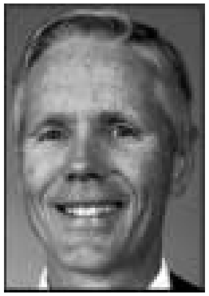
Pension Act will have long-term effects

BY AL MATHEWS

On August 17, 2006, President Bush signed into law the Pension Protection Act of 2006 (the PPA). While much of the publicity surrounding the new law has focused on changes to defined benefit pension plans, many retirement plan specialists believe the PPA's 401(k) provisions will be more significant over the long term.

Congress has been concerned that 401(k) plans, the most prevalent type of retirement plan today, are not benefiting enough employees. Studies have shown that of the employees eligible to participate in traditional "opt-in" 401(k) plans less than 70% elect to do so. In contrast, 401(k) plans with an automatic enrollment feature where employees must "opt-out" have about a 90% participation rate. Incentives for employers to adopt automatic enrollment type plans are included in the PPA as a means of capturing the 20% of employees who are eligible to save for retirement but are not doing so.

The message from Congress is clear: saving for retirement is the responsibility of the private sector. With the PPA Congress has laid out a roadmap designed to help workers achieve the level of saving necessary to support a comfortable retirement. This has been done by preserving higher contribution limits, providing "safe harbor" automatic enrollment and investment option features, and making it easier for participants to receive investment advice. In order for the retirement roadmap to be successful it is imperative that employers do their part by adopting 401(k) plans and taking advantage of the new 401(k) features.



MATHEWS: Guest writer looks at 401(k) provisions

In terms of importance the following PPA 401(k) changes are the most favorable.

■ Permanency of the EGTRRA Provisions – The PPA made permanent the improvements to defined contribution plans, such as 401(k) plans, enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Those improvements, previously scheduled to expire after 2010, include the increased limits on salary deferrals and employer contributions as well as the addition of the Roth (after-tax) feature for deferrals.

> ## From the Executive's Desk
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■ 401(k) Automatic Enrollment - Effective for plan years beginning after December 31, 2007, the PPA allows employers to receive "safe harbor" protection for automatic enrollment 401(k) plans that satisfy certain requirements, including specified levels of employee contributions and minimum amounts of matching or profit sharing contributions. By meeting these requirements a plan is deemed to pass certain plan compliance testing. In addition, the PPA allows for ERISA (Federal) preemption of state payroll withholding laws that could interfere with automatic enrollment.

Further, the PPA provides fiduciary protection for certain types of default investment options. (A default occurs where a participant fails to direct the investment of his account and the plan then designates a "default" investment option.) The Department of Labor is scheduled to issue guidance soon as to the types of default investment options that will fall into a "safe harbor" category thus offering fiduciary protection. The DOL is expected to designate multi-asset class investment vehicles that will satisfy the safe harbor requirements. These vehicles are expected to include risk based life-style funds, age based life-cycle (retirement target date) funds, managed accounts and balanced funds.

■ Investment Advice – The PPA creates ERISA prohibited transaction exemptions for investment advice given to plan participants. The first is for investment advisors who provide advice for a level fee; the second is for anyone who provides advice through the use of a computer model. This second exemption would include advisors whose compensation can be affected by the advice given. These exemptions will enable financial advisors and investment managers to provide advice to 401(k) plan participants if the exemption qualifications are met.