

Federal Update 2003-11
July 15, 2003

Action on Pension Bill Expected Soon

Introduction. The House Ways and Means Committee may mark up by week's end, HR 1776, the Portman-Cardin Pension Preservation and Savings Expansion Act. Reps. Rob Portman (R-OH) and Ben Cardin (D-MD), who promote bipartisan changes in federal pension law, authored the bill.

Slimmed Down Version. HR 1776 is currently 207 pages long and makes numerous changes. NCTR has compiled two summary tables on the bill. Table I covers major changes for state and local government (SLG) plans. Table II includes provisions that affect both SLG and private plans. To view the tables, go to http://www.nctr.org/fed_legislation.htm. The bill is also quite expensive. Consequently, the Committee will consider a slimmed down version that has a lower cost.

Provisions at Risk. The highest priced items in the bill relate to expanding savings opportunities in IRAs and supplementary retirement plans such as 457s; permitting workers to set aside funds to pay for health insurance premiums during retirement; and encouraging workers to take their pensions as annuities rather than as lump sums. These provisions will likely be significantly scaled back or eliminated. The current version of the bill also makes permanent the pension provisions from the Economic Growth and Tax Relief Reconciliation Act of 2001. This permanency provision is a key priority of NCTR. If the 2001 Act is not made permanent, it will expire at the end of 2010 and its helpful changes, including expanded pension portability, will end. We have heard that if the permanency provision is excluded from HR 1776, it may be picked up in subsequent legislation. Another provision at risk of deletion is the proposed floor on the reduction of pensions that are subject to the Section 415 limit.

Good News. The slimmed down version will likely contain a helpful change for NCTR members. As currently written, HR 1776 has two federal notice provisions that apply to SLG plans. The notices respond to problems with Enron during 2002, in which thousands of employees lost the savings in the 401(k)s. They do not address a situation that would likely occur in the SLG sector. NCTR opposes the notices. Staff informed us that the notices will be dropped. Note that another House bill, HR 1000, passed on May 14, does contain a similar notice requirement. We understand, however, that the soon-to-be-drafted Senate pension bill will not include the notice. Thus, the probability of a notice provision in any final version of the bill is not high.

Other Helpful Item. The slimmed down version will build on a helpful provision in HR 1776 that addresses how SLG plans comply with the minimum distribution rules (MDRs). During 2002, IRS promulgated some temporary MDR regulations that would have restricted the types of COLAs offered by SLGs, among other matters. (After protest by SLG plans, IRS delayed the implementation of the regulations for the time being.) To resolve the type of problems created by the temporary regs, HR 1776 allows the plans to

follow the MDRs using a reasonable, good faith interpretation. The bill does not define “reasonable, good faith.” IRS has recently been using a narrow definition that relies principally on some proposed regs. We have been working with staff to broaden the definition. Such a definition would allow plans to interpret the MDRs using the proposed regs as well as an interpretation of the statute underlying the MDRs, IRC § 401(a)(9). Staff says that the slimmed down version of HR 1776 may include such a definition.

Wild Card. A private plan issue is looming that may delay the Committee’s consideration. HR 1776 includes a provision to change the funding methodology of private defined benefit plans. The provision would replace the benchmark 30-year Treasury bond with a composite corporate rate. The Administration has proposed a competing approach. If the two proposals cannot be reconciled, consideration of the bill may slip to later in the month.

Medicare Rx Issue Bogs Down

In June, both the House and Senate passed differing bills that would radically change the Medicare program. The bills would not only add prescription drug coverage, but also create a larger role for private health insurance in the program. At the time of passage, the leadership of both Houses of Congress felt a conference committee could resolve the differences between the two versions before the August recess. To review the essential information about the legislation, click onto http://www.nctr.org/fed_legislation.htm.

But the ambitious schedule appears unlikely to be met. While the Senate has appointed its conferees, the House has not done so yet. Meanwhile, interest groups are beginning to examine what passed and a variety of concerns have arisen. For example, NCTR members that administer retiree health care programs have looked at the definition of “sponsor” for purposes of providing prescription drug coverage. It is not clear whether the definition is broad enough to include retirement systems. We are looking at this issue as well as others and will keep you posted.

EEOC Proposes ADEA Exemption for Retired Health Care Plans

The Equal Employment Opportunity Commission (EEOC) proposed a regulation on July 14 that will allow employer-sponsored retiree health care plans to coordinate with Medicare without running afoul of the Age Discrimination in Employment Act (ADEA). Specifically, the proposed regulations would exempt “the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or a State-sponsored retiree health benefits program.”

EEOC justifies the proposal by saying it does not want the application of the ADEA to discourage employers from providing health benefits to their retirees. The proposal is a result of an EEOC study of the relationship between the ADEA and employer-sponsored retiree health benefit plans that coordinate with Medicare or a comparable State-sponsored retiree health benefits program.

EEOC provided a lengthy explanation of its rationale in the proposed regulations. Among its reasons are double-digit health care coverage cost increases, an aging workforce, and accounting standards (the Financial Accounting Standards Number 106, which apply to the private sector; a similar accounting standard, the Other Post-Employment Benefits (OPEB) proposal of the Governmental Accounting Standards Board (GASB) will be applied to governments shortly).

Public comments are due September 12, 2003. A copy of the proposal is located at <http://www.regulations.gov/fredpdfs/03-17738.pdf>.

Hearing on Social Security Numbers May Set Stage for Bill Re-Introduction

The House Social Security Subcommittee looked at the issue of Social Security number privacy on July 10. The witnesses included the Social Security Administration and other groups that support expanding privacy protections and strengthening punishment of those who steal Social Security numbers.

The hearing likely sets the stage for the re-introduction of the House legislation that may restrict how SLG retirement plans use Social Security numbers. Last year's bill, H.R. 2036, by Subcommittee Chairman Clay Shaw (R-FL) would have prohibited the purchase, sale, and display of Social Security numbers. Although NCTR supports better protections of Social Security numbers and punishment for wrongdoers, the bill did not make clear that legitimate uses of Social Security numbers by SLG plans could continue.

NCTR is working with a coalition of public and private sector organization to exempt retirement systems from the legislation. The groups are drafting a letter that will ask Chairman Shaw to make the necessary changes in the legislation to bring about the exemption. We will post the letter on www.nctr.org once it is completed.