MEMO# 10740

February 19, 1999

REPRESENTATIVE POMEROY INTRODUCES PORTABILITIY LEGISLATION

1 See Institute Memorandum to Pension Committee No. 17-98 dated March 26, 1998. [10740] February 19, 1999 TO: PENSION COMMITTEE No. 10-99 RE: REPRESENTATIVE POMEROY INTRODUCES PORTABILITY LEGISLATION

Representative Pomeroy recently introduced H.R. 739, the "Retirement Account Portability Act of 1999." The bill would permit rollovers of accounts among 401(k), 403(b) and 457 plans, rollovers of section 457(b) plans to IRAs, rollovers of IRA contributory accounts to employer-sponsored plans and rollovers of after-tax amounts from pension plans to IRAs. Pomeroy's 1999 portability bill expands his 1998 portability bill by permitting rollovers of all taxable contributory IRA amounts to employer- sponsored plans. Pomeroy's 1998 portability bill would have permitted rollovers of contributory IRA amounts to employer-sponsored plans only in cases where all contributions to a taxpayer's IRAs represented deductible contributions.1 The bill includes the following provisions: A. Portability Issues 1. Rollovers to and from Section 457(b) Plans. The bill would permit rollovers from all section 457(b) plans to IRAs and employer-sponsored plans, including 403(b) and 401(k) plans. In addition, the bill would permit rollovers of 401(k) and 403(b) plan amounts to section 457(b) plans. 2. Rollovers to and from Section 403(b) Arrangements. The bill would permit rollovers of section 457 and 401(k) plans to section 403(b) arrangements and rollovers of section 403(b) amounts to section 457(b) and 401(k) plans. 3. Expanded Section 402(f) Notice. The bill would expand the notification requirement under section 402(f) to include explanations of differences in the provisions of the distributing plan and the receiving plan regarding restrictions and tax consequences applicable to distributions. 4. Rollovers of IRAs to Employer - Sponsored Plans. The bill would generally permit the rollover of contributory IRA accounts into employer-sponsored plans. However, rollovers of contributory IRA accounts would be limited to taxable amounts, i.e., nondeductible contributions to IRAs and after-tax contributions would not be eligible for rollover to plans. 5. Rollovers of After -Tax Contributions. The bill would permit after-tax contributions to employer-sponsored plans to be rolled to an IRA. 6. Relief from Anti-Cutback Rules for Individuals Transferring Assets Between Defined Contribution Plans. The bill would provide that a defined contribution plan (transferee plan) would not be deemed to fail to meet the requirements of section 411(d)(6) merely because the transferee plan does not provide some or all of the forms of distributions available under the previous defined contribution plan (the transferor plan). Such relief would be available under the following conditions: (1) the transfer is effected via a direct transfer and not a distribution from the transferor plan; (2) the terms of the transferee and transferor plan authorize the transfer; (3) the transfer is made pursuant to a voluntary election by the beneficiary whose account is transferred; (4) the election was made after the participant received a notice describing the consequences of the transfer;

(5) if the transferor plan provides for a joint and survivor annuity distribution, the transfer is made with the consent of the participant's spouse; and (6) the transferee plan allows the participant to take a lump sum distribution. B. Other Issues 1. Faster Vesting of Employer Matching Contributions. The bill would require employer matching contributions to vest either upon three years of service or gradually over 6 years. 2. Extension of Missing Participants Program to Defined Contribution Plans. The bill would expand the Pension Benefit Guaranty Corporation's Missing Participants Program to sponsors of defined contributions plans and multi-employer defined benefit plans. Under the program, plan sponsors may elect to transfer benefits of former employees whom they are unable to locate to the PBGC's Missing Participants Program. 3. Waiver of 60-day Rollover Rule. The bill would permit the Secretary of the Treasury to waive the 60-day rollover rule applicable to IRA rollovers in cases where the rule would be against equity or good conscience, including casualty, disaster or other events beyond the control of the individual subject to the rule. 4. Employers May Disregard Rollovers for Purposes of Cash-Out Rule. The bill would permit employers to disregard rollover amounts when determining whether the accrued, vested benefits exceed the $5,000 cash-out rule. A copy of the bill is attached. Kathryn A. Ricard Assistant Counsel Attachment