

Federal Update 2003-8

TO: NCTR Members

FROM: Cindie Moore, Washington Counsel

RE: House Passage of HR 1000, the Pension Security Act, and Developments on HR 1776, the Portman-Cardin Pension Bill

DATE: May 15, 2003

You may have heard that the House passed HR 1000, the Pension Security Act on May 14. The vote was 271-157. The bill has two main provisions. First, it would provide additional protections to participants and beneficiaries in individual account plans that are invested in employer securities. The provision responds to last year's situation involving Enron. Second, it would promote the provision of retirement investment advice to workers managing their retirement income assets.

Of interest to state and local government (SLG) plans is HR 1000's federal notice requirement. The provision would require an annual notice that describes generally accepted investment principles. It would apply to both private and SLG plans with self-directed accounts and also to governmental 457 plans. Self-directed accounts permit a participant to direct the investment of some or all of his/her account in the plan. NCTR opposes such a notice as redundant to what SLG plans already provide and an unnecessary intervention in the regulation of such plans. We will work to have this provision stricken when the Senate acts on it.

HR 1000 is an effort separate from HR 1776 by Reps. Rob Portman (R-OH) and Ben Cardin (D-MD), the "Pension Preservation and Savings Expansion Act of 2003." Introduced on April 11, HR 1776 is the so-called "next generation of pension reform." I will discuss several issues of interest and the bill's status. A summary of the other provisions applicable to SLG plans appears at the end of this update.

First, HR 1776, like HR 1000, includes various federal notice requirements for SLG plans. I understand from staff that the Chairman's Mark will not include the bill's notice requirements because similar such notices are in H.R. 1000.

Second, Section 905 of H.R. 1776 contains some interesting language addressing the way that SLG plans would comply with IRC § 401(a)(9) regarding required distributions. The section directs the Treasury Department to treat governmental plans as having complied with the requirements of § 401(a)(9) "if such plan complies with a reasonable good faith interpretation of" such Section. As you may recall, the Treasury Department issued temporary regulations under § 401(a)(9) in 2002 that would interfere with the COLA provisions of several states and contradict other provisions of state pension law. Section 905 might help SLG plans by allowing them to use a good faith interpretation of § 401(a)(9). Such an approach could facilitate plans'

ability to follow their respective state or local government pension laws with less risk of violating the rules under § 401(a)(9).

The Chairman of the House Ways and Means Committee, Bill Thomas (R-CA), intends to take up HR 1776 shortly. He will not likely present the bill to the committee in its current form, but will create a revised document, called a “Chairman’s Mark.” We are working with staff to determine what will likely be included in the mark.

Other items of interest to SLG plans in HR 1776 include the following:

- 1) Repeal the sunset on the pension sections of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGATRRRA). The repeal of the sunset makes the sections permanent. If no change is made, the sections go out of existence in 2011. This is very good news as many NCTR members have adopted the helpful portability enhancements and other provisions of the Act.
- 2) Expand rollovers of pension funds, such as rollovers from retirement plans to Roth IRAs.
- 3) Increase the minimum age at which someone must begin to draw his/her pension.
- 4) Allow employees to make pre-tax payments for retiree health. The concept is good and we are looking at how the provisions are structured.
- 5) Make inapplicable the 10 percent additional tax on early distributions of pension plans of public safety employees. This provision relates to distributions from Deferred Retirement Option Plans (DROPs) and includes a federal definition of a DROP.
- 6) Exclude a small amount of annuity income from tax.
- 7) Make technical corrections to the purchase of service credit provision (IRC § 415(n)) and the provision in EGATRRRA that allows the transfer of 403(b) and 457 amounts for the purchase of service credit.
- 8) Add a floor to the actuarial adjustment for early retirement under the IRC § 415 defined benefit limits. The provision would determine the adjustment as if it does not reduce the IRC § 415(b)(1)(A) limit below either \$130,000 if the benefit begins at or after age 55, or if the benefit begins before age 55, the equivalent of \$130,000 at age 55.