

Federal Update 2005-12

April 29, 2005

TO: NCTR Membership
FROM: Cindie Moore, Washington Counsel
RE: Rep. Cardin Flying Solo on Pension Bill

Rep. Ben Cardin (D-MD), one-half of the Portman-Cardin pension duo, introduced H.R. 1961, a broad ranging pension bill on April 28. Rob Portman (R-OH), the other half of the partnership, recently resigned from Congress to become the United States Trade Representative. Thus, his name does not appear on the bill.

Rep. Portman and Rep. Cardin produced bipartisan pension legislation over the years. Mr. Portman's departure leaves Rep. Cardin alone to press on with pension issues. No Republican has appeared at this point to fill Rep. Portman's role. [Click here for a copy of the bill.](#)

Summary of Provisions of Interest to NCTR Members

At 194 pages, H.R. 1961 has a broad range of pension provisions including some of interest to NCTR members. I'll give a run-down of the provisions, some of which we need to investigate further. I'll also note where the Cardin provisions are similar or the same as the Senate pension bill, S. 219, the National Employee Savings Trust Equity Guarantee Act (NESTEG), introduced by Senators Charles Grassley (R-IA) and Max Baucus (D-MT), the Chairman and ranking Democrat of the Senate Finance Committee.

Permanency (Sec. 101): makes the pension provisions in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) permanent. **NCTR strongly supports permanency because it ensures that the pension portability and other helpful provisions of EGTRRA will not end in 2010, as they are currently scheduled to do.**

Enhancing Pension Portability (Sec. 204): allows workers moving between tax-exempt and for-profit employers to roll over their after-tax contributions.

Increasing Participation through Automatic Contribution Arrangements (Sec. 209): sets up a process for an employer to sponsor "auto enrollment" and other types of automatic features for retirement plans. Under "auto enrollment," employees automatically participate in the plan unless they opt out. Supporters of these "auto" features anticipate increased participation and savings levels. At present, many voluntary retirement savings

plans, such as 401(k)s, require employees to affirmatively agree whether to participate and many decide not to sign up.

Making Uniform a Catch-Up Contribution Rule, Definitions of Compensation, and Withdrawal Rules (Secs. 303 - 305): provides an alternative to the Bush Administration's proposed Employer Retirement Savings Accounts (ERSAs). The ERSA would consolidate 401(k)s, 403(b)s, and 457s into a 401(k)-type structure. The Administration argues that the consolidation would result in simplification. Many people question whether consolidation is necessary in light of the steps toward uniformity among the three plans made in EGTRRA. Rep. Cardin (and his former colleague, Rep. Portman) feel that a gradual move toward uniformity is preferable and thus the bill provides an additional avenue toward this goal.

Waiver of 10% Early Withdrawal Penalty Tax on Certain Distributions of Pension Plans for Public Safety Employees (Sec. 401): identical to Sec. 304 of NESTEG.

Clarifications regarding Purchase of Permissive Service Credit (Sec. 402): Similar, but not identical, to Sec. 301 of NESTEG.

Clarification of Minimum Distribution Rules (MDR) (Sec. 404): identical to Sec. 303 of NESTEG. The provision makes clear that governmental plans would be deemed as having complied with the MDRs (IRC Sec. 401(a)(9)) if the plan complies with a reasonable good faith interpretation of Sec. 401(a)(9). As a parallel matter, IRS finalized the MDR regulation in June 2004. Although the final regulation improves significantly upon previous versions, the clarification in the Cardin bill and NESTEG would provide governmental plans with additional flexibility in complying with the rules.

Section 415 Floor Limit at Age 55 for Non-Public Safety Employees (Sec. 408): sets a floor on the reduction of benefits under the section 415 dollar limits for non-public safety employees. Specifically, the reduction won't lower the benefit to below \$130,000 if it begins at or after age 55, or if the benefit begins before age 55, the floor is the equivalent of the \$130,000 limit at age 55.

Changes to Minimum Distribution Rules (Sec. 501): [I will have these provisions analyzed and will provide further information at a later time.]

Treatment of Unclaimed Benefits (Sec. 503): sets up a procedure for handling unclaimed benefit pensions. It appears to address private sector issues, but we'll verify whether and how it applies to governmental plans.

Retirement Contributions on Differential Pay (Sec. 510): clarifies that National Guard members and military reservists called up on active duty may continue contributing to their workplace retirement plans if their employers pay them their salary differential during their active duty service.

Notice Provision (Sec. 601): requires sponsors of defined contribution plans to provide investment notices to participants. This provision is the same as in H.R. 1776, the Portman-Cardin bill of 2003 as introduced, and applies to governmental and other plans. During consideration of H.R. 1776, the Ways and Means Committee approved a version of the bill that omitted the notice requirement. **Although the notice requirement itself is not significant, it opens the door to increased federal regulation of NCTR members in investment and plan administration.**

Two Final Items

Private Sector Contributory Defined Benefit (DB) Plans (Sec. 512): the Cardin bill allows the employee contributions of private sector DB plans to be tax deferred. The provision does not apply to governmental plans because state and local governments already have the option of “picking up,” i.e., paying the employee contributions to DB plans. Thus, the Cardin bill is allowing participants in private sector contributory DB plans to enjoy the same tax treatment as participants in picked up governmental DB plans. Please note that the Joint Committee on Taxation (JCT) has proposed eliminating pick ups. Thus, the JCT is taking the opposite approach from the Cardin bill by suggesting the abolition of such tax treatment for governmental plans. JCT did not deal with private sector contributory DB plans.

NCTR Members with 403(B) Plans: please review the text of Section 409 of the Cardin bill (set out below) and let me know if you have any feedback.

Section 409. Clarification of Treatment of Section 403(b) Programs

- (a) **ADMINISTRATION.** – The Secretary of the Treasury shall not issue any rules which would impose materially greater burdens and responsibilities on employers with respect to the administration of a program described in section 403(b) of the Internal Revenue Code of 1986 than are imposed as of the date of enactment of this Act.
- (b) **TRANSFERS.** – Under rules prescribed by the Secretary of the Treasury, participants shall be permitted to directly transfer all or part of their interest in a section 403(b) annuity contract or custodial account to another section 403(b) annuity contract or custodial account without violating the prohibitions against in-service withdrawals in sections 403(b)(7) and 403(b)(11) of such Code. These rules shall be consistent with the principles of Revenue Ruling 90-24.
- (c) **PROPOSED REGULATIONS.** – The Secretary of the Treasury shall not finalize proposed regulations published on November 15, 2004, unless such regulations reflect the requirements of this section.
- (d) **EFFECTIVE DATE.** – The provisions of this section shall take effect on the date of enactment of this Act.