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# 1996 Pension Simplification

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## I. INTRODUCTION

For many years, Congress has given lip service to addressing some of the more technical and arcane pension rules that have bogged down both employers and practitioners with respect to qualified retirement plans. At long last, it appears that Congress may actually have succeeded in certain areas in bringing about true pension simplification. Pursuant to the Small Business Job Protection Act signed into law on August 20, 1996, significant changes have been made in the areas of distributions, certain of the qualified plan nondiscrimination rules, and the calculation of contributions and benefits.[1] The pension simplification legislation can essentially be divided into five categories. These categories are as follows: increasing access to qualified retirement plans; clarifying the rules that apply to distributions; simplifying and eliminating certain non-discrimination rules that apply to qualified retirement plans; simplifying certain pension rules that apply to contributions, distributions, and benefits; and last, but not least, the simplification and/or clarification of a potpourri of miscellaneous pension provisions. The purpose of this article is to provide an overview of the most important changes brought about by this sweeping legislation and point out how such changes may be beneficial (or detrimental in some instances) to plan sponsors and participants.

## II. INCREASED ACCESS TO PENSION PLANS

### A. Savings Incentive Match Plan for Employees ("Simple Plans")

In the belief of Congress, there are not enough small businesses that are financially able to adopt and maintain a qualified retirement plan. As a result, Congress has created the Savings Incentive Match Plan for Employees (the "SIMPLE Plan").[2] As is so often the case with legislation of this type, a good idea in concept has been completely destroyed by governmental bureaucrats who have no idea of the complexity and interaction of the qualified plan rules

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1. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 1996 U.S.C.C.A.N. (110 Stat.) 1755.

2. I.R.C. § 401(k)(11) (West Supp. 1996). For purposes of this article, all references will be to the 1996 amendments to the Internal Revenue Code of 1986.

and the fact that some of the SIMPLE Plan requirements will actually discourage the small business owner from adopting such a plan.

A SIMPLE Plan can be structured as either an individual retirement account ("IRA") or as a 401(k) qualified cash or deferred arrangement.[3] An employer considering the implementation of a SIMPLE Plan must consider the following disadvantages before adopting such an arrangement:

1. An employee can only defer up to $6,000 per year as adjusted for inflation under a SIMPLE Plan (as compared to $9,500 as adjusted for inflation under a 401(k) plan).[4] The $6,000 limit is indexed for inflation in $500 increments with the base period being the calendar quarter ending September 30, 1996.[5]
2. An employer must make a matching contribution to a SIMPLE 401(k) Plan on a dollar-for-dollar basis of up to 3% of an employee's compensation or, alternatively, a non-elective contribution of 2% of compensation.[6] With respect to a SIMPLE IRA, an employer can elect to match contributions at a rate lower than 3% (but no lower than 1%) of each employee's compensation or, alternatively, such employer can also elect a non-elective contribution of 2% of compensation.[7] In order to apply the lower matching percentage under a SIMPLE IRA, the employer must notify employees of the lower matching percentage within a reasonable time before the 60-day election period at which time employees are allowed to decide whether or not to participate in the arrangement.[8]
3. All contributions to a SIMPLE Plan are fully vested.[9] This means that all matching contributions under such an arrangement cannot be subject to a vesting schedule as they would in a normal qualified retirement plan.
4. The employer that sponsors a SIMPLE Plan can maintain no other type of qualified retirement plan.[10]
5. A SIMPLE Plan is only available for employers with 100 or fewer employees.[11] For this purpose, the term "employer" includes related employers within a controlled group or an affiliated service group.[12]

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3. I.R.C. §§ 401(k)(11), 408(p)(West Supp. 1996).
4. I.R.C. § 401(k)(11)(B)(i)(I) (West Supp. 1996).
5. I.R.C. § 402(g)(5) (West Supp. 1996).
6. I.R.C. §§ 401(k)(11)(B)(i)(II), 401 (k) (11) (B) (ii) (West Supp. 1996).
7. I.R.C. §§ 408(p)(2)(A)(iii), 408(p) (2) (B) (West Supp. 1996).
8. I.R.C. § 408(p)(5)(C) (West Supp. 1996).
9. I.R.C. § 401(k)(11)(A)(iii) (West Supp. 1996).
10. I.R.C. § 401(k)(11)(C) (West Supp. 1996).
11. I.R.C. § 408(p)(2)(C)(i) (West Supp. 1996).
12. I.R.C. § 414(b), 414(c) (West Supp. 1996).

Assuming that reduced employee deferrals for the key employees, fully vested matching contributions and the prohibition against maintaining any other type of qualified retirement plan are not insurmountable hurdles for the employer, then a SIMPLE 401(k) Plan does provide three distinct advantages over a qualified plan. First, such an arrangement is not subject to the "top heavy" rules set forth under section 416 of the Internal Revenue Code of 1986, as amended (the "Code").[13] Generally speaking, a top heavy plan is one in which sixty percent or more of the plan's assets are held by the owner-employees of the business.[14] If a plan is top heavy, certain minimum vesting and contribution rules apply.[15] Second, the special 401(k) nondiscrimination rules that limit how much highly compensated employees can defer under such an arrangement as compared to an employer's rank and file employees are not applicable.[16] Finally, the reporting and disclosure rules associated with such a plan are significantly streamlined and do not require the filing of an annual Form 5500 (only as to SIMPLE IRAs).[17]

The tax treatment of amounts distributed from a SIMPLE Plan are much like that of amounts received from an IRA. Accordingly, distributions are includable in a participant's income when withdrawn from the plan. Furthermore, amounts from a SIMPLE Plan can be rolled over tax free to another SIMPLE Plan or an IRA (if the individual has participated in the SIMPLE Plan for two years).[18] However, such amounts cannot be rolled over tax free to another qualified plan.[19] Finally, if amounts are distributed from a SIMPLE Plan prior to age fifty-nine and one-half, and within two years of plan participation by the individual, such amounts will be subject to a twenty-five percent early withdrawal penalty tax (as opposed to the ten percent early distribution tax for distributions from a qualified plan or IRA effectuated prior to age fifty-nine and one- half).[20]

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13. I.R.C. §§ 401(k)(11)(D)(ii), 416(g)(4)(G) (West Supp. 1996).
14. I.R.C. § 416(g)(1) (West Supp. 1996).
15. I.R.C. § 416(a) (West Supp. 1996).
16. I.R.C. § 401(k)(11)(A) (West Supp. 1996).
17. ERISA § 101(g). In this regard, all that is required to be provided to employees is a simplified summary plan description and an account statement. The summary plan description must contain the following information: (i) the name and address of the employer and the trustee; (ii) the requirements for participation eligibility; (iii) the benefits provided under the plan; (iv) the time and method of making salary reduction elections; and (v) the procedures for withdrawing and rolling over distributions from a SIMPLE Plan.
18. I.R.C. § 402(k) (West Supp. 1996).
19. *Id.*
20. I.R.C. § 72(t)(6) (West Supp. 1996).

B. Adoption of a 401(k) Plan by Tax-exempt Organizations

For whatever reason, it had long been the rule that tax-exempt organizations could not establish a 401(k) plan for their employees (unless such plan had been adopted on or before July 1, 1986). This was due in part to the conventional wisdom that tax exempt organizations could still utilize a "403(b) plan." A 403(b) plan is similar in concept to a 401(k) plan from the standpoint that employees can elect to defer a portion of their compensation on an annual basis from current income taxes. A 403(b) plan, however, is not a qualified plan as defined under Section 401(a) of the Code and hence is not as flexible in terms of plan investment choices (a 403(b) plan is generally limited to mutual funds or annuity contracts) or plan distribution choices (an amount distributed from a 403(b) plan can not be rolled over tax free to a tax qualified plan).

Fortunately for tax exempt organizations, Congress came to its senses during its past legislative session and enacted legislation where it is now possible for tax-exempt organizations to adopt a 401(k) plan.[21] This rule is effective for 401(k) plans adopted on or after January 1, 1997. In this regard, however, it is worth noting that state and local governments (or political subdivisions, agencies, or instrumentalities thereof) continue to be barred from adopting a 401(k) plan.[22]

The main advantages of a 401(k) plan over a 403(b) plan for tax exempt entities considering such an arrangement are twofold. First, a 403(b) plan is limited to offering only annuity contracts or mutual funds as investment choices for plan participants, whereas a 401(k) plan conceivably can be designed to allow total self direction by plan participants (including being able to pick and choose individual stocks, bonds or other similar types of investments).[23] Second, a qualified plan can accept rollovers from another qualified plan, whereas a 403(b) plan can only accept rollovers from another 403(b) plan.[24]

The advantages of a 401(k) plan over a 403(b) plan as set forth above must be balanced against limited ERISA involvement (if only employee contributions are made to the 403(b) plan) and the nonapplicability of nondiscrimination testing (if there are no employer matching contributions made by the employer to the 403(b) plan).[25] Suffice it to say, that any tax

21. I.R.C. § 401(k)(4)(B)(i) (West Supp. 1996).
22. I.R.C. § 401(k)(4)(B)(ii) (West Supp. 1996).
23. I.R.C. § 403(b)(1)(A), 403(b)(7) (West Supp. 1996).
24. I.R.C. § 403(b)(8) (West Supp. 1996).
25. Under ERISA, if the 403 (b) arrangement is completely voluntary for employees and the employer has no direct involvement and receives no compensation (other than for

exempt organization considering adopting a 401(k) plan to replace its existing 403(b) plan should consult with their employee benefits advisor prior to implementing such a plan.

## III. SIMPLIFICATION OF RETIREMENT PLAN DISTRIBUTION RULES

### A. Repeal of Five-Year Averaging for Lump Sum Distributions

Effective for tax years beginning after December 31, 1999, the special five-year forward averaging treatment that applies to lump sum distributions received from a qualified retirement plan has been repealed.[26] However, the prior grandfathering rules that apply to individuals who were at least fifty years of age on or before January 1, 1986, remain in effect. Specifically, under this rule, an individual, trust, or estate may elect ten year (but not five year) forward averaging (using the tax rates in effect in 1986) for a single lump sum distribution and capital gains treatment (if applicable) for the "pre-1974" portion of a lump sum distribution, without regard to whether the employee has attained age fifty-nine and one-half.

### B. Simplification of Calculating Basis for Annuity Payments

Effective with respect to annuity starting dates that are later than ninety days after August 20, 1996, a simplified method has been provided for determining the portion of an annuity distribution from a qualified retirement plan, qualified annuity, or tax-sheltered annuity that represents the portion of such payment that is a non-taxable return of basis. Under this method, the portion of each annuity payment that represents the non-taxable return of the participant's basis is generally equal to the employee's total investment in the

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reasonable expenses) with respect to the 403(b) plan, the plan will not be deemed to be "established or maintained by an employer" so that Title I of ERISA will not apply. 29 C.F.R. § 2510.3-2 (f) (1997). Furthermore, if all employees may participate in such arrangement and there are no employer matching contributions, no nondiscrimination testing is required. I.R.C. § 403(b)(12)(A)(ii) (West Supp. 1996).

26. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1401, 1996 U.S.C.C.A.N. (110 Stat.) 1787.

contract as of the annuity starting date, divided by the number of anticipated payments, determined by reference to the age of the participant as listed below:[27]

| AGE OF PARTICIPANT | NUMBER OF ANTICIPATED PAYMENTS |
|---|---|
| 55 and Under | 360 |
| 56 - 60 | 310 |
| 61 -65 | 260 |
| 66 - 70 | 210 |
| 71 and Over | 160 |

For these purposes, the investment in the contract is defined as the amount of premiums and other consideration paid (which generally is the amount of after-tax contributions made to the plan) minus the amount received before the annuity starting date that has been excluded from gross income.[28]

C. Repeal of $5,000 Death Benefit Exclusion

The special death benefit exclusion that applies to the beneficiary or estate of a deceased employee in which up to $5,000 in death benefits can be excluded from income by the recipient has been repealed.[29] Repeal of this special death benefit exclusion applies with respect to decedent's dying after August 20, 1996.

D. New Beginning Date for Minimum Distributions

In a change that has long been awaited by the employee benefits community, distributions to participants from a qualified plan (assuming the plan so provides) no longer are required to commence by April 1 following such individual's attainment of age seventy and one-half if such individual continues to remain employed by his employer.[30] Specifically, this rule now

27. I.R.C. § 72(d)(1)(B) (West Supp. 1996).
28. I.R.C. § 72(c)(1) (West Supp. 1996).
29. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1402, 1996 U.S.C.C.A.N. (110 Stat.) 1789.
30. I.R.C. § 401(a)(9)(C)(i) (West Supp. 1996).

requires that distributions must commence no later than April 1 of the calendar year following the later of either of the following: (i) the year in which the employee reaches age seventy and one-half or (ii) the calendar year in which the employee retires.[31] The new required beginning date under the minimum distribution rules does not apply to 5% or more owners or to amounts held in an IRA.[32] The modified "minimum distribution rules" are effective for years beginning after December 31, 1996.

## IV. NONDISCRIMINATION RULES

### A. Highly Compensated Employee Definition Refined

Perhaps nowhere was the pension simplification legislation more needed and welcomed than in the area of the "nondiscrimination rules." Sweeping changes have been made in this area, which include changes to the definition of a highly compensated employee, the family aggregation rules, the "minimum participation" rule set forth under Section 401(a)(26) of the Code, and the 401(k) nondiscrimination tests.

The first of these changes discussed herein are the revisions made to the Code's definition of a highly compensated employee. The definition of a highly compensated employee is important because it is used to determine whether or not a plan is covering a required minimum number of rank and file employees (commonly referred to as the "minimum coverage rule" under Section 410(b) of the Code) so as not to discriminate in favor of highly compensated employees. This definition is also utilized in conjunction with testing a 401(k) plan on an annual basis to make sure that the percentage of employee deferrals that are being made by the plan's highly compensated employees do not discriminate in such a manner as to preclude the employer's rank and file employees from being able to materially participate under such an arrangement.

Under the new law, an employee is considered highly compensated if he is either a five percent owner at any time during the current year or the preceding year or had compensation from the employer in excess of $80,000 during the preceding year and, if the employer so elects, was in the top paid group (the top twenty percent of an employer's work force by compensation).[33] By electing to use the top twenty percent of employees by compensation, an employer may be able to include fewer employees in the highly compensated

31. *Id.*
32. I.R.C. § 401(a)(9)(C)(ii) (West Supp. 1996).
33. I.R.C. § 414(q)(1) (West Supp. 1996).

employee group, thereby making it easier to pass the nondiscrimination tests. Please note that conspicuously absent from this new definition of a highly compensated employee is the inclusion of any officers of the employer with compensation in excess of $60,000 (as was the case under prior law). The provisions dealing with the definition of highly compensated employees are effective for years beginning after December 31, 1996, except that in determining whether an employee is a highly compensated employee for 1997, the amendments are treated as having been in effect in 1996.[34]

B. Repeal of the Family Aggregation Rules

The second change in the nondiscrimination area and perhaps the biggest "common sense" change enacted by Congress in all of the 1996 pension legislation is the repeal of the "family aggregation rule."[35] Prior to its repeal, the family aggregation rule required that a husband, his wife and their children who were under nineteen years of age, if they were all employed by the same employer, had to be aggregated and treated as one employee and their compensation had to be combined (subject to being capped at the 401(a)(17) maximum limit which effective for years after December 31, 1993 is $150,000 as adjusted for inflation) for purposes of computing plan contributions (or benefits). As you can readily see, this provision had the effect of penalizing small business owners, by preventing the family members of the business as a group from maximizing their retirement benefits under the terms of the plan.

To illustrate the mechanics of this old rule, assume husband and wife own a small closely held business in which each made $125,000 in 1996. The business maintains a profit sharing plan for its employees. Under the old rules, husband and wife must be aggregated and counted as one employee. This means for computing contributions to the profit sharing plan, the combined "husband/wife employee" is limited to considering only $150,000 in compensation (as opposed to $250,000 which was paid and received by the family unit). By repealing this family aggregation rule, effective for plan years commencing on or after January 1, 1997, the family unit identified above will be able to consider the entire $250,000 (i.e., husband will use $125,000 and wife will use $125,000 in computing contributions under the terms of the plan) for purposes of making contributions to the profit sharing plan (as opposed to being limited to $160,000 for 1997, which for 1997 is the maximum compensation that can be considered for retirement plan purposes).

34. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1431(a), 1996 U.S.C.C.A.N. (110 Stat.) 1802.

35. I.R.C. §401(a)(17)(A) (West Supp. 1996).

C. Minimum Participation Rules to Apply Only to Defined Benefit Pension Plans

Pursuant to section 401(a)(26) of the Code, each qualified retirement plan sponsored by an employer must cover the lesser of forty percent of all of a company's employees or fifty employees.[36] The origin of the "minimum participation" rule goes back prior to the Tax Reform Act of 1986, whereby an employer would establish a profit sharing plan for its rank and file employees in which it would make minimal contributions to such a plan. Simultaneously, therewith, the key owners of the business would establish a separate defined benefit pension plan in which substantial contributions would be made to such an arrangement on behalf of the key employees. Such an arrangement was often used to benefit the key owners of the business to the detriment of the rank and file employees.

The above concept received widespread publicity and insulted Congress. As a result, Congress determined such a concept was an abuse of the qualified plan rules and enacted section 401(a)(26) of the Code in the Tax Reform Act of 1986. Effective for years beginning after December 31, 1996, the minimum participation rule has been clarified so that it only applies to defined benefit pension plans.[37] As a result, this change may in fact allow greater design flexibility with respect to defined contribution plans as to designing defined contribution plans in favor of the plan sponsor's highly compensated employees.

D. Simplification of the 401(k) Nondiscrimination Rules

In an effort to reduce the administrative burden associated with the testing for discrimination under a 401(k) plan, a 401(k) plan can test for discrimination by referring to the prior years data.[38] This is accomplished by using the average deferral percentages ("ADP") and average contribution percentages ("ACP") of the nonhighly compensated employees for the prior plan year.[39] With respect to the first plan year for a 401(k) plan, the ADP is deemed to be three percent for the nonhighly compensated employees.[40] An employer can elect, however, to use the actual ADP as calculated for such year, if desired.[41]

36. I.R.C. § 401(a)(26) (West Supp. 1996).
37. I.R.C. § 401(a)(26)(A) (West Supp. 1996).
38. I.R.C. § 401(k)(3)(A)(ii) (West Supp. 1996).
39. *Id.*
40. I.R.C. § 401(k)(3)(E)(i) (West Supp. 1996).
41. I.R.C. § 401(k)(3)(E)(ii) (West Supp. 1996).

In addition, the act provides two safe harbor formulas whereby a 401(k) plan will be deemed to automatically meet the 401(k) nondiscrimination requirements for employee contributions as well as employer matching contributions. If an employer makes a non-elective contribution of at least 3% of an employee's compensation to the plan on behalf of each eligible nonhighly compensated employee (regardless of whether the employee makes deferrals under the plan), the 401(k) nondiscrimination test will be satisfied.[42] As part of this safe harbor formula, each employee must be given a written notice within a reasonable period of time before the beginning of any plan year of his rights and obligations under the terms of the plan.[43] On the other hand, the actual safe harbor matching contribution requirement is satisfied if the employer makes a matching contribution of one-hundred percent of the employee's elective contributions up to three percent of pay and fifty percent of the employee's elective contributions to the extent that they exceed three percent, but not five percent, of the employee's compensation.[44] The safe harbor rules are effective for plan years beginning after December 31, 1998.

The intent of the 401(k) nondiscrimination alternatives is to add an element of certainty for employers and plan participants. Certainty flows from the fact that an employer will know at the beginning of the plan year whether or not the plan will satisfy the 401(k) nondiscrimination test for the year and thereby eliminates the need for the employer to periodically conduct random and year-end testing.

## V. SIMPLIFICATION OF CERTAIN RULES PERTAININGTO CONTRIBUTIONS, DISTRIBUTIONS AND BENEFITS

### A. Waiver of 30 day Waiting Period for Joint and Survivor Annuities

Effective for plan years beginning after December 31, 1996, a plan may now permit a participant (and if applicable, the participant's spouse) to elect to waive the thirty-day minimum waiting period between the time the written explanation of the terms and conditions of a qualified joint survivor annuity are provided and the annuity starting date.[45] Such a waiver can be effectuated only if the distribution commences more than seven days after the written explana-

42. Small Business Job Protection Act of 1996. Pub. L. No. 104-188, § 1433(a), 1996 U.S.C.C.A.N. (110 Stat.) 1804 (revising I.R.C. § 401(k)(12) effective for plan years commencing after December 31, 1998).

43. *Id.*

44. *Id.*

45. I.R.C. § 417(a)(7)(A) (West Supp. 1996).

tion has been provided.[46] This change in the law codifies a temporary IRS regulation which reduces the thirty day waiting period to a seven day period, if the participant (and spouse, if applicable) so elect.

### B. Repeal of Section 415 Combined Plan Limit

In perhaps the biggest change effecting the so-called "arcane" provisions of the Code with respect to benefits, effective for plan years commencing after December 31, 1999, the "combined plan limit rules" of Section 415(e) of the Code have been repealed.[47] The combined plan limit rules are used to determine, when an employer has both a defined contribution plan and a defined benefit pension plan, exactly how much money can be contributed on behalf of a participant to each one of such plans individually and in the aggregate. The calculations associated with this rule are extremely complicated and oftentimes are handled improperly by the employer and plan administrators.

In conjunction with the repeal of the Section 415(e) combined plan limit, the fifteen percent excise tax that applies to excess plan distributions has been suspended until the repeal of the Section 415(e) combined plan limit rule takes effect.[48] This means that excess distributions from a qualified plan (i.e. those distributions which exceed \$150,000 per year or lump sums which exceed \$750,000) will not be subject to the fifteen percent excise tax for the years 1997 through 1999. However, it is worth noting that the 15% excise tax that applies on "excess retirement accumulations" for estate tax purposes will continue to apply and has not been suspended.[49]

## VI. MISCELLANEOUS PENSION SIMPLIFICATION RULES

### A. Increase in the Prohibited Transaction Excise Tax

A prohibited transaction is any type of transaction involving the qualified plan and "a disqualified person." If such a transaction is entered into, the disqualified person is subject to an excise tax under prior law of 5% of the amount of the transaction involved. The excise tax is applicable for every year in which the transaction continues to go uncorrected. Under the Act, effective

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46. I.R.C. § 417(a)(7)(B) (West Supp. 1996).
47. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1452(a), 1996 U.S.C.C.A.N. (110 Stat.) 1816.
48. I.R.C. § 4980A(g) (West Supp. 1996).
49. *Id.*

for transactions occurring on or after August 20, 1996, the excise tax has been increased from five percent to ten percent of the amount involved.[50]

B. Elimination of ESOP Interest Exclusion

Banks may no longer exclude from gross income 50% of the interest received on loans made to an employee stock ownership plan ("ESOP") or to an employer corporation, the proceeds of which are used by the ESOP to acquire employer stock.[51] The repeal of this benefit is a reflection by Congress that this incentive is no longer necessary to encourage financial institutions to make loans to ESOPs. The repeal of this exclusion is effective for loans made after August 20, 1996, except for the refinancing of certain loans initially made prior to the date of enactment and for loans made pursuant to a written binding contract in effect before June 10, 1996.[52]

C. Definition of Leased Employee Simplified

Under prior law, the test to determine whether or not a leased employee would be counted as an employee of the employer for qualified plan purposes was whether or not the services performed were those which "were historically performed" by such an employee. Effective for plan years on or after December 31, 1996, this test has been replaced with the focus now on whether or not such leased employee's services are performed under the "primary direction and control" of the employer.[53] If an employee's services are under the "primary direction and control" of the employer, such employer must count such leased employee as an employee of the employer for purposes of the qualified plan rules.[54]

D. Extension of $2,000 Deductible IRA Contributions to Spouses with No Compensation

Previously, if one spouse had no compensation, the maximum deductible contribution to an individual retirement account for a couple was $2,250. Effective for tax years beginning after December 31, 1996, a spouse with no

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50. I.R.C. § 4975(a) (West Supp. 1996).

51. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1602(a), 1996 U.S.C.C.A.N. (110 Stat.) 1833.

52. *Id.*

53. I.R.C. § 414(n)(2)(C) (West Supp. 1996).

54. I.R.C. § 414(n)(3) (West Supp. 1996).

compensation can also make a $2,000 tax deductible IRA contribution.[55] However, it is worth noting that these deduction rules are still subject to reduction if the compensation of the family unit exceeds $40,000 and either spouse is an active participant in an employer sponsored retirement plan.[56]

### E. Date for Adoption of Plan Amendments

For plan sponsors (other than governmental employees), such changes are not required to be implemented in the plan until the first day of the first plan year beginning on or after January 1, 1998.[57] As to governmental plan sponsors, a more generous grace period is allowed for adoption which is the first day of the plan year that begins in the year 2000.[58]

## VII. CONCLUSION

As can be seen from the above, Congress was busy in 1996 with respect to pension simplification. In an ever changing employee benefits environment, Congress must continue to monitor this area of the law closely and be able to react accordingly to meet the needs of plan sponsors and participants. In response to this challenge, changes to the minimum distribution rules, the repeal of the family aggregation and Code section 415(e) combined plan limit rules, the extension of the 401(k) plan rules to tax exempt entities, the tightening of the minimum participation rule and overall changes to the nondiscrimination rules were long overdue and welcomed by plan sponsors and practitioners. Nevertheless, as can be seen with the rules that apply to SIMPLE Plans (a good idea gone bad), Congress cannot rest on its laurels, and in fact has its work cut out for it in making such an arrangement a viable one for the small business.

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55. I.R.C. § 219(c) (West Supp. 1996).

56. I.R.C. § 219(f)(2), 219(g)(1) (West Supp. 1996).

57. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1465, 1996 U.S.C.C.A.N. (110 Stat.) 1825.

58. *Id.*