MEMO# 14428

February 6, 2002

REPRESENTATIVES PORTMAN AND CARDIN INTRODUCE H.R. 3669, THE "EMPLOYEE RETIREMENT SAVINGS BILL OF RIGHTS," IN HOUSE OF REPRESENTATIVES

[14428] February 6, 2002 TO: PENSION COMMITTEE No. 6-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 10-02 RE: REPRESENTATIVES PORTMAN AND CARDIN INTRODUCE H.R. 3669, THE “EMPLOYEE RETIREMENT SAVINGS BILL OF RIGHTS,” IN HOUSE OF REPRESENTATIVES On February 4, 2002, Representatives Rob Portman (R-OH) and Benjamin Cardin (D- MD) introduced H.R. 3669, the “Employee Retirement Savings Bill of Rights” (the “Bill”). The Bill would make certain changes to the Internal Revenue Code and ERISA1 “to empower employees to control their retirement savings accounts through new diversification rights, new disclosure requirements, and new tax incentives for retirement education.” A copy of the Bill is attached. Requirement of Notice of Generally Accepted Investment Principles New section 4980G of the Code generally would impose a tax of $100 per individual for the failure of a plan administrator to provide a notice of “generally accepted investment principles” to participants, alternate payees and beneficiaries of qualified plans, 403(a) annuities, 403(b)s, SEPs, SIMPLEs, and 457(b) plans that base their accrued benefits on actual or hypothetical participant direction. The required notice would (1) include principles of risk management and diversification; (2) be written in a manner calculated to be understood by the average plan participant; and (3) be provided upon enrollment in the plan and at least once per plan year thereafter. The Bill would also direct the Secretary of the Treasury (in consultation with the Secretary of Labor) to issue rules or other guidance and a model notice within 120 days after the date of enactment. The new provision would be effective 60 days after the adoption of the rules or other guidance (including the model notice). Requirement of Notice of “Transaction Restriction Periods” New section 4980H of the Code generally would impose a tax of $100 per individual for failure of a plan administrator to provide at least 21 days’ advance notice of any “transition restriction period” to affected participants, alternate payees and beneficiaries of qualified plans, 403(a) annuities, 403(b)s, and 457(b) plans that base their accrued benefits on actual or 1 The Bill would provide for a conforming amendment to section 407 of ERISA in connection with the diversification rules described below. 2 hypothetical participant direction. The Bill would define the term “transaction restriction period” as a temporary or indefinite period of at least three consecutive business days during which the rights of one or more individuals to direct investments, or to obtain loans or distributions, are substantially reduced (other than by reason of the application of securities laws). In

addition, the Bill would provide that any significant restrictions upon employees' rights to direct investments out of employer securities for at least three consecutive business days would cause their rights to be treated as substantially reduced. The Bill would direct the Secretary of the Treasury to prescribe regulations providing other circumstances under which individuals' rights are substantially reduced. The required notice would (1) be written in a manner calculated to be understood by the average plan participant; and (2) provide sufficient information (as determined in accordance with rules or other guidance adopted by the Secretary of the Treasury) to allow affected individuals to understand the timing and effect of the transaction restriction period. In the case of the reduction of rights to direct investments out of employer securities, the Secretary would be directed to consult with the Secretary of Labor and to issue guidance within 60 days after the date of enactment. Special rules would apply to the disposition of substantially all of the stock of a subsidiary or all of the assets of a trade or business and to unforeseeable events. The new provision would become effective 60 days after the adoption of the guidance with respect to restrictions relating to employer securities. Diversification Rights New Code section 401(a)(35) would add to the plan qualification rules diversification rights for participants in defined contribution plans that hold employer securities that are readily tradable on an established securities market.2 Under the bill, (1) elective deferrals invested in employer securities could be directed to other investment options; (2) matching contributions invested in employer securities could be directed to other investment options after the participant had three years of service; and (3) other types of employer contributions (non-elective contributions) invested in employer securities could be directed to other investment options after the participant had five years of service. Although the provision would be effective for plan years beginning after December 31, 2002, the diversification rules would be phased in over a five-year period in order to avoid adverse effects on stock prices. Tax Treatment of Qualified Retirement Planning Services Section 5 of the Bill would amend section 132(m) of the Code, which defines "qualified retirement planning services," to provide that employees could choose to pay for the cost of retirement planning services on a pre-tax basis. Highly compensated employees would be permitted to make use of the provision only if the choice were available on substantially the same terms to each member of the group of employees normally provided education and 2 The new rules would not apply to employee stock ownership plans that are not subject to Code section 401(a)(28) by reason of section 1175(a)(2) of the Tax Reform Act of 1986. 3 information regarding the employer's plan. This provision would be effective for years beginning after December 31, 2002. Kathy D. Ireland Associate Counsel Attachment Attachment (in .pdf format)
