

To: NCTR Members  
From: Cindie Moore  
Re: Federal Update 2003-16  
Date: September 12, 2003

### **Action Very Likely on Pension Bill Next Week**

The Senate Finance Committee is expected to take up pension legislation on September 17. The bill will apparently be similar to S. 1971 from last year with post-Enron items and investor advice, but may also contain some new provisions, such as funding rules for private plans and a “governmental plan clean up package.” The clean up package as proposed includes a number of items that will address issues that NCTR members have been facing. Of particular interest are the following.

IRS Temporary Rules that Affect State and Local Governments’ (SLGs) COLAs. IRS issued temporary rules last year that would make flat percentage and other types of COLAs impermissible. The temporary rules interpret Code § 401(a)(9), the minimum distribution rules. The rules also limit the types of pension options to three (single life, joint and survivor, and period certain), even though some SLG plans offer other actuarially acceptable options. (IRS has delayed the effective date of the rules for the time being.) To resolve these problems, the package would treat SLG plans as having complied with Section 401(a)(9) if they follow a reasonable good faith interpretation of the provisions of the Section. The Department of the Treasury would be directed to issue regulations to implement the provision.

Clarification of Purchase of Service Credit. Code § 415(n) provides rules governing the permissive purchase of service credit. Most SLG plans allow their participants to purchase credit for years in which they did not earn a vested benefit. In addition, the Section provides flexibility by allowing retirement system members to purchase additional credit not tied to an actual period of service. IRS has made restrictive interpretations of this “nonqualified service.” The package proposes some clarifications that will allow the provision to resolve these interpretations.

Other items in the package include: exempting from the 10% early distribution tax public safety workers who separate from service at age 50 (instead of the current age of 55) and restoring the age-55 floor under Code § 415(b).

Two final items should be noted. First, S. 1971 from last year would have required defined contribution plans, including those of state and local governments, to provide a notice to plan participants in the wake of the Enron situation. The notice addresses the problems faced by Enron employees who had large amounts of company stock in their 401(k)s. The notice represents a federal mandate for activities that are already carried out at the SLG level. Moreover, it blurs the line between traditional federal regulation of SLG plans and the regulation of the plans done by the SLGs themselves.

Second, the House Ways and Means Committee, as I reported in July, passed a modified version of the Portman-Cardin bill (H.R. 1776) in a rancorous, partisan atmosphere. Some members feel that the bill should be re-considered by the Committee. It is not clear whether the bill will move forward. Another pension bill, H.R. 1000, a post-Enron/investment advice bill, passed the House in spring.

## **NCTR Submits Comments in Support of EEOC's Proposal on Retiree Health Care**

The Equal Employment Opportunity Commission (EEOC) has proposed an exemption from the Age Discrimination in Employment Act (ADEA) to allow the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or a State-sponsored retirement health benefits program.

In his letter, NCTR President Dave Mills said that EEOC “recognizes the realities and importance of employer-sponsored retiree health benefits, even though they are often subject to reduction upon Medicare eligibility.” EEOC’s proposal addresses the issue of employer-sponsored retiree health benefits only and would represent a narrow exception to the ADEA.

*If your system administers a retiree health care plan, please note the following issue in the Medicare prescription drug bill. An ambiguity exists as to whether a subsidy for providers of prescription drug programs applies to governmental plans. Contact Jim Miller, consultant for Ohio Public Employees’ Retirement System at (614) 878-7451 or [James3558@earthlink.net](mailto:James3558@earthlink.net) for information.*