RSC Republican Study Committee

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Legislative Bulletin…………………………………..…...……April 11, 2002

Contents:

- **H. R. 3762 — Pension Security Act of 2002**

H. R. 3762—Pension Security Act (Boehner)

Order of Business: The bill is scheduled to be considered on Thursday, April 11, under a modified closed rule.

Summary:

Benefit Statements:

- Requires managers of defined contribution **individual account plans** to provide participants at least quarterly benefit statements that includes information about the value of investments allocated to their account, including the value of any assets held in the form of employer securities; the nonforfeitable pensions benefits that have accrued; and includes information of the importance of diversifying retirement plans and the risk of holding more than 25% of a portfolio in any one security.
- **Defined benefit** plan managers are required to provide benefit statements at least once every 3 years that includes information on the total benefits accrued and the nonforfeitable pensions benefits.
- Benefits statements must be understandable and may be in electronic form.
- Authorizes the Secretary to assess a civil penalty of up to $1,000 per day against any plan administrator who fails or refuses to provide the required quarterly statements.
- Directs the Secretary to issue model statements.
- Requires new participants in pension plans to be provided with an investment education notice containing information about the plan and the importance of diversification. Willful failure to provide notices results in a $100 per incident fine capped, at $50,000 each calendar year.

Blackout Notices:

- Requires that plans participants be notified 30 days in advance of any action which will suspend, limit, or otherwise restrict the ability of a participant to direct or diversify their account for more than 3 consecutive business days.
- Requires plan administrators to determine the reasonableness of the action.
- Provides certain limited exceptions.

- Permits the Secretary to issue a $100-a-day fine from the date of failure or refusal to provide notice to a participant. Each participant is who is not provided the proper notice is treated as a separate violation.
- The bill also imposes an excise tax of $100 for each failure to provide a plan participant of a notice of a blackout. Unintential failures are capped at a $500,000 tax. (RSC STAFF NOTE: the version of the bill on the floor today includes both a fine and a excise tax component.)
- The Secretary will provide model notices and notices may be provided electronically.
- Fiduciaries are not liable for losses during blackout periods provided that they complied with the requirements set out under this title.
- Prohibits company executives and those who own more than 10% of any equity security from purchasing or selling any employer securities while plan beneficiaries and participants are precluded from such activity during a blackout period.

Education Program:
- Directs the Secretary to establish an ongoing information and educational resources program for fiduciaries of employee benefit pension plans

Diversification:
- Provides that employer securities may be diversified three years after the calendar quarter in which they were contributed.
- Provides five-year transition for employer securities held in individual accounts as of the day of enactment.
- Provides that employee contributions are immediately diversifiable.
- Exempts individual account plans where there is no class of stock issued by the employer that is readily tradable on the securities market.

Investment Advice:
The bill contains the text of H.R. 2269, the Retirement Security Advice Act that passed the House on November 15 by a vote of 280 to 144 (with all repoublicans voting yes):
- Allow employers to provide workers with direct access to professional investment advice related to employees' cho ices of retirement investments, as long as the advisers disclose any fees or potential conflicts of interest. Currently under ERISA, employers may not provide retirement-plan participants with direct access to fiduciary advisers for individual investment advice.
- Specifically, fiduciary adviser's counsel provided in connection with any sale, acquisition, or holding of a security or other property for purposes of retirement plan investment, as well as the fees for such advice, would be exempted from the list of prohibited transactions under ERISA.
- Make the fees for such advice exempt from excise taxes imposed by section 4975 of the Internal Revenue Code. The investment adviser, who would have to be officially registered with the appropriate authorities, would be required to provide clear, written notification in advance of any advice given of:
  - the fees associated with the advice
  - any material or contractual interests the adviser may have in the securities or properties discussed

    - any limitation placed on the scope of the advice
    - the types of services provided by the adviser
    - the adviser's role as a trustee of the applicable retirement plan
- The investment adviser would be required to comply with all appropriate disclosure laws and provide advice that is at least as favorable as an arm's- length market transaction. Moreover, the adviser would be prohibited from actually making any investment without the express direction of the advisee and from charging unreasonable (undefined in bill) fees for the provision of advice.
- Advisers would have to make their best- faith efforts to provide advice that is in the best financial interest of the individual plan-participant. As evidence of compliance, fiduciary advisers would be required to keep all records of such investment advice for at least six years.

The bill also allows employees to use pre-tax dollars to obtain their own investment advice.

Other Changes:
The bill makes several other changes relative to:
- Pension Benefit Guarantee premiums for 2001
- Reducing reporting requirements for one-participant plans
- Streamlining other reporting requirements
- Reducing Pension Benefit Guarantee premiums for new plans of small employees
- Ensuring that stock options are not treated as wages for the purpose of the payroll tax

Cost to Taxpayers: A CBO estimate on the new revised bill is currently not available. The bill will require additional federal expenditures and will alter federal revenues.

Does the Bill Create New Federal Programs or Rules?: Yes, as described above.

Constitutional Authority: A Committee Report citing Constitutional Authority is unavailable.

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