

Publications

House Committee Approves Enron-Related Pension Legislation

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SERVICES

In March, the House Education and the Workforce Committee approved an Enron-related pension reform bill (H.R. 1000) by a vote of 29-19. Two Democrats joined all Republicans in voting for the bill. During the mark-up of the bill, the Committee rejected a substitute amendment offered by the Ranking Democrat, Rep. George Miller (D-CA), and several other proposed amendments offered by Democrats, including amendments to

- give participants a choice between a traditional defined benefit plan formula and conversion to a cash balance formula;
- require employee representation on boards of trustees for individual account plans;
- provide for (1) vesting of employer contributions, and (2) diversification of employer contributions of employer securities, after 1 year of service;
- limit employer relief for the provision of investment advice to “independent” advice; and
- limit executive deferred compensation plans.

The Committee bill is substantially similar to the Enron-related pension bill (H.R. 3762) approved by the House last April, but does not contain the blackout notice and insider trading provisions enacted as part of the Sarbanes-Oxley Act of 2002. The bill also does not contain the provision from last year’s House-passed bill to exclude from FICA and FUTA amounts realized on the exercise of incentive stock options (ISO) or under an employee stock purchase plan (ESPP). The ISO/ESPP provision – which apparently was removed because of concerns that it would open the bill up to non-germane amendments on issues such as minimum wage – is likely to be added back to the bill when the Ways and Means Committee takes action on pension reform legislation later this year.

Notable Enron-related provisions in the bill would:

- provide for immediate diversification of 401(k) or employee after-tax contributions invested in publicly traded employer securities, and diversification after 3 years of service, or after contributions have been in the plan 3 years, with respect to employer contributions of such securities;

- require ERISA-covered individual account plans to provide quarterly benefit statements to participants with the right to direct investments (ESOPs that receive only nonelective contributions would only have to provide statements annually), including any limitations on the right to direct investments and information on the importance of diversification;
- require ERISA-covered defined benefit plans to provide participants with benefit statements every three years or, alternatively, provide annual notice of the right to request benefit statements;
- require plans not subject to the ERISA benefit statement requirements (including 403(b) and governmental 457(b) plans) that allow participant investment direction to provide investment education notices upon enrollment and on an annual basis thereafter;
- amend ERISA sec. 404(c) to provide that (1) the fiduciary safe harbor does not apply during any blackout period if, by reason of the blackout, the ability of the participant to direct or diversify investments is suspended, and (2) if the fiduciary authorizing the blackout meets the requirements of Title I of ERISA in connection with such authorization, no fiduciary would be liable for losses occurring during the blackout period as a result of a participants exercise of control before the blackout;
- incorporate the controversial provisions from last year's Enron bill, and from the investment advice legislation passed by the House in 2001 (H.R. 2269, the Retirement Security Advice Act), to provide an exemption from the ERISA and Code prohibited transaction rules for investment advisory services so long as certain disclosure and other requirements are satisfied; and
- allow participants to elect to receive qualified retirement planning services in lieu of cash compensation on a pre-tax basis.

H.R. 1000 also contains the provisions that were part of the original Portman-Cardin pension reform legislation enacted in 2001 as part of EGTRRA, but that were dropped for procedural reasons, as well as provisions to apply the temporary funding interest rate changes enacted in the Job Creation and Worker Assistance Act of 2002 to the 2001 plan year (in addition to the 2002 and 2003 plan years).

It is not clear when the House Ways and Means Committee may act upon Enron-related or other pension reform legislation. Possibilities include "marking up" H.R. 1000 as approved by the Education and the Workforce Committee, or crafting a separate pension reform bill – possibly based in part upon proposals in the new pension reform bill that Reps. Rob Portman (R-OH) and Ben Cardin (D-MD) introduced on April 11 – and merging it with the Education and the Workforce bill before it goes to the floor.

It is also not clear when the Senate Committees on Finance, and on Health, Education, Labor, and Pensions (HELP), will act upon pension reform legislation. The HELP Committee has not yet announced plans to consider pension reform legislation. Staff for the Finance Committee have been working on a pension reform bill patterned on the one approved by the Finance Committee last July (S. 1971), and it is possible that the Committee could act upon the bill later this spring.