

MEMO# 11939

June 9, 2000

IRS RELEASES ADDITIONAL GUIDANCE ON HARDSHIP ROLLOVER DISTRIBUTIONS

1 See Institute Memorandum to Pension Members No. 80-98, dated December 28, 1998. Notice 99-5 had provided transition relief for 1999 from section 6005(c)(2)(A) of the Internal Revenue Service Restructuring and Reform Act of 1998, which made hardship distributions described in Code section 401(k)(2)(B)(i)(IV) (in general, contributions attributable to employee elective salary deferrals) ineligible for rollover. That Notice also provided interpretive guidance regarding certain types of contributions, as discussed herein. [11939] June 9, 2000 TO: PENSION MEMBERS No. 31-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 40-00 RE: IRS RELEASES ADDITIONAL GUIDANCE ON HARDSHIP ROLLOVER DISTRIBUTIONS

The Internal Revenue Service issued Notice 2000-32, which provides additional relief relating to the definition of eligible rollover distribution for certain hardship distributions. This guidance is in response to relief requested by the Institute. The Institute continues to seek broader legislative change beyond the reform provided in this Notice that would provide uniform treatment of all portions of hardship distributions with respect to rollover eligibility. Specifically, Notice 2000-32 provides relief from interpretive rules set forth in the Service's previous guidance, Notice 99-5,¹ regarding pre-1989 contributions, hardship distributions made under the terms of a plan that could be distributable under another statutory provision, and the allocation of basis between portions of hardship distributions eligible for rollover and those ineligible. Pre-1989 Contribution Amounts. Notice 2000-32 provides that if a qualified plan's records are not reasonably available to segregate an employee's pre-1989 401(k) contribution amounts from other amounts that, as of July 1, 1989, were credited to the employee's account, the plan must treat the other amounts as ineligible for rollover when distributed on account of hardship — consistent with the treatment of amounts described in Code section 401(k)(2)(B)(i)(IV). Satisfaction of Another Distribution Event. Notice 2000-32 allows an alternative method to that provided in Notice 99-5 in addressing situations where another event, such as an employee's separation from service or attainment of age 59½, has occurred that could entitle a recipient to a distribution without regard to hardship under Code sections 401(k)(2)(B)(i)(IV) and 403(b)(7) or (11). The new rule offers the alternative of treating such amounts as ineligible for rollover. Parties, however, may continue to follow the rule provided in Notice 99-5. The new rule is effective until "further guidance is issued." Allocation of Basis. The Notice provides that if a portion of a hardship distribution from a qualified plan or a section 403(b) annuity is not includible in gross income, the portion of the distribution that is not includible in gross income may be allocated to the portion ineligible for rollover or the portion eligible for

rollover (or between the two portions) using “any reasonable method.” This rule also is effective until further guidance is issued. Finally, Notice 2000-32 provides that a qualified plan or section 403(b) annuity generally must, in applying the rules set forth in Notice 2000-32, be consistent in the treatment of all distributions. Thomas T. Kim Assistant Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment referred to in this Memo, please call the ICI Library at (202) 326-8304, and ask for attachment number 11939. ICI Members may retrieve this Memo and its attachment from ICINet (<http://members.ici.org>).

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