

AMERICAN BENEFITS COUNCIL

SUMMARY OF THE PENSION PRESERVATION AND SAVINGS EXPANSION ACT OF 2003, INTRODUCED BY CONGRESSMEN ROB PORTMAN (R-OH) AND BEN CARDIN (D-MD)*

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* On April 11, Congressmen Rob Portman (R-OH) and Ben Cardin (D-MD) introduced H.R. 1776 -- the Pension Preservation and Savings Expansion Act of 2003.

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Item	Current Law	Portman/ Cardin Bill										
EXTENSION OF EGTRRA RETIREMENT SAVINGS PROVISIONS												
Permanent Extension of EGTRRA Retirement Savings Provisions (§ 101)	The provisions of the Economic Growth and Tax Relief and Reconciliation Act of 2001 (“EGTRRA”), including all of EGTRRA’s retirement savings provisions, are scheduled to expire in 2011.	The retirement savings provisions of EGTRRA, including all provisions affecting employment-based retirement plans and IRAs, would be permanently extended.										
Permanent Extension of the Savers’ Credit (§ 102)	EGTRRA enacted a non-refundable tax credit (the “savers’ credit”) for low- and moderate-income savers who make salary reduction contributions to employment-based retirement plans or IRAs. The savers’ credit was enacted as a pilot program, and will not be available after 2006.	The savers’ credit would be permanently extended.										
EXPANDING COVERAGE AND SAVINGS GENERALLY												
Acceleration of Scheduled Increases in Maximum Salary Reduction Contributions -- 401(k) and 403(b) Plans (§ 402(a))	<p>Section 402(g) limits elective deferrals under most salary reduction plans, (e.g., section 401(k) plans and section 403(b) arrangements). Under EGTRRA, the limit on elective deferrals is increased to \$15,000 as follows:</p> <table border="1" data-bbox="420 768 661 922"> <thead> <tr> <th><u>Year</u></th> <th><u>Limit</u></th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>\$12,000</td> </tr> <tr> <td>2004</td> <td>\$13,000</td> </tr> <tr> <td>2005</td> <td>\$14,000</td> </tr> <tr> <td>2006</td> <td>\$15,000</td> </tr> </tbody> </table> <p>Thereafter, indexing will occur in \$500 increments.</p>	<u>Year</u>	<u>Limit</u>	2003	\$12,000	2004	\$13,000	2005	\$14,000	2006	\$15,000	The limit on elective deferrals would be increased to \$15,000 for 2004, and indexed thereafter as under current law.
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Section 457(b) Plan Contribution Limit (§ 402(b))	<p>Under EGTRRA, the dollar limit on contributions under section 457(b) plans maintained by State and local governments and tax-exempt organizations is increased to \$15,000 as follows:</p> <table border="1" data-bbox="420 1133 766 1287"> <thead> <tr> <th><u>Year</u></th> <th><u>Limit</u></th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>\$12,000</td> </tr> <tr> <td>2004</td> <td>\$13,000</td> </tr> <tr> <td>2005</td> <td>\$14,000</td> </tr> <tr> <td>2006</td> <td>\$15,000</td> </tr> </tbody> </table> <p>Thereafter, indexing will occur in \$500 increments.</p>	<u>Year</u>	<u>Limit</u>	2003	\$12,000	2004	\$13,000	2005	\$14,000	2006	\$15,000	<p>The dollar limit on contributions under eligible deferred compensation plans under section 457(b) would be increased to \$15,000 for 2004, and indexed thereafter as under current law.</p> <p>[Note: other provisions in the bill change the treatment of tax-exempt employers under section 457.]</p>
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SIMPLE Plan Contribution Limit (§ 402(c))	<p>Under EGTRRA, the limit on elective deferrals to SIMPLE plans is increased to \$10,000 as follows:</p> <table border="1" data-bbox="499 250 764 370"> <thead> <tr> <th><u>Year</u></th> <th><u>Limit</u></th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>\$8,000</td> </tr> <tr> <td>2004</td> <td>\$9,000</td> </tr> <tr> <td>2005</td> <td>\$10,000</td> </tr> </tbody> </table> <p>Thereafter, indexing will occur in \$500 increments.</p>	<u>Year</u>	<u>Limit</u>	2003	\$8,000	2004	\$9,000	2005	\$10,000	<p>The limit on elective deferrals to SIMPLE plans would be increased to \$10,000 for 2004, and indexed thereafter as under current law.</p>																			
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Catch-up Contributions for Retirement Plans (§ 402(d))	<p>Under EGTRRA, individuals age 50 or older are allowed to make annual catch-up contributions to salary reduction arrangements of the following amounts:</p> <table border="1" data-bbox="443 581 804 764"> <thead> <tr> <th><u>Year</u></th> <th><u>General</u></th> <th><u>SIMPLE</u></th> </tr> </thead> <tbody> <tr> <td>2002</td> <td>\$1,000</td> <td>\$ 500</td> </tr> <tr> <td>2003</td> <td>\$2,000</td> <td>\$1,000</td> </tr> <tr> <td>2004</td> <td>\$3,000</td> <td>\$1,500</td> </tr> <tr> <td>2005</td> <td>\$4,000</td> <td>\$2,000</td> </tr> <tr> <td>2006</td> <td>\$5,000</td> <td>\$2,500</td> </tr> </tbody> </table> <p>Thereafter, indexing will occur in \$500 increments.</p>	<u>Year</u>	<u>General</u>	<u>SIMPLE</u>	2002	\$1,000	\$ 500	2003	\$2,000	\$1,000	2004	\$3,000	\$1,500	2005	\$4,000	\$2,000	2006	\$5,000	\$2,500	<p>The catch-up contribution limits would be increased to \$5,000 (general) and \$2,500 (SIMPLE) for 2004, and indexed thereafter as under current law.</p>									
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Expansion of Savers' Credit (§ 401)	<p>A targeted non-refundable tax credit is provided to low- and moderate-income savers who make salary reduction contributions to eligible retirement savings plans (e.g., 401(k), 403(b), 457(b), or IRAs). The credit is claimed on the individual's tax return, and applies to the first \$2,000 in savings contributions. The amount of the credit is based on the following AGI schedule:</p> <table border="1" data-bbox="443 1068 951 1187"> <thead> <tr> <th><u>Credit</u></th> <th><u>Individual</u></th> <th><u>Joint</u></th> </tr> </thead> <tbody> <tr> <td>50%</td> <td>\$0-\$15,000</td> <td>\$0-\$30,000</td> </tr> <tr> <td>20%</td> <td>\$15,001-\$16,250</td> <td>\$30,001-\$32,500</td> </tr> <tr> <td>10%</td> <td>\$16,251-\$25,000</td> <td>\$32,501-\$50,000</td> </tr> </tbody> </table>	<u>Credit</u>	<u>Individual</u>	<u>Joint</u>	50%	\$0-\$15,000	\$0-\$30,000	20%	\$15,001-\$16,250	\$30,001-\$32,500	10%	\$16,251-\$25,000	\$32,501-\$50,000	<p>The savers' credit would be expanded as follows:</p> <table border="1" data-bbox="1241 915 1749 1068"> <thead> <tr> <th><u>Credit</u></th> <th><u>Individual</u></th> <th><u>Joint</u></th> </tr> </thead> <tbody> <tr> <td>55%</td> <td>\$0-\$15,000</td> <td>\$0-\$30,000</td> </tr> <tr> <td>25%</td> <td>\$15,001-\$20,000</td> <td>\$30,001-\$40,000</td> </tr> <tr> <td>20%</td> <td>\$20,001-\$25,000</td> <td>\$40,001-\$50,000</td> </tr> <tr> <td>10%</td> <td>\$25,001-\$30,000</td> <td>\$50,001-\$60,000</td> </tr> </tbody> </table> <p><i>Effective Date</i> – Taxable years beginning after December 31, 2003.</p>	<u>Credit</u>	<u>Individual</u>	<u>Joint</u>	55%	\$0-\$15,000	\$0-\$30,000	25%	\$15,001-\$20,000	\$30,001-\$40,000	20%	\$20,001-\$25,000	\$40,001-\$50,000	10%	\$25,001-\$30,000	\$50,001-\$60,000
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Removing Barriers to Automatic Enrollment Arrangements (§ 403)	<p>Automatic contribution arrangements (also known as negative election arrangements) involve 401(k), 403(b), or section 457(b) plans to which contributions are made equal to a fixed percentage the employee's compensation unless the employee specifically elects not to make a contribution of that amount. The Internal Revenue Service has ruled that contributions under these automatic contribution arrangements are permissible, provided that the employee receives a notice explaining his or</p>	<p>Barriers to automatic contribution arrangements would be removed through the creation of "automatic contribution trust arrangements" under ERISA. Under an automatic contribution trust arrangement, employers would make contributions on behalf of a participant in an individual account plan equal to a uniform percentage of compensation until the participant specifically elects not to have such contributions made. In order to be an automatic contribution trust arrangement, the plan</p>																											

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	<p>her rights to have no compensation reduction and, after receiving the notice, the employee has a reasonable period before the cash is currently available in which to elect to receive the cash in lieu of having an employer contribution made to the plan in that amount.</p> <p>ERISA imposes certain duties on plan fiduciaries, with respect to retirement plan investments. However, where a participant exercises control over retirement plan assets, a fiduciary is not liable for any loss which results from the participant or beneficiary's exercise of control (<i>see</i> ERISA section 404(c)). In the case of an automatic contribution arrangement, it is not clear how these rules would be applied in all instances, e.g., where the participant has not made an affirmative election as to investment options. In addition, there is some uncertainty as to whether State laws would permit automatic contribution arrangements in all instances or whether any inconsistent State law would be preempted.</p>	<p>administrator must provide each participant with notice of the employee's rights and obligations under the arrangement within a reasonable time before each plan, and all contributions to the automatic contribution trust arrangement must be invested in accordance with regulations to be prescribed by the DOL. If an arrangement qualifies as an automatic contribution trust arrangement, the participant would be treated as exercising control over assets in the account for purposes of ERISA section 404(c).</p> <p>State law would be preempted to the extent that it would prohibit or restrict automatic contribution trust arrangements. Within 1 year of the date of enactment, the Department of Labor would be directed to issue regulations under ERISA section 404(c) with respect to default automatic enrollment arrangements.</p> <p><i>Effective Date</i> – Plan years beginning after December 31, 2003.</p>
Transfers from Cafeteria Plans (§ 404)	A flexible spending arrangement ("FSA") is a reimbursement account or other arrangement under which an employee is reimbursed for qualified benefits. Currently, if an FSA meets the cafeteria plan requirements of section 125, then the compensation that was available is not included in the employee's gross income or wages for tax purposes. Section 125 contains a "use it or lose it" provision that prevents amounts from being carried forward to future years or used for other purposes if amounts are not used by the end of the year.	<p>An employer's cafeteria plan could permit up to \$500 in amounts available but not used for medical expenses during the plan year to be contributed to a 401(a) plan, 403(a) plan, 403(b) plan, section 457(b) plan, or an IRA. Amounts so transferred from a cafeteria plan to a retirement plan would be treated as an elective contribution, and would be subject to the normal rules (e.g., contribution limits, discrimination tests, etc.) applicable to such contributions.</p> <p><i>Effective Date</i> – Taxable years beginning after December 31, 2003.</p>
REVITALIZING DEFINED BENEFIT PLANS		
30-Year Treasury Rate Replacement (§§ 705, 1201)	The Internal Revenue Code (the "Code") requires that the 30-year Treasury bond interest rate (the "30-year Treasury Rate") be used for a number of purposes in connection with qualified retirement plans. For example, the 30-year Treasury Rate is used in determining plan funding requirements, the amount of PBGC variable rate premiums, calculating lump-sum distributions, and determining defined benefit plan limitations. In 2001, following a three-year program of buying back 30-year Treasury bonds, the Treasury Department announced that it would completely cease issuing 30-year bonds. The buyback program and subsequent discontinuation of 30-year Treasury bonds have shrunk considerably the supply of 30-year Treasury bonds. This lack of supply, combined with continuing demand for long-term secure U.S. government debt, has led to lower than normal interest rates on 30-year Treasury bonds when	<p>The 30-year Treasury Rate would be replaced for all purposes with respect to retirement plans for all purposes for which it is used under current law, as follows:</p> <ul style="list-style-type: none"> • Beginning in 2004, for funding purposes and PBGC premiums, the 30-year Treasury Rate would be replaced by an interest rate based on "amounts conservatively invested in long-term corporate bonds," as determined by the Treasury Department (the "Corporate Bond Rate"). • For purposes of determining lump-sum distributions, the 30-year Treasury Rate would be replaced by the Corporate Bond Rate on a phased-in basis beginning in 2006. During the phase-in period (2006-2009), the applicable interest rate would be the lower of (1) the Corporate Bond Rate or (2) the 30-year Treasury Rate plus a percentage of the excess

Item	Current Law	Portman/ Cardin Bill
	<p>compared with the interest rate on other types of debt, i.e., the yield spread between 30-year Treasury bonds and other debt instruments has broadened substantially.</p>	<p>of the Corporate Bond Rate (20 percent in 2006, 40 percent in 2007, 60 percent in 2008, and 80 percent in 2009) over the 30-year Treasury Rate.</p> <ul style="list-style-type: none"> • For purposes of Code section 415(b) (regarding maximum benefits under a defined benefit plan), the 30-year Treasury Rate would be replaced in 2004 by an interest rate of 5.5 percent. <p>In addition, certain technical changes would be made to the funding provisions in the Retirement Protection Act of 1994.</p> <p><i>Effective Date</i> – In general, years beginning after December 31, 2003, with special rules for lump sums (as noted above), lookback rules, collectively bargained plans, and potential benefit reductions.</p>
<p>Interest Rate Range for Additional Funding Requirements (§ 706)</p>	<p>Because of the plan funding problems caused by the use of the artificially low 30-year Treasury Rate, Congress enacted temporary funding relief for 2002 and 2003 as part of the 2002 economic stimulus bill (H.R. 3090). For 2002 and 2003, plans are able to determine current liability valuations for funding purposes by using an expanded corridor of up to 120 percent of the four-year weighted average of the 30-year Treasury rate (rather than 105 percent under prior law). In addition, relief was provided for purposes of determining variable premium payments to the PBGC.</p>	<p>The temporary plan funding relief enacted as part of the economic stimulus bill would be extended to plan funding valuations performed for 2001.</p> <p><i>Effective Date</i> – As if enacted in section 405 of Job Creation & Workers Assistance Act of 2002.</p>
<p>Multiple Employer Plan Flexibility (§ 701)</p>	<p>A multiple employer retirement plan is a plan in which more than one employer maintains the same retirement plan. A multiple employer plan differs from a “multiemployer plan” in that a multiemployer plan must be maintained pursuant to a collective bargaining agreement between employee representatives and more than one employer. In the case of multiple employer plans established since 1989, each employer contributing to the plan generally is treated separately for purposes of the funding requirements and deduction limitations applicable to qualified retirement plans. Under these rules, assets are allocated each year among all participating employers based on a very complex methodology. In the case of multiple employer plans established before 1989, the funding and deduction limitation rules are applied on a plan-wide basis in some circumstances with contributions allocated among participating employers on a reasonable basis.</p>	<p>The plan administrator of a multiple employer plan would be permitted to elect to determine whether the plan is to be treated as a single plan or as separate plans for purposes of the funding and deduction limitation rules. The election would take effect for the plan year in which made, and could only be revoked with the consent of the IRS.</p> <p><i>Effective Date</i> – Years beginning after December 31, 2003.</p>
<p>Pre-Tax Employee Contributions to DB Plans (§ 702)</p>	<p>Except in the case of plans maintained by certain governmental employers, employee contributions to a defined benefit pension plan may only be made as after-tax employee contributions. Unlike governmental employers, non-governmental employers cannot elect to treat such employee contributions as pre-tax contributions (“pick up contributions”).</p>	<p>Any employer, not just governmental employers, would be able to “pick up” employee contributions so that the employee contributions will be treated as employer contributions, but only for determining the tax treatment of the employee’s contribution.</p>

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		<i>Effective Date</i> – Contributions made in years beginning after December 31, 2003.
Minimum Participation Rule Reform (§ 703)	Under Code section 401(a)(26), a defined benefit plan must cover at least the lesser of (a) 50 employees or (b) 40% of the employer’s employees.	Code section 401(a)(26) would be modified so that it would apply only to the extent provided in Treasury regulations. No later than December 31, 2003, the Treasury Department would be directed to issue regulations targeting the application of section 401(a)(26) at multiple defined benefit plan arrangements that use individual defined benefit arrangements, aggressive nondiscrimination testing techniques, or other potentially abusive practices.
Plan Valuation Data Collection (§ 704)	EGTRRA contained a provision allowing defined benefit plans with plan assets equal to or greater than 125% of current liability to use a valuation date within the plan year prior to the year to which the valuation refers. In carrying out this exception, the statutory text and legislative history of EGTRRA codified the general valuation timing rule based on a proposed Treasury Department regulation nearly two decades old (Prop. Treas. Reg. sec. 1.412(c)(9) – 1(b)(1)). This proposed regulation – and as a result EGTRRA – require the valuation to occur as of a date within the plan year to which the valuation refers or within the month prior to the beginning of that year. Under the interpretation of the Treasury Department and IRS, this also restricts defined benefit plans to use of liability data for valuation purposes from no more than one month prior to the beginning of the year to which the valuation refers. For these purposes, assets and liabilities must be valued as of the same date.	1 -- Defined benefit plans would be permitted to use liability data for plan valuation purposes that dates from up to one year prior to the date of the plan valuation. This data would then be adjusted forward to the valuation date taking account of significant events (e.g., substantial acquisitions or divestitures, early retirement windows). 2 -- Valuation of a plan’s assets may be made as of a date later than the date as of which liabilities are valued, but not later than the end of the plan year (subject to certain adjustments). <i>Effective Date</i> – (1) As if included in EGTRRA; (2) Years beginning after December 31, 2002.
Asset Valuation (§ 707)	Underfunded defined benefit plans must pay an additional PBGC premium. This additional premium is not required if contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under Code section 412(c)(7). Under Code section 412(c)(7), the full funding limitation generally means the excess of liabilities over the lesser of the fair market value of plan assets or the actuarially determined value of such assets (using a reasonable method that is permitted under Treasury regulations).	For purposes of determining additional PBGC premium liability, plans would not be required to use the fair market value of plan assets (if lesser), and instead would determine if contributions met the full funding limitation by calculating liabilities over the actuarially determined value of such assets. <i>Effective Date</i> – Determination of premiums for plan years ending after December 31, 2003.
Multiemployer Plan Emergency Investment Loss Rule (§ 708)	Code section 412(b)(2)(B)(iv) requires plans to charge their funding standard account with the net experience loss for a plan year over a period of 5 years for most plans and 15 years in the case of multiemployer plans. Code section 412(b)(7) provides other special rules for multiemployer plans with respect to minimum funding standards.	In lieu of amortizing its experience loss over 15 years under Code section 412(b)(2)(B)(iv), a multiemployer plan would be allowed to elect to use the “emergency investment loss method” beginning with the first plan year in which it has an “emergency investment loss.” An “emergency investment loss” would be the difference between the fair market value of plan assets as of the last day of a plan year beginning after June 30, 1999, and ending before January 1, 2004, and what the market value would have been if the plan’s earnings had been equal to the projected investment return. Under

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		<p>the “emergency investment loss method,” the funding standard account would be charged with the amounts necessary to amortize in equal installments the plan’s emergency investment loss over a period of 30 years.</p> <p><i>Effective Date</i> – Years beginning after June 30, 1999.</p>														
Mortality Table Adjustment (§ 709)	Code section 412(l)(7) prescribes certain mortality tables to be used in determining a defined benefit plan’s funding obligations.	For plan years beginning after 2003, the Treasury Department would be directed to establish special mortality tables for blue-collar workers that plans would be permitted to use in determining plan funding obligations and deductions.														
Encouraging Uniform Benefit Formulas Under Defined Benefit Plans (§ 804)	Plans must use “section 414(s) compensation” for purposes of nondiscrimination testing and the nondiscrimination safe harbors, including the defined benefit plan nondiscrimination safe harbor. Total compensation, and certain minor variations on total compensation, qualify as section 414(s) compensation. Many plans, however, use base pay or rate of pay instead of total compensation in their benefit formula. An employee’s base pay is generally the “regular” compensation received by the employee without overtime payments, bonuses, or other irregular or special pay. Rate of pay is generally on employee’s stated rate of regular compensation as of a certain date. Base pay or rate of pay only qualifies as section 414(s) compensation if it satisfies three requirements: (1) it does not by design favor highly compensated employees (“HCEs”), (2) it is reasonable, and (3) it satisfies a highly mechanical, mathematical test.	Not later than December 31, 2003, the Treasury Department would be directed to issue regulations under which the rules of Treas. Reg. 1.414(s)-1, without regard to paragraph (d)(3)), apply for purposes of the defined benefit plan nondiscrimination safe harbor. Thus, if base pay (or rate of pay) satisfies two conditions, it would be permitted to be used for the defined benefit plan nondiscrimination safe harbor. The two conditions are two of the three conditions currently applicable under section 414(s): base pay (or rate of pay) (1) must not by design favor HCEs, and (2) must be reasonable. This proposal would encourage use of the safe harbor under which all participants receive equal treatment.														
IRA PROVISIONS																
Acceleration of Increases in IRA Contribution Limits (§ 601(a))	<p>The maximum annual total new contributions permitted to Individual Retirement Arrangements -- IRAs (including traditional deductible IRAs, Roth IRAs, and nondeductible IRAs) is the lesser of: (1) 100% of the compensation for the year or (2) the maximum contribution amount in effect for the year with respect to which the contribution is made.</p> <p>Under EGTRRA, the IRA contribution limit is scheduled to increase as follows:</p> <table border="1" data-bbox="420 1266 997 1388"> <thead> <tr> <th><u>Year</u></th> <th><u>Maximum Contribution Amount</u></th> </tr> </thead> <tbody> <tr> <td>2002-2004</td> <td>\$3,000</td> </tr> <tr> <td>2005-2007</td> <td>\$4,000</td> </tr> <tr> <td>2008 +</td> <td>\$5,000</td> </tr> </tbody> </table> <p>Thereafter, indexing will occur in \$500 increments.</p>	<u>Year</u>	<u>Maximum Contribution Amount</u>	2002-2004	\$3,000	2005-2007	\$4,000	2008 +	\$5,000	<p>The maximum contribution amount would be increased as follows:</p> <table border="1" data-bbox="1218 1047 1795 1144"> <thead> <tr> <th><u>Year</u></th> <th><u>Maximum Contribution Amount</u></th> </tr> </thead> <tbody> <tr> <td>2002-2003</td> <td>\$3,000</td> </tr> <tr> <td>2004+</td> <td>\$5,000</td> </tr> </tbody> </table> <p>Thereafter, the limit will be indexed annually for inflation (in \$500 increments).</p>	<u>Year</u>	<u>Maximum Contribution Amount</u>	2002-2003	\$3,000	2004+	\$5,000
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Item	Current Law	Portman/ Cardin Bill																																				
IRA Catch-Up Contributions (§ 601(b))	<p>Under EG TRRA, individuals age 50 and over are permitted to make catch-up contributions to IRAs as follows:</p> <table border="1" data-bbox="420 243 735 341"> <thead> <tr> <th><u>Year</u></th> <th><u>Limit</u></th> </tr> </thead> <tbody> <tr> <td>2002-2005</td> <td>\$500</td> </tr> <tr> <td>2006+</td> <td>\$1,000</td> </tr> </tbody> </table>	<u>Year</u>	<u>Limit</u>	2002-2005	\$500	2006+	\$1,000	<p>The maximum IRA catch-up contribution amount would be increased as follows:</p> <table border="1" data-bbox="1218 243 1785 341"> <thead> <tr> <th><u>Year</u></th> <th><u>Maximum Contribution Amount</u></th> </tr> </thead> <tbody> <tr> <td>2002-2003</td> <td>\$500</td> </tr> <tr> <td>2004+</td> <td>\$1,000</td> </tr> </tbody> </table>	<u>Year</u>	<u>Maximum Contribution Amount</u>	2002-2003	\$500	2004+	\$1,000																								
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Elimination of Marriage Penalty for Deductible IRA Eligibility Based on Income Limits for Joint Filers (§ 602)	<p>Contributions to IRAs are deductible if certain conditions are satisfied. If the individual is an active participant in an employment-based retirement plan, the maximum deductible contribution is phased out for taxpayers with AGI over certain levels for the taxable year, as follows:</p> <table border="1" data-bbox="420 503 966 698"> <thead> <tr> <th><u>Year</u></th> <th><u>Non-Married Filers</u></th> <th><u>Joint Filers</u></th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>\$40,000-\$50,000</td> <td>\$60,000-\$70,000</td> </tr> <tr> <td>2004</td> <td>\$45,000-\$55,000</td> <td>\$65,000-\$75,000</td> </tr> <tr> <td>2005</td> <td>\$50,000-\$60,000</td> <td>\$70,000-\$80,000</td> </tr> <tr> <td>2006</td> <td>\$50,000-\$60,000</td> <td>\$75,000-\$85,000</td> </tr> <tr> <td>2007+</td> <td>\$50,000-\$60,000</td> <td>\$80,000-\$100,000</td> </tr> </tbody> </table>	<u>Year</u>	<u>Non-Married Filers</u>	<u>Joint Filers</u>	2003	\$40,000-\$50,000	\$60,000-\$70,000	2004	\$45,000-\$55,000	\$65,000-\$75,000	2005	\$50,000-\$60,000	\$70,000-\$80,000	2006	\$50,000-\$60,000	\$75,000-\$85,000	2007+	\$50,000-\$60,000	\$80,000-\$100,000	<p>The scheduled increases in the limit for deductible IRA contributions for joint filers would be accelerated under the following schedule so that the marriage penalty embedded in the eligibility limits would be eliminated:</p> <table border="1" data-bbox="1218 503 1533 779"> <thead> <tr> <th><u>Year</u></th> <th><u>Joint Filers</u></th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>\$60,000-\$70,000</td> </tr> <tr> <td>2004</td> <td>\$70,000-\$80,000</td> </tr> <tr> <td>2005</td> <td>\$75,000-\$85,000</td> </tr> <tr> <td>2006</td> <td>\$80,000-\$90,000</td> </tr> <tr> <td>2007</td> <td>\$85,000-\$105,000</td> </tr> <tr> <td>2008</td> <td>\$90,000-\$110,000</td> </tr> <tr> <td>2009</td> <td>\$95,000-\$115,000</td> </tr> <tr> <td>2010+</td> <td>\$100,000-\$120,000</td> </tr> </tbody> </table>	<u>Year</u>	<u>Joint Filers</u>	2003	\$60,000-\$70,000	2004	\$70,000-\$80,000	2005	\$75,000-\$85,000	2006	\$80,000-\$90,000	2007	\$85,000-\$105,000	2008	\$90,000-\$110,000	2009	\$95,000-\$115,000	2010+	\$100,000-\$120,000
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Elimination of Marriage Penalty on Deductible IRA Eligibility for Active Pension Plan Participants (§ 602)	<p>If the individual is not an active participant in an employment-based retirement plan but the individual's spouse is, eligibility to make a deductible IRA contribution is phased out for the non-active participant spouse for joint AGI between \$150,000-\$160,000 under a special income limit.</p>	<p>The marriage penalty on non-active participant spouses would also be eliminated by repealing the special income limitations for individuals with a spouse who is an active pension plan participant.</p> <p><i>Effective Date</i> – Taxable years beginning after December 31, 2006.</p>																																				
Elimination of Marriage Penalty on Roth IRA Eligibility (§ 602)	<p>Eligibility to contribute to a Roth IRA is phased out for single filers with AGI between \$95,000-\$110,000 and joint filers with AGI between \$150,000-\$160,000. Roth IRA eligibility for married individuals filing separately phases out for AGI between \$0-\$10,000.</p>	<p>The marriage penalty on Roth IRA eligibility would be eliminated by increasing the phase-out range for joint filers to those with AGI between \$190,000-\$220,000.</p> <p><i>Effective Date</i> – Taxable years beginning after December 31, 2003.</p>																																				
IRA Eligibility for the Disabled (§ 603)	<p>The Internal Revenue Code limits the amount that an individual may contribute to an IRA in any taxable year to the lesser of (1) the maximum contribution limit (\$3,000 in 2002) or (2) an individual's compensation. For these purposes, compensation includes "earned income," but generally does not include income from investments or other sources not derived from active participation in a taxpayer's trade or business. This rule prevents many disabled individuals from being able to save for retirement, even though they may have income from other sources (e.g., a legal judgment or settlement). Code section 72(m)(7) defines a person as</p>	<p>Individuals who are disabled (within the meaning of Code section 72(m)(7)) and who have not attained age 70½ would not be required to have compensation in order to make contributions to an IRA.</p> <p><i>Effective Date</i> – Taxable years beginning after December 31, 2003.</p>																																				

Item	Current Law	Portman/ Cardin Bill
	<p>“disabled” if the person is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.</p>	
<p>Protecting IRA Assets (§ 604)</p>	<p>IRA owners or beneficiaries sometimes receive a lump-sum or other substantial distribution inappropriately by reason of an error or misunderstanding. Even though the negative tax and other consequences resulting from such a mistake can be financially devastating, particularly for an older person who depends on retirement accounts to meet living expenses, current law generally provides no avenue for relief from this situation. Instead, in most cases, the individual is taxed immediately on the distribution, and is unable to retribute the amount to a retirement plan or IRA. The IRS has created programs for correcting erroneous qualified plan distributions. No comparable program exists for IRAs.</p>	<p>No later than December 31, 2004, the IRS would be directed to establish an IRA correction procedure that would allow IRA owners and beneficiaries to rescind IRA distributions where the distribution was made as a result of an error (either by the IRA owner or beneficiary or by a third party, such as the IRA trustee). The IRA correction procedure would not require a filing with the IRS in the case of errors that can be self-corrected within a reasonable time period (as defined by the IRS). The IRS would be authorized to include appropriate safeguards and conditions to prevent abuse.</p>
ENHANCED PORTABILITY OF RETIREMENT ASSETS		
<p>Spousal Rollovers of IRA Assets (§ 301)</p>	<p>In general, retirement plan assets may not be rolled over or transferred between spouses unless one of the spouses dies or upon divorce. If a spouse dies and the beneficiary is the deceased spouse’s surviving spouse, the surviving spouse may transfer plan benefits to an IRA or a retirement plan in which he or she participates.</p>	<p>Amounts in one spouse’s IRA generally could be transferred to the other spouse’s IRA without resulting in current taxation to either spouse.</p> <p><i>Effective Date</i> – Years beginning after date of enactment.</p>
<p>Rollovers by Nonspouse Beneficiaries (§ 303)</p>	<p>When a retirement plan participant dies, plan benefits must be distributed in a lump sum or remain in the plan to be distributed in accordance with the minimum distribution requirements of section 401(a)(9). Typically, in a defined contribution plan, plan benefits are forced out immediately in a lump sum. In the case of a nonspouse beneficiary, this lump sum may not be rolled over and is thus subject to immediate taxation. If the beneficiary is the deceased participant’s surviving spouse, the surviving spouse may transfer plan benefits to an IRA or a retirement plan in which he or she is a participant. Similarly, the problem does not exist if retirement assets are held in an IRA because if an IRA owner dies, the IRA beneficiaries (whether spousal or non-spousal) may maintain the IRA in the name of the deceased owner (an “inherited IRA”). In all instances, distributions must be received from an inherited IRA in accordance with the section 401(a)(9) rules.</p>	<p>Retirement plan nonspouse beneficiaries would be allowed to transfer retirement plan benefits to an inherited IRA in the name of the decedent to be distributed consistent with the requirements of section 401(a)(9).</p> <p><i>Effective Date</i> – Distributions after December 31, 2003.</p>
<p>Rollovers to Roth IRAs (§ 304)</p>	<p>Amounts held in a traditional IRA may be converted to a Roth IRA, provided that the individual’s modified adjusted gross income (“MAGI”) does not exceed \$100,000. For federal tax purposes, the amount converted is generally includible in gross income for the year of the</p>	<p>The unnecessary administrative step of rolling to a traditional IRA prior to conversion to a Roth IRA would be eliminated, i.e., individuals would be allowed to roll over amounts from retirement plans to a Roth IRA. All current limitations applicable to conversions from IRAs to Roth IRAs</p>

Item	Current Law	Portman/ Cardin Bill
	distribution to the extent that the amount distributed exceeds the taxpayer's basis. Amounts held in arrangements other than an IRA (e.g., a qualified plan under section 401(a) or a tax-sheltered annuity under section 403(b)) may not be rolled over directly to a Roth IRA. Rather, these amounts must first be moved to a traditional IRA, and then converted to a Roth IRA.	would continue to apply. In particular, the \$100,000 income limit on conversions would apply, as would the current tax treatment of the converted amount. <i>Effective Date</i> – Taxable years beginning after December 31, 2003.
Rollovers of After-Tax Amounts (§ 306)	Employees may make after-tax contributions to certain types of retirement plans, including IRAs, 401(k) and 403(b) plans in some instances. EGTRRA permitted distributions of those after-tax contributions to be rolled over into an IRA or another plan in a direct rollover. Under EGTRRA, there has been uncertainty whether after-tax amounts in 403(b) plans could be rolled over to a 401(k) plan or vice versa.	It would be clarified that after-tax amounts in a 403(b) annuity contract may be rolled over into a 401(k) plan or vice-versa.
Certain Plan Transfers and Mergers (§ 312)	Subject to special rules in the Code and ERISA, individuals generally may roll over or transfer amounts from one type of retirement plan to another. However, if an employer wishes to change the type of retirement plan they sponsor (e.g., from a 403(b) to a 401(k) plan)), there may not be a simple method of transferring plan assets from one type of plan to another. Instead, with respect to the old plan, employers often must maintain a “frozen” plan, and then start a new plan going forward.	Under rules prescribed by the Treasury Department, a plan sponsor could transfer assets from one type of retirement plan to another. Transfers would only be permitted where participant and spousal rights are protected. <i>Effective Date</i> – Years beginning after Secretary of Treasury prescribes these new transfer rules. Such rules must be issued within one year after date of enactment.
PRESERVING RETIREMENT ASSETS AND ENHANCING FAIRNESS		
Faster Vesting of Nonelective Employer Contributions (§ 302)	Employee salary reduction contributions are immediately vested. Vesting rules for amounts attributable to employer contributions differ depending on whether the employer contributions are nonelective or matching contributions. Non-elective employer contributions either must be fully vested after the employee has completed five years of service, or must become vested in increments of 20% for each year beginning with the employee's third year of service, with full vesting after the employee has completed seven years of service. Under EGTRRA, employer matching contributions are required either to be fully vested after an employee has completed three years of service or to become vested in increments of 20% for each year beginning with the employee's second year of service, with full vesting after the employee has completed six years of service.	The vesting rules for non-elective employer contributions would be conformed to the rule for employer matching contributions. Thus, all employer contributions generally would be required to vest after an employee has completed three years of service or to become vested in increments of 20% for each year beginning with the employee's second year of service, with full vesting after the employee has completed six years of service. <i>Effective Date</i> –Generally, plan years beginning after December 31, 2003. Delayed effective date for collectively bargained plans.

Item	Current Law	Portman/ Cardin Bill										
Minimum Required Distribution (MRD) Reform (§ 201)	<p>In general, section 401(a)(9) and related provisions require certain minimum distributions from retirement plans and IRAs starting at the later of age 70½ or retirement (except that deferral until retirement is not permitted with respect to IRAs and 5% owners). These minimum required distributions (“MRDs”) must generally be completed over the life or life expectancy of the individual and his or her beneficiary. In the event the individual dies before all assets are distributed, different required distribution rules may apply depending on whether the individual has attained age 70½. For an individual who retires in a calendar year after the calendar year in which he or she attains age 70½, the employee’s accrued benefit in a defined benefit plan is actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits under the plan. The “required beginning date” for the initial minimum distribution generally is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires. In subsequent years, MRDs must be made before the end of the year. Failure to comply with the section 401(a)(9) minimum distribution rules results in the imposition of a 50% excise tax on the amount not distributed.</p>	<p>The MRD rules would be reformed as follows:</p> <ul style="list-style-type: none"> The required beginning date would be increased to age 75 by 2010 on a phased-in basis as follows: <table border="1" data-bbox="1218 308 1512 462"> <thead> <tr> <th><u>Year</u></th> <th><u>RBD</u></th> </tr> </thead> <tbody> <tr> <td>2004-2005</td> <td>72</td> </tr> <tr> <td>2006-2007</td> <td>73</td> </tr> <tr> <td>2008-2009</td> <td>74</td> </tr> <tr> <td>2010+</td> <td>75</td> </tr> </tbody> </table> <p>As under current law, deferral until retirement would still be permitted except in the case of IRAs and 5% owners.</p> <ul style="list-style-type: none"> The actuarial adjustment requirement would continue to result in actuarially increasing the employee’s accrued benefit in a defined benefit plan to take into account the period after April 1 of the calendar year following the calendar year in which the employee attains age 70½ during which the employee was not receiving benefits under the plan. The required beginning date would be modified to mean December 31 of the later of the calendar year in which the employee attains the specified age or the calendar year in which the employee retires, so that individuals would not receive two minimum required distributions in one year. For administrative purposes, an employee retiring in December is treated as retiring in the following year. The excise tax for failure to comply with the minimum distribution rules would be reduced from 50% to 20% of the amount not distributed. <p><i>Effective Date</i> – In general, years beginning after December 31, 2003.</p>	<u>Year</u>	<u>RBD</u>	2004-2005	72	2006-2007	73	2008-2009	74	2010+	75
<u>Year</u>	<u>RBD</u>											
2004-2005	72											
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Lifetime Payment Incentives (§ 305)	<p>In general, retirement plan distributions are taxed as ordinary income, and receive the same tax treatment whether distributed in a lump sum or as part of a stream of lifetime annuity payments.</p>	<p>A portion of distributions received from employment-based retirement plans (i.e., 401(a), 403(a), 403(b), and governmental 457(b) plans) and IRAs in the form of life (or joint life) annuity payments would be excludable from gross income. The amount of payments that could be excluded from income would be a percentage (5 percent for years 2004-2007 and 10 percent for years 2008 and thereafter) of payments up to \$20,000 (indexed) (i.e., half the defined contribution plan Code section 415 dollar limit). The exclusion would phase-out for single filers with income between \$75,000-\$90,000 and joint filers with income between \$150,000-\$180,000.</p>										

Item	Current Law	Portman/ Cardin Bill
<p>Fair Treatment of Substantially Equal Periodic Payments (§ 307)</p>	<p>Code section 72(t) imposes a 10 percent penalty tax on IRA (or qualified plan) distributions received before age 59½, unless one of several exceptions applies. One of these exceptions is for distributions that are part of a series of substantially equal periodic payments made for the life (or life expectancy) of the IRA owner (or employee in the case of a qualified plan) or the joint lives (or joint life expectancy) of the IRA owner (or employee) and his or her beneficiary. However, if the series of substantially equal periodic payments is subsequently modified (other than by reason of death or disability) within a 5-year period beginning on the date of the first payment (or, if later, age 59½), the exception to the 10-percent tax does not apply, and the taxpayer's tax for the year of modification is increased by the amount which would have been imposed, plus interest for the deferral period.</p> <p>In 2002, the Treasury Department and Internal Revenue Service issued guidance (Revenue Ruling 2002-62) allowing taxpayers a one-time election to modify their stream of substantially equal periodic payments without incurring the penalty tax. At the same time, however, the guidance provided that any nontaxable transfer or rollover of a portion of the account balance to another retirement plan constitutes a modification to the series of substantially equal periodic payments, thus triggering the penalty tax. The guidance also restricted the interest rate that could be used in calculating substantially equal periodic payments.</p>	<p><i>Effective Date</i> – Distributions made after December 31, 2003.</p> <p>Section 72(t) would be amended to provide that if a taxpayer changes from one permissible method for determining substantially equal periodic payments to another permissible method and such change results in an initial reduction in the amount of payments made, such change will not be treated as a modification that gives rise to the 10 percent penalty tax. In addition, a rollover or transfer of amounts being received as substantially equal periodic payments to another plan would not be treated as a modification if the payments continue. Any reasonable interest rate could be used in determining whether payments are substantially equal.</p> <p><i>Effective Date</i> – Series of payments commencing on or after date of enactment.</p>
<p>Treatment of Unclaimed Benefits (§ 202)</p>	<p>A plan may provide for the automatic distribution (“cash-out”) of certain vested accrued benefits that do not exceed \$5,000. EGTRRA included a provision requiring a plan that provides mandatory “cash-outs” of vested accrued benefits to directly transfer such distributions to an IRA (“default IRA”) unless the participant affirmatively elects to receive the distribution directly. Such requirement does not apply to distributions of \$1,000 or less.</p> <p>In the case of missing participants who cannot be located, terminated defined benefit plans are permitted to purchase an annuity, or transfer to the PBGC the benefits of participants who cannot be located after diligent effort. The PBGC Missing Participant program is not available to existing plans or plans not covered by Title IV of ERISA, e.g., defined contribution plans.</p>	<p>In the case of cash-outs amounts that exceed \$1,000 but do not exceed \$5,000 and are subject to EGTRRA’s automatic transfer requirement, the employer would be allowed to transfer such balances to the PBGC. In addition, in the case of balances of \$1,000 or less, the employer would be allowed to transfer balances to the PBGC. In the case of participants with balances of more than \$5,000, the employer would be allowed to elect to transfer balances to the PBGC after one year unless the employee elects otherwise. For lost participants in terminating defined contribution plans, balances could be transferred to the PBGC. The transfer of benefits under these rules would supersede any State escheat laws that might otherwise apply to benefits under the plan.</p> <p><i>Effective Date</i> – In general, years beginning after December 31, 2004, except that the superceding of State escheat laws would be effective on the date of enactment.</p>

Item	Current Law	Portman/ Cardin Bill
Specification of IRA and Annuity Rollover Options (§ 203)	If a plan lists a specific IRA or annuity contract on its distribution form, that may be treated as an endorsement of the IRA or annuity contract, triggering fiduciary liability.	Under regulations directed to be prescribed by the DOL within one year after the date of enactment, it would be clarified that a plan may list an IRA and/or annuity contract to which transfers or distributions may be directed without being considered to have endorsed such IRA or annuity for purposes of ERISA section 404(c), so long as the participant or beneficiary: (1) elects the transfer or distribution; and (2) was given the opportunity to elect any other IRA or annuity contract.
Conforming Required Distribution Rules for DB and DC Plans (§ 204)	In general, section 401(a)(9) and related provisions require certain minimum distributions from retirement plans and IRAs starting at the later of age 70½ or retirement (except that deferral until retirement is not permitted with respect to IRAs and 5% owners). These minimum distributions must generally be completed over the life or life expectancy of the individual and his or her beneficiary. Under proposed Treasury regulations, annuity payments under a defined benefit plan are subject to much more restrictive rules than annuity distributions purchased under a defined contribution plan.	The Secretary of Treasury would be directed to permit defined benefit plans to satisfy the required distribution rules by satisfying the rules applicable to annuity contracts distributed under defined contribution plans, or such other rules as may be permitted under final regulations.
Treatment of Subsequent Qualified Domestic Relations Order (QDRO) (§ 308)	A qualified retirement plan must provide that benefits under the plan cannot be assigned or alienated, except under limited circumstances, including assignment of a participant's benefits to an alternate payee under a QDRO. A qualified plan must provide for the payment of benefits in accordance with the terms of the QDRO, if the plan administrator determines that the domestic relations order meets the requirements to be qualified, as set forth under ERISA and the Code.	It would be clarified that a domestic relations order that is issued after, or revises, another QDRO will be treated as a QDRO if it otherwise meets the requirements to be treated as a QDRO, but only for amounts payable after the order is determined to be qualified. <i>Effective Date</i> – Transfers made after December 31, 2003. Prior transfers are not invalidated.
Treatment of Delayed QDRO (§ 309)	A qualified retirement plan must provide that benefits under the plan cannot be assigned or alienated, except under limited circumstances, including assignment of a participant's benefits to an alternate payee under a QDRO. A qualified plan must provide for the payment of benefits in accordance with the terms of the QDRO, if the plan administrator determines that the domestic relations order meets the requirements to be qualified, as set forth under ERISA and the Code.	It would be clarified that a domestic relations order that otherwise meets the requirements to be treated as qualified will be treated as qualified without regard to the time at which the order is issued. <i>Effective Date</i> – Transfers made after December 31, 2003. Prior orders are not invalidated.
Treatment of Annuity Contracts (§ 310)	A conforming amendment to the Small Business Job Protection Act of 1996 (the "96 Act") omitted language providing that a distribution of an annuity contract from a retirement plan may be part or all of a lump sum distribution. One consequence of this is that, after the 96 Act changes, an individual arguably may not be treated as receiving a lump-sum distribution for purposes of the net unrealized appreciation ("NUA") rules if any part of the recipient's distribution is in the form of an annuity contract.	The omitted language from the conforming amendment would be reinserted into Code section 402(e)(4)(D) to clarify that a distribution of an annuity contract may be treated as part of a lump sum distribution. <i>Effective Date</i> – Taxable years after December 31, 1999. (As if included in section 1401(b) of the Small Business Job Protection Act of 1996.)

Item	Current Law	Portman/ Cardin Bill
Preservation of Pension Plans (§ 311)	Eligibility for supplemental income payments for the aged, blind, or disabled under Social Security are based in part on an individual's income and financial resources. The Social Security Act does not explicitly exclude retirement plan amounts in determining an individual's income or resources.	Retirement plan balances of up to \$75,000 would be excluded when determining an individual's income or resources under Title XVI of the Social Security Act. <i>Effective Date</i> – Date of enactment.
Study Concerning DC Plan Losses Due to Market Volatility (§ 205)	No provision.	Within one year of the date of enactment, the Treasury Department would be directed to conduct and transmit a study to evaluate possible ways to lessen defined contribution plan losses due to volatility of the economic markets. In conducting the study, the Treasury Department would be directed to investigate (1) the extent to which both long- and short-term stock market volatility affects defined contribution plan savings, (2) the effect that such volatility has on the continuation and creation of defined contribution plans, (3) investment alternatives and lifetime distribution options for defined contribution plans that may help ameliorate market risks, and (4) what legislative or administrative steps may be taken to lessen defined contribution plan losses in the future.
Golden Parachute Excise Tax on Certain Payments by a Corporation After Declaring Bankruptcy (§ 1001)	The Code imposes a 20 percent excise tax on any person who receives an "excess [golden] parachute payment." A "parachute payment" is defined for these purposes as a payment which violates any generally enforced federal or state securities laws, or which (a) is in the nature of compensation, (b) is made to a "disqualified individual," and (c) is contingent on a change in corporate ownership or effective control (or ownership of a substantial portion of the corporate assets). A parachute payment is treated as "excess" (I) if it exceeds three times the "base amount," and (ii) to the extent it exceeds the greater of the "base amount" or "reasonable compensation." In general, "base amount" equals the disqualified individual's average annualized compensation, which was includible as gross income for the five years preceding the tax year at issue. The statute defines the term "disqualified individual" as an individual who is (1) an employee, independent contractor, or other person specified in regulations, who performs personal services for any corporation, and (2) an officer, shareholder, or highly compensated individual of the corporation.	A 50 percent excise tax would be imposed on any "excessive employee remuneration" received by an "covered employee" during the corporation's "bankruptcy period," which includes the time period that the corporation is in bankruptcy and the two years prior to the bankruptcy filing. "Excessive employee remuneration" generally would be taxable remuneration paid, other than qualified plan benefits, for which a deduction is not allowed under Code section 162(m) or would not be allowed if the individual's compensation was covered by Code section 162(m) at the time of payment. For these purposes, "covered employee" includes any person whose compensation is subject to the Code section 162(m) deduction limit, plus any person who had been covered the deduction limit during the "bankruptcy period." Similar rules are to apply to non-public companies that are not subject to Code section 162(m). Exceptions are provided for vested compensation paid under the terms of a contract binding prior to the beginning of the bankruptcy period and certain supplemental pension arrangements. The excise tax is increased to 100 percent for tax gross-up payments. <i>Effective Date</i> – Payments received after date of enactment with respect to any title 11 or similar case commenced after such date.

Item	Current Law	Portman/ Cardin Bill
Qualified Group Legal Services Plans (§ 1210)	Code section 120 provides an exclusion for contributions and services under qualified group legal services plans to the extent that the value of insurance received under such a plan does not exceed \$70 for a year. The exclusion is inapplicable for years beginning after June 30, 1992.	For years 2004-2008, the exclusion for contributions and services under qualified group legal services plans would be reinstated, and the maximum exclusion would be increased to \$150.
EXPANDING SMALL BUSINESS RETIREMENT PLAN COVERAGE		
Additional Nonelective Employer Contributions to SIMPLE Plans (§ 501)	All employees eligible to participate in a SIMPLE IRA or SIMPLE 401(k) must be permitted to make elective deferrals under the plan, and employers are required to either (1) match employees' elective deferrals on a dollar-for-dollar basis up to 3 percent of compensation, or (2) make a 2 percent non-elective contribution for all eligible employees. No other contributions are permitted.	Employers would have the option to make additional nonelective contributions (up to 10% of compensation) to SIMPLE plans for their employees. This option would exist without regard to whether an employer is also making matching contributions to the SIMPLE plan. <i>Effective Date</i> – Years beginning after December 31, 2003.
Conforming Matching Contribution Rules for SIMPLE IRAs and SIMPLE 401(k)s (§ 502)	In the case of SIMPLE IRAs, but not SIMPLE 401(k)s, the employer may make matching contributions at a rate less than 3 percent, but not less than 1 percent, but may not make such reduced matching contributions for more than 2 years in the five-year period ending in the current year.	Employers who sponsor SIMPLE 401(k)s would be allowed to make matching contributions at a rate less than 3 percent, so long as the matching contribution amount was not less than 1 percent and such a reduced matching contribution was not made for more than 2 years in the five-year period ending in the current year. <i>Effective Date</i> – Years beginning after December 31, 2003.
Salary-Reduction Only SIMPLE Plans (§ 503)	All employees eligible to participate in a SIMPLE IRA or SIMPLE 401(k) must be permitted to make elective deferrals under the plan, and employers generally are required to either (1) match employees' elective deferrals on a dollar-for-dollar basis up to 3 percent of compensation, or (2) make a 2 percent non-elective contribution for all eligible employees.	A small employer that has not maintained any type of retirement plan in the previous two years (and that is otherwise eligible to adopt a SIMPLE arrangement under present law) would be permitted to maintain instead a pure salary-reduction SIMPLE arrangement. Under this new arrangement, the employer would not be required to make any contributions, but all employees would be permitted to make elective contributions of up to \$5,000 (indexed for inflation in future years). In general, all the other rules regarding present-law SIMPLE arrangements would apply to these new arrangements. <i>Effective Date</i> – Years beginning after December 31, 2004.
Permitting Mid-Year Changes From SIMPLE Plans (§ 504)	Once an employer has established a SIMPLE plan for a given year, the employer may not make a mid-year change from a SIMPLE plan to another type of tax-qualified retirement plan.	No later than December 31, 2004, the Treasury Department would be directed to create a mechanism that would allow employers to make a mid-year change from a SIMPLE plan to another type of tax-qualified retirement plan (e.g., a 401(k) plan). The Treasury would be authorized to impose appropriate safeguards to ensure that pension limits and other rules are not circumvented by having two plans in the same year.

Item	Current Law	Portman/ Cardin Bill
Elimination of Higher Penalty Tax on Certain SIMPLE Distributions (§ 505)	In the case of early withdrawals from a SIMPLE IRA during the first two years of plan participation, a penalty tax is imposed equal to 25 percent of the amount distributed (compared to the generally applicable 10 percent penalty tax).	<p>The higher penalty tax for early withdrawals from a SIMPLE IRA during the first two years of plan participation would be eliminated, and replaced with the 10 percent penalty tax generally applicable to early withdrawals from retirement plans.</p> <p><i>Effective Date</i> – Years beginning after December 31, 2003.</p>
SIMPLE Plan Portability (§ 506)	EGTRRA significantly increased the portability of retirement plan assets, and now rollovers generally may be made between most types of retirement plans, including section 401(a) plans, section 403(b) arrangements, section 457 plans, and traditional IRAs. However, Congress did not expand the rules with respect to rollovers from other retirement plans into SIMPLE plans. Also, during the period in which the 25 percent early withdrawal tax applies, distributions from SIMPLE IRAs may only be rolled over to other SIMPLE IRAs.	<p>Individuals would be allowed to roll over amounts from any type of retirement plan to a SIMPLE IRA. Rollovers from SIMPLE IRAs would be permitted to the same extent as rollovers from other IRAs.</p> <p><i>Effective Date</i> – Years beginning after December 31, 2003.</p>
Correction of SEP Compensation Inconsistency (§ 507)	The limit on an employer's deduction for contributions (other than salary reduction contributions) to a SEP is generally 25% of the aggregate compensation of the employer's employees. For this purpose, the employees' compensation includes salary reduction contributions made to the SEP or to other arrangements such as a cafeteria plan. Thus, if an employee earns \$50,000 but makes \$4,000 of salary reduction contributions to the SEP and \$2,000 of salary reduction contributions under a cafeteria plan, the employee's taxable compensation is \$44,000, but the employee's compensation for purposes of the employer's deduction limit is \$50,000. The employer's deduction limit for SEP contributions is 25% of the sum of this \$50,000 and the corresponding pay figures for the employer's other employees. There is also a limit on the contributions that can be made on behalf of any employee under a SEP. That limit is generally equal to the lesser of (a) 25% of the employee's <u>taxable</u> compensation, or (b) \$40,000 (indexed) (reduced in certain circumstances). In the case of the employee described above, the applicable limit would be 25% of \$44,000.	<p>For purposes of the 25% of compensation limit on contributions that can be made on behalf of any employee under a SEP, the definition of compensation would be revised to be gross compensation (as defined in section 415(c)(3)).</p> <p><i>Effective Date</i> – Taxable years beginning after December 31, 2003.</p>
Equalizing Tax Treatment of Self-Employed Retirement Plan Contributions (§ 508)	In general, employer contributions to a retirement plan on behalf of an employee are excluded from both income and employment taxes (with the exception of 401(k) contributions and other salary reduction contributions, which are subject to employment taxes). In contrast, employer contributions to a retirement plan on behalf of the self-employed generally are not excluded for purposes of determining employment taxes. The end result is that the incentive for self-employed individuals to maintain and contribute to retirement plans is reduced.	<p>The treatment of the self-employed would be equalized by excluding contributions to a retirement plan on behalf of a self-employed from employment taxes.</p> <p><i>Effective Date</i> – Taxable years beginning after December 31, 2003.</p>

Item	Current Law	Portman/ Cardin Bill
Reverse Match Salary Reduction SEPs (§ 810)	Following enactment of the Small Business Job Protection Act of 1996, salary reduction contributions to SEPs are no longer permitted, except in the case of grandfathered plans.	Salary reduction contributions to SEPs would be permitted, subject to all normally applicable rules to such contributions. In addition, such salary reduction contributions could not exceed twice the amount of employer contributions (e.g., if the employer contributes 5 percent of pay, then the employee's salary reduction contributions could not exceed 10 percent of pay). Salary reduction contributions to SEPs would not be permitted with respect to any year in the case of a SEP maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year. <i>Effective Date</i> – Years beginning after December 31, 2003.
Level Dollar Contributions to SEPs (§ 811)	In order to be considered nondiscriminatory, SEP contributions generally must bear a uniform relation to the compensation (not in excess of the first \$200,000 (indexed)) of each employee maintaining a SEP.	SEP contributions also would be considered nondiscriminatory if such contributions were a uniform dollar amount on behalf of each employee. <i>Effective Date</i> – Years beginning after December 31, 2003.
Studies (§ 1211)	No provision.	The following studies would be directed to be conducted: <ul style="list-style-type: none"> • The DOL would be directed (in consultation with the Treasury Department) to conduct a study regarding potential designs and effects of a model small employer group plan. • The DOL would be directed to report on the effect of the proposals included herein and the proposals included in EGTRRA on pension plan coverage, including any change in low- and middle-income worker coverage, the levels of pension benefits generally, the quality of coverage, access and participation in retirement plans, and retirement security.
NEW PARTICIPANT PROTECTIONS FOR DEFINED CONTRIBUTION PLANS		
Diversification Requirements for DC Plans (§ 1103)	Employer matching and non-elective contributions may be made in a variety of forms, including in the form of company stock. Some companies require that contributions in company stock continue to be held as company stock for some period of time (e.g., until the participant attains a certain age and/or has a certain number of years of service).	Participants generally could not be required to invest any of their own elective deferrals in employer stock. Participants would have to be allowed to divest themselves of any employer securities upon the completion of (a) 3 years of service in the case of employer matching contributions and (b) 5 years of service in the case of non-elective employer contributions. Stand-alone ESOPs and plans which hold company stock that is not readily tradeable on an established market would be excepted. The diversification requirements would be phased in beginning in 2004 through 2008 in 20 percent increments. <i>Effective Date</i> – In general, plan years beginning after December 31, 2003.

Item	Current Law	Portman/ Cardin Bill
Excise Tax for Failure to Provide Investment Education Notices (§ 1101)	Upon the request of a participant, the plan administrator must provide a summary of the participant's benefits under the plan. A participant is not entitled to more than one benefits statement during any one 12-month period. There are no specific requirements to disclose to plan participants the risks of a non-diversified portfolio of investments, including the risks of a heavy concentration of investment in company stock.	<p>A quarterly "investment education notice" would be required to be provided to participants and beneficiaries in defined contribution retirement plans (including certain plans not governed by ERISA, e.g., plans of State and local governments and churches). The notice would include information regarding principles of risk management and diversification, and would be provided at the time of enrollment and quarterly thereafter. An excise tax of \$100 per failure (capped at \$500,000 per calendar year) would be imposed on the employer for each participant or beneficiary who is not provided the notice.</p> <p><i>Effective Date</i> – In general, plan years beginning after December 31, 2003. For governmental plans, plan years beginning after December 31, 2005.</p>
Excise Tax for Failure to Provide Blackout Period Notices (§ 1102)	The Sarbanes-Oxley Act of 2002 generally requires advance notice before imposing a blackout period. In particular, except under certain circumstances, plan administrators of an individual account plan subject to ERISA will be required to provide notice to plan participants and beneficiaries 30 days before imposing a blackout. The DOL may assess a civil penalty against the plan administrator of up to \$100 per day per participant or beneficiary for each failure to provide notice.	<p>An excise tax of \$100 (capped at \$500,000 per calendar year) generally would be imposed for each participant or beneficiary of a non-ERISA plan who is not provided notice at least 30 days before the imposition of a blackout period.</p> <p><i>Effective Date</i> – Two years after date of enactment.</p>
Treatment of Qualified Retirement Planning Services (§ 1104)	In certain cases, employees, retirement plan participants, and beneficiaries must pay for retirement planning and investment advice and education expenses with after-tax dollars. Code section 132(m) defines "qualified retirement planning services" as any retirement planning advice or information provided to an employee and the employee's spouse by an employer maintaining a retirement plan.	<p>Employees would be able to pay for "qualified retirement planning services" provided by a "qualified investment advisor" on a pre-tax basis through a payroll deduction arrangement. Such a program would have to be available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's retirement plan.</p> <p><i>Effective Date</i> – Taxable years beginning after December 31, 2003.</p>
RETIREE HEALTH		
Employee Pre-Tax Payments for Retiree Health (§ 1401)	It is common for employers that provide retiree health plan coverage to require retirees to pay a portion of the cost of the coverage. Generally, those payments must be made on an after-tax basis. The Internal Revenue Service appears to take the position that retirees cannot make these payment on a pre-tax basis by electing to reduce their retirement plan distributions.	Retirees would be able to elect to use retirement plan distributions on a pre-tax basis to pay for their share of the cost of retiree health plan coverage (including coverage under a qualified long-term care insurance contract). The proposal would apply to distributions from a section 401(a) qualified plan, section 403(a) plan, section 403(b) plan, or governmental section 457(b) plan; it would not apply to distributions from IRAs (including IRAs that are part of a SEP or a SIMPLE IRA). In addition, in order to qualify for pre-tax treatment, the distribution would have to be used to pay part of all of the premium (or imputed premium in the case of a self-insured plan) of a retiree health plan maintained by the retiree's former employer. Prior to 2010, there would be a limitation on the

Item	Current Law	Portman/ Cardin Bill
		<p>amount of pre-tax retirement plan distributions that could be used for retiree health purposes (\$500 in 2004-2005, \$1,000 in 2006-2007, \$2,000 in 2008-2009).</p> <p><i>Effective Date</i> – Amounts paid for coverage in years beginning after December 31, 2003.</p>
<p>Partial Pre-Funding for Retiree Health (§ 1402)</p>	<p>Employers have limited options available to pre-fund retiree health costs, resulting in a decline in employers' willingness to maintain retiree health plans and a reduction in benefits under the plans still being maintained. One available arrangement is a section 401(h) account. A section 401(h) account is generally an account that can be maintained within a defined benefit plan or a money purchase pension plan. The account may be funded by employer contributions and/or employee contributions. In general, assets in the section 401(h) account must be used to provide retiree health benefits (including benefits under a qualified long-term care insurance contract) to employees eligible for retirement benefits under the defined benefit plan or money purchase pension plan. Such assets may not be used to provide "regular" retirement benefits under the defined benefit plan or money purchase pension plan. Correspondingly, except to the extent permitted by Code section 420, assets in the "regular" part of the defined benefit plan or money purchase pension plan may not be transferred to the section 401(h) account. Like other assets in the plan, earnings on assets in the section 401(h) account are not currently taxable. In addition, like other employer-provided retiree health plan benefits, benefits provided through the section 401(h) account are generally not taxable to the retirees. Typically, section 401(h) accounts do not contain an individual account for each participant, but rather are generally structured as an undivided pool of assets available to pay for any retiree health benefit costs. However, there is not a prohibition on the individual account approach. In fact, the individual account approach is required for key employees (and, unlike contributions for other employees, contributions for key employees are taken into account for purposes of the section 415 limits). If all retiree health benefit liabilities have been satisfied, all excess assets must revert to the employer. Current law section 401(h) accounts are insufficient because many employers do not maintain a defined benefit plan or a money purchase pension plan, and contributions to the section 401(h) account are limited so that the sum of the cumulative employer contributions to the account plus the cumulative employer contributions for life insurance protection under the plan must not exceed 25 percent of the total employer contributions to the plan (other than contributions to fund past service credits).</p>	<p>Section 401(h) accounts would be expanded so that they could be maintained as part of a profit-sharing or stock bonus plan. The present-law 25% limit would apply as would all other otherwise applicable section 401(h) rules -- except that for years prior to 2010 in the case of profit-sharing and stock bonus plans, the 25 percent limit would be reduced (to 5 percent in 2004-2005, 10 percent in 2006-2007, and 20 percent in 2008-2009).</p> <p><i>Effective Date</i> – Years beginning after December 31, 2003.</p>

Item	Current Law	Portman/ Cardin Bill
EXPANDING RETIREMENT SAVINGS FOR EMPLOYEES OF TAX-EXEMPT ORGANIZATIONS AND GOVERNMENTS		
Deferred Compensation Plans of Tax-Exempt Organizations (§ 901)	Code section 457 generally applies to nonqualified deferred compensation provided by State or local governments or by tax-exempt organizations. Contributions to such plans generally are limited to \$12,000 per year (for 2003). In the case of tax-exempt organizations, 457 plans are used in a manner similar to the nonqualified deferred compensation plans maintained by taxable employers for their higher paid employees, but plans maintained by taxable employers are not subject to any contribution limits.	<p>The 457 requirements (such as the contribution limit) would not apply to nonqualified deferred compensation plans of tax-exempt organizations. Instead, a new Code section 459 generally would govern nonqualified plans maintained by tax-exempt organizations. Under new Code section 459 , any employee’s nonqualified deferred compensation benefits would be subject to an annual limit equal to one-third of the employee’s total compensation (including deferred compensation) for the year (or the 457 plan limit if greater). Any excess over this limit would be taxable when the employee is vested in the excess. Amounts up to the limit would be taxable only when paid or made available. This limit would prevent a higher paid employee from voluntarily deferring all or substantially all of his or her compensation.</p> <p><i>Effective Date</i> – Taxable years beginning after December 31, 2003.</p>
Inapplicability of Penalty Tax on Pension Distributions for Public Safety Employees (§ 902)	Section 72(t) imposes a 10 percent penalty tax on distributions from employment-based retirement plans and IRAs that are received before age 59½, unless one of several exceptions applies (e.g., received on account of death or disability, received after separation of service after age 55, etc.).	<p>A new exception from the section 72(t) penalty tax would be created for distributions to a “qualified public safety employee” from a governmental plan to the extent that such distributions are attributable to a “DROP benefit.” A “DROP benefit” would mean a feature of a governmental plan under which an employee elects to receive credits to an account in the plan in lieu of increases in the employee’s accrued pension benefit based on years of service after the effective date of the DROP election. A “qualified public safety employee” would mean an employee of a police or fire department if the employee provides police protection, firefighting services, or emergency medical services.</p> <p><i>Effective Date</i> – Distributions after date of enactment.</p>
Purchase of Permissive Service Credit Improvements (§ 903)	Under State law, employees of State and local governments often have the option of purchasing service credits in their State defined benefit pension plans in order to make up for time spent in another State or district. EGTRRA included a provision allowing State and local government employees to use funds from their section 403(b) or section 457(b) plans to purchase service credits.	<p>Technical corrections to the EGTRRA changes would be made clarifying that (1) provisions with respect to nonqualified service (e.g., 5 year limit on nonqualified service) are not applicable to the use of funds from section 403(b) or section 457(b) plans; (2) that transfers may be made State to State from any governmental plan; (3) that the defined benefit plan’s distribution rules apply to the transferred amounts; and (4) that individuals may purchase service credits to increase benefits attributable to past service (in addition to purchasing credits with respect to new service).</p> <p><i>Effective Date</i> – Transfers after December 31, 2001 (as if included in section 647 of EGTRRA).</p>

Item	Current Law	Portman/ Cardin Bill
Certain Rollovers of Benefits Permitted (§ 904)	A participant in a section 457 plan is not required to include in gross income any amount payable to the participant solely by reason of the transfer of such amount from one eligible deferred compensation plan to another.	<p>It would be clarified that a transfer from one eligible deferred compensation plan to another of the entire benefit of one or more participants would not fail to be permitted solely because all assets of the transferor plan are not transferred to the transferee plan. In addition, an individual would not be precluded from participating in an eligible deferred compensation plan by reason of having received a distribution under Code section 457(e)(9) as in effect prior to the Small Business Job Protection Act of 1996.</p> <p><i>Effective Date</i> – In general, taxable years beginning after December 31, 2003.</p>
Minimum Distribution Rules for Governmental Plans (§ 905)	In general, section 401(a)(9) and related provisions require certain minimum distributions from retirement plans starting at the later of age 70½ or retirement. These minimum distribution requirements generally are applicable to governmental plans.	The Treasury Department would be directed to issue regulations providing that a governmental plan complies with the minimum distribution rules of section 401(a)(9) (for all years which such rules are applicable to the plan) if the governmental plan complies with a reasonable, good faith interpretation of section 401(a)(9).
Plans Maintained by Governments and Tax-Exempt Organizations (§ 907)	Section 415(b) limits maximum annual benefits under a defined benefit plan to the lesser of 100% of three-year-high-average pay or \$160,000 (in 2003). Actuarial reduction of the section 415(b) limit is required for benefit commencement prior to age 62. EGTRRA repealed Code section 415(b)(2)(F) which provided a special rule regarding pre-Social Security retirement age benefits for plans maintained by governments, tax-exempt organizations, and certain merchant marine plans.	<p>A new Code section 415(b)(2)(f) would provide, in the case of plans maintained by governments, tax-exempt organizations, and certain merchant marine plans, that the actuarial adjustment for early retirement will be determined as if such adjustment does not reduce the Code section 415(b)(1)(A) limit below (i) \$130,000 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the equivalent of \$130,000 at age 55.</p> <p><i>Effective Date</i> – Years beginning after December 31, 2003.</p>
Benefit Improvements for Church and Other Religious Institution Workers (§ 906)	Code section 415(b) generally limits annual benefits received from defined benefit plans to the lesser of \$160,000 (indexed), or 100 percent of the participant's average compensation for his high three years. For governmental and multiemployer plans, there is a special rule that only limits annual benefits to \$160,000, without regard to the 100 percent of compensation limit.	<p>The special rule for governmental and multiemployer plans would be extended to churches and other religious institutions (that are referenced in Code section 3121(w)(3)(A)) except with respect to certain benefits received by highly compensated employees.</p> <p><i>Effective Date</i> – Years beginning after December 31, 2003.</p>
Clarification of Status of YMCA's Retirement Fund (§ 815)	Churches (or certain church-related organizations) may maintain accounts under Code section 403(b)(9).	<p>It would be clarified that the Young Men's Christian Association (YMCA) Retirement Fund is to be treated as a church plan for purposes of Code section 403(b)(9).</p> <p><i>Effective Date</i> – Years beginning after December 31, 2002.</p>

Item	Current Law	Portman/ Cardin Bill
SIMPLIFY AND STREAMLINE RETIREMENT PLAN RULES		
Excise Tax on Excess Contributions (§ 801)	Excess contributions and excess aggregate contributions (<i>i.e.</i> , excesses with respect to the ADP and ACP nondiscrimination tests, respectively) generally are subject to an excise tax equal to 10 percent of the sum of such excess amounts. An exception to the excise tax is provided to the extent that the excess amounts are distributed (or forfeited, if forfeitable) before the date that is 2½ months after the plan year (<i>i.e.</i> , March 15 in the case of a calendar year plan). If a corrective distribution is made within the 2½ month period, the excess amounts (and income) generally are includible in the employee's gross income in the employee's taxable year in which the contributions were made. However, if the total excess amounts distributed for a plan year are less than \$100 or are distributed after the 2½ month period, such distributions are treated as received in the year of the distribution.	The exception to the excise tax for corrective distributions made within the first 2½ months of the following plan year would be extended to apply to corrective distributions made within 6 months of the following plan year. In addition, corrective distributions of excess amounts of up to \$1,000 would be taxable in the year of receipt without regard to when the corrective distribution is made. Amounts in excess of \$1,000 that are distributed prior to the end of the 6 month period would still be taxable in the employee's taxable year in which contributed. <i>Effective Date</i> – Years beginning after December 31, 2003.
Excess Benefit Plans (§ 802)	In general, ERISA does not permit an employer to maintain an unfunded, nonqualified retirement plan. There is, however, an exception for “top-hat plans” that cover a select group of management or highly compensated employees. There is no precise definition of a “top-hat employee” who is permitted to participate in such a plan. Under the Code, qualified retirement plans are subject to numerous nondiscrimination rules that can restrict the benefits of “highly compensated employees.” Very generally, a highly compensated employee is any 5% owner or any employee earning over \$90,000 (indexed) in the preceding year (though an employer may elect to limit the latter group to the top 20% of its workforce). In the case of many employers, some employees who are “highly compensated” under the Code may not be top-hat employees for purposes of ERISA. Accordingly, employers often find that all of the employer's highly compensated employees have their retirement benefits limited by the Code's nondiscrimination rules, but only the highest paid of these highly compensated employees -- the top-hat employees -- can receive nonqualified benefits to make up for the Code's limitations. Under this regime, lower-earning highly compensated employees receive lesser retirement benefits than more highly-compensated employees.	ERISA would not apply to an excess plan that provides benefits that would have been provided under an employer's qualified plan (or section 403(b) arrangement) but for the following nondiscrimination rules: the actual deferral percentage (“ADP”) test under section 401(k), the actual contribution percentage (“ACP”) test under section 401(m), and the compensation limit under section 401(a)(17). Under this rule, if a qualified plan (or section 403(b) arrangement) limits contributions by highly compensated employees in order to avoid a failure of the ADP or ACP tests, a nonqualified plan would be permitted to provide benefits that would have been provided under the qualified plan (or section 403(b) arrangement) but for the plan's limit. <i>Effective Date</i> – Plan years beginning after December 31, 2003.

Item	Current Law	Portman/ Cardin Bill
Paperless Technologies in Retirement Plans (§ 803)	In some instances, retirement plans and their sponsors are permitted to use new technologies (such as the Internet or telephonic response systems) to comply with certain retirement plan rules under the Code or ERISA. In particular, Treasury/IRS guidance has clarified that new technologies may generally be used to perform various transactions for which the Code does not prescribe rules regarding the media to be used, e.g., elections regarding participant contributions and investments, ERISA section 204(h) notices regarding significant reductions in the rate of future benefit accrual, and notices required in connection with the section 401(k) safe harbor. Regulations issued by the Department of Labor provide a safe harbor that retirement plans may rely upon in using new technologies to provide most disclosures and notices to participants under ERISA. The safe harbor permits the use of new technologies to provide, for example, electronic summary plan descriptions and individual benefit statements. However, there remain plan transactions for which the use of new technologies has not been permitted.	Not later than December 31, 2004, the Treasury Department and the Labor Department would be directed to permit the use of new technologies for purposes of (1) the notices, elections, and spousal consents required under Code sections 401(a)(11) and 417 (and ERISA section 205), (2) satisfying the conditions for a hardship distribution under Code section 401(k)(2)(B)(i)(IV), and (3) other plan transactions for which the use of new technologies has not yet been permitted. Such regulatory direction provides that new technologies should not be permitted if their use would undermine the rights of any participant or beneficiary or weaken the policy purposes of any rule. In cases where the Treasury Department or Labor Department determines that new technologies is unworkable, the Department would be directed to file a report to the appropriate committees of Congress.
Repeal of the Gateway Test (§ 805)	Before using the separate line of business rules, the employer must pass a “gateway test” that applies on an employer-wide basis, thus defeating the purpose of the separate line of business rules.	The “gateway test” would be repealed. <i>Effective Date</i> – Years beginning after December 31, 2003.
Intermediate Sanctions for Inadvertent Failures (§ 806)	The only statutory sanction for even a minor violation of any of the numerous pension rules is complete disqualification of the plan. The consequences of disqualification are draconian and generally bear no relation to the nature of the error that occurred. Similarly, certain tax advantages for employees under a section 403(b) arrangements can be lost, and the employer penalized, due to a failure to comply with the numerous rules applicable to such plans. The IRS has established the Employee Plans Compliance Resolution System (EPCRS) which is a comprehensive system of correction programs for sponsors of retirement plans and annuities that are intended, but have failed, to satisfy the requirements of section 401(a) and section 403(b), as applicable. The basic elements of the programs that comprise EPCRS are self-correction, voluntary correction with IRS approval, and correction on audit. The IRS has expressed its intent that EPCRS be updated and improved periodically in light of experience and comments from those who use it.	Retirement plans would not be disqualified solely on account of a violation of applicable rules so long as the plan has made good faith efforts to comply with qualification requirements, has inadvertently failed to satisfy such requirements, and substantially corrects any failure. If the violation is corrected before audit, no penalty would apply. To the extent that the failure is corrected after a plan becomes subject to an audit, the IRS could require payment of a fee that is reasonable in comparison to the severity of the violation. Also, non-highly compensated employees would not be required to include amounts in income that are attributable to plan disqualification. <i>Effective Date</i> – Date of enactment.
Qualified Preretirement Survivor Annuity (§ 807)	Elections prior to age 35 to waive a qualified pre-retirement survivor annuity are no longer valid once the electing individual attains age 35.	Pre-retirement survivor annuity waivers would continue to be valid after the electing individual attains age 35. <i>Effective Date</i> – In general, years beginning after December 31, 2003.

Item	Current Law	Portman/ Cardin Bill
Cost-of-living Adjustment of \$5,000 Cash-Out Amount (§ 808)	If a terminated participant has a vested accrued benefit of \$5,000 or less, the plan may distribute such benefit in a lump sum without the consent of the participant or the participant's spouse. This \$5,000 cash-out limit is not indexed for inflation.	The \$5,000 cash-out limit would be indexed for future inflation in \$500 increments. <i>Effective Date</i> – Years beginning after December 31, 2003.
Catch-up Contributions (§ 809)	EGTRRA included a provision allowing retirement plan participants age 50 or older to make annual catch-up contributions. For purposes of these catch-up contributions, an employer must allow all eligible participants to make the same election with respect to catch-up contributions (i.e., if one participant has a right to make catch-up contributions, then that right must be universally available to all participants), or any plan allowing catch-up contributions will be treated as failing to meet the nondiscrimination requirements with respect to benefits, rights, and features.	The nondiscrimination rule would be incorporated into the section 401(a)(4) nondiscrimination rules, and it would be clarified that employees covered under a collective bargaining agreement and employees of a qualified separate line of business (QSLOB) would not be considered in determining compliance with the universal availability requirement related to benefits, rights, and features. <i>Effective Date</i> – Taxable years after December 31, 2001. (As if included in section 631(a) of EGTRRA.)
Clarification of Fiduciary Duty with Respect to Automatic Rollovers of Cash-Out Amounts (§ 813)	As discussed above, a plan may provide for mandatory cash-outs of certain vested accrued benefits that do not exceed \$5,000. EGTRRA included a provision requiring a plan that provides mandatory “cash-outs” of vested accrued benefits to directly transfer such distributions to a default IRA unless the participant affirmatively elects to receive the distribution directly. This requirement does not apply to distributions of \$1,000 or less. Limited fiduciary relief is provided to plan fiduciary with respect to the selection of the default IRA. The Department of Labor (DOL) has been directed to issue safe harbors with respect to the designation of an institution and investment of funds.	ERISA section 404(c) would be amended so that, in the case of an automatic rollover of any mandatory cash-out amount, the fiduciary would be subject to ERISA's fiduciary requirements only with respect to the initial selection of the IRA and the investments thereunder. It also would be clarified that the fiduciary would have no liability under ERISA for selections made consistent with DOL guidance. <i>Effective Date</i> – Distributions after DOL has adopted final regulations which are required not later than three years after date of enactment (June 7, 2001). (As if included in section 657 of EGTRRA.)
Multiemployer Plan Clarification (§ 814)	The Code and ERISA provide a number of special rules for multiemployer plans and plans maintained pursuant to a collective bargaining agreement.	The Treasury Department would be given authority to prescribe regulations under which a multiemployer plan is not treated as a plan of or maintained by the employers of participating employees for purposes of any applicable nondiscrimination rules. <i>Effective Date</i> – Date of enactment.
Updating Deduction Rules for Combination of Plans (§ 405)	Code section 404(a)(7) provides special rules limiting employer deductions where an employer sponsors a combination of defined benefit and defined contribution plans.	The special rules of Code section 404(a)(7) would apply in the case of contributions to one or more defined contribution plans only to the extent that such contributions exceed 6 percent of compensation otherwise paid or accrued during the taxable year to beneficiaries under such plans. <i>Effective Date</i> – Years beginning after December 31, 2003.

Item	Current Law	Portman/ Cardin Bill
Tax on Nondeductible Contributions Not to Apply to Certain Nontrade or Business SEP Contributions (§ 812)	Within limits, employers may make deductible contributions to retirement plans for employees. Generally, a 10 percent excise tax applies to nondeductible contributions to such plans. EGTRRA included a provision that the 10 percent excise tax on nondeductible contributions does not apply to contributions to a SIMPLE plan or IRA, which are nondeductible solely because the contributions are not a trade or business expense under section 162.	The exception to the 10 percent excise tax for nondeductible contributions to a SIMPLE plan or SIMPLE IRA would be extended to include nondeductible contributions to a SEP. <i>Effective Date</i> – Years beginning after December 31, 2003.
Employment Tax Treatment of Statutory Stock Options (§ 1301)	Reversing 30 years of rulings and practice, the Treasury Department and IRS issued proposed regulations in November 2001 that would have imposed employment taxes when stock options are exercised under incentive stock option plans (ISOs) or employee stock purchase programs (ESPPs). Subsequently, Notice 2002-47 was issued in which it was provided that employment taxes would not be assessed upon the exercise of an ISO or ESPP and that the proposed regulations were being suspended indefinitely.	It would be clarified that employment taxes are not owed when stock options are exercised under ISOs or ESPPs. <i>Effective Date</i> –Stock acquired pursuant to options exercised after date of enactment.
PENSION PROVISIONS DROPPED FROM 2001 TAX ACT FOR PROCEDURAL REASONS (BYRD ITEMS)		
Reporting Simplification (§ 1202)	“One-participant retirement plans” are exempt from the annual report filing requirement for a plan year if they did not hold more than \$100,000 in total plan assets at the end of that plan year or any preceding plan year beginning on or after January 1, 1994. A one-participant plan that is not exempt from the annual report filing requirement is only required to file a simplified form, <i>i.e.</i> , Form 5500-EZ. A one-participant plan is a plan that covers and benefits only certain owners (or such owners and their spouses) of the sponsoring employer and meets certain requirements.	The Treasury and Labor Departments would be directed to provide that a one-participant retirement plan with assets of \$250,000 or less as of the close of the plan year would be exempt from the annual report filing requirement for that plan year. In addition, in the case of plan years beginning after December 31, 2004, the Secretary of the Treasury and the Secretary of Labor would be directed to provide simplified reporting requirements for certain plans with fewer than 25 employees. <i>Effective Date</i> –Except as noted above, plan years beginning on or after January 1, 2003.
Improvement to Employee Plans Compliance Resolution System (§ 1203)	Failure to satisfy all applicable requirements of section 401(a) or section 403(b) may disqualify a plan or annuity from the intended tax-favored treatment. The IRS has established the Employee Plans Compliance Resolution System (EPCRS) which is a comprehensive system of correction programs for sponsors of retirement plans and annuities that are intended, but have failed, to satisfy the requirements of section 401(a) and section 403(b), as applicable. The basic elements of the programs that comprise EPCRS are self-correction, voluntary correction with IRS approval, and correction on audit. The IRS has expressed its intent that EPCRS be updated and improved periodically in light of experience and comments from those who use it.	The Secretary of the Treasury would be directed to continue to update and improve EPCRS, giving special attention to (1) increasing the awareness and knowledge of small employers concerning the availability and use of EPCRS, (2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures, (3) extending the duration of the self-correction period for significant compliance failures, (4) expanding the ability to correct insignificant compliance failures using self-correction during audit, and (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of failure.

Item	Current Law	Portman/ Cardin Bill
Uniform Treatment of Governmental Plans (§ 1204)	The Taxpayer Relief Act of 1997 exempted governmental plans maintained by State or local governments from various nondiscrimination rules. Governmental plans other than those maintained by State or local governments were only exempted from the rule requiring a nondiscriminatory group to be covered.	All governmental plans (as defined in section 414(d)) would be exempt from the nondiscrimination and minimum participation rules. <i>Effective Date</i> – Years beginning after December 31, 2003.
Notice and Consent Period Regarding Distributions (§ 1205)	If a participant has a vested benefit in excess of \$5,000, that benefit cannot be distributed prior to the later of age 62 or normal retirement age unless the participant consents no more than 90 days before benefit commencement. Such consent is not valid unless the participant receives an explanation of his or her distribution options, including an explanation of the right to defer distributions, no more than 90 days before benefit commencement. In addition, in the case of an eligible rollover distribution, the plan administrator must provide an explanation to the recipient of certain rules regarding the tax treatment of such distribution. This explanation must be provided no more than 90 days before the date of distribution. If a participant in certain types of plans has a vested benefit in excess of \$5,000, that benefit must be distributed in the form of a qualified joint and survivor annuity unless such participant and his or her spouse consent to another form no more than 90 days before the annuity starting date. In this regard, a plan must provide a participant with an explanation of his or her distribution options no more than 90 days before the annuity starting date.	A qualified retirement plan would be required to provide the applicable distribution notices no more than 180 days before the date distribution commences. The Secretary of the Treasury would be directed to modify the applicable regulations to reflect the extension of the notice period to 180 days and to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt. <i>Effective Date</i> – Years beginning after December 31, 2003.
Reduced PBGC Premiums For New, Small Employer Plans (§ 1206 & 1207)	Defined benefit plans are required to pay the PBGC a flat annual premium of \$19 per participant plus a variable premium based on their funding status. In addition, PBGC insurance protection for defined benefit plans generally phases in over a five-year period. Underfunded defined benefit plans are subject to an additional PBGC variable rate premium (VRP) based on the extent of a plan's underfunding. There is no VRP for the first year of a defined benefit plan.	A new defined benefit pension plan adopted by a small employer (100 or fewer employees) would only pay an annual premium of \$5 per participant for the first five years. In the case of any other newly created defined benefit plan, any applicable VRP would be phased-in over a six-year period as follows: 0% in year one; 20% in year two; 40% in year three; 60% in year four; 80% in year five; and 100% in year six. In addition, for certain small employer plans (25 or fewer employees), the VRP would be capped at \$5 times the number of plan participants. <i>Effective Date</i> – Plans established after December 31, 2002.
Authorization for PBGC to Pay Interest on Premium Overpayment Refunds (§ 1208)	ERISA contains no specific authorization for the PBGC to pay interest on premium overpayment refunds.	The PBGC would be authorized to pay, subject to regulations prescribed by the PBGC, interest on the amount of any premium overpayment refund. <i>Effective Date</i> – Interest accruing for periods beginning not earlier than date of enactment.

Item	Current Law	Portman/ Cardin Bill
Rules for Substantial Owners Relating to Plan Terminations (§ 1209)	ERISA contains complicated rules for determining the benefits guaranteed by the PBGC for an individual who owns more than ten percent of a business (a “substantial owner”) and who is a participant in the terminating plan.	<p>The five-year PBGC guarantee phase-in that currently applies to a participant who is not a substantial owner would apply to a substantial owner with less than a 50% ownership interest. For a substantial owner with a 50% or more ownership interest (a “majority owner”), the phase-in would depend on the number of years the plan has been in effect, rather than on the number of years the owner has been a participant and the initial plan benefit.</p> <p><i>Effective Date</i> – In general, terminations for which notices of intent to terminate are provided or with respect to which proceeding are instituted after December 31, 2002.</p>
OTHER PROVISIONS		
Protection of Social Security and Medicare (§ 1601)	No provision.	Social Security and Medicare would be “held harmless” by providing that amounts transferred to any trust fund under the Social Security Act would be determined as if the provisions of the Act had not been enacted.
Plan Amendments (§ 1501)	Generally, there is a short time within which to make plan amendments to reflect amendments to the law. In addition, the “anti-cutback” rules of Code section 411(d)(6) can have the unintended effect of preventing an employer from amending its plan to reflect a change in the law.	Amendments to a plan or annuity contract made pursuant to any amendment made by the Act, or Title VI of EGTRRA, or regulations under the Act or Title VI of EGTRRA would not be required to be made on or before the last day of the first plan year beginning on or after January 1, 2006. Except as provided by Treasury, any such plan amendments would not result in a failure to meet the requirements of section 411(d)(6). In the case of a governmental plan, the date for amendments is extended to the first plan year beginning on or after January 1, 2008. Of course, operational compliance would be required with respect to all plans as of the applicable effective date of any amendment made by this Act.