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SUMMARY OF DEFINED CONTRIBUTION PROVISIONS IN
HR 7327, THE WORKER RETIREE AND EMPLOYER RECOVERY ACT OF 2008
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*******DRAFT*******

HR 7327 has three main components - funding relief for defined benefit plans, a waiver of minimum requirement distributions for 2009, and technical and substantive changes to HR 4, the Pension Protection Act of 2006. All provisions are effective as if included in HR 4 unless otherwise noted.

Section 101(e) amends IRC (Internal Revenue Code) Section 409A(b)(3)(A)(ii) to clarify that the **restrictions on nonqualified deferred compensation plans (NQDC) during a “restricted period”**(DB plan is “at-risk” or terminated or employer is in Chapter 11 bankruptcy) apply only to “an applicable covered employee” (a current or former employee who was described in IRC Section 162(m)(3) or Section 16(a) of the Securities Exchange Act of 1934). Applicable to taxable years beginning after 2007, but only with respect to NQDC plan years that end with or within such taxable year.

Section 104(e) amends ERISA Section 4050(d)(4)(A), that describes the types **of retirement plans not otherwise subject to the PBGC that are eligible to participate in the PBGC missing participants program**. The program is now restricted to plans qualified under IRC Section 401(a), which includes 401(k) and profit sharing plans. Additionally, plans that do not provide for employer contributions are now permitted to use the program.

Section 105(g) amends ERISA Section 101(i)(8)(B), relating to **blackout notices, to make conforming changes to the definition of a one-participant retirement plan that is excluded from the blackout notice requirements**. In addition, a one-participant plan that covers a business that leases employees is now exempt from the notice requirements. The exemption applies to plans that meet these requirements on the first day of the plan year.

Section 106(b) amends the **prohibited transaction exemption for foreign exchange transactions** under ERISA 408(b)(18) and IRC Section 4975(d)(18). The permitted range for the exchange rate was “not more or less” than three percent. It is changed to “not more than three percent.” The scope of the exemption is expanded from fiduciaries who offer advice to all fiduciaries as defined in IRC Section 4975(e)(3).

Section 106(d) amends ERISA Section 404(c)(5), that provides relief for **qualified default investment arrangements** if certain investment and notice requirements are met, to replace the term “participant” with “participant or beneficiary” each time it appears.

Sections 106(a) and (c) amend IRC Section 404(a)(7) that limits **deductions when an employer offers both a defined benefit and defined contribution**. The legislation clarifies that the combination plan limit only applies when a defined contribution plan(s) includes contributions that exceed six percent of compensation otherwise paid or accrued during the taxable year to beneficiaries under the plan. If the six percent limit is exceeded, only the excess contributions are counted towards the overall limit.

Section 108(d) removes the adjusted gross income conditions and income recognition (except a return of after tax contributions) requirements **for rollovers from a designated Roth account to another designate Roth account or a Roth IRA**.

Section 108(f) amends the **rollover notice requirements in IRC 402(f) to include nonspousal beneficiary rollovers**. This provision is effective for plan years beginning after December 31, 2009.

Section 109(a) expands the **one-participant plan exception to the diversification requirements for plan investments in employer securities**. The one-participant plans are not required to meet the Section 410(b) minimum coverage requirements and the exception is available to a business that leases employees. The conditions apply on the first day of the plan year.

Section 109(b)(3) amends IRC Section 402(g)(2)(A)(ii), relating to the distribution of excess deferrals, to specify that **only income earned through the end of the taxable year that applies to the excess deferral must be distributed**.

Sections 109(b)(4) and (5) amend **the permissible withdrawal provisions** in IRC Section 414(w). An eligible automatic contribution arrangement, a condition of a permissible withdrawal, is **no longer required to include a qualified default investment arrangement**. Permissible withdrawals are extended to SARSEPS and SIMPLE IRAs.

Section 109(c) amends the rules for **eligible combined plans (“DBK plans”)** to require that, in the case of plan termination, the DB and DC plans must be separately terminated.

Section 111(b), relating to IRC Section 3304(a), is amended to provide that **unemployment compensation** may not be reduced by the amount of a rollover contribution.

Section 201 amends IRC Section 401(a)(9), relating to **required minimum distributions (RMD)**, to **provide that the requirements will not apply to calendar year 2009** for a defined contribution plan qualified under IRC Section 401(a) (this includes 401(k) and profit sharing plans), a Section 403(a) or (b) plan, a Section 457(b) governmental plan, and an IRA. Calendar year 2009 will be considered for calculating required minimum distributions for years after 2009 – an individual who turns 70½ in 2009 is not required to begin a RMD by April 1, 2010 (in regard to 2009), but will have to make an RMD by the end of 2010 in regard to 2010. Calendar year 2009 will not be considered in calculating the five-year distribution period when an employee dies before distributions have begun.

Distributions pursuant to the RMD rules are generally not eligible for rollover treatment, but this condition does not apply for 2009. A plan may, but is not required to, offer a direct rollover, meet the

rollover notice requirements, or apply the 20% mandatory withholding to an eligible rollover distribution that would otherwise have been a RMD for 2009.

A plan or contract is not treated as failing to be operated in accordance with the plan terms if a plan amendment, pursuant to this provision, is made on or before the last day of the first plan year beginning on or after January 1, 2011 (2012 for government plans) and the plan is operated in 2009 as if the amendment were in effect. The provision is effective for calendar years beginning after 12/31/08.