

DC BAR EMPLOYEE BENEFITS COMMITTEE

THE PENSION PROTECTION ACT OF 2006:
WHAT YOU HAVE TO KNOW AND DO RIGHT NOW

FOR DEFINED CONTRIBUTION PLANS

Vesting	Effective Date
<ul style="list-style-type: none"> Vesting for all employer contributions must be at least as fast as 3 year cliff or 6 year graded. <i>Act §904, amending IRC §411(a)(2).</i> 	<p>Applies to contributions made for plan years after 12/31/06. Special exception available for certain leveraged ESOPs.</p>
Distributions	Effective Date
<ul style="list-style-type: none"> Non-spouse inherited IRAs available. <i>Act §829, amending IRC §402(c)(11).</i> 	<p>Applies to distributions made after 12/31/06.</p>
<ul style="list-style-type: none"> Notice & consent period extended from 90-180 days for distributions other than QJSA; notice content expanded. <i>Act §1102, amending IRC §417(a)(6).</i> 	<p>Effective for years beginning after 12/31/06.</p>
<ul style="list-style-type: none"> Beneficiary hardships expanded to hardships of participant's beneficiary even if not the participant's spouse or §152 dependent. <i>Act §826.</i> 	<p>Treasury to issue regulations within 180 days of enactment.</p>
<ul style="list-style-type: none"> Reservist distributions of 401(k) deferrals or from IRAs permitted, without 10% penalty if reservist called for active duty for at least 179 days, provided distribution made during the period of active duty; distributed amounts can be repaid within 2 years to an IRA. <i>Act §827, amending IRC §72(t).</i> 	<p>Effective for distributions made after 9/11/01, if reservist called for active duty of at least 179 days between 9/11/01 and 12/31/07.</p>

Investments	Effective Date
<ul style="list-style-type: none"> • Default investments will have ERISA §404(c) protection provided adequate notice given before each plan year and reasonable time to make investment elections after receiving notice. <i>Act §624, amending ERISA §404(c).</i> 	Effective for plan years after 12/31/06, but DOL is to issue regulations within 6 months of enactment.
<ul style="list-style-type: none"> • Investment advice eligible for PTE if it is an “eligible investment advice arrangement” provided by a “fiduciary advisor.” <i>Act §601, amending ERISA §408.</i> 	Effective for investment advice provided after 12/31/06.

Company Stock Diversification	Effective Date
<ul style="list-style-type: none"> • Diversification from company stock for all employee contributions, and for employer contributions if individual has 3 years of service (subject to 3 year phase-in for stock acquired before 2007). <i>Act §901, adding IRC §401(a)(35) and ERISA §204(j).</i> • Notice must be distributed explaining diversification rights and importance. <i>Act §507, adding ERISA §101(l).</i> 	Effective for plan years beginning after 12/31/06, but only to plans holding publicly traded employer securities (determined on a controlled group basis); transition rules apply.

Disclosure Requirements: New Benefit Statements	Effective Date
<ul style="list-style-type: none"> • Without participant-directed investment, benefit statements must be provided at least annually. • With participant-directed investment, benefit statements must be provided at least quarterly. All benefit statements must contain more detailed information. <i>Act §508, amending ERISA §105(a).</i> 	Effective for plan years beginning after 2006. DOL to publish model benefit statement within 1 year from enactment.

Preliminary Planning for 2008 Plan Year
<ul style="list-style-type: none"> • Evaluate Roth 401Ks as they are likely to grow in popularity now that they have been made permanent. • Evaluate auto enrollment with matching contributions to satisfy safe harbors. • For money purchase pension plans, add “qualified optional survivor annuity,” adding for 75% survivor annuity option, and plan for new minimum funding requirements.

FOR DEFINED BENEFIT PLANS

Distributions	Effective Date
<ul style="list-style-type: none"> <i>Non-spouse inherited IRAs</i> available. <i>Act §829, amending IRC §402(c)(11).</i> 	Applies to distributions made after 12/31/06.
<ul style="list-style-type: none"> <i>Notice & consent period extended</i> from 90-180 days for distributions other than QJSA; notice content expanded. <i>Act §1102, amending IRC §417(a)(6).</i> 	Effective for years beginning after 12/31/06.
<ul style="list-style-type: none"> <i>415 limits</i> calculated by using all compensation earned as employee (not just as participant) for purposes of computing “average compensation.” <i>Act §832, amending IRC §415(b)(3).</i> 	Effective for years beginning after 12/31/05.
<ul style="list-style-type: none"> <i>Interest rates and mortality tables for lump-sum distributions changed.</i> <i>Act §302, amending IRC §417(e)(3).</i> 	Applies to distributions in years beginning after 12/31/05.
<ul style="list-style-type: none"> <i>Limited in-service distributions</i> permitted upon age 62 to accommodate “working” retirement. <i>Act §905, amending ERISA §3(2) and adding IRC §401(a)(36).</i> 	Applies to distributions in plan years beginning after 12/31/06.

Disclosure Requirements	Effective Date
<ul style="list-style-type: none"> <i>Participant benefit statements</i> to be provided at least every 3 years and on request. Alternatively, the plan can notify participants annually that a statement is available and how it can be obtained. <i>Act §508, amending ERISA §105(a).</i> 	Effective for plan years beginning after 2006. DOL is to publish a model benefit statement within 1 year from enactment.

Preliminary Planning for the 2008 Plan Year
<ul style="list-style-type: none"> <i>Analysis of cash balance plan options</i> now that PPA sets out specific rules about interest credits, vesting, and conversion. <i>Impact of new funding rules</i> establishing funding targets, at risk targets, time frames for closing funding shortfalls, deduction limits, and different interest rate assumptions to be phased in. <i>New disclosure obligations</i> will require annual funding notice; a special notice if plan is underfunded; and additional information on annual Forms 5500. <i>Add “qualified optional survivor annuity,”</i> providing for 75% survivor annuity option.

FOR INTERNAL CLIENTS/COLLEAGUES

<i>For...</i>	<i>Tell them about...</i>
Labor and Employment Lawyers	<ul style="list-style-type: none"> • Qualified reservist distributions could impact military leave policies. • Changes to multiemployer plan funding rules and impact on collective bargaining processes.
Trusts and Estates Lawyers	<ul style="list-style-type: none"> • Direct rollovers permitted to Roth IRAs after 2007. • Nonspouse inherited IRAs. • Qualified charitable distributions from IRAs.
M&A Lawyers	<ul style="list-style-type: none"> • Review/modification of deal benefit reps, warranties, and due diligence checklists to reflect changes in funding rules and increased reporting and disclosure obligations.
Bankruptcy Lawyers	<ul style="list-style-type: none"> • New funding rules if plans are underfunded and at risk; additional funding obligations for multiemployer plans that are considered “endangered” or in “critical” status. • Restricted ability to fund deferred compensation for “covered employees” during a “restricted period” if a DB plan is “at risk,” the company is in Chapter 11, or during the 6 months before or after a distress or involuntary termination of a DB plan; further limitations on gross-up payments to these individuals. • Limits on benefit increases and lump-sum distributions if plan’s funded ratio drops below certain thresholds. • New notice obligations if a distress or involuntary termination. • PBGC guaranteed benefit levels are tied to date of bankruptcy filing.