

**MEMO# 14276**

December 21, 2001

# **IRS GUIDANCE ON CATCH-UP CONTRIBUTION UNIVERSAL AVAILABILITY REQUIREMENT AND CERTAIN 401(K) CONTRIBUTIONS AND DISTRIBUTIONS**

[14276] December 21, 2001 TO: PENSION MEMBERS No. 40-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 78-01 RE: IRS GUIDANCE ON CATCH-UP CONTRIBUTION UNIVERSAL AVAILABILITY REQUIREMENT AND CERTAIN 401(k) CONTRIBUTIONS AND DISTRIBUTIONS The Internal Revenue Service has issued Notice 2002-4, which provides guidance on several provisions enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).<sup>1</sup> In particular, the Notice provides transitional relief with respect to the universal availability requirement under the catch-up provisions of Code section 414(v). The Notice also provides guidance with regard to EGTRRA's modifications to the safe harbor hardship distribution rules under Code section 401(k)(2)(B)(i)(IV) and the rules governing distributions made upon "severance from employment" under Code section 401(k)(2)(B)(i)(I). Universal Availability Regarding Catch-up Contributions. Notice 2002-4 clarifies application of the universal availability requirement of Code section 414(v)(4) for 2002 by providing that a plan otherwise permitted to accept catch-up contributions may do so -- even though other plans maintained by the same employer (as defined in Regulations section 1.410(b)-9)<sup>2</sup> do not yet permit catch-up contributions -- so long as all such plans begin offering catch-up contributions no later than October 1, 2002. Additionally, the Notice clarifies the application of the universal availability requirement where one or more plans maintained by members of a controlled group are qualified under Puerto Rico law -- which presently does not permit catch-up contributions. Specifically, until further guidance is issued, an applicable employer plan (within the meaning of Code section 414(v)(6)(A)) permitting catch-up contributions will not violate the universal availability requirement "solely because another applicable employer plan maintained by the employer that is qualified under Puerto Rico law does not provide for catch-up contributions." Elective Contributions Following Hardship Distributions. Notice 2002-4 also provides guidance regarding the amount of elective contributions that a 401(k) plan participant may 1 See Institute Memorandum to Pension Members No. 21-01 and Pension Operations Advisory Committee No. 35-01, dated May 31, 2001. 2 See Institute Memorandum to Pension Members No. 32-01 and Pension Operations Advisory Committee No. 67-01, dated October 23, 2001. 2 make, beginning in 2002, if the participant took a hardship distribution in the prior year and the plan uses the safe harbor provisions of Regulations section 1.401(k)-1(d)(2)(iv)(B). In this situation, a plan participant will no longer be required to

reduce the amount of elective contributions permitted under Code section 402(g) by the amount of the elective contributions made in the year of the hardship. Distributions on Severance from Employment. Finally, Notice 2002-4 permits plan amendments made on or after January 1, 2002 to provide for distributions upon severance from employment under Code section 401(k)(2)(B)(i)(I), as amended by EGTRRA, regardless of whether the severance from employment occurred before, on, or after January 1, 2002. For additional details regarding the guidance, please see the Notice, which is attached. Keith Lawson Thomas T. Kim Senior Counsel Associate Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 14276, or call the ICI Library at (202) 326-8304 and request the attachment for memo 14276. Attachment (in .pdf format)

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