

MEMO# 23143

December 23, 2008

ICI Comment Letter On IRS Proposed Regulation under IRC 411(a)(11)

[23143]

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TO: PENSION COMMITTEE No. 33-08

PENSION OPERATIONS ADVISORY COMMITTEE No. 33-08 RE: ICI COMMENT LETTER ON
IRS PROPOSED REGULATION UNDER IRC 411(a)(11)

As we previously informed you, [\[1\]](#) the Internal Revenue Service proposed regulations under section 411(a)(11) of the Internal Revenue Code reflecting section 1102(b) of the Pension Protection Act. These regulations will require that the description of a participant's right, if any, to defer receipt of a distribution also include the consequences of failing to defer receipt. The IRS proposal details what must be in the notice.

The proposed rule overrules the safe harbor in Notice 2007-7, which required significant investment- and fee-related information, largely duplicative of the information already provided to participants. [\[2\]](#) The Institute had requested that IRS reconsider this aspect of Notice 2007-7. Under the proposal, participants are provided instead with

- a statement that some currently available investment options in the plan may not be generally available on similar terms outside the plan and contact information for obtaining additional information on the general availability outside the plan of currently available investment options in the plan; and
- a statement that fees and expenses (including administrative or investment-related fees) outside the plan may be different from fees and expenses that apply to the participant's account and contact information for obtaining additional information on the fees and expenses that apply to the participant's account.

Comments on the proposal are due January 7, 2008. To date we have not received any comments from members.

Unless Committee members identify any other issues, the Institute plans to send a short

comment letter recommending that the IRS retain the generic language in the proposal relating to investments and fees.

If you have any issues you would like raised in a comment letter, please contact the undersigned (mhadley@ici.org, 202-326-5810) by January 2, 2009.

Michael L. Hadley
Associate Counsel

endnotes

[\[1\]](#) See Memorandum to Pension Members No. 64-08 [22985], dated October 9, 2008.

[\[2\]](#) See Memorandum to Pension Members No. 1-07 [20783], dated January 12, 2007.

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