

MEMO# 16674

October 16, 2003

DRAFT COMMENT LETTER REGARDING PROPOSED 401(K) REGULATIONS

[16674] October 16, 2003 TO: PENSION COMMITTEE No. 40-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 69-03 RE: DRAFT COMMENT LETTER REGARDING PROPOSED 401(K) REGULATIONS Earlier this year the Internal Revenue Service issued proposed regulations setting forth the requirements for cash or deferred arrangements under Code section 401(k) and matching or employee contributions under Code section 401(m).¹ These proposed regulations are generally intended to restate and consolidate prior guidance on 401(k) plans, as well as reflect the legislative changes that have been enacted since the existing final regulations were last amended in December 1994. In the attached comment letter, which reflects member comments made during our recent conference call on this issue, the Institute urges the following: Calculation of gap period income. Clarify that the gap period does not include the date of distribution, i.e., the date a check is issued to a plan participant, for purposes of determining earnings on gap period income. Notice of automatic enrollment. Clarify that notices regarding automatic enrollments may be provided as part of the general notices and information given to eligible participants about participating in the plan. Tax treatment of corrective distributions. Amend the provision addressing the tax treatment of corrective distributions in the proposed regulations to use the same language as the corresponding provision of the existing regulations, which the Institute urges will more clearly and accurately reflect income. Amendments to change ADP and ACP testing provisions. Clarify that a plan has at least until the end of the 2 ½ month period immediately following the close of the plan year to incorporate amendments regarding ADP and ACP testing. QNECs/QMACs and combination of corrections methods. Eliminate a requirement that when a combination of methods is used to correct an ADP failure, any qualified 1 See Institute Memorandum (No. 16324) to Pension Members No. 34-03 and Pension Operations Advisory Committee No. 44-03, dated July 18, 2003. You may view the press release and proposed regulations on Treasury's website at: <http://www.treas.gov/press/releases/js567.htm>. Scroll to the bottom of the press release page and click on the link to the proposed regulations. 2 nonelective or qualified matching contribution must be taken into account before distributing excess contributions or recharacterizing excess contributions. Electronic submissions. Permit plans to use electronic media to provide notices and information to plan participants. Comment letters must be submitted to the IRS by October 22, 2003. Please provide me with any changes to this draft by Tuesday, October 21, 2003 at 4:00 p.m. EDT. You may contact me at 202-326-5835 or lrobinson@ici.org. Lisa Robinson Assistant Counsel Attachment (in .pdf format)

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