U.S. Senate
Republican Policy
Committee

Legislative Notice

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No. 25 November 16, 2005

S. 1783 – Pension Security and Transparency Act of 2005

Calendar No. 231

On September 28, 2005, read twice and ordered placed on Senate Legislative Calendar under General Orders.

NOTEWORTHY

- Under a unanimous consent agreement reached November 15, 2005, the Senate will take up S. 1783, the "Pension Security and Transparency Act of 2005" on November 16, 2005, with a managers' substitute amendment and two additional amendments. The managers' amendment will be subject to a two-hour limit on debate, and the other amendments will be limited to 30 minutes of debate.

- The bill is a compromise package based on S. 219, the National Employee Savings and Trust Equity Guarantee Act (NESTEG), S. 1953, reported by the Finance Committee, and the Defined Benefit Security Act, approved by the HELP Committee earlier this year.

- S. 1783 provides new pension-funding rules and a permanent interest rate to replace the temporary rate, based on the composite of long-term corporate bonds, that will expire at the end of this year.

- Special provisions are included for the airline industry to help improve the funding level of the airlines' current plans, while protecting pension benefits accrued by their plan participants.

- The bill also adjusts PBGC insurance premiums and makes other modifications to strengthen private pension plans, including multiple-employer plans and multiemployer pensions.

Background

Last year, Congress enacted the Pension Funding Equity Act (PFEA), which provided temporary measures to address pension-funding problems and other issues facing businesses sponsoring defined-benefit pension plans.[1] (For a summary of the PFEA's provisions, see the RPC's "Highlights of Conference Report to Accompany H.R. 3108, the Pension Funding Equity Act of 2004," April 6, 2004 – http://rpc.senate.gov/_files/Apr0604CFRPensionsKH.pdf). That legislation, however, will expire at the end of 2005.

On November 15, 2005, the Pension Benefit Guaranty Corporation (PBGC) reported a $22.8-billion deficit in the assets under the agency's management that are necessary to satisfy all of the potential claims turned over to the PBGC through fiscal year 2005. This deficit is the result of an increased number of pension plans administered by the PBGC, and it has been exacerbated by additional high-profile pension failures, such as those caused by the bankruptcy of U.S. Airways and United Airlines. In addition, estimates by the PBGC indicate that the nation's single-employer pensions are underfunded by more than $450 billion – the highest level on record – in part due to low interest rates and asset values.[2]

The looming expiration of the PFEA at the end of 2005 creates significant uncertainty for pension sponsors seeking to fund their pension obligations adequately. In addition, the recent pension failures and sizeable PBGC deficit create an urgent need for Congressional action to strengthen and improve the nation's private-pension system.

Responding to those needs, the Administration offered a comprehensive pension-reform package in January of this year. This package proposed reforms to the funding rules to ensure pension promises are kept, improvements are made to disclosure rules for workers, investors and regulators about pension plan status, and adjustments are made to PBGC premiums to reflect better a pension plan's risk and ensure the pension insurance system's financial solvency.[3]

On July 26, 2005, the Senate Finance Committee marked up S. 219, the National Employee Savings and Trust Equity Guarantee Act (NESTEG), which provides new, permanent funding rules, adjusts PBGC insurance premiums, and makes other modifications to strengthen private-pension plans.[4] The Senate HELP Committee marked up similar legislation, the Defined Benefit Security Act (not yet filed), on September 8, 2005. That bill also addresses the pension funding rules and PBGC premiums, and it includes significant changes to the requirements with respect to the disclosure of information to pension participants and to the rules governing multiemployer pension plans. Subsequently, the committees combined the two bills into a

[1]Public Law 108-218, H.R. 3108, 108th Congress, 2d Session, April 10, 2004.

[2]Bradley D. Belt, Executive Director, Pension Benefit Guaranty Corporation (PBGC), in testimony before the Senate Committee on Finance, March 1, 2005, p. 8 – http://finance.senate.gov/hearings/testimony/2005test/bbtest030105.pdf.

[3]A complete explanation of the Administration's pension-reform proposal is available at: http://www.dol.gov/EBSA/pensionreform.html.

[4]A summary of the NESTEG bill prepared by the Joint Committee on Taxation is available at: http://finance.senate.gov/sitepages/leg/072205chmark.pdf.

unified package of pension reforms: S. 1783, the “Pension Security and Transparency Act of 2005.”

Bill Provisions

The following is a brief summary of the major provisions of S. 1783, the Pension Security and Transparency Act of 2005.[5]

I. Funding and Deduction Rules for Single-Employer Defined Benefit Plans

A. <u>Minimum Funding</u>

<u>Measuring Liabilities</u>

Current Law: A pension plan’s ongoing liability consists of the accrued benefits of all its participants. In order to take into account the fact that employees have different life expectancies and retire at different times with varying benefits, a pension’s liability is generally stated as the present value of all the participants’ accrued benefits. The present value indicates the amount that a plan would need to invest today at a given rate of return in order to have sufficient funds to pay the required benefits as they come due. The key to present-value calculation is the interest rate used to reflect the rate of return.

For healthy plans, liabilities are based on “reasonable assumptions,” primarily relating to the participants covered by the plan, and an applicable interest rate. Under special rules for underfunded plans – the Deficit Reduction Contribution (DRC) rules – the plan’s current liability is calculated using specified interest rate and mortality assumptions.

The Internal Revenue Code (the Code) and the Employee Retirement Income Security Act of 1974 (ERISA) provide that interest rates shall be based on the yield of 30-year Treasury Bonds. However, the Congress enacted a temporary interest rate applicable to plan years beginning in 2004 and 2005. This temporary rate is based on the yield on high-grade corporate bonds. For plan years beginning in 2006, if Congress does not act, plans would be required to return to the use of the 30-year Treasury Bond rate.[6]

Mortality assumptions are governed by Treasury regulations. Current law does not permit plan-specific mortality tables to be used for funding.

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[5] For additional background information on pension rules addressed in this legislation, see the Congressional Research Service’s “Defined Benefit Pension Reform for Single-Employer Plans,” RL32991, August 17, 2005 – http://www.congress.gov/erp/rl/pdf/RL32991.pdf.

[6] For more information on the effect of interest rates on pension liabilities, see the RPC’s policy paper: “Retirement-Income Security: Strengthening the Private-Pension System,” April 7, 2005 – http://rpc.senate.gov/_files/Apr0705RetIncomeSecMW.pdf.

S. 1783: The bill provides a new, permanent interest rate for the calculation of pension liabilities, based on a modified yield curve approach to provide the applicable interest rate.[7] The yield curve is based on the unweighted average of investment-grade corporate bonds over a 12-month period. Instead of using the entire yield curve, the bill divides the curve into three segments – in effect, short-term, medium-term, and long-term – and the interest rate will vary according to the due date for each expected payment by the pension plan. The new yield curve will be phased in over 3 years starting in 2007.

The bill requires that in calculating pension liabilities, plans must use a specified mortality table, subject to 10-year updates. A pension plan may use a plan-specific mortality table if it is approved by the Internal Revenue Service (IRS).

Measuring Assets

Current Law: For funding purposes, plans may measure assets either by using the market value of assets or by using an actuarial-smoothing method that smooths out fluctuations in asset values over 5 years, provided that the ultimate asset value is between 80 percent and 120 percent of the assets' market value.

S. 1783: The bill requires that pensions use either the market value of assets or, pursuant to Treasury guidance, the market value based on an unweighted average over the prior 12 months.

Financial Health of Sponsor and "At Risk" Liability

Current Law: The current rules for measuring pension liabilities and assets do not take into consideration the financial health of the plan's sponsor. Accordingly, there is no increase in a plan's liability as a result of the sponsor's poor financial health.

S. 1783: Under the bill, an employer's financial health is factored into the amount of liabilities that the employer must fund. A pension plan sponsored by an unhealthy employer will have "at risk" funding targets rather than "ongoing" funding targets, because companies that are in poor financial health have higher pension obligations (e.g., due to workers leaving early with subsidized benefits that can be twice as costly as the normal retirement benefit).

The bill uses a company's bond rating as the determinant of financial health. The at-risk rules apply once a plan sponsor has "below investment grade" bond rating and declines in its credit rating for 2 years, as determined by all bond-rating agencies. Under an exception, the at-risk rules will not apply if a plan is 93-percent funded when the non-at-risk assumptions are applied. The rules require that plans calculate the extra liabilities based on the assumption that workers who might retire in the following 7 years will do so. The increased liability target is

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[7] For more information on the yield-curve concept and its application to the measurement of pension liabilities, see the RPC's policy paper: "Retirement-Income Security: Strengthening the Private-Pension System," April 7, 2005 – http://rpc.senate.gov/_files/Apr0705RetIncomeSecMW.pdf.

phased in over 5 years (e.g., 20 percent per year) once the company becomes subject to the at-risk rules.

For employers without bond ratings, the Treasury Department will issue guidance as to appropriate substitute measures (e.g., the debt-equity ratio). Plans with 500 or fewer participants are excluded from the at-risk rules.

Funding Target

Current Law: The funding target for healthy pensions is 90 percent of the plan's current liability. For plans subject to the DRC, the funding target moves up to 100 percent of current liability.

S. 1783: The bill increases the funding target from 90 percent to 100 percent of the plan's current liability. For plans subject to the at-risk rules, the bill also sets the target at 100 percent, but that percentage applies to a larger liability target since the at-risk rules require pensions to calculate their liabilities based on assumptions that generally will increase the overall current liability. The bill phases in this new target over 3 years – 93 percent in 2007, 96 percent in 2008, and 100 percent in 2009 – for plans with more than 100 participants. For plans with 100 or fewer participants, the new target is phased in proportionately over 5 years (e.g., 2 percent per year).

Valuation Date

Current Law: The valuation date is the day of the year on which all liability measurements are made. Most plans use the first day of the plan year as the "as of" valuation date, but plans may select a different date. Date changes are subject to approval by the IRS.

S. 1783: Under the bill, plans with more than 100 participants must use the first day of the plan year as the "as of" valuation date. Plans with 100 or fewer participants may use any day of the plan year, but changes are subject to approval by the IRS.

Minimum Contributions

Current Law: Generally, an employer must contribute to the pension plan an amount sufficient to cover the benefits that participants accrue during the year plus an amount to amortize any underfunding from past years. Charges and credits to the plan are amortized over varying periods (e.g., 5 to 30 years) depending on the cause of the charge or credit. In addition, unless the plan is more than 90-percent funded on a current-liability basis, the employer is generally subject to the DRC and must make an additional annual contribution. Under the DRC rules, underfunded amounts are generally amortized over 4 to 7 years.

S. 1783: Under the bill, an employer must contribute to the plan an amount sufficient to cover the year's normal cost (i.e., the amount of benefits accrued during that year). In addition, the employer must amortize the shortfall between the plan's assets and its target liability over a 7-year period. Each year the employer will be required to recalculate the amount of underfunding based on that year's assets and liabilities. The employer continues to make payments due on previous unfunded liabilities plus amortizing any new underfunding over a new 7-year period. In any year in which a plan's assets exceed its liability target, an amortization contribution will not be required.

Credit Balances

Current Law: In some cases, employers make contributions in excess of the minimum amount required for a year. These excesses are referred to as a "credit balance" and can be used in future years to offset required contributions. Under current law, plans may increase the value of their credit balances based on an assumed rate of return, regardless of the actual performance of the plan's assets. For example, during the economic decline that started in 2000, plans could, and did, assume that their credit balances grew by 8 or 9 percent, when the assets in the plan (including the funds that made up the credit balance) actually declined with the markets.

S. 1783: The bill requires that credit balances must be adjusted annually to reflect their market value (i.e., marked to market) rather than varying by the assumed rate of return. For plans that are less than 80-percent funded, credit balances may only be used to pay minimum required contributions if the sponsor makes a cash contribution equal to the lesser of 25 percent of the minimum contribution or the plan's normal cost for the year.

Special Rules for Multiple-Employer Pension Plans

Current Law: Multiple-employer pension plans, such as those maintained by certain rural cooperatives, are considered single-employer plans under the Code and ERISA, but they operate on a collective basis, usually sharing administrative functions and liability. Under current law, the funding rules for multiple-employer plans are the same as those applicable to single-employer plans.

S. 1783: The bill delays the effective date of the new funding rules for 10 years for eligible multiple-employer pension plans, including those operated by rural electric cooperatives, rural telephone cooperative associations, and certain agricultural cooperatives.

Special Rules for Airlines

Current Law: Airlines must follow the same funding rules under current law as other plan sponsors. Special relief was provided for the airlines in 2004 and 2005, which allowed them to defer paying part of their additional contribution due under the DRC rules.

S. 1783: The bill provides special rules that permit airlines to amortize their funding deficiencies over 14 years using assumptions specific to the particular plan. At the end of the 14-year period, the new rules applicable to all pension plans will apply to the airline industry. Under the bill, airlines must elect to apply the special provisions. In addition, they must agree to freeze all benefit accruals for participants under their plans, and freeze the PBGC guarantee of benefits as of the date of the election.

<u>Alternative Funding Arrangements</u>

Current Law: A pension plan may be terminated if it meets the criteria for a distressed termination or if the PBGC concludes that the plan must be terminated involuntarily for one of several permitted reasons. In most cases, the PBGC pursues a plan termination when the agency determines that the PBGC will suffer an unreasonable risk of long-run loss if the plan is not terminated. The PBGC has no authority to negotiate alternative funding schedules, although the PBGC can negotiate additional contributions to plans and other voluntary actions by sponsors under the threat of the agency's terminating the plan.

S. 1783: Under the bill, the IRS would have the authority to negotiate alternative funding schedules with plan sponsors. The IRS must act in consultation with the PBGC, and the PBGC must determine whether an employer or plan situation meets the termination criteria, based on projections for up to 6 months. An employer or other person, however, may request that the PBGC base its finding on projections for up to 2 years.

B. <u>Benefit Limitations</u>

Current Law: The Code and ERISA contain two limitations on benefit increases. First, an employer in bankruptcy cannot amend its plans to increase benefits. Second, if the funded current-liability percentage of a plan, calculated using only post-1987 liabilities, is less than 60 percent, the employer may not increase benefits unless the employer immediately funds or secures the liability resulting from the benefit increase.

In certain cases involving the closure of a segment of an employer's business, a pension plan may provide participants with special "shutdown benefits." Ordinarily, benefit increases provided to participants within 5 years of a plan termination are not fully covered by the PBGC guarantee; the full guarantee is phased in over the 5-year period. Shutdown benefits are guaranteed by the PBGC, and the guarantee on shutdown benefits is phased in, beginning on the date that the benefit is added to the pension plan, not from the time the shutdown occurs.

S. 1783:

<u>Benefit Increases</u>: Under the bill, plans are not permitted to increase benefits when the sponsor is in bankruptcy or if the plan's funding level is below 80 percent (with certain exceptions). For plans subject to collective-bargaining agreements, the plan must fund up to the 80-percent level before benefit increases are permitted.

<u>Lump Sums</u>: If a plan is less than 60-percent funded, the plan can make lump-sum and similar distributions, but only up to the lesser of (1) 50 percent of the otherwise available lump-sum distribution amount, or (2) the lump-sum equivalent of the maximum amount guaranteed by the PBGC. Once a plan triggers this rule, the limitation remains in effect for 2 years after the plan reaches the 60-percent funding level. When the lump-sum restriction is triggered, the plan is subject to an excise tax in the same amount as if the sponsor missed a required contribution.

Freezes: If a plan is less than 60-percent funded, benefit accruals are frozen, and remain frozen until the plan has attained a funding level of 60 percent or greater for 2 years.

PBGC and Bankruptcy: The bill treats the bankruptcy filing date as the plan-termination date for certain PBGC purposes if the plan terminates before the company emerges from bankruptcy. Unless the plan is 100-percent funded, no benefit increases are allowed and lump-sum distributions are limited. Bankruptcy also triggers a temporary freeze on the PBGC guarantee limits (e.g., the maximum limit and the counting of years for the phase-in of guarantees) and certain asset allocation priorities. The temporary freeze takes effect if the plan terminates before the company comes out of bankruptcy.

The bill also provides that the PBGC guarantee of shutdown benefits is phased in over 5 years from the time that the shutdown occurs.

C. Lump-Sum Calculations

Current Law: The value of lump-sum payments to participants is determined by using the yield on 30-year Treasury Bonds as of the relevant date of the distribution.

S. 1783: The bill provides that the value of lump-sum distributions shall be determined according to the yield curve based on the 3-month average of corporate bonds. This change will be phased in over 4 years, starting in 2007.

D. Maximum Deductible Contribution

Current Law: Employers are currently limited in the amount of deductible contributions they can make to their pension plans. An employer may contribute and deduct up to the plan's unfunded current liability in any year. Contributions in excess of the deductible limit may be made, but they are subject to a 10-percent excise tax. In addition, for employers maintaining both a defined-benefit and defined-contribution plan, current law provides a combined limit on deductible contributions to the plans.

S. 1783: The bill allows employers to deduct the greater of (1) contributions up to the plan's at-risk liability target; or (2) 180 percent of the normal target liability, minus the value of the plan's assets, plus any liability associated with projected increases in salary or benefits. For PBGC-covered plans, the bill allows salary and benefit projection without regard to the maximums provided in the Code. For 2006, employers may contribute and deduct 180 percent of current liability, less the value of assets, but no projections are permitted. Under the bill's provisions regarding multiemployer plans, such plans may deduct up to 130 percent of their unfunded current liability, less the value of the assets held by the plan.

The bill eliminates the combined deductible limit for employers that maintain defined-benefit and defined-contribution plans (both single-employer and multiemployer) beginning in 2007. For other employers (mainly those that provide professional services and maintain plans for fewer than 25 participants), the combined limit does not apply unless the employer's contributions to the defined-contribution plan exceed 6 percent of compensation. This limited rule also applies to PBGC-covered plans for 2006.

II. Multiemployer Plan Funding Rules

Current Law: Multiemployer pension plans provide retirement benefits to employees of multiple employers, subject to collective-bargaining agreements. These plans generally are subject to the same funding rules as single-employer plans, although the DRC rules do not apply to multiemployer plans. The only limitations on funding assumptions is that the plan actuary must certify that the assumptions are reasonable. Multiemployer plans also have a longer period to amortize unfunded liabilities than single-employer plans. Like single-employer plans, multiemployer plans experiencing financial hardships can petition the Treasury Department for an amortization-period extension.

Additionally, special rules apply to multiemployer plans that have to be reorganized or become insolvent, although such events are rare. Generally, multiemployer plans do not terminate nor enter reorganization. If they become insolvent, the PBGC lends them funds to pay a reduced benefit (well below single-employer guaranteed benefits). The PBGC has made such loans to fewer than 30 plans since 1974. If an employer withdraws from a multiemployer plan and the plan is underfunded, the employer must pay withdrawal liability to the plan based on one of several formulas. Generally, the amount of withdrawal liability depends on the proportion of the employer's contributions over time to the other active employers' contributions.

S. 1783: The bill includes detailed new rules for multiemployer plans, which require plans failing to meet certain funding and other tests to adopt funding improvement plans or rehabilitation plans. Plans that are funded below 80 percent, but are not projected to have an accumulated funding deficiency within 7 years, are considered to be in "endangered status." Plans that have or are projected to have an accumulated funding deficiency within 7 years fall into the "seriously endangered status." Plans that are less than 65-percent funded and are facing an accumulated funding deficiency in a shorter period of time are deemed to be in "critical status." The financial improvement and rehabilitation plans specify what actions the plans and the bargaining parties will take to get out of their status within 10 to 15 years, as applicable under the provision.

The bill requires the plan actuary to certify not only that the funding percentage is accurate, but also that the financial improvement or rehabilitation plan is on track to accomplish its goal in a timely manner. The actuary must also certify each year that the plan is still on target or that the funding improvement or rehabilitation plan has been changed as necessary to accomplish the target.

The bill allows multiemployer plans projected to experience an accumulated funding deficiency within 10 years to obtain an automatic amortization period extension as long as the plan satisfies certain requirements to ensure adequate funding. Plans may also adopt the shortfall funding method as an accounting technique during periods between collective bargaining agreements.

Under the bill, the PBGC is instructed to report in 5 years to Congress on the health of the multiemployer program and the effectiveness of the new multiemployer-plan rules. The tests and trigger events for the new rules "sunset" 8 years after enactment. Plans operating under funding improvement or rehabilitation plans would continue under those plans until emerging from endangered or critical status.

III. PBGC Premiums

A. Flat-Rate Premiums

Current Law: The PBGC effectively insures defined-benefit pension plans, and the agency collects annual premiums from plans to fund the insurance program. Single-employer plans currently pay a flat-rate premium of $19 per participant. Multiemployer plans pay $2.60 per participant.

S. 1783: The bill increases the single-employer premium to $30. The PBGC is required to submit a report every 5 years to Congress with recommendations on premium changes. The multiemployer premium remains unchanged under the bill.

B. Variable-Rate Premiums

Current Law: In addition to the flat-rate premium, certain single-employer plans also must pay a variable rate premium (VRP) of $9 per $1,000 of unfunded, vested current liability. Plans that satisfy the current "full funding limit" are exempt from the VRP, even though they may actually be underfunded.

S. 1783: The bill eliminates the full-funding exemption, meaning that all underfunded plans would be required to pay the VRP premiums.

IV. Disclosures

Current Law: Plan administrators must file an annual report (Form 5500) each year providing details on the plan's operations. For plans using the calendar year (rather than a fiscal year), this report can be filed as late as October 15th of the year following the year covered by the report, subject to extensions. Sixty days after the annual report is filed, the plan administrator must distribute to each participant a summary annual report (SAR), which provides certain summary financial data from the Form 5500. At the same time, administrators of plans that pay the PBGC variable rate premium and owe the Deficit Reduction Contribution must provide participants with a notice (the "4011 notice") of the plan's current liability funding percentage and a description of the PBGC guarantee rules. Sponsors of plans with $50 million or more in underfunding, on an aggregate basis, must file actuarial and financial information with the PBGC ("section 4010 filings"). The PBGC is required to keep information in section 4010 filings confidential.

S. 1783: The bill creates a new notice for plan participants, which would be due 90 days after the end of the plan year. This notice includes funding and other information and must be provided by single and multiemployer plans, although the requirements are slightly different. The bill also expands the information on the Form 5500 annual report. The due date of the SAR is moved to 30 days after the date that the annual report is due.

The bill also changes the criteria for filing the section 4010 reports. Plans with underfunding in excess of $50 million will have to file only if their plans are less than 90-percent funded. Also required to file are plans that have an aggregate funding percentage of less than 60 percent, and those that are less than 75-percent funded, in the aggregate, if the filer is in a troubled industry. In addition, all companies with junk bond ratings whose plans have $50 million or more in underfunding, on an aggregate basis, will have to report to the PBGC.

V. Hybrid Pension Plans

Current Law: The legality of hybrid-pension plans – commonly referred to as "cash balance" plans – has been the subject of considerable litigation in recent years. The legal uncertainty pertains to both the design of such plans and whether conversions from traditional defined-benefit plans to cash-balance plans comply with the age-discrimination rules of the Internal Revenue Code, ERISA, and the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 623(i)).

Many employers have either established new cash-balance plans or converted existing defined-benefit plans to cash-balance plans. Participants have challenged both the basic design and the "wearaway" of benefits during a conversion. While the litigation is ongoing in many cases, there are also situations in which there has been no litigation. The fact pattern of each plan design or conversion is somewhat different, and the effects on workers differ in each situation.[8]

S. 1783: The bill validates the basic design of hybrid-pension plans and provides that conversions are valid as long as certain rules are followed. The bill's hybrid-pension provisions are prospective only – the bill states that there is no inference as to the legality of the basic design or the manner in which plans were converted prior to the date of enactment (i.e., no implication is intended for any plan currently involved in litigation). The bill also provides rules for addressing the "whipsaw" issue[9] as well as the treatment of variable indices when a plan terminates.

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[8] For more information on hybrid pension plans, see the RPC's policy paper: "Retirement-Income Security: The Status of Hybrid-Pension Plans," April 25, 2005 – http://rpc.senate.gov/_files/Apr2505RetIncomeSecMW.pdf.

[9] For additional information on the whipsaw issue, see the Congressional Research Service's "Pension Issues: Cash-Balance Plans," RL30196, January 24, 2005 – http://www.congress.gov/erp/rl/pdf/RL30196.pdf.

VI. Other Provisions

The bill includes a number of provisions from the NESTEG bill, which the Finance Committee has reported favorably three times since it was first introduced in 2002.[10] A summary of the main provisions from the NESTEG bill appears below.

Diversification. Like the NESTEG legislation, S. 1783 requires that publicly held companies must allow workers to divest themselves of company stock attributable to employer contributions once the worker has completed 3 years of service. Workers would be permitted to diversify accounts attributable to employee contributions immediately. Freestanding Employee Stock Ownership Plans and single-participant plans are exempt from these requirements.

Information. The bill requires that plans provide more benefit information, investment-education materials, and retirement-planning information to plan participants.

Investment Advice. S. 1783 includes a safe harbor for independent investment advice that provides employers with liability relief for any losses that result from the investment advice given by an independent advisor.

Spousal Pension Protection. The bill clarifies that domestic-relations orders issued subsequent to a divorce can be Qualified Domestic Relations Orders directing assignment of unpaid benefits to an alternate payee (i.e., usually a former spouse).

Special Catch-up Contributions. S. 1783 helps individuals adversely affected by the ENRON bankruptcy, or a similar situation, to make additional contributions to an Individual Retirement Account (IRA) for a period of 5 years. To qualify for the additional contribution, the individual must have participated in a plan that had a matching contribution made in employer stock. The employer must be bankrupt and an officer must be under indictment or subject to conviction for acts related to the bankruptcy. The additional contributions are limited to $1,500 per year for 2005 and $3,000 per year for tax years 2006 through 2009.

Portability enhancements. The bill provides a number of changes to improve the portability of retirement savings from one pension arrangement to another. Specifically, the bill does the following:

- Allows rollovers by non-spouse beneficiaries of certain retirement plan distributions;
- Provides faster vesting of employer non-elective contributions (i.e., 6-year-graded or 3-year-cliff vesting);
- Allows direct rollovers from retirement plans to Roth IRAs;
- Eliminates the special penalties on SIMPLE IRAs and permits rollovers between SIMPLE plans and other tax-favored retirement arrangements within the first two years of participation; and

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[10] For more information on the NESTEG bill, see the JCT's summary at: http://finance.senate.gov/sitepages/leg/072205chmark.pdf. A Congressional Research Service review of the legislation is also available at: http://www.congress.gov/erp/rs/pdf/RS22221.pdf.

- Clarifies the rules regarding the purchase of service credit from a so-called 403(b) annuity or a section 457 plan to a governmental defined-benefit plan.

Company-Owned Life Insurance. S. 1783 limits the availability of tax-free proceeds on company-owned life insurance, and provides disclosure and reporting requirements.

Black Lung Trust Fund and Combined Benefits Fund. The bill eliminates the aggregate limit on the amount of excess black lung benefit trust assets available to pay premiums, and transfers the additional amounts available to the UMWA Combined Benefit Fund.

Cost

The Congressional Budge Office (CBO) estimates that the bill will reduce direct spending by $2.2 billion over the period of 2006 to 2010, and would increase direct spending by $1.6 billion over the period of 2006 to 2015. Based on estimates by the Joint Committee on Taxation, the CBO estimates that the bill will increase federal revenues by $3.7 billion over the next 5 years and reduce revenues by $3.1 billion over the next 10 years. A copy of the revenue estimate is available at: http://www.cbo.gov/ftpdocs/66xx/doc6683/s1783.pdf.

Administration Position

A Statement of Administration Policy (SAP) on the bill as agreed to by Chairmen and Ranking Members of the Senate Finance and HELP Committees was not available at press time.

Possible Amendments

Managers' Substitute Amendment

Under the unanimous consent agreement reached on November 15, 2005, the managers are permitted to offer a substitute amendment, which will include the provisions of S. 1783 plus the following additional provisions:

Temporary Relief for Certain Rescued Plans (Title I). Certain pension plans assumed as part of a corporate acquisition and subject to agreements with the PBGC (i.e., "rescued plans") will be allowed to operate under current pension rules for 7 years.

Multiemployer Plans (Title II). The managers' substitute includes technical corrections and makes other changes. It clarifies the earlier grandfather provision for pending applications with respect to amortization extension, adds a new category of plans that fall in critical status ("red zone"), and requires plan trustees to consider the impact of contribution increases on small businesses in order to encourage continued participation and minimize financial harm. The amendment also increases the deductibility limit from 130 percent in S.1783 to 140 percent, and it provides that plans that are operating under funding agreements with the PBGC are not subject to the benefit restrictions.

In the area of withdrawal liability, the bill repeals the limitation on withdrawal liability of insolvent employers and clarifies that such liability continues if an employer subcontracts to a subsidiary. The substitute amendment removes the restriction on construction-industry plans, thus permitting new small-business contributors to participate in the plan for less than 5 years without triggering withdrawal liability (i.e., the so-called "free look" provision applicable to other industries).

Improvements in PBGC Guarantee Provisions (Title IV).

- PBGC Premiums. The substitute amendment indexes the increase in the single-employer flat-rate premiums to $30 in the bill.
- Cessation or Change in Membership of a Controlled Group. Fully funded defined-benefit plans sponsored by financially healthy companies that are acquired or spun off will be valuated on an ongoing, rather than a termination-liability, basis.
- Effect of Title IV. The substitute amendment includes language to make clear that passage of the Pension Security and Transparency Act will override the premium increases in DRORA if equal or greater savings are achieved.

Disclosure (Title V). The substitute amendment adds a provision to the disclosure title of the bill that clarifies the circumstances under which an employer is required to give returning employees a suspension-of-benefits notice.

Diversification Rights and Other Participant Protections Under Defined Contribution Plans (Title VII). The substitute amendment includes bipartisan language that clarifies the fiduciary liability and obligations that apply prior to and during blackout periods and when investment options are changed in the plan. The substitute amendment also increases the ERISA bonding requirement for plans holding employer securities from $500,000 to $1 million.

Information to Assist Pension Plan Participants (Title VIII). The substitute amendment increases maximum penalties for coercive interference with the exercise of rights under ERISA from a $10,000 fine and one year in prison to a $100,000 fine and ten years in prison. This provision is essentially a technical correction of the Sarbanes-Oxley Act.

Improvements in Portability and Distribution Rules (Title X). The substitute amendment modifies the rules governing hardships and unforeseen financial emergencies.

Administrative Provisions (Title XI). The substitute amendment incorporates provisions increasing participation in cash or deferred plans through automatic contribution arrangements. It also clarifies the treatment of investment of assets by the plan when participants fail to exercise investment election, and it instructs the Secretary of Labor to clarify the rules on annuity contracts.

Other Provisions (Title XIII). Adding to the package of administrative provisions included in S. 1783, the substitute amendment addresses health and medical benefits relating to the use of excess pension assets, special rules for funding of collectively bargained retiree health benefits, and the allowance of a reserve for medical benefits of associations. The substitute amendment also addresses the treatment of cash or deferred arrangements, and it makes state and local governments eligible to maintain 401(k) plans.

Additionally, the substitute amendment includes provisions relating to prohibited transactions involving the following: (a) block trading, (b) bonding relief, (c) exceptions for financial markets trading systems, (d) relief for foreign-exchange transactions, (e) a correction period for certain transactions involving securities and commodities, and (f) a study of cross-trade transactions. The substitute amendment also provides for an interagency task force, led by the Department of Labor, to identify statutory and regulatory disincentives in pension law for older workers to remain in the workforce.

Other Amendments

In addition to the managers' substitute amendment, the unanimous consent agreement provides for two additional amendments:

Senator Isakson (or his designee). The amendment is expected to propose an expansion of the bill's special relief for the airline industry, including provisions that would allow airlines to amortize their underfunded pension liabilities over 20 years, as opposed to the special 14-year period already provided in S. 1783, provided that they freeze future benefit accruals (i.e., "hard freeze"). The amendment is also expected to permit certain airlines to qualify for the expanded amortization period, if they immediately fund any benefit accruals (i.e., "soft freeze"). Senators Enzi and Grassley will oppose this amendment.

Senator Akaka. The amendment is expected to lower the normal retirement age of pilots to 60 for PBGC guarantee purposes, in effect increasing the PBGC maximum payout to pilots by 35 percent per person. This amendment is based on Senator Akaka's "Pension Benefit Guaranty Corporation Pilots Equitable Treatment Act," S. 685. Senators Enzi and Grassley will oppose this amendment.