

**MEMO# 10285**

September 16, 1998

# **INSTITUTE REQUESTS TREASURY EXPEDITE GUIDANCE ON 401(K) PLAN DESIGN-BASED SAFE HARBORS**

[10285] September 16, 1998 TO: PENSION COMMITTEE No. 61-98 RE: INSTITUTE REQUESTS  
TREASURY EXPEDITE GUIDANCE ON 401(k) PLAN DESIGN-BASED SAFE HARBORS

The Institute has submitted a letter to the Department of Treasury and the Internal Revenue Service requesting that guidance regarding the implementation of section 401(k) plan design-based safe harbor formulas be expedited in order that plans may elect to use the safe harbor formulas starting January 1, 1999, as permitted by statute. The Small Business Job Protection Act of 1996 provides that plans may use one of two safe harbor formulas in lieu of satisfying nondiscrimination rules, effective for years beginning after December 31, 1998. Plans electing to use the safe harbor formulas must provide plan participants with a written notice of the election and relevant participant rights within a "reasonable period before any year." Presently, there is no guidance regarding the notice period. The Institute in its letter explains that guidance is needed expeditiously on this matter in light of the amount of time plan sponsors need to consider, draft and implement plan amendments and to provide required timely notice to employees. The letter notes that prototype plan sponsors need additional time, because of the need to draft, print and notify employers of the availability of the safe harbor options under their plans. A copy of the letter is attached. Russell G. Galer Senior Counsel Attachment

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