

# NRTA National Advocacy Conference September 2015



# Legislative Issues

- 1) WEP and GPO (Repeal bills and Brady WEP Bill)
- 2) Funding of Teacher Pensions (Dold Amendment)
- 3) Annuity Accumulation Plan (Hatch Bill)
- 4) Employer Pick Up (Sanchez Bill)
- 5) PEPTA (Nunes-Burr Bills)
- 6) Tax Reform

# WEP and GPO

- Full repeal bills (WEP and GPO):
  - H.R. 973, Rep. Rodney Davis (R-IL)
  - S. 1651, Sen. Sherrod Brown (D-OH)
- Repeal and replace (WEP-only):
  - H.R. 711, Rep. Kevin Brady (R-TX)

# H.R. 711, Brady WEP Bill

- Two Subgroups:
  - (1) Currently retired and subject to WEP or turn age 62 on or before 12/31/16
  - (2) Turn age 62 after 12/31/16
- First group would see a 32% increase in benefit
- Second group would be under a new, replacement formula (based on actual work history)

# Brady WEP Bill, cont.

- New formula:
- SS benefit =
  - Step 1 - Calculate benefit as if all earnings covered
  - Step 2 - Find % of earnings actually covered
  - Step 3 - Multiply results of Steps 1 and 2
- No longer provides 21-30 year (substantial earnings) phase-out of WEP

# Funding of Teacher Pensions

- House floor amendment to H.R. 5, ESEA
- Rep. Robert Dold (R-IL)
- Limit use of Title 1 monies to “normal cost”
- Normal cost  $\neq$  accrued unfunded liabilities

# Annuity Accumulation Plan

- S. 1270 (113<sup>th</sup> Congress)
- Sen. Orrin Hatch (R-UT); now SFC Chairman
- Title I – Public Pension Reform
- Sponsor “may” establish annuity accumulation retirement plans

# Annuity Bill (cont.)

- Individual deferred fixed annuity contracts may be purchased not less frequently than annually
- However, the plan may allow the employer to reduce the contribution percentage or not make any contributions for any period for all employees



# Annuity Bill (cont.)

- No contributions may be made under the plan other than employer contributions (aspirational ceilings of 30% for public safety; 20% for others)
- No employee contributions are allowed
- Runs counter to current practice where vast majority of state and local DB plans are contributory

# Annuity Bill (cont.)

## Concerns:

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

# Annuity Bill (cont.)

## Further Concerns:

- Would not improve sustainability of legacy plans (if anything, it will make legacy plans more expensive to operate)
- Financial backstop (state guaranty associations)

# Employer Pick Up

## The Issue

- Interpretation of Revenue Ruling 2006-43 on IRC §414(h)(2) pick ups
- PLR requests to allow existing employees to elect between current and new DB tiers
- Would allow “cash or deferred arrangement” = choice to get more or less take home pay
- Rev. Ruling 2006-43 plugs into 1.401(k)-1(a)(1) – no CODAs in pick up situation

## Tension

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

## Two Approaches

- Regulatory
- Legislative (H.R. 205, 113<sup>th</sup> Congress)

# H.R. 205 (113<sup>th</sup> Congress)

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

(B) TREATMENT OF ELECTIONS BETWEEN ALTERNATIVE BENEFIT FORMULAS.-

(i) In General.—for purposes of subparagraph (A), 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.

# H.R. 205, cont.

(ii) APPLICATION TO EXISTING EMPLOYEES. –  
Clause (i) shall be applied without regard to whether the employee is already covered by one of the benefit formulas referred to therein.

Introduced by Rep. Loretta Sanchez (D-CA)

# Public Employee Pension Transparency Act (PEPTA)

- H.R. 1628, Rep. Devin Nunes (R-CA)
- S. 779, Sen. Richard Burr (R-NC)  
(113<sup>th</sup> Congress)
- State and local reporting to federal government for the first time
- Failure to comply = No federally tax-exempt bonds

# PEPTA, cont.

- Annual reports to Treasury Department
- Two sets of numbers:
  - 1) Current assumed rate of return
  - 2) Supplemental report based on U.S. Treasury obligation yield curve



# Comprehensive Tax Reform

## Policy Tension

Retirement  
Security



Revenue  
for Lower  
Tax Rates

# Regulatory Issues

- 1) Definition of governmental plan/Charter school issue
- 2) Normal retirement age

# Definition of Governmental Plan IRC Section 414(d)

- ANPRM, Nov. 2011
  - 76 Fed. Reg. 69172
  - Issued by IRS in consultation with DOL and PBGC
  - 2300 comments received
  - 2000 on charter schools
- Define Key Terms:
    - 1) Established and Maintained
    - 2) Political subdivision of a state
    - 3) Agency or instrumentality of a State or political subdivision

# Definition of Governmental Plan

Agency or instrumentality of a state/political subdivision

## Major factors

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

# Agency or Instrumentality

## Minor and Additional Factors

- Specific enabling statute
- Funding
- Federal tax treatment
- Control
- Treatment under state law
- Judicial determinations
- Ownership interest
- Governmental purpose

# Treasury Notice 2015-7

## Public Charter Schools

- Released Jan. 2015
- Applies to DB, DC, 403(b) and 457(b) plans
- 5-part test (a-e) for a public charter school
- Comments were due on May 11, 2015

# Public Charter Schools, cont.

- a. Non-sectarian independent public school serving governmental purpose (tuition-free elementary or secondary education, or both)
  
- b. Established and operated in accordance with a specific state statute

# Public Charter Schools, cont.

- c. Participation in the state or local retirement plan is expressly required or permissible under applicable law
- d. Elaborate control test
- e. All financial interests of ownership must be held by a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state



# Public Charter Schools, cont.

- Prong (e)

...entity's governing documents must require the entity's net assets to be distributed to another public school that meets the 5-part test or to a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state

# Normal Retirement Age

## The Issue

- May 2007 Treasury Regulations – 1.401(a)-1(b)
- NRA = Age = A number
- YOS or combination YOS and age not in 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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