

MEMO# 10132

July 17, 1998

DEMOCRATIC LEADERSHIP FILES PENSION REFORM LEGISLATION

[10132] July 17, 1998 TO: PENSION COMMITTEE No. 46-98 RE: DEMOCRATIC LEADERSHIP FILES PENSION REFORM LEGISLATION

Congressional

Democratic leaders have filed pension reform legislation, S. 2249 and H.R. 4152, titled the "Retirement Accessibility, Security, and Portability Act of 1998." The bill and a description of the bill, prepared by the bill sponsors, are attached. Many provisions of the bill have been introduced previously in other bills. The bill divides itself into four titles: Pension Access and Coverage, Security, Portability and Comprehensive Women's Pension Protection. It is not expected that this legislation will be enacted in this form this year. Among the provisions in the bill are the following items: I. Pension Access and Coverage 1. Start-up Tax Credit For Small Employers. Small employers who establish a new pension plan would be allowed to claim a credit in an amount up to 50 percent of permissible administrative and educational expenses associated with the plan for the first three years of maintaining the plan. 2. Payroll Deduction IRAs/Nonrefundable Tax Credit For IRA Contributions of Low-Income Workers. An employee would be allowed to make IRA contributions through automatic payroll deductions from wages. Such contributions would be excluded from income to the extent they would have been deductible under Code section 219. Additionally, the bill proposes a tax credit of \$450 for individuals making IRA contributions, if adjusted gross income is no more than \$15,000. The credit would phase out for individuals earning from \$15,000 to \$30,000. 3. Penalty-Free Withdrawals in Cases of Long-Term Unemployment. Section 72(t) would be amended to permit penalty-free withdraws from IRAs, 401(k)s and 403(b)s in cases of long-term unemployment after the individual has received 12 weeks of unemployment compensation. 4. Simplified Defined Benefit Plan For Small Employers. A new small employer plan, the "Secure Money Annuity or Retirement Trust" (SMART), would provide small employers with the option of offering a simplified defined benefit plan. This proposal is similar to the "SAFE" plan proposal that has been introduced in various bills over the past year and is identical to the plan advocated previously by the Administration. 5. Modification of 401(k) Safe Harbors and SIMPLE Plan Contribution Requirements. The 401(k) plan safe harbor formulas would be changed to require that the employer make a minimum contribution of one percent of compensation for each eligible employee in addition to any required matching contributions. Small employers sponsoring SIMPLE plans also would be required to make a similar one-percent, minimum contribution to each eligible employee. II. Security 1. Periodic Benefit Statements. Employers sponsoring defined contribution plans would be required to provide plan participants and beneficiaries with benefit statements reflecting the balance and activity of their accounts at least annually. Employers sponsoring defined benefit plans would be required to provide such statements at least once every three years. 2. Disclosure

Requirements For Non-404(c), 401(k) Plans of Small Employers. Within 60 days after the end of the plan year employers sponsoring 401(k) plans covering less than 100 participants would be required to provide each participant and each beneficiary receiving benefits an "annual investment report." The report would include information regarding plan assets, such as total plan assets and liabilities, plan income and expenses, contributions made, benefits paid, transactions between the plan and certain parties in interest, and any noncash or nonpublicly traded securities contributed to the plan. The Secretary of Labor would be directed to issue regulations defining the precise information to be disclosed in the report. Employers would not be required to make such disclosure to participants described in ERISA section 404(c).

3. Disclosure Requirements To 401(k) Plan Investment Managers. ERISA section 105 would be amended to require plan administrators of 401(k) plans to provide investment managers with any information necessary to enable the manager to separately account at any time for benefits accrued with respect to each participant and beneficiary.

4. Direct Reporting of Plan Irregularities. The bill would require plan administrators and plan accountants to notify the Department of Labor within 5 business days when they determine there is evidence of an irregularity (such as theft, embezzlement or kickbacks) that may have occurred with respect to the plan.

5. Repeal of Limited Scope Audit. The bill would repeal the limited scope audit provision of ERISA. According to the descriptive material prepared by the bill sponsors, the legislation anticipates that plan auditors would review the procedural audits of financial institutions (SAS 70 reports), rather than necessarily re-audit financial institutions holding plan assets. (Limited scope audit repeal appears in the descriptive material, but does not appear in the actual bill.)

III. Portability

1. Faster Vesting of Employers' Matching Contributions. Participants would be fully vested in employer matching contributions to a defined contribution plan after completing three years of service on a cliff vesting schedule or six years of service on a graded vesting schedule.

2. Same Desk Rule Modified. "Severance from employment" -- rather than "separation from service" -- would be a permissible event permitting distribution of account balances to plan participants, enabling rollovers to an IRA or another plan.

3. Defined Contribution Plan Transfers. Relief from the anticutback rules would be provided to enable plan participants voluntarily to elect to transfer their account balance from one defined contribution plan to another without requiring the transferee plan to provide the same distribution options as provided in the transferor plan.

4. Enhanced Portability of 403(b) and 457 Plan Benefits. Individuals would be able to roll account balances to and from 403(b) plans and section 401(a) plans when changing employment. Individuals participating in 457 plans would be permitted to roll their account balances into an IRA upon termination of employment to the extent the 457 plan is a funded arrangement.

IV. Comprehensive Women's Pension Protection

1. Modification of Joint and Survivor Annuity Requirements and Extension to Defined Contribution Plans. The bill would modify the current survivor annuity requirements to require plans subject to the requirement to provide participants the option of a qualified "joint and 2/3 survivor annuity" in which the benefit paid to a surviving spouse is equal to at least 2/3 of the amount of the annuity which is payable during the joint lives of the participant and spouse. Defined contribution plans would be required to offer qualified joint and survivor and preretirement survivor annuities in the same manner as a defined benefit plan. This requirement, however, would not apply in the case of hardship distributions from section 401(k) plans. Additionally, the bill proposes the following rule for lump sum distributions from defined contribution plans: if the present value of the qualified joint and survivor annuity is less than \$10,000, the plan may immediately distribute 50 percent of the present value of the annuity to each spouse.

2. Enhanced Disclosure To Spouses. Code section 417 would be amended to require plans to provide participants' spouses with a copy of the same written explanation that participants receive regarding survivor benefits and options under the

plan. Such notices would be delivered by mail. 3. Enhanced 401(k) Notice of Right to Make Elective Contributions. The bill would require notice of the right to make elective contributions to the plan to be provided before the 60th day before the beginning of the year, rather than, as currently is the case, "within a reasonable period before any year." 4. FMLA Leave Treated As Service. Code section 410(a) and ERISA section 202(a) relating to minimum participation standards would be amended to credit leave taken under the Family and Medical Leave act for purposes of participation and vesting. 5. Repeal of Social Security Integration. Integration would be repealed completely for benefits accrued for plan years beginning in 2004. In the interim, qualified retirement plans which integrate plan benefits with social security benefits would be required to apply the rules included in the Tax Reform Act of 1986 to benefits attributable to plan years beginning on or before December 31, 1988. With regard to SEPs, Code section 408(k)(3)(D) relating to permitted disparity would be repealed. 6. Reform of QDRO Rules. The bill would entitle a former spouse (if married for five or more years) to an automatic share of pension benefits, if the domestic relations order is silent as to pension benefits. The former spouse would be entitled to 50% of the benefit accrued under the plan starting at the date of marriage and ending with the date of divorce; in cases where a participant fails to provide notice of the divorce to the plan administrator within 60 days of the divorce, the former spouse would be entitled to 67%, rather than 50%, of the accrued benefit. After receiving participant notice of the divorce, the plan administrator would be required to issue notice to the former spouse of his or her rights under the plan. Following receipt of such notice, the former spouse would be required to notify the plan of the intent to claim the benefit within one year of receiving the notice.

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