

MEMO# 10424

October 27, 1998

NATIONAL COMMISSION ON RETIREMENT POLICY CHAIRMEN INTRODUCE PENSION REFORM LEGISLATION

1 See Institute Memorandum to Pension Committee No. 48-98, dated July 29, 1998. 2 See Institute Memorandum to Pension Committee No. 35-98, dated June 11, 1998. [10424]
October 27, 1998 TO: PENSION COMMITTEE No. 72-98 RE: NATIONAL COMMISSION ON RETIREMENT POLICY CHAIRMEN INTRODUCE PENSION REFORM LEGISLATION

Representatives Kolbe (R-AZ) and Stenholm (D-TX) and Senators Gregg (R-NH) and Breaux (D-LA) recently introduced H.R. 4823 in the House and S. 2635 in the Senate, titled the "21st Century Retirement Savings Act." This bill, which contains pension reform proposals described below, is a companion to a previously filed bill, which proposed reforms to social security.¹ Both bills are based on recommendations made in the report of the bipartisan National Commission on Retirement Policy, which was published in May, 1998.² The bill includes the following proposals, many of which are part of the Institute's legislative agenda:

INDIVIDUAL ACCOUNT PORTABILITY. The bill would enable individuals to roll over assets to and from 401(k), 403(b) and 457 plan accounts (in the form of a direct rollover or via a conduit IRA). The bill also would permit the rollover of (non-conduit) IRAs into 401(k), 403(b) and 457 plans to the extent that all contributions to all IRAs of the individual were allowed as a deduction under section 219. In other words, individuals with any nondeductible contributions would not be permitted to rollover any of their (non-conduit) IRA assets into an employer-sponsored plan.

ROLLOVER OF AFTER-TAX CONTRIBUTIONS. The bill would permit the rollover of after-tax contributions if the portion of the rollover that otherwise would have been includible in income is reported by the trustee and the plan to which it is paid agrees to report the amount in any subsequent distribution.

IRA CATCH-UP CONTRIBUTIONS. The bill would amend section 408 to permit individuals whose modified adjusted gross income does not exceed \$50,000 to make nondeductible "catch-up" contributions to an IRA. Specifically, if no contribution was made on behalf of the individual to a pension, profit-sharing or stock bonus plan for any of the five years preceding the calendar year in which the catch-up period begins, an individual would be permitted to make catch-up contributions of up to \$2,000 annually for a five-year period.

REPEAL OF 25 PERCENT OF COMPENSATION LIMITATION. The bill would amend section 415 to eliminate the 25 percent of compensation limitation on contributions to defined contribution plans.

NEW EMPLOYER PENSION PLANS MUST BE 401(K) PLANS AND NOT 403(B) OR 457 PLANS. This proposal would make all employers (including state and local governments and tax-exempt - 2 - organizations, to the extent now not eligible) eligible to establish a section 401(k) plan for their employers and would require that the establishment of any new plan be in the form of a 401(k) plan, rather than a 403(b) or 457 plan.

ANTICUTBACK RULE

MODIFIED WITH RESPECT TO CERTAIN TRANSFERS BETWEEN DEFINED CONTRIBUTION PLANS. The bill would amend section 411(d)(6) to permit a transfer between two defined contribution plans, regardless of whether the transferee plan provides the same forms of distribution previously available under the transferor plan to the extent the following conditions are met: (1) each plan permits the transfer, (2) the transfer is in the form of a direct transfer and not pursuant to a distribution from the transferor plan, (3) the transfer is made pursuant to a voluntary participant election made after the participant is provided a notice describing the consequences of the election, and (4) if the transferor plan provides for a section 417 annuity, the transfer is made only with spousal consent. SAME DESK RULE MODIFIED. The bill would modify sections 401(k)(2)(B)(i)(I), 403(b)(11) and 457(d)(1)(A) of the Internal Revenue Code by striking the term "separation from service" and substituting "severance from employment." For 401(k) plans, the "business sale requirements" at section 401(k)(2)(B)(i)(II) would be deleted. TAX CREDIT FOR START-UP COSTS OF SMALL EMPLOYER PLANS. Small employers of under 100 employees that establish a qualified employer plan before January 1, 2001 would be able to claim a tax credit for up to 60 percent of start-up costs in the first year of the plan and 50 percent of such costs for the second and third years. The maximum amount of the credit would be \$2,000 in year one and \$1,000 in each of years two and three. Start-up costs would include costs paid or incurred in connection with the establishment and administration of the plan or in connection with retirement-related education of employees with respect to the plan. SMALL EMPLOYER DEFINED BENEFIT PLANS. The bill would create a new, simplified defined benefit plan, called the "SAFE Annuity or Trust", for small employers of under 100 employees. FASTER VESTING OF EMPLOYER MATCHES. The bill would accelerate plan vesting schedules for employer matching contributions by substituting a three-year cliff requirement for the current five-year rule and shortening the alternative graded vesting schedule to a six-year schedule. PERIODIC BENEFIT STATEMENTS. The bill would amend ERISA section 105(a) to require plan sponsors to furnish benefit statements annually to defined contribution plan participants and once every three years to defined benefit plan participants. The statements could be furnished in written or electronic form. Plan Correction Procedures. For stock bonus, pension and profit-sharing plans, the bill would establish procedures and sanctions for correcting plan violations of section 401(a). The IRS would not be permitted to impose sanctions for violations cured before the close of an IRS audit of the plan. The IRS could impose "intermediate sanctions," as defined in the bill, if the violation is not corrected before the close of a plan audit. After the close of an audit, the IRS would be permitted to make a final determination with regard to whether or not a plan remains qualified under section 401. Russell G. Galer Senior Counsel - 3 - Attachment