

MEMO# 10165

August 4, 1998

ADDITIONAL PENSION PORTABILITY LEGISLATION FILED

1 H.R. 3503. See Institute Memorandum to Pension Committee No. 17-98, dated March 26, 1998. 2 H.R. 3788. See Institute Memorandum to Pension Committee No. 27-98, dated May 7, 1998. 3 S. 2339. See forthcoming Institute Memorandum to Pension Committee. 4 According to the statement in the Congressional Record, which is attached, individuals with Roth IRAs also would not be permitted to avail themselves of this rollover provision. [10165] August 4, 1998 TO: PENSION COMMITTEE No. 49-98 RE: ADDITIONAL PENSION PORTABILITY LEGISLATION FILED

Senators
Jeffords (R-VT), Bingaman (D-NM) and Graham (D-FL) recently introduced S. 2329, titled the "Retirement Account Portability Act of 1998." This legislation seeks to enhance the portability of retirement benefits. Similar proposals have been included in bills previously filed by Representative Pomeroy (D-SD)¹ and Representatives Portman (R-OH) and Cardin (D-MD)² and in a larger pension reform bill recently filed by Senators Graham (D-FL) and Grassley (R-IA).³ Included among the bill's provisions are the following: I. Enhanced Individual Account Portability. The bill would permit the rollover of "eligible rollover distributions" from a 401(k) plan to another section 401(k) plan, 403(b) arrangement, section 457 plan, or IRA. Likewise such distributions from a 403(b) arrangement or 457 plan could be rolled over to the same array of retirement vehicles. Under the bill, rules regarding 20% withholding would not apply to section 457 plans. The written notice required to be provided under Code section 402(f) when an "eligible rollover distribution" is made would be expanded to apply to section 457 plans and to include a description of restrictions and tax consequences which will be different if the plan to which amounts are transferred is a different type of plan from the distributing plan. II. Rollover of IRAs to Qualified Plans. The bill would permit the rollover of IRAs into a 401(k) plan, 403(b) arrangement or a section 457 plan to the extent an individual has never made any nondeductible contribution to his or her IRA.⁴ III. Rollover of After-tax Contributions. The bill would permit the rollover of after-tax contributions to be included in a rollover contribution to an IRA or qualified retirement plan. Unlike requirements set forth in H.R. 3503, trustees would not be required to separately track or report these amounts. - 2 - IV. Modification of 60-Day Rollover Rule. The bill would permit the Department of Treasury to waive the 60-day rollover requirement in cases of a Presidentially-declared natural disaster, military service within a combat zone, undue hardship, such as serious personal injury or illness. V. Modification of the Same Desk Rule. The bill would modify the "same desk" rule that applies to distributions from 401(k) plans. Under current law, a "separation from service" is a distributable event. Under the "same desk" rule, however, the law has been interpreted to prohibit distributions to a terminated employee if the employee continues performing the same functions for a successor employer. To address this issue, the bill would replace the phrase "separation

from service” with “severance from employment.” This would enable employees to transfer funds to the new employer plan rather than being required leave their account balance with their prior employer. VI. Modification of Retirement Plan Distribution Options. The bill would modify the Code section 411(d)(6) “anti-cutback” rule to permit an employee to waive his or her section 411(d)(6) rights and transfer benefits from one defined contribution plan to another without requiring the transferee plan to preserve the forms of benefit options offered by the transferor plan. VII. Lump Sum Cash-out Rule Modification. The bill would allow plan sponsors to disregard rollover amounts received by their plans when determining a terminated employee’s eligibility for the involuntary cash-out rule. Under the cash-out rule, an employer may distribute, without terminated employee election, the individual’s vested accrued benefit if the benefit does not exceed \$5,000. A copy of the bill is attached. Russell G. Galer Senior Counsel Attachments

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