

Federal Update 2004-25

TO: NCTR Membership  
FROM: Cindie Moore, Washington Counsel  
RE: Good News – 415(m) Plans Will Likely Be Exempted from Proposed  
Deferred Compensation Rules

As I reported to you in Federal Update 2004-23, provisions in corporate and international tax reform legislation passed by the House and Senate would substantially change the rules applicable to nonqualified deferred compensation plans (H.R. 4520, the “American Jobs Creation Act of 2004”). In general, the provisions would tax immediately amounts deferred (including earnings) under a nonqualified deferred compensation plan unless certain requirements were satisfied. The proposed legislation targets primarily voluntary salary and bonus deferrals by executives of for-profit corporations, but apparently would also apply to Section 415(m) plans. Public pension representatives met with staff of the tax writing committees in an effort to ensure 415(b) plans were exempt.

Section 415(m) plans have acquired a variety of names, such as excess benefit, spill-overs, slivers, and tag-alongs. Their sole purpose is to provide participants with the portion of their annual benefit otherwise payable under the terms of the defined benefit plan that exceeds the Section 415(b) dollar limits. Typically, benefits under Section 415(m) plans are paid at the same time and in the same form as the employee elects under the underlying qualified plan when the employee retires.

Members of the House and Senate tax writing committees are meeting in conference committee to iron out the differences between their two versions of the bill. **According to the “Chairman’s Mark,” a document released by House Ways and Means Committee Chairman Bill Thomas (R-CA), Section 415(m) plans would be exempted from the changes.** While nothing is final, the appearance of the exemption in the Chairman’s Mark is good news.

The conference committee deliberations are ongoing. They hope to complete the bill before recessing at the end of this week in order to hit the campaign trail. Whether they will make the deadline is unclear. If they do not do so, they will likely continue their work during the lame-duck session after the election. I’ll keep you posted.