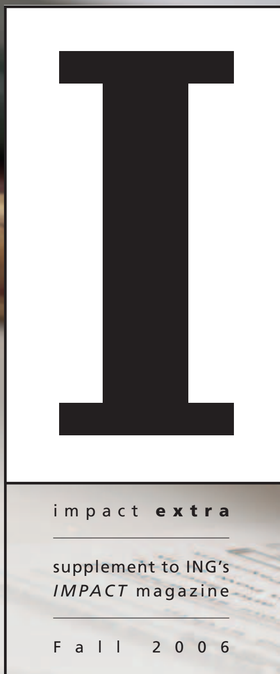

The Pension Protection Act of 2006: An ING Summary

ING appreciates the trust you've shown in selecting us to help you manage your retirement plan. We are dedicated to working with you every step of the way, including making it easier for you to stay informed about changes to tax legislation that could affect your plan.

On August 17, 2006, President Bush signed into law the ***Pension Protection Act of 2006 (Act)***. This legislation, which updated defined benefit pension rules, also has provisions relating to defined contribution plans.

While many changes of the Act are effective with plan years beginning in 2007 or later, please use this summary document to learn more about the potential impact on your plan(s) now. We've segmented the specific changes into categories that might have greatest meaning to you based on when the changes are effective.

1. EGTRRA Pension Reforms Made Permanent and Selectively Improved (effective immediately)
2. Faster Vesting of Employer Contributions (ERISA plans, starting in 2007)
3. More Frequent Participant Statements (ERISA plans, starting in 2007)
4. Portability Enhancements (Now, 2007)
5. Clarification and New Opportunities for Government Plans (Now, 2007)
6. Clarification of Automatic Contribution Rules (Effective 2007, 2008)
7. Education and Investment Opportunities (ERISA plans starting in 2007 and 2008)
8. Portability Enhancements (2008 and beyond)

Over the coming months, ING will be building a wide variety of tools to help you understand and take advantage of the Act's many opportunities. Visit our website, www.ingretirementplans.com/sponsor for all of the late-breaking news and current information about the Act.

Please take a look inside for a summarized view of the Pension Protection Act of 2006.

Note: This summary focuses primarily on changes related to defined contribution plans.

Provisions applying to ERISA plans are identified with "orange" boxes.

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one

EGTRRA PENSION REFORMS MADE PERMANENT AND SELECTIVELY IMPROVED (EFFECTIVE IMMEDIATELY)

EGTRRA Permanence

The pension and individual retirement arrangements (IRA) reform components of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) will be made permanent provisions of the Internal Revenue Code of 1986. Prior to the Act, the EGTRRA provisions were scheduled to sunset (i.e., expire) after December 31, 2010. This is good news for all defined contribution plans and IRAs.

Saver's Credit

The Saver's Credit that is currently available for all defined contribution plans, which was set to expire at the end of 2006, has also been made permanent and the adjusted gross income amounts, which determine eligibility for the credit, will be indexed annually in $500 amounts. *Effective for tax years after December 31, 2006.*

Certain IRA Limits to Increase

The income limits for making deductible contributions to a traditional IRA and for eligibility for a Roth IRA will now be indexed in $1,000 increments. *Effective for tax years after December 31, 2006.*

Refunds to IRAs

The IRS will be releasing a form that would enable taxpayers to direct refunds of federal income tax to a traditional IRA. IRA deductibility rules continue to apply on such contributions. *Effective for tax years beginning after December 31, 2006.*

two

FASTER VESTING OF EMPLOYER CONTRIBUTIONS (ERISA PLANS, STARTING IN 2007)

The Act applies the minimum required vesting schedules for matching contributions to all employer contributions to a defined contribution plan subject to ERISA. The minimum permissible vesting schedules are either a 3-year cliff vesting schedule or a graded 6-year vesting schedule (where the participant is 20% vested after 2 years of service, and is an additional 20% vested for each successive year of service). *Effective generally for plan years after December 31, 2006, although a special effective date applies to plans subject to collective bargaining agreements.*

three

MORE FREQUENT PENSION BENEFIT STATEMENTS (ERISA PLANS, STARTING IN 2007)

Pension Benefit Statements must be provided quarterly to active participants in plans that permit participants to direct their own investments and annually to participants in plans where the employer directs the investment of all assets. The Act outlines certain new disclosure requirements that plan administrators must include in the statements including, but not limited to the requirement that vesting information be provided. A model statement will be provided by the Secretary of Labor within 1 year after the date of enactment of this section. The statements must be written in a manner that will be understood by the average plan participant. *Effective date: Plan years beginning after December 31, 2006 (a special effective date applies for collectively bargained plans).*

When do changes take place:
In general, plan documents must be amended for the Act no later than the last day of the first plan year beginning on or after January 1, 2009; for governmental plans, documents must be amended no later than the last day of the first plan year beginning on or after January 1, 2011.

Who is impacted:
Some provisions apply to plans subject to the Employee Retirement Income Security Act of 1974 (ERISA), which imposes specific duties and requirements on employer sponsored retirement plans and their fiduciaries. Other provisions pertain to all defined contribution plans.

Note: Governmental plans are not subject to ERISA.

four

PORTABILITY ENHANCEMENTS (NOW, 2007)

New Exemption from IRS 10% Premature Distribution Penalty Tax

A "qualified reservist distribution" for defined contribution plan participants or IRA owners called to active duty will not incur the IRS 10% premature distribution penalty tax. Such distributions must be from a traditional IRA or from elective deferrals under a 401(k) or 403(b) plan and the individual must have been a member of the reserves, called to active duty for more than 179 days, and the distribution had to have been made during the period when the individual was called to active duty. In addition, the distribution may be re-contributed to an IRA as late as 2 years after the reservist's active duty ends. *Effective for distributions made to a military reservist called to active duty on or after September 11, 2001 and before December 31, 2007.*

After-tax rollovers

The Act allows after-tax amounts to be directly rolled over into 401 defined contribution plans, defined benefit plans, and tax-deferred annuities, but only if the plan or annuity separately accounts for such contributions and earnings. *Effective for tax years after December 31, 2006.*

Extending Limited Rollover Rights to Nonspousal Beneficiaries

A nonspousal beneficiary under a 401, 403(b), or governmental 457(b) plan may roll over eligible death benefit amounts to a traditional IRA. When rolled over, the IRA is an "inherited IRA," subject to the minimum distribution requirements that would have applied had the distribution remained in the initial retirement plan. **Note**: The inherited IRA can only hold the rollover amount and cannot contain any prior or ongoing contributions. *Effective for distributions after December 31, 2006.*

Extended Time Period for ERISA Notice of Spousal Consent and Waiver

The time period for providing applicable distribution notices to participants including their distribution options and their rights to waive a QJSA is extended from 90 days to 180 days. *Effective for plan years after December 31, 2006.*

Certain In-Service Distributions Permitted from Pension Plans

Participants in a money purchase pension plan, target benefit plan or defined benefit plan may take in-service distributions if they are at least age 62 and still employed, even if this is before the plan's "normal retirement age." Note: This is not mandatory; plans must be amended to permit distributions at age 62. *Effective for distributions in plan years after December 31, 2006.*

Hardship and Unforeseeable Emergency Withdrawals

The Act charges the IRS with developing hardship guidance that would enable participants under a 401(k) plan, 403(b) program, 457(b) plan or nonqualified deferred compensation plan under 409A to take a hardship distribution or an unforeseeable emergency withdrawal for events impacting the beneficiary. *Guidance to be issued no later than 180 days after enactment of the Act.*

five

CLARIFICATION AND NEW OPPORTUNITIES FOR GOVERNMENT PLANS (NOW, 2007)

Governmental Buybacks of Permissive Service Credit

A participant may now transfer 403(b) and governmental 457(b) benefits to buy back service credit under a governmental defined benefit plan, even where the service credit is given without performance of services. A buy back is also permitted to enable a participant to receive an increased benefit even if the benefit applies to service already credited under the defined benefit plan. *Effective retroactively for years beginning after December 31, 1997.*

Indian Tribal Plans' Status as Governmental Plans

The Act clarifies that plans sponsored by Indian tribes for its employees performing governmental functions are considered governmental plans under Section 414(d) of the Internal Revenue Code. As a result, the ability to offer 414(h) governmental pick-up contributions now apply to Indian tribal plans. *Effective for plan years beginning on or after the date of enactment of the Act.*

Distributions from Governmental Plans for Health and Long Term Care

Annual distributions are excludable from income of up to $3,000 from a governmental defined benefit, defined contribution, 403(b) or 457(b) plan to pay for qualified health insurance premiums (accident health insurance or long term care) for eligible retired public safety officers (spouse and dependents) if amounts are paid directly to the insurer. An eligible public safety officer must be separated from service due to disability or attainment of normal retirement age. *Effective for distributions in taxable years beginning after December 31, 2006.*

six

CLARIFICATION OF AUTOMATIC CONTRIBUTION RULES (EFFECTIVE 2007, 2008)

Safe Harbor Design Alternative

Under a new automatic enrollment safe harbor that will be effective in 2008, elective deferrals to a 401(k) plan will be deemed nondiscriminatory if all eligible employees, unless they elect out, automatically make deferrals of at least 3% of compensation but not more than 10% of compensation in the first year of the automatic contribution arrangement. In successive years the minimum percentage of automatic contributions increases as follows: 4% in the second year; 5% in the third year; and 6% in later years with a cap in any year of 10%.

In addition, an employer must generally make to all eligible non-highly compensated employees either a matching contribution (subject to certain requirements) of 100% for the first 1% of compensation deferred, plus 50% of the next 5% of compensation deferred (capped at 6%) or a non-elective contribution of at least 3% of compensation regardless of whether deferrals are made. The matching or nonelective contribution must be 100% vested after two years of service. An employer whose plan has an automatic contribution feature must provide annual notice to employees, explaining the ability to modify the automatic contribution amount and how such contributions will be invested in the absence of employee direction. *Effective for plan years beginning after December 31, 2007.*

Default Investments for Automatic Contributions and Other Applications

In certain situations involving plans where participants direct the investment of assets but do not make an investment election, the plan fiduciary must elect a default fund for the investment of contributions. Currently, participants in this situation are not considered to be exercising control over their assets (participant control is necessary for 404(c) protection for the fiduciary). Under the Act, participants will be treated as electing the plan sponsor to exercise investment control with respect to the participant's own assets until the participant next makes an affirmative investment election if:

1) the participant receives a notice of his rights and obligations, how the assets will otherwise be invested and other related information within a reasonable period before the plan year, and

2) the participant has a reasonable amount of time after receiving the notice (and before the beginning of the plan year) to make an affirmative investment election, and

3) the plan sponsor complies with final regulations, to be released by the Secretary of Labor within six months of enactment, that provide guidance covering default investment selections by the fiduciary. *Effective for plan years beginning after December 31, 2006.*

Erroneous Contributions

Erroneous contributions under automatic contribution arrangements may be returned within 90 days of the contribution date. *Effective for plan years beginning after December 31, 2007.*

Excess Contributions

Under automatic contribution arrangements, the 2½ month deadline for avoiding the 10% excise tax penalty is extended to six months. Under all 401(k) plans (including those where automatic enrollment is not used), failed ADP/ACP excess amounts are taxable in the year distributed, and gap period interest need not be distributed. *Effective for plan years beginning after December 31, 2007.*

ERISA Preemption

Any state law that would directly or indirectly prohibit or restrict an automatic contribution feature in connection with an ERISA plan, including a state payroll withholding law, is preempted whether or not the plan satisfies the safe harbor model described above. The Department of Labor has jurisdiction over guidance on this feature. Note that this preemption provision does not apply to plans that are not subject to ERISA, such as government plans. *The preemption of conflicting state regulations is effective as of the date of enactment of the Act.*

Watch-out for 403(b) Programs and Governmental 457(b) Plans.

The Act clarifies certain rules relating to erroneous contributions described above governing 403(b) programs and governmental 457(b) plans that offer automatic contributions. *Effective for plan years beginning after December 31, 2007.*

Note that the Act does not reconcile the automatic contribution feature with federal securities law requiring that a participant acknowledge withdrawal restrictions from a variable 403(b) contract at point of sale. As a result, it appears that only a 403(b) program directing automatic contributions to a fixed (nonvariable) investment would be viable.

seven

EDUCATION AND INVESTMENT OPPORTUNITIES (ERISA PLANS STARTING IN 2007 AND 2008)

Greater Access to Investment Advice Starting in 2007

Under a new exemption, participants in defined contribution plans subject to ERISA with employee investment direction may receive investment advice under an "eligible investment advice arrangement" without subjecting the plan sponsor to additional ERISA fiduciary obligations. An "eligible investment advice arrangement" must meet certain audit, notice, and fee requirements. To be an eligible investment advice arrangement, either (1) any fees received by the adviser must not vary on the basis of investment options selected or (2) the adviser must use a computer model. The computer model must meet certain investment criteria certified by an eligible investment expert upfront and again if later modified.

Investment advice is specifically exempted as a prohibited transaction, provided that (1) appropriate disclosures are made consistent with applicable securities laws (2) only the participant receiving the advice makes the investment transaction and (3) the compensation received by the fiduciary adviser is reasonable and the terms of the transaction are at least as favorable to the plan as an arm's length transaction would be. Fees for investment advice may be paid from plan assets.

Plan fiduciaries do not have fiduciary responsibility for the specific advice provided by the fiduciary adviser (as defined in the Act). However, the plan fiduciary remains responsible for the selection and review of that adviser. *Effective for investment advice provided after December 31, 2006.*

Defined Contribution Plans Must Permit Freedom to Invest Assets

Certain defined contribution plans that hold publicly-traded employer securities must now permit participants to re-invest those amounts. Participants with elective deferrals or after-tax employee contributions invested in such securities must be permitted to re-invest those assets in alternative investments at any time. For all other contributions under the plan (e.g., nonelective employer contributions, and employer matching contributions) that are invested in employer securities, any participant who has three years of service (or any beneficiary of such person) must be permitted to re-invest those amounts in other investment vehicles available under the plan.

The Act provides transition rules and rules relating to the election of investment alternatives. A new notice to participants that describes the freedom to invest assets is required to be provided to participants not later than 30 days before the first date the employee is eligible to exercise the right to divest. The notice must explain the participant's rights and the importance of diversifying investments in a retirement account. The IRS is instructed to provide a model notice within 180 days of enactment.

On November 30, 2006, the IRS released Notice 2006-107, which provides further guidance with regard to this provision of the Act, including (but not limited to) relief on the timing for delivery of the Notice of Freedom to Divest. The guidance makes it clear that plans will not be required to furnish the Notice of Freedom to Divest to participants before January 1, 2007. This is helpful to calendar year plans that would otherwise be required to deliver a notice by December 2, 2006, to meet the 30 day advance notice requirement described above. In addition, 2006-107 provides a model notice that can be used to advise participants of their right to diversify out of employer stock. We will be reviewing this new guidance in detail and will provide further information at a later date. *Effective date: For plan years beginning after December 31, 2006 (special effective dates apply to collectively bargained plans and to certain ESOP arrangements).*

Special Rules for Changing Investment Options under an ERISA Plan Starting in 2008

ERISA Section 404(c) relief is available for mapping that constitutes a "qualified change in investment options," if a participant's account is reallocated among one or more new investment options under the plan and the characteristics of the new investment options (including risk and rate of return) are reasonably similar to the characteristics of the investment options immediately before the change. The plan administrator must provide notice to the participant at least 30, but not more than 60 days before the effective date of the change in investment options. The notice must explain how the account will be invested in the absence of affirmative directions from the participant and include information comparing the new and existing investment options.

If the plan fiduciary satisfies the ERISA requirements for authorizing and implementing a blackout period related to the new investment options, that plan fiduciary will not be liable under ERISA for any loss occurring during that blackout period. *Effective generally for plan years beginning after December 31, 2007, although a special later effective date applies to plans subject to collective bargaining agreements.*

eight

PORTABILITY ENHANCEMENTS (2008 AND BEYOND)

Direct Rollovers into Roth IRAs

Rollover eligible amounts from a 401, 403(b), or governmental 457(b) plan will be eligible to be rolled over directly to a Roth IRA subject to the current Roth IRA conversion rules. The participant will need to pay income taxes on the rollover/conversion, but not the IRS 10% premature distribution penalty tax. Note that rollovers made between 2008 and 2010 (when the adjusted gross income cap for conversions to Roth IRAs is lifted) will only be permissible if the participant does not exceed the adjusted gross income limits. *Effective for distributions after December 31, 2007.*

New Form of Distribution for ERISA Plans

The Act creates another optional form of benefit – "qualified optional survivor annuity" – which plans subject to the ERISA survivor annuity rules must offer. A qualified optional survivor annuity is an annuity for the life of the participant with a survivor annuity for the life of the spouse equal to a percentage of the amount payable during the joint lives of the participant and the spouse. The survivor portion of the qualified optional survivor annuity is determined by the plan's qualified joint and survivor annuity (QJSA) benefit. If the QJSA provides a survivor benefit of less than 75%, the qualified optional survivor annuity must have a survivor benefit of 75%. If the QJSA provides a survivor benefit of at least 75%, the qualified optional survivor annuity must have a survivor benefit of 50% of the annuity payable during the participant's lifetime.

The QJSA spousal consent and waiver notice must also explain the implications of the qualified optional survivor annuity.

Effective generally for plan years beginning after December 31, 2007, although a special effective date applies to plans subject to collective bargaining agreements.

Missing Participants upon Defined Contribution Plan Termination

Under the Act, the Pension Benefit Guaranty Corporation (PBGC) is instructed to issue regulations permitting (but not requiring) certain terminating defined contribution plans to transfer missing participants' benefits to the PBGC upon plan termination. The transfer of missing participants' benefits is not available for some defined contribution plans, including governmental and non-electing church plans. *Effective for distributions made after the PBGC issues final regulations.*

Any tax discussion contained in this communication was not intended or written to be used, and cannot be used by the recipient or any other person, for the purpose of avoiding any Internal Revenue Code penalties that may be imposed on such person. Any tax discussion contained in this communication was written to support the promotion or marketing of the transactions or matter discussed herein. Any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.
This information is provided as general guidance. It is not intended to be legal or tax advice. Employers should contact their legal and/or tax advisors regarding the facts and circumstances around their own retirement plan and the applicability of the issues discussed in this communication.

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