

MEMO# 8697

March 7, 1997

IRS RELEASES ADDITIONAL GUIDANCE ON SBJPA AMENDMENT TO SECTION 401(A)(9)

1 In prior guidance, the IRS addressed the application of the change in law to individuals attaining age 70½ in 1996 and to minimum distribution payments of active employees received in 1996. See Institute Memorandum to Pension Members No. 68-96, dated December 26, 1996. March 7, 1997 TO: PENSION MEMBERS No. 13-97 PENSION OPERATIONS ADVISORY COMMITTEE No. 8-97 RE: IRS RELEASES ADDITIONAL GUIDANCE ON SBJPA AMENDMENT TO SECTION 401(a)(9)

The Internal Revenue Service has issued additional guidance with regard to the Small Business Job Protection Act of 1996 (SBJPA) amendment to Internal Revenue Code section 401(a)(9). The SBJPA provided that qualified retirement plans no longer must make required minimum distributions to individuals attaining age 70½ but still employed by the employer. Announcement 97-24 provides that employers need not first amend their plan documents before offering to such employees the option to defer commencement of benefit distributions.¹ This Announcement enables employers to implement the SBJPA amendment, but to delay making a formal plan amendment to reflect implementation. Future guidance will require that employers amend their plans retroactively within a time frame to be established in that guidance. Please note, Announcement 97-24 also applies to employers who have adopted a master or prototype plan, although the IRS warns that if a conforming amendment is not made available under the prototype document, such plans may lose prototype status. The IRS has yet to clarify the ability of an employer to eliminate the option to receive in-service distributions after age 70½. If a plan amendment eliminating this option is applied to benefits accrued prior to the amendment, it may violate section 411(d)(6). The Service is currently reviewing this issue. This Announcement also does not address the conditions under which employers may offer employees who are already receiving minimum distributions the option of stopping further receipt until after retirement. Future guidance is anticipated on this point. We will keep you informed of developments. Russell G. Galer Assistant Counsel - Pension Attachment (in .pdf format) Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 8697.

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