

# Federal Legislation Quick Guide

April 9, 2008

## Pending Legislation—Retirement Plans

**Note:** The following charts summarize federal legislation that is currently under active consideration by Congress or has recently been enacted into law. In most cases, other bills have also been introduced on the same issue, but are not being actively considered by Congress at this time. For more information on the summarized bills, or to find other bills on the same issue, go to the Library of Congress Web site at <http://thomas.loc.gov>.

### Nonqualified Deferred Compensation (NQDC)

<b>Current Legislation</b>	<ul style="list-style-type: none"><li>■ Shareholder Vote on Executive Compensation Act (H.R. 1257/S. 1181).</li><li>■ Protecting Employees and Retirees in Business Bankruptcies Act (S. 2092/H.R. 3652).</li><li>■ Ending Corporate Tax Favors for Stock Options Act (S. 2116).</li><li>■ Tax Reduction and Reform Act of 2007 (H.R. 3970).</li><li>■ Pension Protection Technical Corrections Act of 2007 (S. 1974/H.R. 3361).</li></ul>
<b>Status</b>	<ul style="list-style-type: none"><li>■ H.R. 1257 was approved by the House on April 20, 2007 by a vote of 269 to 134. S. 1181 was introduced by Sen. Obama (D-IL) on April 20, 2007.</li><li>■ S. 2092 and H.R. 3652 were introduced by Sen. Durbin (D-IL) and Rep. Conyers (D-MI), respectively, on September 25, 2007.</li><li>■ S. 2116 was introduced by Sen. Levin (D-MI) on September 28, 2007.</li><li>■ H.R. 3970 was introduced by Rep. Rangel (D-NY) on October 25, 2007.</li><li>■ The Senate passed S. 1974 on December 19, 2007. The House passed H.R. 3361 by voice vote on March 13.</li></ul>
<b>Outlook</b>	<p>NQDC legislation may be addressed in 2008 and used as a revenue raiser to pay for other bills. Senate Finance Committee staff are considering provisions that would impose a cap on NQDC beyond what is required under 409A; include a market rate of return (possibly based on Code section 3121(v)); index the \$1 million annual cap; extend the payment date from 2 ½ months to 12 months after the vesting event; and exclude DB mirror plans (mirror plan could include those that have more stringent vesting rules for the mirror plan). The House Ways and Means Committee could also revisit the NQDC provisions as part of permanent alternative minimum tax reform legislation. It is working closely with the Senate Finance Committee on the NQDC provisions.</p>

## Nonqualified Deferred Compensation (NQDC) (continued)

<p><b>Outlook (continued)</b></p>	<p>Business leaders are willing to work on executive compensation issues with House Financial Services Committee Chairman Frank (D-MA) but have raised some concerns that advisory shareholder votes on executive pay plans could lead to votes on other aspects of corporate governance, such as hiring and strategic plans. President Bush would veto H.R. 1257.</p> <p>S. 2092/H.R. 3652 could see action in 2008 since Rep. Conyers is the Chairman of the House Judiciary Committee, the committee of jurisdiction, and Sen. Durbin sits on the Senate Judiciary Committee.</p> <p>Sen. Levin, Chairman of the Senate Permanent Subcommittee on Investigations, introduced S. 2116 following a June hearing on the stock options taxation issue. The legislation is a likely revenue raiser.</p> <p>The Senate is expected to address H.R. 3361 in April.</p>
<p><b>Details</b></p>	<p>H.R. 1257/S. 1181 would require public companies to include in their annual proxies a non-binding advisory shareholder vote on their executive pay plans beginning in 2009. Such proxy votes would impose no “additional fiduciary duty” on the board. The bill would not set any limits on executive pay but would provide shareholders an opportunity to approve or disapprove a company’s executive pay practices. The legislation would also require a separate advisory vote if a company gave a new, not yet disclosed “golden parachute” while simultaneously negotiating to buy or sell a company.</p> <p>S. 2092 and H.R. 3652 purport to protect worker and retiree wages and benefits partly by increasing the parity of worker and executive claims when a corporate files for bankruptcy under Chapter 11. Under S. 2092/H.R. 3652, court approval of executive compensation would be required on exit from bankruptcy, and deferred executive compensation would be prohibited if employee compensation plans were terminated in bankruptcy. Workers would be able to make a claim for earned defined contribution plans, but insiders could not. Executive compensation enhancements would be limited during bankruptcy. Executive compensation could be recovered only relative to lost employee compensation. Finally the bill would void extra payments made to executives or consultants in anticipation of bankruptcy.</p> <p>S. 2116 would (1) create a new corporate stock option deduction under a new Code section 162(q) requiring the tax deduction to be consistent with the book expense, and (2) eliminate the existing corporate stock option deduction under Code section 83(h) allowing excess deductions. The bill would allow corporations to deduct stock option compensation in the same year it is recorded on the company books. The bill would establish a transition rule applying the new deduction to stock options exercised after enactment, permitting deductions under the old rule for options vested prior to adoption of FAS 123R on June 15, 2005, and allowing a catch-up deduction in the first year after enactment for options that vested between adoption of FAS 123R and the date of enactment. Finally, the bill would make executive stock option compensation deductions subject to the same \$1 million cap on corporate deductions that applies to other types of compensation paid to the top executives.</p> <p>H.R. 3970 would prevent hedge fund managers from using offshore hedge funds to defer compensation received for providing investment services.</p>

## Nonqualified Deferred Compensation (NQDC) (continued)

<b>Details (continued)</b>	S. 1974/H.R. 3361 would treat assets set aside or transferred to a trust for the purpose of paying deferred compensation during any restricted period that a defined benefit plan is in at-risk status as a transfer of property under Section 83. It would also treat assets of a NQDC plan that are restricted to the provision of benefits under the plan in connection with a restricted period of a defined benefit plan as a transfer of assets under Section 83.
<b>Effective Date</b>	<p>H.R. 1257/S. 1181 would require the Securities and Exchange Commission (SEC) to issue final regulations within one year after the date of enactment.</p> <p>S. 2092/H.R. 3652 would be effective on date of enactment.</p> <p>The new deduction rules in S. 2116 would become effective on date of enactment. The executive pay deduction limit would apply to stock options exercised or granted after the date of enactment.</p> <p>S. 1974/H.R. 3361 would be effective as if included in the PPA.</p>

## Expatriate Taxation

<b>Current Legislation</b>	Heroes Earnings Assistance and Tax Relief (HEART) Act of 2007 (H.R. 3997).
<b>Status</b>	The House unanimously passed H.R. 3997 on November 6, 2007. The Senate passed the bill by unanimous consent with an amendment, on December 12. The House further amended the bill in H. Res. 884 on December 18 that passed unanimously. H.R. 3997 then returned to the Senate where it was modified again and passed on December 19.
<b>Outlook</b>	H.R. 3997 will be taken up again in 2008 and the differences in the House and Senate versions will need to be reconciled; however, the expatriate tax provision is identical in both versions.
<b>Details</b>	H.R. 3997 would revise the tax rules on expatriation by imposing a 30% withholding tax on distributions from tax-qualified and nonqualified plans at the time the distribution is paid. The new withholding requirement would apply to distributions paid to individuals who have relinquished their U.S. citizenship (expatriates) and those who were long-term U.S. residents (green card holders).
<b>Effective Date</b>	H.R. 3997 would become effective on date of enactment.

## Fee Disclosure

<b>Current Legislation</b>	<ul style="list-style-type: none"> <li>■ 401(k) Fair Disclosure for Retirement Security Act of 2007 (H.R. 3185).</li> <li>■ The Defined Contribution Plan Fee Transparency Act (H.R. 3765).</li> <li>■ Mutual Fund Fee Reform Act (H.R. 3225).</li> <li>■ Defined Contribution Fee Disclosure Act (S. 2473).</li> </ul>
<b>Status</b>	<ul style="list-style-type: none"> <li>■ The House Education and Labor Committee held a hearing on H.R. 3185 on October 4, 2007.</li> <li>■ The House Ways and Means Committee held a hearing on H.R. 3765 on October 30, 2007.</li> <li>■ H.R. 3225 was introduced by Reps. Moore (D-KS) and Castle (R-DE) on July 31, 2007.</li> <li>■ S. 2473 was introduced by Sens. Harkin (D-IA) and Kohl (D-WI) on December 13, 2007.</li> </ul>
<b>Outlook</b>	<p>Fee disclosure legislation may pass the House, but Senate approval is unlikely this year. It is likely that the Department of Labor's proposed regulations on fee disclosures to plan fiduciaries by service providers will be finalized before any legislation on this issue is enacted. Many believe that the proposed regulations will have greater impact on fee disclosure than any pending legislation. H.R. 3765 is an alternative to H.R. 3185 recognizing that the participant disclosure provisions of H.R. 3185 are too complex and of little value to participants. House Education and Labor Committee Chairman Miller (D-CA) plans to revise H.R. 3185 and hold a markup during the week of April 14. Rep. Miller has offered to drop a provision that would have required all 401(k) plans to offer an index fund as an investment option in exchange for industry support of his bill. Pension and mutual fund groups oppose Rep. Miller's bill as it currently stands because they believe H.R. 3185 will require them to provide investment options dictated by lawmakers. Miller's revised bill will move immediately to the floor after it is reported out of committee. The House Ways and Means Committee is working on disclosure legislation of its own, but has not drafted any legislation as yet, but Ways and Means staff indicates that its legislation will be similar to the Miller bill. Ways and Means is expected to markup bills on plan fee disclosure during the week of April 14. Both committees have indicated that they will consult with one another and work on this issue on a bipartisan basis.</p> <p>On the Senate side, Sen. Harkin has indicated that legislation may not be necessary pending Labor Department regulations. There is no markup expected on S. 2473, but Sens. Kohl and Harkin are reviewing the comments submitted in response to the proposed regulations. The Senate Finance Committee does not plan to hold a hearing on the issue, but the issue could be addressed as part of a broader hearing on retirement security in the Senate HELP Committee later this year.</p>

## Fee Disclosure (continued)

<b>Details (continued)</b>	<p>H.R. 3185 would require 401(k) plan administrators to obtain a service disclosure statement from service providers prior to entering into a contract with total cost that are at least \$1,000. The service disclosure statement would provide the identity of the service provider and a description of services and itemized costs of each service. Itemized costs would include sales commissions, start-up fees, investment management and advice expenses, trading costs, administrative and recording keeping fees, legal compliance, trusteeship, potential termination or surrender charges and other costs. The statement would also include disclosure of any conflicts of interest that a service provider may have with the plan sponsor, the plan or other service provider and receives a payment for services. The statement could require disclosure of the impact of share classes of certain mutual fund investments if applicable. Service providers performing services without charge, discounted services or rebates would also be required to be disclosed in the statement. Service providers would update the statement annually and within 30 days of any material change to the statement. Plan participants and beneficiaries would receive a copy of the statement within 30 days after a written request. The plan sponsor would be required to post the statement on the company's Intranet website.</p> <p>Under the legislation, a plan administrator would provide participants or beneficiaries with an annual investment election notice generally at least 15 days prior to the beginning of the plan year and upon the effective date of any material change in investment options. Such notice would include the name of each available investment option, investment objective, risk level, historical returns and fee menu. The fee menu would include any potential service fees assessed against a participant or beneficiary account, such as variable fees depending on the investment option selected, fees as a percentage of total assets and administrative and transactional fees.</p> <p>The bill would require plan administrators to provide each participant and beneficiary an annual benefit statement no later than 90 days after the close of each plan year. The annual benefit statement would generally disclose plan information from the preceding year, such as starting and ending account balance, vesting status, employer and employee contributions, earnings, fees assessed, asset allocation, service fees for each investment option, and a comparison of the performance of options to a nationally recognized market based index. The annual benefit statement could also include the historical return and risk level for each investment option and an estimated projection of amount a participant needs to save monthly to retire at age 65.</p> <p>The Department of Labor (DOL) would be required to provide model notices for the service disclosure statement, investment election notice and participant benefit notice. The DOL would also conduct an annual audit of a representative sampling of plans to determine compliance with these new disclosure requirements. The DOL would refer violations to the Securities Exchange Commission and other regulatory agencies.</p> <p>The bill would require 401(k) plans to include at least one investment option that is a nationally recognized market-based index fund that offers a combination of historical returns, risk and fees likely to meet retirement income needs at "adequate levels of contribution." The bill would establish a 12 member advisory council on improving employer-employee retirement practices.</p>
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## Fee Disclosure (continued)

<p><b>Details (continued)</b></p>	<p>H.R. 3765 would requires employers to provide employees with disclosures regarding plan investments and fees at enrollment and annually. The enrollment notice would require the disclosure of the key characteristics of each investment option such as risk and return characteristics and any applicable fees (including asset-based fees, whether fees are used for services beyond investment management, and whether additional charges apply such as redemption fees). In addition, participants would be provided a statement that they should not select investments based solely on fees but based on careful consideration of a range of factors. The annual notice would provide participants with information about the investments selected and the fees applicable to their accounts. This annual notice would describe the participant's investment choices, as well as any asset-based or other fees charged to the account. Reasonable estimates of expenses or fees would be allowed for both notices. The Treasury Department would develop model notices and regulations for automatic enrollment and electronic communication. Failure to comply would result in a tax of \$100 per day per failure with annual exposure capped at \$500,000.</p> <p>The bill would require service providers to provide more extensive fee information to plan administrators in advance of a contract for plan services, each year the contract is in place and following any material modification of the contract. Providers would have to provide an estimate of total fees and a detailed and itemized list of all the services to be provided under the contract. Multiple bundled services would have to be separated for (1) investment management, (2) administration and recordkeeping, and (3) fees paid to intermediaries or other third parties. Reasonable estimates would be allowed. Revenue sharing would also have to be disclosed. The detailed disclosure statement would need to be provided to employers every year and after any material modification to the contract. Employers would be required to make the notice available to participants. Failure to comply would result in a tax of \$1,000 per day per failure with annual exposure capped at \$1,000,000.</p> <p>H.R. 3765 would apply to all participant-directed defined contribution plans, including 401(k) plans, 403(b) plans, and governmental 457(b) plans.</p> <p>H.R. 3225 would require the Securities and Exchange Commission (SEC) to improve the disclosure of 12b-1 fees and expenses charged to mutual fund investors.</p> <p>S. 2473 would require easy-to-understand fee information to be disclosed to participants in individual account plans. The fee information would have to be provided to participants before they choose between investment options in a plan and also on quarterly statements. In addition, the bill would require service providers to disclose more information to plan sponsors, including all fees and relationships between service providers.</p>
<p><b>Effective Date</b></p>	<p>H.R. 3185 would generally apply to plan years beginning after the date of enactment.</p> <p>Disclosures to participants under H.R. 3765 would become effective for plan years beginning on or after January 1, 2009. Disclosures between service providers and plans would apply to arrangements entered into or materially modified on or after the 90<sup>th</sup> day after enactment.</p> <p>H.R. 3225 would become effective one year after the SEC issues regulations (within 180 days after enactment).</p> <p>S. 2473 would apply to plan years beginning after December 31, 2009. Final DOL regulations would be required by December 31, 2008.</p>

## PPA Technical Corrections

<b>Current Legislation</b>	Pension Protection Technical Corrections Act of 2007 (S. 1974/H.R. 3361).
<b>Status</b>	The Senate passed S. 1974 on December 19, 2007 with some modifications. The House passed H.R. 3361 on March 13, 2008.
<b>Outlook</b>	<p>The Senate is expected to address H.R. 3361 in April.</p> <p>Rep. Pomeroy (D-ND) is continuing to work on a separate bill that will address asset smoothing and reverse IRS guidance that requires asset values to be averaged with no adjustment for expected or actual investment returns. It is likely that the House will consider asset smoothing in April. Rep. Andrews (D-NJ) plans to introduce PPA legislation later this year that will address asset smoothing and ease PPA transition rules.</p>
<b>Details</b>	<p>H.R. 3361 would make clerical and conforming changes to the Pension Protection Act (PPA).</p> <p>H.R. 3361 would limit references to provisions prohibiting retroactive plan amendments to those that reduced accrued benefits. Duplicative language on approval of changes in a plan's funding method would be eliminated. The bill would clarify the definition of a plan's normal cost and the 2008 transition rule for determining at-risk status would apply to the 80% test. Under the funding rules, lump sums of \$5,000 or less could be paid, even if an underfunded plan would otherwise be prohibited from paying lump sums. The Department of Treasury would be permitted to issue rules on the notice of funding-based distribution limits under ERISA section 101(i). For funding-related limits and accruals, the bill would provide a definition of a single employer plan. As passed, The bill would allow IRS to write rules for determining whether quarterly contributions are required for the 2008 plan year.</p> <p>Other provisions of H.R. 3361 would extend the required amendment date for interest rates to conform to the amendment period permitted under the PPA; clarify what mortality table may be used in calculating the minimum value of optional forms of benefits for purpose of the benefit limits; limit the extension of the PBGC missing participant program to qualified plans; conform information and measurement dates in the notice required to be provided by a multiemployer plan administrator to the required notice information from a single-employer plan administrator; extend to PBGC special rules on disclosure of confidential information where a plan is terminated involuntarily; expand the information that a plan administrator must disclose to affected parties to include information provided to PBGC both before and after the notice of intent to terminate is given; conform the individual benefit statement requirement of ERISA Section 105 with ERISA Section 209 on plan recordkeeping and reporting obligations; revise effective dates on benefit accrual provisions under PPA Section 701; increase the combined plan deduction limit, where a single-employer plan is not covered by PBGC, the combined plan limit is not less than the excess (if any) of the plan's funding target over the value of the plan's assets; provide that for combined plans, if defined contributions are less than 6% of compensation, a defined benefit plan is not subject to the overall deduction limit, while if contributions exceed the 6%, only the contributions above the 6% are counted toward the overall deduction limit; amend use of excess pension assets to fund health benefits as a Section 420 transfer; repeal the requirement that an eligible automatic contribution arrangement satisfy ERISA Section 404(c)(5) if a participant has not made an investment election, and disregard a permissive withdrawal from automatic contribution arrangements when applying the annual individual limit on elective deferrals; and require separate termination of the individual account and defined benefit components of a combined plan.</p>

## PPA Technical Corrections (continued)

<p><b>Details (continued)</b></p>	<p>Fiduciary relief currently available during blackout periods (which spans three consecutive days or more) would be extended to periods of less than three consecutive days. The bill would clarify that the combined plan deduction limit for defined benefit and defined contribution plans would not apply to the defined benefit plan if contributions to the defined contribution plan are not more than 6% of compensation. If these contributions are more than 6% of compensation, only contributions in excess of 6% would count towards the deduction limit. All plans would be required to permit rollovers out of the plan for non-spousal beneficiaries.</p> <p>The new vesting rules for hybrid plans would be effective on the basis of plan years and would apply to participants with an hour of service after the applicable effective date for the plan. The new interest crediting rules for hybrid plans in existence on June 29, 2005 would apply to years beginning after December 31, 2007, unless the sponsor elects to apply the rules earlier. The vesting and interest crediting rules that would apply to collectively bargained plans would not apply to plan years beginning before the earlier of: (1) (a) the later of January 1, 2008 or (b) the termination of the collective bargaining agreement; or (2) January 1, 2010.</p> <p>H.R. 3361 would also allow direct rollovers from retirement plans to Roth IRAs and would allow rollovers by nonspouse beneficiaries of certain retirement plan distributions, including inherited IRAs.</p>
<p><b>Effective Date</b></p>	<p>H.R. 3361 would be effective as if included in the PPA.</p>

## Discrimination in Retirement Plan Benefits

<p><b>Current Legislation</b></p>	<ul style="list-style-type: none"> <li>■ Lilly Ledbetter Fair Pay Act of 2007 (H.R. 2831).</li> <li>■ The Fair Pay Restoration Act (S. 1843).</li> </ul>
<p><b>Status</b></p>	<ul style="list-style-type: none"> <li>■ The House approved H.R. 2831 by a vote of 225 to 199 on July 31, 2007.</li> <li>■ Sen. Kennedy (D-MA) introduced S. 1843 on July 20, 2007.</li> </ul>
<p><b>Outlook</b></p>	<p>In 2007, S. 1843 bypassed the committee process and was placed directly on the Senate calendar. However, it seems to be moving through the normal committee process now as the Senate HELP committee held a hearing on the bill. The HELP committee will either mark up the bill or send H.R. 2831 to the Senate floor. While the President would support some changes to remedy what happened in the <i>Ledbetter</i> case, he would likely veto the legislation as currently drafted because it is so broad.</p>
<p><b>Details</b></p>	<p>H.R. 2831/S. 1843 would overturn the recent Supreme Court decision in <i>Ledbetter v. Goodyear Tire &amp; Rubber Co.</i>, which held that the limitations period for filing a claim begins when the discriminatory act occurs and is communicated to the individual and does not re-start with each paycheck (the “paycheck rule”). The bill could potentially raise issues for plan sponsors including potential liability for increased compensation when re-calculating a benefit, how the bill would approach deduction limits, benefit limits under the Internal Revenue Code, employer matches and earnings.</p>
<p><b>Effective Date</b></p>	<p>H.R. 2831/S. 1843 would be effective May 28, 2007 and apply to all pay discrimination claims pending on or after that date.</p>

## Qualified Tuition Deduction

<b>Current Legislation</b>	To amend the Internal Revenue Code to make permanent the qualified tuition deduction (H.R. 686).
<b>Status</b>	H.R. 686 was introduced by Reps. Pomeroy (D-ND) and English (R-PA) on January 24, 2007.
<b>Outlook</b>	This bill may be considered in 2008. The current law provision, which expired December 31, 2008, could be retroactively extended on another tax vehicle.
<b>Details</b>	H.R. 686 would make the current \$4,000 above-the-line income tax deduction for qualified higher education expenses permanent.
<b>Effective Date</b>	H.R. 686 would apply to taxable years beginning after December 31, 2007.

## IRAs

<b>Current Legislation</b>	<ul style="list-style-type: none"> <li>■ Public Good IRA Rollover Act of 2007 (S. 819/H.R. 1419).</li> <li>■ Automatic IRA Act of 2007 (S. 1141/H.R. 2167).</li> <li>■ Women's Retirement Security Act (S. 1288).</li> </ul>
<b>Status</b>	<ul style="list-style-type: none"> <li>■ S. 819 and H.R. 1419 were introduced by Sen. Dorgan (D-ND) and Rep. Pomeroy (D-ND), respectively on March 8, 2007.</li> <li>■ S. 1141 was introduced by Sens. Bingaman (D-NM) and Smith (R-OR) on April 18, 2007. H.R. 2167 was introduced by Reps. Neal (D-MA) and English (R-PA) on May 3, 2007.</li> <li>■ S. 1288 was introduced by Sens. Smith (R-OR) and Conrad (D-ND) on May 3, 2007.</li> </ul>
<b>Outlook</b>	This issue may be considered in 2008. The current law provision, which expired December 31, 2008, could be retroactively extended on another tax vehicle.
<b>Details</b>	<p>S. 819/H.R. 1419 would make permanent a provision that allows penalty-free rollovers from IRAs to charitable organizations. The bill would allow tax-free direct gifts to charities from an IRA at age 70 ½ and "life income" gifts at age 59 ½. Life income gifts would involve the donation of assets to a charity where the donor retains an income stream from those assets for a defined period.</p> <p>S. 1141/H.R. 2167 would require employers with more than ten employees that do not offer a qualified retirement plan or arrangement for their employees, to offer employees the option to remit wages to an IRA account. Employer contributions would not be required but small employers (less than 100 employees) would receive a tax credit to offset administrative costs. IRA contributions could be invested in life cycle funds similar to the Thrift Savings Plan (TSP) unless an employee chooses another investment and would receive the same tax treatment as other IRA contributions. If the payroll deposit IRA is an automatic enrollment arrangement, The automatic IRA contributions would be subject to the 401(k) automatic enrollment and other default election rules. Employers with automatic IRAs would not be subject fiduciary liability under ERISA. Automatic IRA contributions would generally be 3% of compensation that could be increased annually by the Board, but not more than 8% of compensation. The bill would also preempt conflicting state law that would prohibit or restrict the establishment of payroll deductions to automatic IRAs.</p> <p>S. 1288 is similar to S. 1141/H.R. 2167.</p>

## IRAs (continued)

<b>Effective Date</b>	S. 819/H.R. 1419 would apply to taxable years beginning after December 31, 2006. S. 1141/H.R. 2167/S. 1288 would apply to calendar years beginning after December 31, 2008.
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## Retirement Plan Distributions for Active Military

<b>Current Legislation</b>	Heroes Earnings Assistance and Tax Relief (HEART) Act of 2007 (H.R. 3997).
<b>Status</b>	The House unanimously passed H.R. 3997 on November 6, 2007. The Senate passed the bill by unanimous consent with an amendment, on December 12. The House further amended the bill in H. Res. 884 on December 18 that passed unanimously. H.R. 3997 returned to the Senate where it was modified again and passed on December 19.
<b>Outlook</b>	H.R. 3997 will be taken up again in 2008 and the differences in the House and Senate versions will need to be reconciled, but the retirement plan provisions are not at issue.
<b>Details</b>	<p>H.R. 3997 would make the penalty-free withdrawal provision permanent. The bill would also amend USERRA to require a trust to provide that if a person dies while performing qualified military service, the survivors would be entitled to any additional benefits provided under the plan had the participant resumed and then terminated employment on account of death. If a participant dies or becomes disabled while performing qualified military service, for benefit accrual purposes, an employer may treat the individual as if he or she had resumed employment pursuant to USERRA on the day preceding death or disability.</p> <p>This provision includes a nondiscrimination requirement for all individuals performing qualified military service. Employee contributions and elective deferral amounts would be calculated based on the individual's average actual contributions or deferrals for the lesser of the 12-month period of service immediately prior to qualified military service or the actual length of continuous service if employment is less than 12 months. These provisions would apply to deaths and disabilities that occur on or after January 1, 2007.</p> <p>The bill would provide that any differential wage payments made to employees called to active duty would count as wages. For retirement plan purposes, individuals receiving differential wage payments would be treated as employees and for purposes of distributions, the individual would be treated as having been severed from employment. However, if an individual chooses to receive distributions, he or she may not make any elective deferrals or contributions for the six month period beginning on the date of distribution. These provisions would apply to years beginning after December 31, 2007.</p>

## Retirement Plan Distributions for Active Military (continued)

<b>Details (continued)</b>	The bill would allow military death gratuities to be rolled over to a Roth IRA or Coverdell education savings account (from an eligible retirement plan for contributions after the PPA became effective), and any contributions from an IRA (other than a Roth IRA) to a Roth IRA would be disregarded. This provision would apply to deaths from injuries occurring on or after the date of enactment. The provision would be applicable to deaths from injuries occurring after October 7, 2001 and before the date of enactment if contributions are made within one year after the date of enactment. For contributions made after the PPA became effective, the provision would apply to taxable years beginning after December 31, 2007.
<b>Effective Date</b>	H.R. 3997 includes various effective dates as indicated in the Details section.

## Bankruptcy

<b>Current Legislation</b>	Protecting Employees and Retirees in Business Bankruptcies Act of 2007 (S. 2092/H.R. 3652).
<b>Status</b>	S. 2092 and H.R. 3652 were introduced by Sen. Durbin (D-IL) and Rep. Conyers (D-MI), respectively, on September 25, 2007.
<b>Outlook</b>	This legislation could be considered in 2008.
<b>Details</b>	<p>S. 2092 and H.R. 3652 purport to protect worker and retiree wages and benefits when a corporate files for bankruptcy under Chapter 11. Under the legislation, wage claims per worker would be increased to \$20,000 and would allow a second claim of up to \$20,000 for benefits earned. The 180-day filing requirement would be eliminated, and a new priority claim would be created for the loss in value of worker pensions. A new priority administrative expense would also be established for worker collective severance pay. The bill would restrict the situations in which collective bargaining agreements can be rejected and would tighten the criteria by which collective bargaining agreements can be amended.</p> <p>The procedures through which retiree benefits could be reduced would also be tightened. Added criteria would be used to evaluate bids for assets so that bids are also judged by offers to maintain existing jobs, preserve retiree health benefits and assume pension obligations. Reasonable and necessary expenses in determining the proceeds from asset sales would include unpaid wages, vacation, and other accrued benefits. Further, employees and retirees would continue to receive compensation after the company exits bankruptcy. The statement of purpose of reorganizing plans would have to include a plan to preserve jobs.</p>
<b>Effective Date</b>	S. 2092/H.R. 3652 would be effective on date of enactment.

## Roth Accounts in Government Plans

<b>Current Legislation</b>	Farm, Nutrition, and Bioenergy Act of 2007 (H.R. 2419).
<b>Status</b>	H.R. 2419 passed the House by a vote of 231 to 191 on July 27, 2007. The Senate passed the bill with an amendment on December 14 by a vote of 79 to 14. The Senate named conferees on February 4, 2008.
<b>Outlook</b>	The bill could be enacted this year.
<b>Details</b>	H.R. 2419 includes a provision that would enable state and local governmental 457(b) plans to adopt qualified Roth contribution programs. Participants would be able to designate elective deferrals that could be otherwise deferred under the plan as Roth contributions. Qualified distributions of the Roth contributions and income on those contributions would be excluded from gross income.
<b>Effective Date</b>	H.R. 2419 would be effective for taxable years after December 31, 2007.