

**MEMO# 12810**

October 31, 2000

## **INSTITUTE SUBMITS COMMENT LETTER ON PROPOSED PLAN LOAN REGULATIONS**

[12810] October 31, 2000 TO: PENSION COMMITTEE No. 81-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 80-00 OCTOBER 11TH CONFERENCE CALL PARTICIPANTS RE: INSTITUTE SUBMITS COMMENT LETTER ON PROPOSED PLAN LOAN REGULATIONS The Institute has submitted a comment letter to the Internal Revenue Service to address (1) the impact of the Electronic Signatures in Global and National Commerce Act (E-SIGN) on final plan loan regulations, which were published on July 31, 2000; (2) issues arising from proposed regulations regarding multiple loans and loan refinancing, which also were issued on July 31;<sup>1</sup> and (3) the availability of plan loans in section 457 plans. The comment letter is based on concerns raised on an October 11th conference call and member review of a draft letter distributed earlier this month.<sup>2</sup> The Institute comment letter first addresses the applicability of E-SIGN to loan processing, stating that the E-SIGN legislation should enable plans to enter into loan agreements with plan participants electronically and to produce, execute and process all necessary loan documentation, including any required spousal consents and related notarizations electronically. We also state, however, that it is unclear whether the consumer consent provision in the E-SIGN legislation applies to plan loans. Additionally, we note that even if the consumer consent provision is applicable, the Service has authority under E-SIGN to exempt notices and disclosures required under the tax code from the consumer consent requirement. Second, we make several comments regarding the proposed regulations on multiple loans and loan refinancing. With respect to multiple loans, we address proposed requirements regarding loans issued to a participant after a default on a previously issued loan and a proposed two-loan-per-year limitation. With respect to loans issued after a loan default, we explain that few plan fiduciaries would be likely to undertake the burden of obtaining additional security for a loan, as proposed. We also note that 403(b) providers would have 1 For both the final and proposed regulations, see Institute Memorandum to Pension Members No. 41-00 and Pension Operations Advisory Committee No. 59-00, dated August 2, 2000. 2 See Institute Memorandum to Pension Committee No. 79-00, Pension Operations Advisory Committee No. 76-00 and October 11th Conference Call Participants, dated October 20, 2000. 2 additional difficulty in complying with the proposed rule, because they are less able to obtain loan repayment via employer payroll withholding. Finally, we question the need for these proposed regulations in light of the current statutory and regulatory limitations on the maximum loan amount available to participants. With respect to the proposed two-loan-per-year limitation, we state that, as a practical matter, many plans already limit the number of loans that may be obtained by a participant and that, therefore, a limitation imposed by regulations may be unnecessary. At a minimum, we recommend that the rule accommodate plans that already have loan

limitations in place. Second, we ask the Service to clarify that the limit would apply on a plan-by-plan basis and, in the case of 403(b) contracts, on a contract-by-contract basis. We also ask the Service to clarify whether a loan refinancing would count against the proposed two-loan limit. With respect to the proposed rules on loan refinancing, we note the complex nature of the proposal and ask the Service to delay the effective date to assure that employers and service providers have adequate time to make necessary software and systems modifications and develop effective communications materials. Third, we ask the Service to clarify that governmental employers are permitted to offer loans to employees participating in section 457(b) plans in a manner consistent with section 72(p). Russell G. Galer Senior Counsel Attachment Attachment (in .pdf format)

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