

October 3, 2005

Federal Update 2005-29

TO: NCTR Membership
FROM: Cindie Moore, Washington Counsel
RE: Senate Pension Legislation; White House Tax Panel

Progress in Senate on Pension Legislation

When I last reported to you, three out of four of the Committees with jurisdiction over private pension plans had a different approach for shoring up the funding of such plans. The legislation is of interest to NCTR members because it provides a likely vehicle for helpful governmental retirement plan provisions.

As of September 27, the number of approaches dropped to two after the relevant Senate Committees, Finance and HELP (Health, Education, Labor, and Pensions), reached a bipartisan compromise bill, S. 1783, the Pension Security and Transparency Act of 2005 (PSTA). The other approach is H.R. 2830, approved by the House Education and the Workforce Committee in June.

PSTA melds the two committees' bills: (1) NESTEG, the National Employee Savings Trust Equity Guarantee Act, passed July 26 by the Finance Committee, and (2) the Defined Benefit Security Act, approved September 8 by the HELP Committee. PSTA also picks up some helpful governmental plan items as well as addresses hybrid plans. It does not contain the Administration's Employer Retirement Savings Accounts (ERSA) proposal that Senator Craig Thomas (R-WY) has sponsored.

Governmental Plan Provisions

S. 1783 contains the governmental items in the NESTEG Act. I summarize the items here. For more details, see Federal Update 2005-24.

- Clarification of purchase of service credit provisions
- Approval of after-tax rollovers to defined benefit plans
- Relief from the minimum distribution rules to ensure recognition of the special features of governmental plans
- Relief for public safety employees from the 10% early withdrawal penalty

Hybrid Plans

S. 1783 makes clear that hybrid plans, including those with a cash balance design, are valid. The bill does not, as currently drafted, appear to apply this treatment to governmental hybrid plans. Thus, the managers' amendment, used for last minute changes and clean up items, may include the needed clarification.

ERSAs

In February, the Administration proposed some savings initiatives, including ERSAs, employer-provided retirement savings programs. If enacted, ERSAs would consolidate the current 401(k)s, 403(b)s, and 457s into a single plan. ERSAs would require state and local governments to (1) freeze existing plans and establish ERSAs for future contributions, resulting in two plans or (2) merge the existing plan into new plan. This proposal would be costly for states, localities, and their employees. Plan administrators would have to create new plans and educate participants about the changes. Moreover, the ERSAs do not contain the special features of 403(b)s and 457s, such as the special catch up contributions. Thus, those features would be lost.

Senator Thomas introduced the ERSA proposal and looked into the possibility of having it included in PSTA. The proposal was not included, but the Senator may offer it as an amendment on the Senate floor.

Outlook for Action

S. 1783 is on the Senate Calendar, so it is now ready for consideration by the entire body. It may move as soon as this week. Meanwhile, Chairman John Boehner (R-OH) of the House Education and the Workforce expects floor action on the House version, H.R. 2830, before November. The final committee with jurisdiction over pensions is Ways and Means of the House. Its Chairman, Bill Thomas (R-CA), wants to combine pension legislation, Social Security privatization, and tax reform in a single, massive bill. Whether he can succeed in such a large undertaking this late in the session appears unlikely.

Text of S. 1783

Go to <http://thomas.loc.gov/>, click the "Enter bill number button," type "S.1783" into the box, and press enter. The text of the bill should appear.

Report by White House Tax Panel Delayed Again

The White House recently announced that it has for the second time delayed the deadline for the report by the President's tax advisory panel. The panel's deadline was

extended from July 31 to September 30. The new deadline is November 1. The Katrina hurricane caused the latest delay.

The panel has been discussing ideas for simplifying the tax system and promoting economic growth. They include proposals to adopt a flat tax or a consumption-based tax. Such changes might alter the current tax-preferred treatment of retirement savings. NCTR, NASRA, and NCPERS sent on June 10 a letter to the panel pointing out the benefits of such treatment. See Federal Update 2005-20.

If you'd like to be removed from this list, please contact me at cmoore@nctr.org.