

MEMO# 13579

June 5, 2001

IRS NOTICE CONCERNING INCLUSION OF ELECTIVE REDUCTIONS FOR QUALIFIED TRANSPORTATION FRINGES IN "COMPENSATION"

[13579] June 5, 2001 TO: PENSION MEMBERS No. 22-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 37-01 RE: IRS NOTICE CONCERNING INCLUSION OF ELECTIVE REDUCTIONS FOR QUALIFIED TRANSPORTATION FRINGES IN "COMPENSATION" The Internal Revenue Service has released Notice 2001-37, which provides guidance relating to amendments made to sections 403(b)(3), 414(s)(2), and 415(c)(3) of the Internal Revenue Code by the Community Renewal Tax Relief Act of 2000 ("CRA"). The CRA amendments change the "compensation" definitions in these sections to reflect the amount of the compensation reduction elected for qualified transportation fringes that is not includible in gross income by reason of section 132(f)(4) of the Code. Although the CRA amendments to section 403(b)(3), 414(s) and 415(c)(3) are retroactively effective for years beginning after December 31, 1997, the Notice provides that qualified plans must be operated in accordance with the amendments for plan and limitation years beginning on or after January 1, 2001. Plan amendments that are needed as a result of the CRA amendments must be adopted within the GUST remedial amendment period.¹ The Notice states that plan amendments must be effective no later than the first day of the first plan and limitation years beginning on or after January 1, 2001, and notes that qualified plans will not be disqualified solely on account of a failure to reflect the CRA amendments in form or operation for prior years. Retroactive amendments will be necessary, however, if the plan operated in accordance with sections 414(s) and 415(c)(3) as amended with respect to prior years. In addition, the Notice includes model amendments that may be adopted by sponsors of individually designed plans and used by sponsors and adopters of prototype plans. According to the Notice, sponsors of prototype plans that have not yet been approved for GUST may incorporate the model provisions in adoption agreements. Sponsors of prototype plans that have been approved may provide the model amendments to adopting employers as supplements to the approved adoption agreements. ¹ For general information about the GUST remedial amendment period, see Institute Memorandum to Pension Members No. 33-00 and Pension Operations Advisory Committee No. 41-00, dated June 15, 2000. ² The Notice also provides that a 403(b) plan that is required to satisfy the nondiscrimination requirements of section 403(b)(12) must be operated in accordance with the CRA amendments in years beginning on or after January 1, 2001. According to the Notice, exclusion allowances for employees who participate in section 403(b) plans need not be recalculated under section 403(b)(2) on account of the CRA amendments for years before January 1, 2001. A copy of the Notice is attached. Kathy D. Ireland Associate Counsel

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