiduciaries of defined contribution plans.

**SECTION 107 – TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES**

IRC 132(m) amended to add new provision providing that no constructive receipt will result from an employee choosing between a qualified retirement planning service and compensation otherwise includible in gross income. Choice must be made available on substantially same terms to each member of the group of employees normally provided education and information about plan.

**SECTION 108 – INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS**

It shall be unlawful for any person who is, directly or indirectly, a more than ten percent beneficial owner or a director or an officer to, directly or indirectly, purchase or sell any equity security of the issuer (other than an exempted security) during any period during which a blackout period exists with respect to such security. Any profit realized in violation of this provision shall inure and be recoverable by the issuer.

A blackout period with respect to the equity securities of any issuer means any period during which the ability of at least fifty percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase, acquire, or sell an interest in any equity of such issuer is suspended by the issuer or fiduciary of the plan. Additionally, it does not include a period in which the employees of an issuer may not allocate their interests in the plan due to an express investment restriction incorporated into the plan and timely disclosed. A blackout period does not include any suspension imposed solely in connection with persons becoming or ceasing to be participants by reason of a merger, acquisition divestiture, or similar transaction.

**SECTION 201 AMENDMENTS TO RETIREMENT PROTECTION ACT OF 1994**

(Special purpose provision affecting transition rule under section 796(c) of the Retirement Protection Act of 1994.)

**SECTION 202** - Allows 5500EZ's for plans with less than 25 employees. Also provides that "one-participant" plans with assets less than \$250,000 do not have to file an annual report

**SECTION 203** - Secretary of Treasury to update and improve Employee Plans Compliance Resolution System.

**SECTION 204** - Secretary shall issue new regs relating to 401(a)(4) nondiscrimination and 410(b) coverage tests that deem a plan to be in compliance if it satisfies the "facts and circumstances" test in effect before January 1, 1994, if the plan satisfies new regs to "appropriately limit the availability of such test" and the test is submitted to IRS for determination of whether it satisfies such test. Secretary to modify single line of business regs to reflect facts and circumstances.

**SECTION 205** - Extension to all government plans of moratorium on application of certain nondiscrimination rules applicable to state and local plans.

**SECTION 206** - Notices under 417, 402(f), and 411(a)(11) may be made 180 days prior to event (currently 90 days). Notice under 411(a)(11) (distributions over \$5K) to include notice of consequences of failing to defer receipt.

**SECTION 207** - Annual reports under ERISA 104(b)(3) may be provided electronically.

**SECTION 208** – Technical corrections to SAVER Act.

**SECTION 209** - ERISA section 4050 is amended to allow DC plan sponsors and noncovered DB plans to elect to transfer missing participant benefits to the PBGC upon plan termination. Multiemployer plans covered under 4050.

**SECTION 210** - Reduced PBGC premium for new small plans (\$5 for 5 years) (100 or fewer employees).

**SECTION 211** - Phase-in of PBGC variable rate premium for new small plans over five years (25 or fewer employees).

**SECTION 212** - PBGC authorized to pay interest on overpayment refunds.

**SECTION 213** - ERISA 4002(b)(5) is amended to relax restrictions on substantial owner benefits in terminated plans by increasing ownership criteria from 10% to 50%.

**SECTION 214** - Regulations under ERISA section 203 benefit suspension notice relaxed so that individual participants working past retirement age do not have to be notified if information is included in SPD. Participants reentering the workforce with same employer after they begin to receive benefits must still be notified.

**SECTION 215** - Study of model small employer group plan.

**SECTION 216** - Defined benefit interest rate range change included in the economic stimulus bill is applied to 2001.

**SECTION 217 – PROVISIONS RELATING TO PLAN AMENDMENTS**

Amendments not required until plan years beginning on or after January 1, 2005 (2007 for governmental plans).

**SECTION 301 – EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLAN STOCK OPTIONS FROM WAGES**

Exclusion of ISOs and ESPPs from wages for purposes of withholding and payroll taxes.

**SECTION 401 – PROTECTION OF SOCIAL SECURITY AND MEDICARE**

The amounts transferred to any trust fund under the Social Security Act shall be determined as if this Act had not been enacted.