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Multiemployer Plans

Former Lawmaker Sees Hope in Congress For Multiemployer Plan Recommendations

Greater congressional interest in retirement policy in recent years could help a proposal that would shore up the multiemployer retirement plan system get adopted into law, former Rep. Earl Pomeroy (D-N.D.) said May 2.

“Congress knows that something needs to be done. I think they have a better sense as baby boomers are expressing their anxieties . . . about how these 401(k)s are falling short of what they hoped. They’re looking for ways to come up with something that preserves this guaranteed cash flow in retirement,” Pomeroy said during a panel discussion on multiemployer pension plans hosted by Bloomberg Government.

When Pomeroy was in Congress, there was not a lot of “sustained interest” in retirement policy, he said, but “I’m seeing something different now.” He cited Sen. Tom Harkin (D-Iowa), chairman of the Senate Health, Education, Labor, and Pensions Committee, and Rep. John Kline (R-Minn.), chairman of the House Education and the Workforce Committee, as two congressional leaders who are trying to take on retirement security issues.

Because of this renewed interest, Pomeroy thinks Congress will consider the legislative recommendations developed by employer and labor organizations working as the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans (NCCMP).

The proposal appeared in a report released by commission in February (34 PBD, 2/20/13; 40 BPR 443, 2/26/13).

The report’s recommendations fell into three categories: preservation, remediation, and innovation.

“I think Congress will be very interested. Congress likes self-help an awful lot. This is self-help and done so in a way that’s a balanced self-help package. I think those are essential elements to get congressional interests,” Pomeroy said.

NCCMP’s Plan. Randy G. DeFrehn, executive director of NCCMP, said the commission sought “to make sure the workers would have a regular retirement income.”

One of the commission’s goals was to promote “innovation in the creation of new ‘flexible’ plan designs that substantially reduce or totally eliminate withdrawal liability,” the report said. Although the commission did not expressly endorse a specific course of action, it offered two “alternative” approaches to plan design: the

“variable annuity” plan and the “target benefit” plan. The target benefit plan approach would “combine the retirement income security and economic efficiency of defined benefit plans with the predictable employer costs of defined contribution plans,” the report said.

DeFrehn said: “The new model looks just like your current defined benefit plan—benefits are pooled, it’s a full annuity, benefits would be paid on an annuity form. There is no individual account or no events which would lead to leakage from the system. . . . It operationally would be just like the [defined benefit] system.”

Slighting Retirees? Norman P. Stein, professor of law at Drexel University’s Earle Mack School of Law, questioned the proposal’s ability to protect retirees if benefits need to be cut to preserve a plan.

“I think the commission’s recommendations are really important and it’s a really thoughtful report. The organizations I talk to that deal with retirees are concerned about aspects of it. The tools that deeply troubled plans would have would permit immediate reduction of retiree benefits,” Stein said.

Stein said one of his concerns with the commission’s proposal is that it “talks about the problems with vulnerable populations, but the reductions in benefits are up to the trustees. . . . Trustees all have a legal duty to act on behalf of all participants, but structurally, the way trustees are appointed raises the question of whether the primary goal is going to be to try and harm the retirees as little as possible.”

“One thing we want to see is . . . some clear voice for the retirees that’s independent of the trustees,” Stein said. “One of the constant themes in pension law and pension management over the last 100 years has been, when there’s a problem, the first person you protect is the retirees,” he said.

Stein said that, while the commission included unions and employer groups, retirement groups such as AARP and the Pension Rights Center were not part of the discussions and the shaping of the report.

“What I think would make the commission’s recommendations far more palatable to retiree groups is if they felt they had an independent voice in the process who could at least get people focused on their particular issues,” Stein said.

‘Benefit Preservation.’ Pomeroy took issue with Stein’s characterization of the proposal as sacrificing retiree benefits in favor of saving endangered multiemployer plans, saying the “overriding goal of this plan [is] benefit preservation, not reduction.”

The commission’s proposal currently is being drafted into bill language (69 PBD, 4/10/13; 40 BPR 933, 4/16/13), Pomeroy said, but he was adamant that wor-

ries about cuts to retiree benefits not overshadow the work that is being done on behalf of all multiemployer plan participants.

“We have all kinds of time to make certain that we’re tending to the vulnerable population issue,” Pomeroy said. “But let’s not have that part of the discussion overwhelm all the other discussion. This is the kind of thing that can stop this dead in its tracks. Doing nothing is the worst course to [take] when you’ve got plans heading irretrievably into the [Pension Benefit Guaranty Corporation] realm when benefits collapse and the PBGC isn’t adequately funded. That’s the worst thing you can do for these vulnerable populations and everybody else,” he said.

DeFrehn echoed Pomeroy’s sentiments and said Stein’s “reading of the commission is perhaps a little misleading.”

DeFrehn said that, for plans headed for insolvency, “instead of requiring the plans to spend all their assets down on current participants and then having nothing going forward, why not allow the trustees who know that’s happening—where all reasonable measures have been taken to ensure a plan can survive but it’s still projected to be insolvent—why not allow them access to the tools they’re mandated to impose when they get to insolvency?”

BY KRISTEN RICAURTE KNEBEL