

Federal Update 2004-34

December 18, 2004

TO: NCTR Membership

FROM: Cindie Moore, Washington Counsel

RE: Lack Luster Year Ends with Introduction of PEPPRA Bill

PEPPRA Reappears at End of Session

2004, an otherwise uneventful year, ended with a little excitement. Rep. Rob Andrews (D-NJ) dusted off a PEPPRA bill from 2001 and re-introduced it on November 19. The Retirement Enhancement Revenue Act of 2004, H.R. 5398, would impose extensive federal reporting and disclosure on state and local government plans. Among other things, it would require states to set up qualified review boards that could overturn enacted state law on employer contributions. The establishment of such boards would be a condition of pension qualification under the Internal Revenue Code. If a state failed to enact these provisions, its retirement plans could be disqualified, i.e., the employees with a vested benefit would be immediately taxed on employer contributions made on their behalf. The bill died when Congress adjourned on December 8. You can access a summary of the 2001 bill at <http://www.nctr.org/pdf/peppra040202.pdf>. PEPPRA, which stands for the “Public Employee Pension Plan Reporting and Accountability Act,” originally designated a particular piece of legislation. It is now any bill in which the federal government attempts to broaden its otherwise narrow purview over state and local government plans.

2004: Nothing to Write Home About

During 2004, Congress enacted no substantive pension legislation affecting NCTR members with the exception. H.R. 4520, the “American Jobs Creation Act of 2004,” includes rule changes for nonqualified deferred compensation plans and, as first introduced, the bill appeared to apply the complex rules to governmental Section 415(m) plans. The sole purpose of Section 415(m) plans is to provide participants with the portion of their annual benefit otherwise payable under the terms of the defined benefit plan that exceeds the Section 415(b) dollar limits. The final version of H.R. 4520 makes clear that governmental 415(m) plans are excluded from the rules for nonqualified deferred compensation plans. See http://www.nctr.org/pdf/fedupd2004_25.pdf for more information.

In the Social Security area, Congress enacted the Social Security Protection Act (SSPA) that includes a requirement for state and local governments that hire individuals into non-Social Security-covered positions beginning January 1, 2005, to provide the

“Section 419 Notice” to such individuals. The Notice explains the possible reduction of their future Social Security benefit because they are taking a non-Social Security covered position. The reductions occur by operation of the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP). The individuals must sign the Notice. The employer must then send the Notice to the retirement system that covers the individuals. Section 419 is the location of the new requirement in the SSPA, signed into law on March 2, 2004. The Social Security Administration has posted the Section 419 Notice at <http://www.socialsecurity.gov/form1945>.

The most significant action on the regulatory front was the release by Treasury and IRS of the final regulations for the minimum distribution rules. We have discussed them extensively and the latest instance was in Federal Update 2004-32 at http://www.nctr.org/pdf/fedupd2004_32.pdf.

Even though 2004 was lackluster, 2005 promises a great deal of excitement. The President’s top three priorities are tax reform, Social Security reform, and malpractice lawsuit reform, of which the first two affect NCTR members. In the area of tax reform, the President’s proposal could include a modification or elimination of the special tax treatment for retirement plans. Social Security reform could result in the partial privatization of the system, under which younger workers could divert a portion of their payroll tax into an account that they would manage. The accounts would operate like defined contribution plans.

Thanks for your feedback and help over the past year. I’m looking forward to working with you in 2005.