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### **President Bush Signs Pension Protection Act into Law**

On August 17, 2006, President Bush signed into law the Pension Protection Act, calling it “the most sweeping reform of America’s pension laws in over 30 years.” As its name suggests, the purpose of the Pension Protection Act is to provide greater pension security to employees and retirees. Much of the law, which is several hundreds of pages in length, is devoted to tightening the funding rules for traditional defined benefit pension plans. The new law also changes some of the rules relating to 401(k) plans. Note that the law is highly technical; the following represents a summary of some of its key points.

The most significant provisions of the Pension Protection Act are intended to eliminate underfunded defined benefit plans. Employers are required to make sufficient contributions to erase any funding shortfalls over the next seven years. Further, plans that are “at risk” also are required to make accelerated contributions and are restricted in using deferred compensation arrangements for executives. In the case of a collectively-bargained defined benefit plan, the law restricts employers and unions from increasing benefits if the plan is less than 80% funded.

In addition to these funding requirements, the Pension Protection Act imposes new reporting and disclosure requirements upon all pension plans. Among other requirements, pension plans must provide more detailed information in annual Form 5500 filings and must notify participants of the plan’s funding status.

The new reporting and disclosure requirements also address concerns relating to employees’ investments in the securities of their employers. Plans, such as 401(k) plans, are prohibited from requiring employees to invest their retirement savings contributions into employer stock. They also are required to notify employees that they have the right to divest their investments in employer stock and to explain the importance of asset diversification.

Another significant aspect of the new law relates to the provision of investment advice to participants in plans such as 401(k) plans, under which employees direct the investment of their contributions. Prior to the enactment of the Pension Protection Act, plan fiduciaries could not provide such advice without running the risk of being sued for any losses. The new law permits qualified fiduciary advisors to provide investment advice regarding the investment options under the plan and exempts such advice from claims for breach of fiduciary duties.

In order to increase retirement savings, the law also permits employers, under certain conditions, to automatically enroll employees in defined contribution plans, such as 401(k) plans. The employer must tell employees that they have the right to opt-out from making automatic contributions and how contributions will be invested in the absence of an investment election by the employee.

Finally, the Pension Protection Act makes permanent the annual contribution limits to 401(k) plans that were adopted by Congress in 2001. Thus, the annual contribution limit to a 401(k) plan will remain at \$15,000. Workers over 50 years of age may contribute an additional \$5,000 per year to their 401(k) accounts. These limits will adjust for annual cost of living increases.

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