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**PENSION AND IRA PROVISIONS IN CONFERENCE AGREEMENT ON HR 1836,  
 THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 AS  
 AGREED TO BY THE HOUSE AND THE SENATE ON MAY 26, 2001**

**May 28, 2001**

(discussion does not include section 403, 457, or gov't. plans)

(All provisions effective for plan or taxable years beginning after 12/31/01 unless noted)

**All provisions shall not apply to taxable, plan, or limitation years beginning after December 31, 2010. The Internal Revenue Code of 1986 and ERISA of 1974 shall be applied after this period as if these provisions had never been enacted.**

Sec.	
601	<b>Increase IRA limits</b> to \$3,000 in 2002 through 2004, \$4,000 in 2005 through 2007, and \$5,000 in 2008 and thereafter. Index in \$500 increments after 2008.
601	<b>IRA Catch-up</b> for individuals age 50 and above in taxable year, Limit increased by \$500 for 2002 through 2005 and by \$1,000 for 2006 and thereafter. No indexing.
602	<b>Deemed IRA under employer plan</b> is allowed. Subject to ERISA exclusive benefit and fiduciary rules only. Effective after 12/31/02.
611	<b>415(b) defined benefit limit increased to \$160,000 from \$140,000.</b> Actuarial reduction applied only below age 62. (with special exemption for airline pilots). Actuarial increase begins at age 65. (Presently social security retirement age for both.) Effective for plan years <u>ending</u> after 12/31/01.
611	<b>415 (c)(1) limit for defined contribution plans is increased to \$40,000</b> from \$35,000. Indexing increment reduced from \$5,000 to \$1,000.
611	<b>401(a)(17) compensation considered limit increased to \$200,000</b> from \$170K. Indexing increment reduced from \$10,000 multiples to \$5,000.
611	<b>402(g)(1) elective deferral</b> limit increased to \$11,000 in 2002, \$12,000 in 2003, \$13,000 in 2004, \$14,000 in 2005, and <b>\$15,000 in 2006 and thereafter.</b>

Sec.	
611	<b>SIMPLE Plan employee contribution limit increased to \$10,000 from \$6,500</b> , phased in beginning at \$7,000 in 2002 and increasing in \$1,000 increments through 2005. Indexed in \$500 increments thereafter.
611	401(c)(2), defining rules relating to earned income for self-employed and owner-employees, is amended to specify that the term “trade or business” shall be applied as described in section 1402(c)(6). Note - this provision addresses issue raised by individuals who elect to be exempt from SECA on religious grounds.
612	Amends 4975(f)(6) to allow <b>plan loans to participants who are owners.</b>
613	TOP HEAVY - <b>Eliminates need to consider 4 years preceding plan year</b> when applying definition of key employee and confines itself to the preceding plan year.
613	TOP HEAVY - key employee definition – Officer compensated at <b>fifty percent of 415(b)(1) limit is replaced with “an officer having an annual compensation greater than \$130,000.</b> Indexed in \$5,000 increments.
613	TOP HEAVY - key employee definition - <b>Clause ii of 416(i)(1) (A) is repealed. It defines key employee as 1 of 10 employees earning more than the 415(c)(1)(A) limit</b> and owning the largest interests in the employer.
613	TOP HEAVY - Minimum benefits - <b>matching contributions shall be included in 416(c)(2)(A)</b> 3% minimum contribution for each non-key participant.
613	TOP HEAVY - Consideration of past distributions (416(g)(3)) - <b>5 year look-back</b> replaced with “one year period ending on the determination date.” Look-back for terminated plans also reduced to one year, but five-year rule still applies for in-service distributions...
613	Top Heavy – The term “ <b>top heavy plan</b> ” shall not apply to plans consisting solely of a <b>401(k)(12) elective deferral safe harbor and a 401(m)(11) matching contribution safe harbor.</b>
613	TOP HEAVY - 416(c)(1)(C) is amended by adding that for purposes of determining an employee’s years of service, any <b>service shall be disregarded to the extent that such service occurs during a plan year when no employee or former employee benefits under the plan</b> within the meaning of section 410(b).
614	<b>Elective deferrals shall not be taken into account in calculating employer contribution deduction limit under section 404.</b>
616	<b>Employer contribution limit under 404(a)(3) (stock bonus or profit-sharing trusts) increased from fifteen to twenty five percent.</b> Defined contribution plans subject to section 412 funding standards (money purchase plans) shall be treated in same manner.
616	<b>Compensation under 404(a)(3) paragraphs 3, 7, 8, &amp; 9 (employer contribution limits) shall include amounts treated as compensation under 415(c) (3) (C) or (D). (Elective deferrals are included in compensation calculation under 404.)</b>
617	<b>Roth 401(k)</b> elective deferrals can be treated as after-tax contributions (not excludable from gross income) and treated as “plus contributions” that are placed in separate account and can be rolled over only into another plus account or a Roth IRA. Distributions not taxed if age 59½ and held in plan for five years. Plus contribution included in elective deferral limit. <b>Effective for taxable years after December 31, 2005.</b>

Sec.	
618	<b>Credit for low and middle-income savers.</b> Nonrefundable matching tax credit for elective deferrals or IRA contributions up to \$2,000. Full fifty percent matching credit for joint/single AGIs of \$30K/\$15K, very steeply phased out by \$50K/\$25K. Credit is in addition to existing deduction or exclusion. Available to individuals over age 18 who are not a dependent or full-time student. <b>No impact on plan administration. Expires after 12/31/06.</b>
619	<b>Start-up credit.</b> Nonrefundable fifty percent credit in lieu of deduction for half of <b>administrative and education costs</b> of new small plans (not more than 100 employees earning \$5,000 or more). Eligible costs limited to \$1,000 for each of first three plan years. Plans must be established after December 31, 2001. Must have at least one nonhighly compensated participant.
620	Five year <b>elimination of IRS fees</b> for plan determination letters with respect to the qualified status of a pension plan maintained solely by one or more eligible employers or any trust which is part of the plan. Not available to <u>sponsors of</u> prototype plans intended to be marketed to participating employers (adopters of prototype plans may be eligible). Available up to the later of the fifth plan year of existence or the end of any remedial amendment period with respect to plan within first five years. Only applies to employers with less than 100 employees who received at least \$5K in compensation and have at least one nonhighly compensated participant. Covered fees are not included in determination of average fees charged.
621	<b>Nonresident aliens earning U.S. income only for services performed in connection with the individual's temporary presence in the U.S. as a regular member of the crew of a foreign vessel engaged in transportation between the U.S. and a foreign country may be excluded from coverage and nondiscrimination test consideration.</b>
631	<b>Catch-up contribution Additional elective deferrals for individuals age fifty and above before close of plan year.</b> Must make maximum elective deferral allowed under plan or law first. Additional deferral not subject to any limits <b>and not subject to nondiscrimination testing.</b> Employer may make tested match on additional amount. Additional deferrals cannot exceed excess of participant's compensation over any other elective deferrals made without regard to this section. Must be available to all participants in order to satisfy benefits, rights, and features requirements.  Applicable dollar amount is \$1,000 in 2002, \$2,000 in 2003, \$3,000 in 2004, \$4,000 in 2005, and <b>\$5,000 in 2006 and thereafter</b> , except that for SIMPLE 401(k) or SIMPLE IRA plans all amounts are fifty percent less. Indexed in \$500 increments thereafter.
632	<b>415(c)(1)(B) contribution limit made on behalf of an individual participant is increased from 25% to 100% of the participant's compensation.</b>
633	<b>Accelerated vesting for 401(m) matching contributions.</b> (3 year cliff, 6 year incremental). Effective date delayed to NLT 2006 if collectively bargained until then.
634	The Secretary of the Treasury shall <b>modify the life expectancy tables under the regulations</b> relating to the minimum distribution requirements to reflect current life expectancy. Effective upon enactment.
636	<b>Hardship withdrawal safe harbor</b> under IRS reg 401(k)(2)(B)(i)(IV) regarding suspension from plan <b>lowered from twelve to six months.</b> Also adds provision that any hardship distribution as defined by the plan or under law is not an eligible rollover distribution.
641	Allows <b>rollovers</b> in and out of 457, 403(b), and 401 plans.

Sec.	
642	Permits <b>rollovers of deductible IRA's into DC or DB plan</b> . Requires "conduit IRA" to preserve proper tax treatment of plan distribution. Also will require changes to rollover notices.
643	Amends 402(c)(2) regarding ban on <b>after-tax rollovers</b> to allow direct trustee-to-trustee transfers to qualified trusts in DC plans that agree to separate accounting.
644	Provides <b>hardship exceptions to 60-day limit</b> on rollovers if Secretary of Treasury finds failure to do so "would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement."
645	A DC plan will not fail 411(d) (6) merely because the <b>transferor plan does not provide some or all of the forms of distributions</b> previously available under another plan. <b>Applies to mergers and other transactions having the effect of a direct transfer. A DC plan shall not violate section 411(d)(6) merely because of the elimination of a form of distribution if it retains a single sum payment option.</b> Secretary's discretion under <b>411(d)(6) is amended to allow regulations to provide that "this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in more than a de minimis manner."</b>
646	<b>Fixes same desk rule by replacing "separation from service" with "severance from employment"</b> in 401(k)(2)(B)(i)(I). This would allow the employee to rollover their account in the terminated plan to the successor owner's plan (if there is one) or to an IRA. <b>Addresses business sale requirements in 401(k)(2)(B)(i)(II) by striking "an event" and inserting "a plan termination."</b> 401(k)(10) language regarding disposition of assets and/or subsidiary is repealed as unnecessary.
648	Employers may <b>disregard rollovers for purposes of cash-out amounts</b> .
651	Repeal of <b>155% of defined benefit current liability</b> funding limit by 2004.
652	<b>Maximum DB contribution under 404(a)(1) shall not be less than unfunded termination liability</b> determined as if plan terminated at end of plan year. Plans less than 100 participants cannot include HC's in calculating liability. Does not apply to professional service employers of 25 or less.
653	<b>DB plan exception to section 4972</b> (relating to nondeductible contributions). Employer may elect not to take into account DB contributions except to the extent that they exceed accrued liability full funding contribution limits.
654	<b>415(b) limits for multiemployer and government plans</b> modified to eliminate 100% of three-year-high-average compensation (but not dollar amount).
654	<b>Multiemployer plans exempted from aggregation requirements</b> under 415(f) for any combination with any other plan maintained by an employer for purposes of calculating the 100% of compensation limit.
655	<b>Technical correction to exclusion of voluntary investment of elective deferrals in employer stock or real property from ten percent limit .</b>

Sec.	
656	<b>Section 409 S Corp ESOPS</b> will be treated as having made distributions to disqualified persons in any year in which a disqualified person holds at least fifty percent of the number of shares of the S Corp. Generally effective for plan years after on 12/31/04 for existing plans and upon enactment for plans established after 3/14/01.
657	<b>Involuntary distributions above \$1,000 must have a default rollover to an IRA</b> or annuity. Fiduciary responsibility for IRA for lesser of one year or when rolled over to another IRA or annuity. <b>Conference Report language requires that participant be notified that distribution may be rolled over to another IRA without cost to the participant. Effective upon issuance of final regulations by the Secretary of Labor. Regulations to be issued within three years of enactment.</b>
658	<b>Clarifies that taxable year of contributions to multiemployer plans shall not be treated as a method of accounting.</b>
659	<b>Significant reductions in DB plans</b> New excise tax of \$100 per day per participant for plans that fail to notify individuals in writing of significant reduction in the rate of future benefit accrual in a way designed to be “understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment.” Secretary may provide a simplified form of notice or exempt from notice requirement plans with fewer than 100 participants or any plan that allows participants to choose between new and old benefit formulas. Notice requirement includes reductions in early retirement benefits or subsidies, which will have the effect of reducing future accrual rates instead of the effect of reducing accrued benefits.  Applies to DB plans and DC plans subject to section 412. <b>Effective upon enactment.</b>
661	Modify timing of <b>plan valuations</b> to allow election from same plan year to one year prior to beginning of plan year if value of assets are not less than 125% of the plan’s current liability.
662	<b>ESOP dividends</b> may be reinvested without loss of dividend deduction.
664	Secretary to modify regulations under 1.410(b)-6(g) to provide that <b>tax exempt entities offering 401(k) plans may exclude under section 410(b) any employees covered under a 403(b) plan if certain conditions are met.</b> Effective upon enactment.
665	Amends section 132(e) to add that <b>employer provided retirement advice provided “to an employee and his spouse”</b> is a de minimus fringe provided it is offered to all employees “on substantially the same terms.”
666	IRC 401(m)(9) relating to the Secretary’s duty to issue regs to prevent <b>the multiple use of the alternative limit (lesser of 200% or 2 percentage points difference)</b> is amended to substitute “regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions”, <b>essentially eliminating the multiple use test.</b>