

Federal Update 2003-2
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TO: NCTR Members

FROM: Cindie Moore
Washington Counsel

Change in GPO's "Last Day" Rule Causes Stir in House

The House of Representatives failed to pass, under a special procedure, a provision to change the "last day" rule under the Government Pension Offset (GPO) on 3/5/03. The provision would have substituted a 60-month rule in its place.

Under the GPO, an individual who works in a job not covered by Social Security (such as certain state and local government positions) is not entitled to a full dependent benefit under Social Security. Instead, Social Security reduces his/her dependent benefit by two-thirds of his/her pension from the non-Social Security covered job. Current law provides an exemption from GPO if the individual's last day of work is in a position covered by both Social Security and the state or local government retirement system that covered he/she in the non-Social Security covered job.

Part of the impetus for changing the law is a report by the General Accounting Office (GAO-02-950, 8/12/2002) recommending a change in the "last day" rule. The report states that the rule raises fairness and equity concerns and could also cost the Social Security Trust Fund \$450 million over the long term. At a hearing on 2/27/03, a GAO official reiterated the recommendation.

The change is part of H.R. 743, the "Social Security Protection Act of 2003," introduced by the Chairman of the House Social Security Subcommittee, Clay Shaw (R-FL). The bill better protects a Social Security beneficiary if a person has been entrusted to receive the benefit on the beneficiary's behalf and the person misuses it. It also includes a variety of technical corrections. Finally, it contains some miscellaneous changes, including the "last day" rule change. The House leadership expected the bill to pass without controversy, so it fast-tracked it under a special procedure, known as suspension of the rules. The procedure requires a two-thirds, not a simple, majority of votes for passage of a measure.

Members of the Texas delegation vigorously opposed the change. They argued that the change is unfair to teachers in Texas, many of whom are subject to the GPO. Under the "last day" rule, they can avoid the GPO. They voted against the bill in sufficient number to prevent its passage under the suspension procedure. The House could still debate the bill under the regular procedure. Meanwhile, Sen. Jim Bunning (R-KY) has introduced legislation (S. 249) on 2/25/03 that contains the same change in the "last day" rule as H.R. 743.

House Begins Consideration of Re-Introduced Post-Enron Bill

Legislation to address pension abuse by Enron executives is moving. The bill requires employers to provide their employees with benefit statements and investment education notices. Because two House Committees have jurisdiction over the bill, the procedure for its consideration is somewhat complicated.

John Boehner, Chairman of the House Education and the Workforce Committee, introduced H.R. 1000 on 2/27/2003. The bill, as currently drafted, amends ERISA, so that the new requirements apply to private employer retirement plans only. The Committee approved the bill on 3/6/03.

The legislation will then move to the Ways and Means Committee. I expect that Committee to extend some of the provisions to governmental plans. In conversations with Ways and Means staff, public pension representatives have learned that the benefit statement requirement will not apply to governmental plans, but the investment education notice will. The notice would be applicable to plans with individually directed accounts and not to other types of plans.

Last year's bill would have required both private and public employers to comply with "blackout notices." Such notices inform employees with defined contribution plans that they may not engage in any transactions in their accounts (e.g., taking a distribution) during some period of time. Congress passed that provision as part of the Sarbanes-Oxley Act, the corporate governance reform legislation, so it is not part of H.R. 1000.

Most people would agree that investment education for employees is necessary. State and local government retirement systems, understanding the responsibility, already provide such information. However salutary the intent of the provision is, it opens up expanded congressional regulation of governmental plans. At this point, such regulation is tax-based only. The legislation would allow the federal government to prescribe non-tax rules, such as notices. NCTR and other public plan groups are working to eliminate the expected inclusion of governmental plans in the bill. (Note, the situation in the Senate is more promising. A pension staff member has told public plan representatives that governmental plans will likely be exempted either in the bill as introduced or in the bill as passed by Committee.)

House Bankruptcy Bill Re-Introduced

As I reported in Federal Update 2003-1, early consideration of bankruptcy legislation is expected during the 108th Congress. Chairman of the House Judiciary Committee, James Sensenbrenner (R-WI), introduced H.R. 975 on 2/27/2003 that contains the pension protections supported by NCTR. Rep. Sensenbrenner hopes for rapid consideration of the bill. No bill has been introduced in the Senate yet.

GASB-OPEB Exposure Draft available, includes Plain-Language Supplement

The Governmental Accounting standards Board (GASB) released its exposure draft on how employers report and account for other post-employment benefits (OPEB), such as retiree health care. The release includes two lengthy documents (142 and 133 pages, respectively) and a short, fairly readable "plain-language" version. Comments are due April 30, 2003. Public hearings will be in May. For a copy of the documents, go to www.gasb.org.

Bush Administration Issues Medicare Prescription Drug Proposal

I will prepare an analysis and distribute it shortly.