On April 11, 2003, Congressmen Rob Portman (R-OH) and Benjamin Cardin (D-MD) introduced new retirement security legislation, The Pension Preservation and Savings Expansion Act of 2003, H.R. 1776. The proposed ground-breaking legislation, if adopted by Congress, will provide individuals and families with a number of new savings tools, will further strengthen and expand the employer-sponsored retirement system, will offer important new protections to retirement plan participants, and will assist retirees in managing and preserving retirement assets and income.

The Transamerica Center for Retirement Studies has conducted a detailed review of the proposed legislation including background information, highlights, and a summary that outlines the provisions and includes references to the Bill’s source text.

**Background**

In recent years, Congressmen Portman and Cardin have taken the lead in pension reform. Their highly successful bipartisan efforts have focused on creating more opportunities for Americans to save for retirement and to encourage employers to sponsor retirement plans.

Portman and Cardin’s landmark pension legislation, adopted under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), included catch-up contributions for workers age 50 and over, enhanced pension portability through reduced vesting and removal of rollover barriers, encouraged small business pension coverage, and simplified pension regulation.

**The Pension Preservation and Savings Expansion Act of 2003, H.R. 1776: Highlights**

The Pension Preservation and Savings Expansion Act of 2003 substantially builds on the EGTRRA reforms and introduces new opportunities and protections for retirement savings. Highlights include:

- Securing EGTRRA’s savings opportunities
  - Making retirement savings opportunities permanent by eliminating the 2010 sunset provision
  - Accelerating increased savings limits by making them fully effective in 2004 rather than phasing them in
  - Expanding and making permanent the Saver’s Credit for modest-income savers
- Expanding small business pension coverage
  - Expanding and improving SIMPLE and SEP plans
  - Small retirement plan payroll tax equity
- Revitalizing defined benefit plans
- Expanding IRAs
- Reforming company stock and executive compensation practices
- Financing retiree health
- Enhancing pension portability
- Regulatory simplification – cutting red tape

While we are very excited about all of the opportunities that the proposed legislation includes, it is important to remember that it has only been proposed. It may take months or years through the legislative process, with many changes along the way, if and when it is ultimately passed.

Additional information, including the 207-page Bill, H.R. 1776, is available at the Transamerica Center for Retirement Studies (TCRS) website at [http://www.ta-retirement.com/thecenter](http://www.ta-retirement.com/thecenter).
On April 11, The Pension Preservation and Savings Expansion Act of 2003 was introduced in the House of Representatives by Congressmen Portman and Cardin. This Bill builds on many of the changes contained in previously enacted legislation, e.g. EGTRRA. If passed, this Bill would provide numerous opportunities for Americans to save more for retirement sooner, more savings options and tools, and more pension protections. The Bill would also further strengthen and expand employer-sponsored plans. If passed this year, most changes would take effect starting in 2004, unless otherwise noted.

This is only a summary of the pertinent provisions of the Bill as initially proposed on introduction. It is anticipated that it will undergo a number of changes and there is no guarantee that it will become law. But, the Legislative Task Force is committed to following the developments very closely and keeping you informed of the progress as it goes through the lengthy legislative process. So stay tuned…

Amendments required by this Bill would generally not be required until the end of the 2006 plan year. Operational compliance would be required before then.

KEY AREAS OF THE BILL

- Making EGTRRA Opportunities Permanent and Accelerating Limits
- Preserving Retirement Assets
- Enhancing Fairness and Pension Portability
- Increasing Retirement Plan Participation and Savings
- Expanding Retirement Coverage to Small Business Employees
- Strengthening IRAs
- Revitalizing Defined Benefit Plans
- Simplifying Retirement Plan Rules
- Defined Contribution Plan Protections
- Retiree Health
- Miscellaneous

Next to each bullet in the summary, a numeric reference appears in parentheses. This reference identifies the location of the provision in the source text of the Bill, H.R. 1776.

MAKING EGTRRA OPPORTUNITIES PERMANENT AND ACCELERATING LIMITS

- The EGTRRA increases in the contribution, benefits and compensation limits we currently enjoy are due to expire at the end of 2010. This Bill would make all these limits permanent. (101, 402)
- The Savers Credit for modest to low income workers which provides a tax credit of up to 50% of employee contributions to a retirement plan or IRA would be made permanent. This provision is due to expire at the end of 2006. In addition, the current maximum credit of 50% would increase to 55%, the income eligibility for single filers would increase to $30,000 (from $25,000) and joint filers to $60,000 (from $50,000). These changes provide more incentives to save. (102, 401)
- The 402(g) deferral limits would be accelerated to $15,000 ($12,000 for 2003) and catch-up contributions to $5,000 ($2,000 for 2003). The accelerated IRA and SIMPLE limits can be found in the Sections entitled “STRENGTHENING IRAs” and “EXPANDING RETIREMENT PLAN COVERAGE TO SMALL BUSINESS EMPLOYEES”.  

PRESERVING RETIREMENT ASSETS

• The age 70½ minimum required distribution start date would be raised incrementally (from 2004 through 2010) to age 75. (201)

• The excise tax for failure to take required minimum distribution amounts would be reduced from 50% to 20%. (201)

• The required beginning date would be 12/31 rather than 4/1 of the following year and a participant retiring during December of a calendar year would be treated as retiring on the following calendar year. (201)

• Employers would be able to send unclaimed benefits for missing participants to the PBGC which will use its existing Missing Participants Program to match unclaimed benefits to individuals or transfer them to an IRA. (202)

• For terminating plans, in addition to sending the unclaimed benefits of missing participants to the PBGC or rolling them to an IRA, the Bill would permit the unclaimed benefits to be transferred to another plan of the employer, or used to purchase an annuity contract. (202)

• Would clarify that state escheat laws that conflict with these provisions for disposing of unclaimed benefits of missing participants are preempted. (202)

• Would require the Treasury Secretary to conduct a study to evaluate possible ways of lessening DC plan losses due to market volatility. (205)

• For years 2004-2007, 5% of the lifetime annuity income of an individual from a qualified plan or IRA would be tax free, up to $2,000 per year. After 2007, the percentage increases to 10%. There is a cumulative lifetime limit equal to 50% of the DC plan 415 limit (currently $20,000). Would include a provision for recapture if the method of annuity payments is modified. (305)

• Through the use of fiduciary safe harbors, the Bill would prevent leakage from retirement plans by permitting plan sponsors to use default rollover options or to purchase life annuities for terminating employees. (203)

ENHANCING FAIRNESS AND PENSION PORTABILITY

• Would allow transfers to a spouse or former spouse (permitting a split between spouses). This applies only to IRAs. (301)

• Would accelerate the 7-year graded vesting schedule for profit sharing contributions to the 6-year top-heavy schedule that currently applies to matching contributions. This change applies only to employees who complete at least 1 hour of service after the change becomes effective. (302)

• Would allow non-spouse beneficiaries to roll over death benefits to an IRA. Currently, non-spouse beneficiaries must receive a lump sum cash distribution or take payments over their lifetime. (303)

• Would allow direct rollovers from retirement plans to ROTH IRAs. Would eliminate the interim step of rolling over to a traditional IRA. (304)

• To expand portability rules, participants would be able to roll after-tax contributions in annuity contracts to 401(k)s or 403(b)s. (306)

• For purposes of the exception to the 10% penalty on distributions prior to age 59 ½, would allow payees to change the method of calculating their substantially equal periodic payments and allow any reasonable interest rate to be used rather than the low interest rates required by current IRS guidance. (307)

• The Bill would improve retirement security by clarifying that if a domestic relations order is otherwise qualified, it must be recognized even though it is issued after, or revises a prior qualified domestic relations order, but only with respect to amounts payable after the date the domestic relations order is determined to be qualified. (308, 309)
The Pension Preservation and Savings Expansion Act of 2003, H.R. 1776
Summary – Prepared by TCRS

- Plan transfers and mergers involving 401(a) and 403(b) plans would be permitted provided the transfer or merger does not cause a reduction in benefits (including non-vested benefits). Subsequent distributions from amounts transferred or merged must be made in accordance with the terms of the originating plan. Spousal consent, if applicable under the originating plan must be retained. Effective after IRS publishes guidance. (312)

INCREASING RETIREMENT PLAN PARTICIPATION AND SAVINGS

- The Bill would amend ERISA 404(c) to remove barriers to automatic enrollment by treating amounts contributed on behalf of a participant as under the participant’s direction and control provided certain notice requirements are met. This change would preempt any conflicting state law. We have been waiting for this preemption for 5 years. (403)

- Instead of the “use it or lose it” practice we have today regarding Health Care Flexible Spending Accounts, this Bill would permit unused amounts up to $500 per year to be rolled over to a qualified retirement plan or IRA, subject to the contribution limits of the plan or IRA. The contribution would be treated as an elective contribution. (404)

- The Bill would update the deduction rules for combo DC and DB plans so that up to 6% of payroll above the current limit (lesser of 25% or the amount required to satisfy minimum funding under the DB plan) would be deductible. (405)

Expanding Retirement Plan Coverage to Small Business Owners

- The SIMPLE deferral limits and catch-up contributions would be accelerated to $10,000 and $2,500 respectively ($8,000 and $1,000 for 2003). (402)

- The Bill would allow employers to make nonelective contributions of up to 10% of compensation to SIMPLEs. (501)

- The ability to contribute less matching contributions under SIMPLE IRAs for certain years would be extended to SIMPLE 401(k)s. (502)

- Effective for years beginning after 12/31/04, salary reduction only SIMPLE plans would be permitted up to $5,000 (indexed) per year. (503)

- The requirement that a SIMPLE plan must be the only plan of the employer during any calendar year would be changed to exclude situations where another plan exists as a result of an acquisition, disposition or similar transaction. (504)

- Effective in 2005, the Bill would permit a mid-year change from a SIMPLE plan to another plan. The Bill would require the Treasury Secretary to issue final regulations to ensure that the change is not used to circumvent otherwise applicable limits or rules. (504)

- The 25% excise tax for distributions during the first 2 years of a SIMPLE plan would be eliminated. (505)

- Rollovers between SIMPLEs and other qualified plans and IRAs would be permitted. (506)

- Compensation under SEP plans is being brought in line with compensation used for qualified plans. (507)

- Small businesses (sole proprietorships, partnerships, S-Corporations) would no longer have to pay payroll taxes on employer contributions made to plans. (509)

STRENGTHENING IRAS

- The IRA contribution limit would be accelerated to $5,000 in 2004. The limit for 2003 is $3,000. (601)

- Catch-up contributions would be accelerated to $1,000 from the current $500 limit. (601)
The Pension Preservation and Savings Expansion Act of 2003, H.R. 1776
Summary – Prepared by TCRS

- Traditional IRA income eligibility for active participants in certain pension plans would be increased incrementally from $60,000 (for 2003) to $100,000 (for 2010) resulting in higher, immediate tax deduction for Americans. (602)
- Income eligibility levels for married couples filing jointly would be increased to twice the level for singles. (602)
- Roth IRA income eligibility limitation would be increased to $190,000 ($150,000 currently) for married couples filing jointly. (602)
- Effective in years beginning after 12/31/06, would allow IRA deduction currently prohibited because the spouse is an active participant in a retirement plan. (602)
- Certain disabled Americans under age 70½ would be able to maintain IRAs using income from non-wage sources. (603)
- No later than 12/31/04, the Treasury Secretary would establish a correction program that would allow IRA distribution errors to be corrected. (604)

REVITALIZING DEFINED BENEFIT PLANS

- The Bill would institute a new interest rate benchmark to replace the 30-year Treasury bond rate to ensure funding, lump sum and contribution calculations are more in line with the times. (705)
- Multiple employer plans (413(c)) would be permitted to elect separate or aggregate treatment in applying funding and deduction limits. The election, once made, may only be revoked with approval from the Treasury Secretary. (701)
- Employee after-tax contributions to contributory defined benefit plans could be treated as pre-tax employer pick-up contributions, if elected by the employer. (702)
- Under the Bill, plan valuation data collection may be based on data as of a date either within the current or prior plan year to which the valuation refers. (704)
- The Bill would reform the 401(a)(26) minimum participation rules to limit them to only the abusive arrangements that combine plans in a way to favor HCEs. (703)

SIMPLIFYING PLAN RULES

- The excise tax corrective distribution period for excess contributions would be expanded to 6 months (currently 2½ months). (801)
- The de minimis distribution amount would be increased to an amount “not exceeding” $1,000 ($100 currently). (801)
- Not later than 12/31/04, the Secretaries of the Treasury and Labor would issue regulations that would permit electronic media for distribution of:
  - Notices, elections and spousal consent for IRC 401(a)(11) and 417 of the Code dealing with joint and survivor and small cash-out requirements.
  - Information to satisfy the conditions for hardship distributions. (803)
- Final rules would be issued covering the intended results from the use of base pay or rate of pay (rather than total pay) for purposes of applying the safe harbor non-discrimination rules. (804)
- The IRS’ Employee Plans Compliance Resolution System (EPCRS) would be improved to protect a plan from disqualification in cases where the plan sponsor has made good faith efforts to correct a plan failure, and, either (1) substantially corrects the failure before the date a plan becomes subject to an audit for the year in question or (2) substantially corrects the failure on or after the audit. However, sanctions may be imposed if the correction is made on or after the audit. (806)
The Pension Preservation and Savings Expansion Act of 2003, H.R. 1776
Summary – Prepared by TCRS

• The provision requiring the waiver of the pre-retirement survivor annuity for participants to be made after attaining age 35 would be repealed. Waivers made prior to age 35 would be valid. (807)
• The $5,000 small cash-out limit would be subject to a cost-of-living adjustment. (808)
• The provision that requires catch-up contributions to be offered under all plans of all employers in a controlled group or affiliated service group would be simplified to exclude newly acquired employees during the transition period in the case of acquisitions. In addition, union employees whose retirement benefits were the subject of good faith bargaining and non-resident aliens with no US source income need not be offered the opportunity to make catch-up contributions. Effective as though included in EGTRRA. (809)
• Would permit a SEP participant to contribute twice what the SEP employer contributes on his or her behalf. This provision would not apply to employers with more than 25 employees or SEPs maintained by state and local governments. (810)
• Would also allow a SEP employer to contribute a uniform dollar amount for all participants rather than the uniform percentage of pay that applies currently. (811)
• SEPs that are not made in connection with the trade or business of the employer are added to the list of exceptions to the tax on non-deductible contributions. (812)
• ERISA would be amended to clarify that a fiduciary who selects the IRA account or annuity and the initial investments in the case of a transfer to such IRA account or annuity, would be subject to the fiduciary rules only with respect to the initial selections, provided the selections are made consistent with guidance provided by the Secretary. Effective as though included in EGTRRA. (813)

DEFINED CONTRIBUTION PLAN PROTECTIONS

• The Bill would require plan administrators to provide investment education notices to participants. The plan administrator would be subject to a penalty of $100 for each occurrence, not to exceed $500,000 per calendar year for willful neglect to provide the notice. (1101)
• A model investment notice would be issued by Treasury. (1101)
• The Bill would prescribe rules dealing with blackout periods and issue model blackout notices. (1102)
• The Bill would provide new diversification rights for participants in plans that hold employer stock. Under the Bill, a defined contribution plan must offer at least 3 investment options in addition to employer stock. (1103)

RETIREE HEALTH

• The Bill would allow retiree health premiums to be paid on a pre-tax basis from retirement payments, putting retirees on the same tax footing as active employees with health plans. (1401)
• Through a mechanism under the plan, the Bill would allow defined contribution plan sponsors to fund a portion of retiree medical expenses on a pre-tax basis. (1402)

MISCELLANEOUS PENSION PROVISIONS

• One-participant plans with less than $250,000 in assets would not need to file Form 5500. “One-participant plan” would be defined to include the owner and his/her spouse, or in the case of partners, if the plan covers only the partners and their spouses. To qualify, no other employees (including leased employees) must be covered in the plan, the company must not be part of a controlled group or affiliated service group and the plan must pass the coverage test. (1202)
• Effective in 2005, the Treasury Secretary would prescribe simplified filing requirements for plans which cover less than 25 participants and which meet requirements similar to one-participant plans. (1202)
• The EPCRS program would be improved by extending the self correction period, expanding the availability to correct insignificant failures and ensuring any tax, penalty or sanction imposed is not excessive in relation to the severity of the failure. (1203)

• The Bill would reduce the basic PBGC premium for new single-employer plans to $5 per individual (currently $19) for the first 5 years of the plan. A reduction also applies to the additional PBGC premium based on a graded scale. (1206)

• The notice and consent period for distributions would be expanded from 30 - 90 days to 30 - 180 days. (1205)

• The Bill would authorize the PBGC to pay interest on overpayments using the same rate used for underpayments. (1208)

• Employees would be allowed to save for retirement planning expenses on a pre-tax basis. Also, qualified group legal services would be treated on a pre-tax preferred basis for taxable years 1/1/04 – 12/31/08. (1104, 1210)

• An excise tax would be imposed on excessive payments to senior executives during the period prior to a company’s bankruptcy. The goal is to prevent executives from draining company assets during this period. (1001)

• Several retirement savings opportunities would be available to employees of tax-exempt organizations and governments, e.g., excess deferred compensation would be redefined, the 10% additional tax for early distributions would not apply to qualified public safety employees, permissive service credits would be allowed, certain rollovers of benefits would be permitted, etc. (901-904)

• Governmental plans (414 (d)) would be exempt from nondiscrimination requirements. (1204)