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# Focus on 457



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Edited by  
Gregory E. Seller, Senior Vice President,  
Government Markets (800) 933-9808 &  
Marilyn R. Collister, Assistant Vice President,  
Plan Design & Compliance  
(800) 537-2033, Ext. 73819

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## **Pension Reform 2003 & Final 457 Regulations: Status Update – May 14, 2003**

### **Pension Security Act**

The House of Representatives is scheduled to vote on the Pension Security Act (H.R. 1000) sponsored by Representative John Boehner (R-OH) on May 14, 2003. The Pension Security Act is similar to the comprehensive retirement savings reform bill that passed the House last year by a vote of 255-163.

The core provisions of H.R. 1000 are:

- New diversification rights for participants including the ability to immediately diversify employee deferrals. Employees must also have the ability to diversify out of employer contributions invested in employer stock after three years.
- Increased employee access to qualified investment advice. Employers would be required to have qualified investment advisors inform employees of need to diversity and to assist in choosing appropriate investments. A tax incentive would be made available.
- Plan sponsors would be required to give quarterly benefit statements, including information about their rights to diversify and the importance of maintaining a diversified portfolio in addition to the value of their assets.
- Plan sponsors would have fiduciary responsibility for employee's savings during blackout period.

This bill is expected to pass the House, but not before Democrats offer a substitute bill drafted by Representative George Miller (D-CA).

No version of the bill has yet been introduced in the Senate.

## **Pension Preservation and Savings Expansion Act of 2003**

The House Ways and Means Committee had originally scheduled a mark-up of The Pension Preservation and Savings Expansion Act of 2003 (H.R. 1776 sponsored by Representatives Rob Portman (R-OH) and Ben Cardin (D-MD)). This mark-up session has been rescheduled for later this month.

As we have previously reported, the Portman-Cardin Pension Preservation and Savings Expansion Act, HR 1776, would, among other things:

- **Make EGTRRA Permanent.** All retirement savings and pension reforms in EGTRRA currently scheduled to sunset at the end of 2010 would be made permanent.
- **Accelerate Contribution and Catch-up Limits.** The maximum annual contribution limits for elective deferrals and age 50 catch-up amounts contained in EGTRRA would become effective in 2004 rather than 2006.. Participants could contribute the full \$15,000 into a 401(k), 403(b) or 457(b) and the full \$5,000 age 50 catch-up amount.
- **Enhance Portability.** Provide new retirement planning tools by expanding the availability of rollovers.
  - Allows participants to roll plan assets directly into a spouse's IRA.
  - Allows non-spouse beneficiaries to do rollovers.
  - Allows direct rollovers from retirement plans to Roth IRAs.
  - Allows employees to roll over up to \$500 of unused health care flexible benefit account amounts into retirement plans, subject to certain contribution limits.
  - Improve the purchase of service credit regime and enhance DROP plans for public safety workers.
  - Allows rollovers of after-tax contributions to 403(b) plans.
  - Permits rollovers to and from SIMPLE and SEP IRAs.
  - Eases transfers or mergers between 401(k)s and 403(b)s.
- **Finance Retiree Health Expenses.**
  - Allows retirees to cover medical premiums with pre-tax pension money, thus putting retirees on the same tax footing as active workers with respect to the tax treatment of their health plan premiums.
  - Provides sponsors of defined contribution plans, such as 401(k)s, with a new mechanism to fund a modest portion of retiree medical expenses on a pre-tax basis.

- **Preserve Retirement Assets.**

- Raises the beginning date for required minimum distributions from age 70 ½ to age 75.
- Reduces the excise tax on amounts not timely distributed from 50% to 20%.
- Provides incentives for individuals to take their retirement benefits in the form of a life annuity by allowing individuals with income of up to \$90,000 to exclude up to \$2,000 or annuity income from taxation each year.
- Amends ERISA section 404(c) to provide protection to plan fiduciaries in connection with default rollover options to an IRA.
- Expands existing PBGC program to find missing participants and get them their lost retirement plan benefits.
- Permits definition of qualified domestic relations orders to include orders issued after a divorce.
- The \$5,000 cash-out limitation would become subject to cost of living adjustments.
- Guidance on electronic plan administration would be provided.
- The “substantially equal periodic payment” exception to the 10% premature distribution penalty tax would be clarified.

- **Expand the Saver’s Credit and Making it Permanent.** The low and moderate income saver’s credit limits would be increased. Eligibility for single filers would increase to \$30,000 and for joint filers to \$60,000. The maximum credit would increase to 60% of first \$2,000.

- **Enhance IRAs**

- Accelerate IRA contribution and catch-up limits by allowing owners to contribute the full \$5,000 beginning in 2004 rather than in 2008. The age 50 catch-up amount would increase to the full \$1,000 now rather than 2006.
- Eliminate IRA Marriage Penalty. The income eligibility levels for joint filers will be increased to twice the levels for single filers. The rule that one spouse cannot make own deductible IRA contributions if other spouse in a retirement plan would be eliminated.
- Accelerate Income Eligibility - Deductible IRAs. Individuals earning below \$50,000 and couples earning below \$100,000 would be fully eligible in 2004, rather than 2006.
- Allowing IRAs for Disabled Americans. Disabled Americans with no wage income cannot currently contribute to IRAs. Those meeting a standard of disability could contribute to an IRA using non-wage sources.
- Correcting IRA Distribution Mistakes. Initiate a correction mechanism to allow IRA investors to return funds to their accounts when distributions have been made in error.

- **Simplify Regulation.** Reforming a variety of administrative rules that have unnecessarily increased the cost and complexity of retirement plan sponsorship and administration.

## Final 457 Regulations

In a presentation to the Tax Section of the American Bar Association meeting this month, Cheryl Press and Bob Architect stated that the final 457 regulations should be issued in the next two months. Although we won't know until the regulations are actually issued, it seems that self-correction of excess deferrals and plan-to-plan transfers will be extended to exempt organizations. It also seems likely that the "same state" requirement for purchase of service credit transfers will be eliminated.

## Proposed 403(b) Regulations

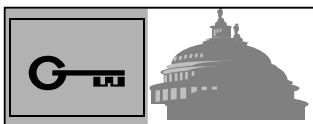
The IRS has been working on new 403(b) regulations for about six months. They are reportedly making good progress and expect to issue them in proposed form within six months.

As always, we will continue to monitor these developments closely and report them to you in future issues of *Focus on 457* and *LegAlert*.

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Cathy Matusiewicz, RVP, Irvine, CA 800-933-9808	Brion Beetz, RVP, San Ramon, CA 800-274-8491	Tim Jones, RVP, State of Washington 800-462-9277	Jeff Fossier, RVP, Chicago, IL 800-926-5862	Mike Abkowitz, Assoc. Mgr. Austin, TX 866-613-6189	Marie Panciocco RVP, New England, 800-596-3384
Muriel Knapp RVP, Orlando, FL 800-360-2684,	David Sharer, RVP, Reston VA 800-879-3133	Joe Dionisi, RVP, Baton Rouge, LA 800-937-7604,	Paul Citron, RVP, Raleigh, NC 888-600-2763	Michael Sole, VP, Eastern Region 800-926-5862	Duane Jeffers, RVP, Pennsylvania 800-222-1567
Vince Camacho RVP, Guam 671-475-8938	Duane Jeffers, RVP, Ohio 800-284-0444	Kris Morton, Assoc. Manager Ohio 800.284.0444 ext. 11	Fred Bender VP, Denver, CO 800-947-4409	Kent Morris, VP, Western Region, Glendale 800-382-8924	Sylvia Hackl Assoc. Mgr. Cheyenne 800.989.9324
Julie Klassen Defined Contribution Specialist Western Region 800.933.9808					Britt Palmer Defined Contribution Specialist Eastern Region 800.537.2033 ext. 72083

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**Great-West Retirement Services  
Government Markets Division**

  
**Great-West**