

Federal Update 2003-30
December 8, 2003 (Updated December 10, 2003)

TO: NCTR Members
FROM: Cindie Moore
RE: Year-End Wrap Up

House Gone; Senate Will Be Soon; Medicare Bill Enacted

The House finished its business for the year on December 8 by approving a \$328 billion omnibus spending bill for fiscal year 2004. The Senate will convene on December 9 to consider the bill, but Senator Robert Byrd (D-WV) says he will block an immediate vote, likely delaying final congressional action until January or later.

The delay would leave 11 Cabinet-level departments in the federal government operating under temporary spending authority at fiscal year 2003's level. Fiscal year 2004 began October 1. Senate Majority Leader Bill Frist (R-TN) informed his colleagues in November that they would not need to return for recorded votes until January. That statement, combined with the approaching holidays, makes it unlikely that Senator Frist could produce the 60 votes to end a Byrd-led filibuster and pass the omnibus bill.

A more probable scenario is that Senate GOP leaders will file a motion to limit debate on the omnibus bill, likely resulting in a vote in January. A continuing resolution that expires January 31 is keeping the government operating.

Although Congress' conclusion for the year lacked drama, White House activity has been anything but. On December 8, President Bush signed into law a \$400 billion over 10 years bill that provides a prescription drug benefit in 2006 for 40 million elderly and disabled recipients. See http://www.nctr.org/content/pdf/fedupd2003_26.pdf for details. The new law represents the largest expansion of Medicare since its creation in 1968.

NCTR's Activities During 2003

Here is a summary of progress on key legislative issues. Information on other legislative issues and also regulatory matters appear below.

<i>Issue</i>	<i>House</i>	<i>Senate</i>
1099R Reporting: Proposed reporting by pension plans on 1099R whether pension based on non-Social Security-covered work (Section 210 of H.R. 743) <i>NCTR Opposes</i>	Not included in House version of H.R. 743	H.R. 743, as passed by Senate Finance Committee 9/17/03, includes provision. H.R. 743 as amended on Senate floor 12/9/03 deletes the requirement
Relief for Governmental Plans from Minimum Distribution Rules <i>NCTR Supports</i>	H.R. 1776 included relief in bill passed by Ways and Means Committee 7/18/03	NESTEG Act, as passed by Senate Finance Committee 9/17/03, included same relief
Expansion and Clarification of Purchases of Service Credit Rules <i>NCTR Supports</i>	H.R. 1776 included helpful provision in bill passed by Ways and Means Committee 7/18/03	NESTEG Act, as passed by Senate Finance Committee 9/17/03, included same provision in House bill plus additional items
Federal Notice Requirement Applicable to Defined Contribution Plans, Including those of State and Local Governments <i>NCTR Opposes</i>	Although H.R. 1776 as introduced included the requirement, the bill as passed 7/18/03 by Ways and Means Committee omitted it. Notice still in H.R. 1000, efforts to be made to eliminate it	Requirement excluded from the National Employee Savings and Trust Equity Guarantee (NESTEG) Act passed by Finance Committee 9/17/03 (still no bill number)
Bankruptcy Reform: Making clear that bill will not override existing protections for NCTR members <i>NCTR Supports</i>	House included needed language in House Report 108-40, which accompanied H.R. 975 (bill passed 3/19/03)	Staff of Judiciary Committee Chairman has agreed to include needed language when bill considered by Senate

Promoting Pension Clarification

We worked to promote pension clarification during 2003 in three areas.

Minimum Distribution Rules

Temporary Rules by the Department of the Treasury made impermissible various state and local government (SLG) plan statutes and practices. The Temporary Rules interpret IRC § 401(a)(9), the minimum distribution rules (MDR), which specify how pensions must be paid out. Items made impermissible include post-retirement increases based on a flat percentage or on investment returns and any payout options except single life, joint/survivor annuity, or period certain.

NCTR and others met with Treasury about the problem. Treasury delayed the effective date of the Temporary Rules until further notice. Meanwhile, NCTR and others have had relief included in both the House pension bill (HR 1776) and the Senate version, National Employee Savings Trust Equity Guarantee (NESTEG Act, no number yet). Under the relief, Congress directs Treasury to issue regs under which a SLG plan is treated as complying with the MDR rules if the plan complies with a reasonable, good faith interpretation of the statutory requirements. We will work to ensure any final pension bill includes the relief.

Restrictive Interpretations of 457 Transfers

Treasury made several restrictive interpretations of the transfers of 457 funds to defined benefit plans for the purchase of service credit in its proposed 457 regulations. NCTR and others met with Treasury about the problem. Treasury addressed the concerns in the final rules.

Clarifying Purchase of Service Credit

IRS has made restrictive interpretations in private letter rulings of IRC § 415(n) regarding purchases of service credit. Various NCTR members with Senate Finance Committee members in their states asked for a change that would make clear that IRS should make a more expansive interpretation. The Senate Finance Committee approved the NESTEG Act, which includes these clarifications. HR 1776 includes similar provisions. We will work to ensure any final pension bill includes the clarifications.

Holding Back Federal Mandates

Proposed Addition to 1099R Reporting

The Senate Finance Committee passed on September 17, as part of H.R. 743, a requirement that SLG retirement systems indicate on a modified Form 1099R whether a pension is based on work not covered by Social Security. The requirement is not in the House version of H.R. 743. SLG retirement systems provide annual reports of pension benefits to IRS, but the form does not currently include such a requirement. The federal government can use Form W-2 to help it determine whether some has work not covered by Social Security. The full Senate passed on December 9 a revised version of H.R. 743, which included the deletion of the requirement.

Proposed Federal Notice

At the end of 2002, Congress proposed to require defined contribution plans, including those of SLGs, to provide a notice to plan participants in the wake of the Enron situation. The notice addressed 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 already carried out at the SLG level. Moreover, it blurred the line between traditional federal regulation of SLG plans and the regulation of the plans done by the SLGs themselves.

Reps. Portman and Cardin introduced H.R. 1776 this spring with the notice provision. It was deleted from the bill as passed by the Ways

and Means Committee. When the Senate Finance Committee considered NESTEG, it did not include the notice. At this point, the notice appears only in H.R. 1000. We will work next year to eliminate it.

Other NCTR Activities

Expansion of Pension Portability: NCTR members with Senate Finance Committee members in their states asked that Congress allow defined benefit plans to accept after-tax rollovers if they so wanted. The Senate pension bill, NESTEG, includes the provision.

Protection of Pension Funds during Bankruptcy: The House Judiciary Committee agreed to explanatory language in the report accompanying HR 875, the Bankruptcy Reform Act, which makes clear that existing protections will not be eliminated by proposed new protections. On the Senate side, staff of Judiciary Committee Chairman has agreed to include needed language when the bill is considered by Senate

403(b) Regulation Revision: NCTR members with 403(b) plans filed joint comments with Treasury in response to the regulation revision. Among other issues, the letter asked Treasury to preserve the grandfather for self-insured governmental 403(b) plans.

Social Security Numbers (SSNs): NCTR joined with other pension groups in urging the House Ways and Means Committee to support of an exception for retirement systems' use of SSNs.

Health Care:

NCTR was involved in three health care efforts during 2003.

National Coalition on Health Care (NCHC). NCTR joined the NCHC, a group of nearly 100 organizations, employing or representing approximately 100 million Americans. The group works for universal, more affordable health. NCHC sent a letter to members of the

conference committee on the Medicare prescription drug bill. Among other issues, the NCHC urged the conferees to guard against any erosion of employer-sponsored drug coverage for retirees.

GASB OPEB. Earlier this year, NCTR co-signed comments to the Governmental Accounting Standards Board (GASB) about its Other Post-Employment Benefits (OPEB) project. The largest OPEB is retiree health care. Under the project, state and local governments would have to account and report their OPEB costs on a long-term basis. The comments raised such concerns as the high cost to make the changes.

Employer-Sponsored Retiree Health Care. NCTR's other activities have included submitting a statement to Equal Employment Opportunity Commission (EEOC) relating to employer-sponsored retiree health care programs. Such programs frequently modify coverage once retired employees reach Medicare eligibility. NCTR supports EEOC's proposal that such programs be exempted from the Age Discrimination in Employment Act (ADEA).

Ongoing Issues

Phased Retirement: NCTR filed comments with Treasury in response to its interest in the phased retirement issue. NCTR supports phased retirement as a way for individuals to transition from full-time work to retirement without an abrupt termination of work. The organization favors voluntary phased retirement programs that afford maximum flexibility. It believes that in-service distributions, which could be part of phased retirement, be allowed only after an individual is eligible for a retirement benefit. Finally, it asks that no guidance be issued on the return to work issue because states already have workable programs in place. NCTR, NASRA, and NCPERS will be meeting with Treasury officials on the issue in the near future.