

November 30, 2005

Federal Update 2005-37

TO: NCTR Members  
FROM: Cindie Moore, Washington Counsel  
RE: Comparison of House and Senate Pension Bills

Pension legislation is moving forward in Congress. S. 1783, the Pension Security and Transparency Act of 2005, passed the Senate November 16. The House version, H.R. 2830, known as the Pension Protection Act of 2005, won approval of the Ways and Means Committee November 9. (See Federal Update 2005-36). I've summarized the differences between the two bills below. Chart 1 covers pension provisions of interest to NCTR members and Chart 2 has other provisions.

Each bill has provisions that NCTR strongly supports, but those provisions do not appear in both bills. For example, in H.R. 2830, but not in S. 1783, is a provision that makes permanent the pension provisions of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA). S. 1783, but not H.R. 2830, contains a set of governmental plan provisions promoted over the years by the top Republican and Democrat of the Senate Finance Committee, Charles Grassley (R-IA) and Max Baucus (D-MT). These provisions, which include clarifications for purchases of service credit, were also promoted by the former dynamic pension duo of the House, former Rep. Rob Portman (R-OH) and Rep. Ben Cardin (D-MD). (Mr. Portman retired from the House to assume the position of U.S. Trade Representative.) NCTR has strongly supported this set of provisions over the years.

These are not the only examples of the lack of consistency in the bills. In fact, only three provisions overlap between the two bills: automatic enrollment, waiver of the 10% penalty for early withdrawals by public safety workers, and cash balance plans. Accordingly, it is difficult to predict what a House-Senate compromise version will look like.

The provisions of interest to NCTR members do not drive the bills. Instead, the bills' funding provisions for private plans are powering the movement (or at times, lack of movement). In a recent discussion with congressional staff, I learned that no clear plan for advancing the bills has yet emerged.

**Chart 1: Pension Issues for Governmental Plans**

<i>Provision</i>	<i>House Bill (H.R. 2830)</i>	<i>Senate Bill (S. 1783)</i>
Permanency Issue	Makes permanent the <i>pension</i> provisions of the	None

	<p>Economic Growth and Tax Relief Reconciliation Act (EGTRRA). Under current law, the pension (and other provisions) of EGTRRA will sunset after 2010. Such provisions include the portability enhancements supported by NCTR. The enhancements include 1) allowing 403(b) and 457 funds on a pre-tax basis for the purchase of service credit; and 2) allowing the rollover of funds among 403(b)s, 457s, and 401(k)s. Permanency is a top NCTR legislative priority. (§ 901)</p>	
Savers' Credit	<p>Makes permanent the Saver's Credit that provides incentives for lower income workers to participate in retirement plans. (§ 902)</p>	None
Automatic Enrollment	<p>Makes it easier for employers to offer to their employees automatic enrollment in defined contribution plans (while not entirely clear, the provision appears to</p>	<p>Allows automatic enrollment via an amendment to the 401(k) nondiscrimination rules, which are inapplicable to governmental plans. Thus, provision does not likely apply to such plans. (§ 1108)</p>

	apply to 401(k)s, but not 457s and 403(b)s). (§ 903)	
Withdrawals by Reservists or National Guard Members	Waives 10% penalty on distributions of IRAs or pension plans for military reservists and national guard members called up for active duty for at least 179 days. Affected individuals could repay the IRA or pension plan within two years of the distribution. (§ 904)	None
Waiver of 10% penalty for distributions made to public safety employees in connection with DROPs and similar benefits. (DROP stands for “deferred retirement option plan.” DROPs allow individuals to receive a portion of their retirement benefit as a lump sum.)	Allows exception to 10% early withdrawal penalty for distributions from DROPs and similar benefits to public safety employees. Provides a federal definition of a DROP benefit, which is problematic as DROPs have a variety of features and the definition may not cover all of them. (§ 905)	Waives the penalty for public safety employees participating in DROPs and similar benefits who retire between ages 50 and 55. It does not define DROPs. Under current law, the age is 55. (§ 1004)
Purchase of Service Credit Clarifications	None	Clarifies purchase of service credit provisions (Code Section 415(n)) that: <ul style="list-style-type: none"> <li>-purchases of service credit (PSC) for periods for which there is no performance of service is allowable;</li> <li>-PSC may include service credited in order to provide an increased benefit for service credit that the participant is receiving under</li> </ul>

		<p>the plan, i.e., benefit to which the participant is not otherwise entitled;</p> <p>-a trustee-to-trustee transfer of 403(b) and 457 funds into a governmental defined benefit plan for purchase of PSC is not subject to the limits applicable to non-qualified service, also known as air time. The following limits apply to non-qualified service: not more than 5 years of non-qualified PSC and a participant must have 5 years of participation in the plan;</p> <p>-once 403(b)/457 funds are transferred to a governmental defined benefit plan, they take on the rules of such a plan; and</p> <p>-a transfer need not be made between plans maintained by same employer. (§ 1001)</p>
After-Tax Contributions into Defined Benefit Plans	None	Allows defined benefit plans to accept after-tax rollovers, if they so wish, provided that they separately track the after-tax funds from the pre-tax funds. At present, defined contribution plans may accept these types of rollovers. (§ 1002)
Application of Minimum Distribution Rules (MDRs) to Governmental Plans	None	Permits governmental retirement plans to be deemed as having complied with the MDRs of Code Section 401(a)(9) if they follow a reasonable good faith interpretation. Directs Treasury Secretary to issue regulations to that effect. (§ 1003)
Eligibility of State and Local Governments to Maintain 401(k) Plans	None	Allows state and local governments (SLGs) to offer 401(k) plans. Congress closed off SLGs' right to do so in the Tax Reform Act of 1986, but grandfathered 401(k)s already in effect. For new 401(k) plans, limit on individual's elective deferrals reduced by contributions to 457 plan (i.e., "coordinated"). Grandfathered plans not affected by coordination rule. (§ 1337)
Cash Balance Plans	Clarifies legality of cash balance and hybrid plans. Affects private plans only. (§ 701)	Clarifies legality of cash balance and hybrid plans, but language in bill may adversely affect 1) any such plans provided by state and local governments and 2) interest-bearing accounts in defined benefit plans. (§ 601) For more information, click here

		<a href="http://www.nctr.org/pdf/fedupd2005_32.pdf">http://www.nctr.org/pdf/fedupd2005_32.pdf</a> and scroll down to David Powell's memo on pages 6-7.
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**Chart 2: Other Issues of Interest**

<i>Provision</i>	<i>House Bill (H.R. 2830)</i>	<i>Senate Bill (S. 1783)</i>
Voluntary Early Retirement Incentive Plans of Local Educational Agencies	None	Allows local educational agencies to offer certain types of voluntary early retirement incentive plans (§ 1104)
Tax-Free Distributions for Public Safety Officers for Purchases of Health and Long Term Care (LTC) Insurance	Permits public safety officers who retire or become disabled to make tax-free distributions of up to \$5,000 annually from governmental pension plans if the distribution is used to purchase health or LTC insurance. (§ 1003)	None