



## The Pension Protection Act and Employee Financial Education

At the end of their 2 week Easter recess (April 21st) Congress will return to the bargaining table in an attempt to reconcile one of the more important Bill's on the Spring docket: the House and Senate versions of the **Pension Protection Act** (H.R. 2830). The House-Senate conference committee, charged with the reconciliation of the two versions of the new pension law, are already behind schedule: April 15th was the *signing* goal (the date when many companies must make their first contributions of the year into their pension accounts). Not surprising, a new date has not been set. In fact, the Joint Committee website's comparison of the differences between the two versions of the Act is itself over 125 pages. It's going to take some time.

Time notwithstanding, the *Pension Protection Act* is on the 'A-list' of things to get done. H.R. 2830 is a comprehensive reform of corporate America's troubled pensions system. In summary, the *Pension Protection Act* will "require companies to better fund their pension plans, change the formula used to calculate pensions and increase program transparency for employees" (Emily Heil, CongressDailyPM).

While pension reform is critical to the financial health of millions of working Americans, simply improving the fiscal viability of these plans may not be enough. The success of America's retirement plans rest in part on the skill of employees to use these plans. Both the House and Senate know this, and both have included in their versions additional provisions addressing the liability employers face when providing financial advice/education to their employees. As summarized by John Boehner, Chairman of *House Education & the Workforce Committee*: "The *Pension Protection Act* also clarifies that employers are not responsible for the individual advice given by professional advisers to individual participants; this liability is assumed by the individual adviser. Under current law, employers are discouraged from providing this benefit because liability issues are ambiguous and employers may be held liable for specific advice that is provided to their employees. Under the bill, employers will remain responsible under ERISA fiduciary rules for the prudent selection and periodic review of any investment adviser and the advice given to employees." In other words, given the current liability landscape, most employers will not provide investment education/advice to their employees because their lawyers have told them they could be sued under the current ERISA regulations – even if the employer can prove a prudent process for selecting a good educational provider.

### H.R. 2830 and Employee Education

But H.R. 2830 is out to change the fiduciary rules of the pension game. The House bill states: "An employer or fiduciary under ERISA is not subject to fiduciary liability solely because of investment advice provided by a fiduciary adviser." And the Senate amendment: "The plan sponsor or other fiduciary is not liable for any loss or breach with respect to investment advice provided to a participant by a qualified investment adviser" (sections 601-602 of the House bill and section 802 of the Senate amendment). Here, both versions of the Act seem to be in complete agreement. It seems unlikely that this provision would somehow be left out of the final negotiated bill.

Further, in section 801 & 803 of the Senate amendment (titled: *Defined Contribution Plans to Provide Adequate Investment Education to Participants*, and, *Treatment of Qualified Retirement Planning Services*) the Senate version seems to actually encourage employers to provide “qualified retirement planning services by an eligible investment adviser”. In addition: “The plan administrator of a defined contribution plan must provide participants with a model form relating to basic investment guidelines.” The Senate version further charges the Secretary of Labor and the Secretary of the Treasury to develop such models and the new law would fine noncompliant employers a “penalty of up to \$100 a day”.

### **Liability Begets Liability**

There is of course one important caveat to these new provisions, namely: employers will have a fiduciary responsibility to prudently choose and monitor the provider of financial advice/education made accessible to their employees. The House bill states: “The provision does not exempt a plan fiduciary from fiduciary responsibility for the prudent selection and periodic review of a fiduciary adviser” (sections 601-602). The Senate amendment: “an employer or fiduciary is deemed to satisfy its fiduciary duty with respect to the prudent designation and periodic review of a qualified investment adviser to provide investment advice to participants” (section 802). Simply put, it will not be sufficient for an organization/employer to simply delegate financial education/advice to their pension plan provider, insurance broker or personal financial planner. Doing so without some documented process of prudent selection and proof of periodic review will incur a liability, and, as we know, “fiduciaries are personally liable for any losses to the plan due to a violation of fiduciary standards.”

### **Zero Sum Gain?**

OK, subtract one liability – add another. Well, not quite. H.R. 2830 will, without question, have a positive affect on the current topography of corporate liability & lawsuits. Still, employers/organizations can not ignore their due-diligence responsibilities. While some organizations simply *don't have* or *won't spend* the time & energy necessary to perform and document the *selection, monitoring & review* requirements, employers and Human Resource departments should consider outsourcing the bulk of these duties to organizations like HIFE – and at little to no cost.

### **Case-in-point:**

Organizations such as HIFE can help employers better manage their due-diligence fiduciary responsibilities – and at little to no cost. For example: Corporate Express offered two college level financial education courses to their employee population last year. The instructor for these courses provided to Corporate Express by HIFE was a designated CFE®. Corporate Express knows that Registry CFE® designees are screened & approved by HIFE's board of governors through an application process and background check. They have completed the CFE® study course and passed the CFE® exam. Further Registry CFE® designees have participated in a 3 day training course supervised by HIFE stressing the importance of integrity in work-place education and the CFE® has signed a code-of-ethics pledging adherence to educational integrity. In addition, Corporate Express knows that the CFE® designee must complete 12 hours of continuing education credits each year to maintain their designation and that the designee is monitored by the HIFE board for ongoing quality and integrity and, just as important, designees will be dismissed for breach of the CFE® code-of-ethics. Finally, Corporate Express will receive evaluations from course attendees as documentation of employee satisfaction for their corporate *monitoring and review* files. Corporate Express was able to easily review the quality of the courses provided to their employees by attending the classes which were offered on sight for employee convenience.

The *Pension Protection Act*, in both the House and Senate versions, is a real improvement in the liability landscape of financial education/advice that has long troubled corporate America. The continuing due-diligence fiduciary responsibility for selecting an education provider is a manageable obligation and with the help of organizations such as HIFE much of the time & energy required to meet this duty can be outsourced at little to no cost.