NCPERS
Washington Legislative Conference
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Williams & Jensen, PLLC
2017
Near-Term Landscape

• Tax reform

• ACA tax-related legislation

• Specific retiree-related legislation (coal miners)
Playing Defense on Tax Reform

- PEPTA
- Annuity accumulation plan
- Contribution limits
- Normalization provisions
Public Employee Pension Transparency Act (PEPTA)

• S. 2381 (114th), Puerto Rico Assistance Act, Finance Committee Chairman Orrin Hatch (R-UT)

• H.R. 4822 (114th), Rep. Devin Nunes (R-CA)

• State and local reporting on funding status to federal government for first time in history

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PEPTA, cont.

- Plan sponsor would submit annual reports to U.S. Treasury Department

- Two sets of calculations:
  1) Current assumed rate of return
  2) Supplemental report based on FMV of assets and U.S. Treasury obligation yield curve
PEPTA, cont.

- Heightened degree of political pressure
- Single year returns are one thing
- 3-year, 5-year, 10-year, 15-year, and 20-year averages are something else
- The issue is not going away
Annuity Accumulation Plan

• Also contained in S. 2381 (114th)

• Purely optional: Sponsor “may” establish an annuity accumulation retirement plan

• However: It’s being positioned as a replacement for DB plans
Annuity Plan, cont.

- Individual, deferred, fixed-rate annuities (annual)
- Only employer contributions
- Aspirational ceilings of 30% for public safety; 20% for others; higher limits for certain ages
Annuity Plan, cont.

Concerns:

• Replacement income (inconsistent contributions)
• Survivor and disability benefits (public safety)
• New costs: (1) aggregation costs (outside provider or sponsor/fund); (2) transition costs (similar to DB to DC); and (3) new determination letter

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Contribution Limits

- Annual limits
- Over age 50 catch-up
- Value to high-income earners (28%)
Normalization

• Search for Inconsistencies
  • 457(b) plans and 72(t) penalty
  • 457(b) annual contribution limits
  • Pick up
More Than Miscellaneous

• Implementation of PROMESA

• Pension normal cost
PROMESA

• Covers only public plans in Puerto Rico

• But, opportunities to broaden discussion

• Fiscal plan, recommendations on alternatives to pension funding, Congressional Task Force, main analysis, and GAO studies
Normal Pension Cost

- H.R. 5427 (114th), former Rep. Robert Dold (R-IL)
- Attempted in 2015 on Every Student Succeeds Act (revision to No Child Left Behind)
- Stopped because of concerns over unintended consequences
Normal Cost, cont.

- Would affect the use of ESEA dollars by states

- No state may require an LEA to pay for more than normal cost

- Normal cost ≠ accrued unfunded liabilities
Playing Offense, Too

• Early age Medicare for public safety
  • Age 55 optional buy-in

• HELPS II (IRC §402(l))
  • Index $3k, include all public sector employees, survivor benefit, and make it deduction-based
Regulatory Issues

• Employer pick up
• Normal retirement age
• Definition of governmental plan
Employer Pick Up

**The Issue**
- No regulations, §414(h)(2)
- Revenue Ruling 2006-43
- No CODAs in pick up situation
- Cash or deferred arrangement = affects take home pay
- PLR requests to allow existing employees to elect between legacy/new DB plans/tiers

**Tension**
- Promoting retention of DB plans through flexibility
- Clear path to erode underlying DB benefits

**Two Approaches**
- Regulatory
- Legislative (H.R. 205, 113th Congress)

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Amendment to IRC section 414(h)(2):

...a contribution shall not fail to be treated as picked up by an employing unit merely because the employee may make an irrevocable election between the application of two alternative benefit formulas involving the same or different levels of employee contributions.
(ii) APPLICATION TO EXISTING EMPLOYEES. –

...shall be applied without regard to whether the employee is already covered by one of the benefit formulas referred to therein.

Introduced by former Rep. Loretta Sanchez (D-CA)
Normal Retirement Age

May 2007 Regulations

• Qualification issue, 1.401(a)-1(b)
• NRA = Age = A number
• YOS or combination YOS and age ≠ compliance

Treasury Notice 2012-29

• Governmental plans that do not provide in-service distributions prior to age 62 ≠ NRA definition
• QPSE safe harbor of age 50 applies even where QPSEs are subgroup of larger plan

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Normal Retirement Age, cont.

- January 2016, release of proposed regulations
- Governmental plan may use NRA that reflects YOS
- Public safety safe harbor (age 50), Notice 2012-29
- Also, rule of 70 or 20 years credited service
Normal Retirement Age, cont.

- Safe harbors for other governmental plans:
  - No in-service distributions before age 62 (begs question of what is a separation of service)
  - Also, later of age 60 or age at 5 years credit service
  - Also, later of age 55 or age at 10 years credited service
Normal Retirement Age, cont.

• Also, rule of 80

• Final safe harbor: earlier of age at 25 years credited service or the NRA under another safe harbor

• Awaiting release of final regulations
Definition of Governmental Plan
IRC Section 414(d)

ANPRM (Nov. 2011)
• Issued by IRS-Treasury in consultation with DOL and PBGC
• 2300 comments received
• 2000 on charter schools

Define Key Terms:
1) Established and maintained
2) Agency or instrumentality of a state or political subdivision
Definition of Governmental Plan, cont.

**Major Factors** -- Agency or instrumentality of a state or political subdivision

- Control of governing board or body
- Board members are publicly nominated and elected
- Entity’s employees treated the same as a state or political subdivision, except for benefits
- State or political subdivision has responsibility for debts/liabilities
- Delegated sovereign powers

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Definition of Governmental Plan, cont.

Minor and Additional Factors

• Specific enabling statute
• Funding of entity
• Federal tax treatment
• Control of operations
• Treatment under state law
• Judicial determinations
• Ownership interest
• Governmental purpose
Treasury Notice 2015-7

• Released in January 2015

• Defines public charter school

• Applies to DB, DC, 403(b) and 457(b) plans

• 5-part test (a-e) for a public charter school

• Control is key factor

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