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Retirement and Pensions Update

Senate HELP Committee Considers Pension Modernization Options

On September 20th, the Senate Health, Education, Labor and Pensions Committee held a roundtable discussion on ways in which to modernize the pension system for a 21st century workforce. Lawmakers and witnesses recognized that the current pension system is not perfect but largely agreed that the pension system and Social Security need to be strengthened rather than fully reformed and employees need to be educated to better understand and appreciate the need for a lifetime benefit. Chairman Tom Harkin (D-IA) said he favors a blend of options including defined benefit plans and 401(k)s—a policy reflected in his July retirement security [proposal](#) of Universal, Secure and Adaptable (USA) Retirement Funds. Harkin also noted that work will not begin on overhauling the pension system until 2013 and this hearing was meant to see “where the interconnectors and outliers are.” Witnesses at the hearing included representatives from the Chamber of Commerce, Principal Financial, Retirement USA, SEIU, the American Enterprise Institute and the Center for American Progress.

House Presses Treasury to Release Delphi Documents

In a [letter](#) to Treasury Secretary Geithner, House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) and Representative Michael Turner (R-OH) requested all documents and communications relating to the decision to terminate the pension plans of salaried retirees at the auto parts manufacturer Delphi. The letter follows on the heels of similar requests to the Treasury Department and the Pension Benefit Guaranty Corporation (PBGC) and warns that “if the Department does not produce all the requested material by October 9, 2012, the Committee will be forced to consider use of compulsory process.”

Bill to Extend Older Americans Act Introduced

On September 19th, Senator Bernie Sanders (I-VT) introduced [S. 3562](#), which would reauthorize and expand the Older Americans Act, the landmark law that supports Meals on Wheels and other essential programs for seniors. The Alliance for Retired Americans applauded the legislation, saying the bill is “vital to the health and economic security of millions of older Americans and their families.”

DOL Publishes Electronic Form to Report 408(b)(2) Failures

On September 17th, EBSA released an [electronic form](#) on its website which will allow plan fiduciaries to report service providers that do not provide the proper disclosures about compensation and conflict of interest risks. While fiduciaries must file with DOL to obtain relief from any prohibited transactions, Phyllis Borzi said “the revised submission procedures should provide plan sponsors a greater level of confidence that their requests for fiduciary relief have been received.”

Vesting Rules Issues Resolved Allowing Determination Letter Submission to Proceed

On September 21st, an IRS attorney said that IRS uncertainty over vesting schedules predating the 1974 ERISA will no longer impede determination letters related to government plan documents. Uncertainty was caused by whether the definition of ‘normal retirement age’ can be used to apply pre-ERISA vesting rules to certain determination requests. While the IRS chief counsel “was able to get comfortable with certain vesting schedules that did not have vesting as fast as ERISA,” it is still extremely rare for a government plan not to meet pre-ERISA vesting rules.

Treasury Official: Pension Interest Rates Will Remain the Same for FY 2012

On September 21st, Senior Actuary Harlan Weller told participants at the American Law Institute Continuing Legal Education conference that the 25-year interest rate averages used for pension funding relief in MAP-21 will not change in the FY 2012 plan year. As the Notice setting the rates was based on an equivalent rate, rather than an actual rate, the Treasury is working to determine how to calculate actual rates and apply them to future years. Weller asked participants to “stay tuned” to determine if rates set in [Notice 2012-55](#) will be used in the future or whether new actual rates will be issued.

IRS Discusses Implementation Of MAP-21 Rates in Phone Forum

On September 27th, during an IRS-sponsored phone [forum](#), actuary Michael Spaid said employers that sponsor cash balance plans will likely have to wait on final rules for a market rate of return to know whether they are affected by the recent MAP-21 adjusted segment rates for pension funding. The Treasury and IRS published the adjusted rates in [Notice 2012-55](#); however, Spaid said any final regulation on a market rate of return would not take effect before January 1, 2013.

IRS Requests Detailed Comments on “Government Plan” Proposal

Speaking at an American Law Institute Continuing Legal Education conference, IRS Assistant Branch Chief Pamela Kinard said that agency officials will meet in mid-October to review hundreds of comments related to draft regulations defining “government plan.” Kinard told attendees that the IRS needs detailed information from commenters so that can appropriately craft the regulation’s facts-and-circumstances test. The [draft proposal](#), defines “government plan” under Section 414(d) of the tax code as a “state” or “political subdivision” of a state and an “agency of instrumentality” of a state or political subdivision.

IRS Panel Seeking Feedback on Employee Plan Compliance

On September 19th, the Employee Plans subgroup of the IRS’s Advisory Committee posted [survey](#) questions requesting feedback on how to improve the Employee Plans Compliance Resolution System (EPCRS).

California Approves Legislation to Create Pension Plan Mandate

On September 28th, California Governor Jerry Brown (D) signed into law two pieces of legislation that set the stage for a state-sponsored program requiring private employers to offer retirement savings options. [S.B. 1234](#) creates a nine person governing board to study the legality and financial feasibility of the California Secure Choice Retirement Savings Investment Program. [S.B. 923](#) provides for the creation of the Program and requires the governing board to report back to the California legislature before the Program begins operations. The retirement accounts these bills would create, according to the sponsor, Senator Kevin De Leon (D), would be similar to insured IRAs. Still, the governing board will need rulings from the IRS and DOL on whether these accounts would qualify for pre-tax treatment and whether the accounts would fall under ERISA.

Fraud Claims Against Freddie Mac Dismissed

On September 24th the U.S. District Court for the Southern District of New York dismissed a second attempt by the Central States, Southeast and Southwest Areas Pension Fund, and the National Elevator Industry Pension Fund to level a securities fraud class action suit against Freddie Mac. The fraud allegations stem from alleged securities violations arising from material misrepresentation about exposure to risky mortgage products and from accuracy of the GSE's financial reporting.

Comments on Proposed Deferred Vested Benefits Rule Caution Regulators

In [comments](#) submitted to the Treasury Department and IRS, the Pension Rights Center told agencies to use caution in “rules that could materially affect information given to participants and beneficiaries” which “should be considered through a formal regulatory proceeding under the Administrative Procedure Act.” The comments are in response to [REG-153627-08](#) which would delegate authority to the IRS to create special rules for satisfying deferred vested benefits requirements. Likewise, the Pension Action center [expressed concerns](#) that delegating this authority could potentially take away protections from those who are owed deferred vested benefits. Still, commenters, including the Pension Rights Center, were supportive of an additional change the proposed rule would make—eliminating the requirement that employers and plan administrators sign extension request Form 5558 when applying for an automatic extension to Form 8955-SSA. The American Benefits Council is also supportive of eliminating Form 5558 and adding Form 8955-SSA to the forms that are eligible for automatic extensions.

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