GROOM LAW GROUP

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MEMORANDUM TO CLIENTS

RE: <u>Comprehensive Pension Reform Finally Arrives</u>

Years of negotiations, lobbying efforts, and political posturing have finally culminated in comprehensive pension reform, as the House of Representatives and the Senate passed H.R. 4, the "Pension Protection Act of 2006", on July 28th and August 3rd, respectively. The President is expected to sign the bill into law on August 17th. We attach detailed summary comparisons of current law and the principal provisions of H.R. 4, the Pension Protection Act – in separate packages focusing on defined benefit and defined contribution plans. We also attach a separate side-by-side that focuses on the many ERISA fiduciary changes in the legislation.

The comprehensive pension reform bill had been languishing in a slow-moving conference committee tasked with negotiating the final details of the measure for nearly 6 months. The conference committee targeted, but missed, three self-imposed deadlines based upon the Easter, Memorial Day, and July 4th recess periods. Major issues contributing to the delay included the use of a company's credit rating to determine a plan's funding status, the legitimacy of cash balance plans, the provision of investment advice to 401(k) plan participants and IRA owners, and whether to give the airline industry special relief under the new defined benefit plan funding rules. To further complicate matters, the House and Senate Republican Leadership targeted the pension conference report as a viable vehicle to attach estate tax relief and "tax extenders." These efforts were short-lived, however, as the pension conferees, including Senator Olympia Snowe (R-ME) and Chairman of the Senate Finance Committee, Senator Charles Grassley (R-IA), objected to its inclusion in the conference agreement clearing the way for final passage.

H.R. 4 arguably marks the most sweeping changes to the pension laws since the enactment of ERISA. Nearly 800 pages of the 900-page bill amend the tax and ERISA provisions for retirement programs. They reflect a host of initiatives including

- dramatically revamped funding rules for defined benefit plans – generally effective in 2008 – and changes to the PBGC insurance program. These reflect major modifications to the basic structure of the February 2003 and 2004 Bush Administration proposals,

- prospective changes affecting cash balance and hybrid plan designs, including new rules for future conversions,

- the most significant changes in the ERISA fiduciary and prohibited transaction provisions since ERISA's enactment in 1974,

- several of the 2002 "Enron-related" reforms affecting employer stock and investments in defined contribution plans,

- important new rules for "corporate-owned life insurance programs" ("COLI") as well as significant changes to promote long-term care coverage,

- a host of "cats and dogs" targeted at specific problems or segments of the pension world.

The pension community also should be relieved that the legislation makes the many EGTRRA changes in the pension limits – including contribution limits and Roth 401(k) provisions – permanent. Although the expectation was that this would eventually happen, it is helpful to have them off the political tables – especially with the Presidential elections approaching.

There is an awful lot to sort out in this legislation. Most observers believe it will further hasten the demise of defined benefit plans. The hope is that many of the changes – such as the those for "auto enrollment" and investment advice – will enhance individual retirement savings programs. Only time will tell.