

**MEMO# 11315**

October 19, 1999

## **PENSION REFORM MEASURES INCLUDED IN MINIMUM WAGE BILL**

1 See Memorandum to Pension Members No. 31-99, Tax Committee No. 21-99, Transfer Agent Advisory Committee No. 53-99, Operations Committee No. 32-99 and Investment Advisers Committee No. 10-99, dated August 13, 1999. 2 See Memorandum to Pension Committee No. 50-99 and Pension Operations Advisory Committee No. 38-99, dated August 2, 1999, describing the Senate version of H.R. 2488, the "Taxpayer Refund Act of 1999" (herein, "the Senate tax bill"). [11315] October 19, 1999 TO: PENSION COMMITTEE No. 60-99 PENSION OPERATIONS ADVISORY COMMITTEE No. 47-99 RE: PENSION REFORM MEASURES INCLUDED IN MINIMUM WAGE BILL

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Representative Lazio (R-NY) has introduced H.R. 3081, "The Wage and Employment Growth Act of 1999," which includes all of the pension reform measures previously included in Title XII of H.R. 2488, the tax bill vetoed by the President in September. For details on these provisions, please refer to the Institute's memorandum on the tax bill.<sup>1</sup> H.R. 3081 does not include the IRA expansion or education-related provisions that were in the tax bill. The bill does, however, include a number of additional provisions that originally appeared in either the House or Senate versions of the tax bill (prior to changes made at conference), H.R. 1102 (the "Portman-Cardin bill"), or other previously introduced legislation such as S. 741 (the "Graham-Grassley bill"), but did not appear in the final version of the tax bill. These include the following:

1. Periodic Pension Benefits Statements. The bill would require the plan administrator of a defined contribution plan to furnish a benefit statement to each participant at least once annually and to a beneficiary upon written request. Defined benefit plan administrators would be required to furnish benefit statements annually upon request, as under current law, and additionally, at least once every 3 years to each participant who is currently employed by the employer. Alternatively, in the case of a defined benefit plan, the plan administrator may annually furnish written or electronic notice to each participant of the availability of such statements. In either case, the statement must indicate total benefits accrued, the amount vested, the earliest date on which benefits will become vested, and must be written in a manner calculated to be understood by participants. The statement may be furnished in written, electronic, telephonic or other appropriate form. Section 344; see section 351 of the Senate tax bill.<sup>2</sup>
2. Civil Penalties For Breach of Fiduciary Responsibility. The bill would modify ERISA section 502(l) to provide the Department of Labor discretionary authority with respect to

<sup>3</sup> See Memorandum to Pension Committee No. 14-99 and Pension Operations Advisory Committee No. 14-99, dated March 16, 1999. <sup>4</sup> See Memorandum to Pension Committee No. 23-99 and Pension Operations Advisory Committee No. 23-99, dated April 5, 1999. <sup>5</sup> See Memorandum to Pension Committee No. 46-99 and Pension Operations Advisory Committee No. 36-99, dated July 28, 1999, describing H.R. 2488, the "Financial Freedom Act of 1999" (herein, "the House tax bill").

the imposition of civil penalty amounts. Section 345; see section 404 of the Portman-Cardin bill.<sup>3</sup> 3. Technical Corrections to the Saver Act. The bill would amend section 517 of ERISA to specify the manner in which delegates are to be appointed to the quadrennial National Summit on Retirement Income Savings (the “SAVER Summit”). Section 350; see section 1406 of the Senate tax bill. 4. Model Spousal Consent Language and QDRO. The bill would amend ERISA sections 205(c) and 206(d)(3) to direct the Secretary of Labor to develop model language for spousal consents required under the Act and for qualified domestic relations orders. Section 351. 5. Elimination of ERISA Double Jeopardy. The bill would amend ERISA section 502(h) to bar the Labor and Treasury Departments from instituting litigation in cases where a private action had been brought and settled and the Department had been served a copy of the proposed settlement 90 days before the court approved the settlement. Section 352; see section 408 of the Graham-Grassley bill.<sup>4</sup> 6. Notice and Consent Period Regarding Distributions. The bill would extend to 180 days the 90- day notice period under ERISA sections 203(e) and 205 and direct the Secretary of the Treasury to modify its regulations to provide that the description of a participant’s right, if any, to defer receipt of a distribution also shall describe the consequences of failing to defer receipt. Section 373; see section 1255 of the House tax bill.<sup>5</sup> 7. Annual Report Dissemination. The bill would require the summary annual report, which is presently required to be furnished under ERISA section 104(b)(3), only be made available for examination and be furnished only upon request. Section 374; see section 369 of the Senate tax bill. 8. Excess Benefit Plans. The bill would amend section 3(36) of ERISA to expand the meaning of the term “excess benefit plan” to include a plan maintained solely for the purpose of providing employees benefits in excess of the Internal Revenue Code section 401(a)(17) or 415 limits “or any other limitation on contribution or benefits” under the Code. Section 375; see section 522 of the Portman-Cardin bill. 9. Benefit Suspension Notice. The bill would direct the Secretary of Labor to modify the regulation under ERISA section 203(a)(3)(b) to provide that the notification required to suspend benefit payments may be included in the summary plan description rather than provided in a separate notice. Section 376; see section 523 of the Portman-Cardin bill. In addition to a provision that would increase the minimum wage, the bill also includes provisions, that among other things, would provide estate tax relief and provide a 100 percent deduction for health care costs of self-employed individuals. We have attached the Table of Contents to the bill. For the relevant bill language and a full description of the pension provisions that previously had been included in prior bills and reappear here, please refer to our memoranda on the relevant bills, which are identified in the footnotes. Russell G. Galer Senior Counsel  
Attachment