

MEMO# 1990

June 25, 1990

PROPOSED AND INTERIM REGULATIONS RELATING TO ERISA 502(1)

- 1 - June 25, 1990 TO: PENSION MEMBERS NO. 29-90 INVESTMENT ADVISER MEMBERS NO. 26-90 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 24-90 RE: PROPOSED AND INTERIM REGULATIONS RELATING TO ERISA 502(1)

The Department of Labor recently released a proposed regulation relating to the 20 percent civil penalty under ERISA section 502(l) for violation of fiduciary responsibilities and an interim regulation regarding the procedures for assessing this penalty. Copies of the regulations are attached. Section 502(l) of ERISA requires the Department of Labor to assess a civil penalty against a person who breaches a fiduciary responsibility under or commits a violation of ERISA or any other person who knowingly participates in such breach or violation. The penalty under section 502(l) is equal to 20 percent of the applicable recovery amount paid pursuant to a court order or settlement, reduced by any prohibited transaction penalty taxes paid under section 4975 of the Internal Revenue Code. The proposed regulation defines the terms used in section 502(l) and generally provides that the penalty will apply to all violations of fiduciary responsibilities under ERISA, including continuing violations such as ongoing prohibited loans. The regulation provides for pro rata reduction of the penalty for continuing fiduciary violations which began before December 19, 1989, the effective date of section 502(l). Although the proposed regulation will be effective 30 days after its publication in final form, the Department of Labor indicated that the proposal constitutes a statement of policy such that its provisions will be used for any breach or violation occurring on or after December 19, 1989. The interim regulation sets forth the procedures under which the 20 percent penalty will be assessed, when an assessed penalty must be paid, and the circumstances pursuant to which the penalty may be waived or reduced by the Department of Labor. The interim regulation allows a 60 day period from the date of - 2 - service of notice of assessment to pay the penalty and to request a conference to waive or reduce the penalty on the basis that the person assessed (1) acted reasonably and in good faith in engaging in the breach or violation or (2) will not be able to restore all losses to the plan or any participant or beneficiary without severe financial hardship unless the waiver or reduction is granted. We will keep you informed of further developments. W. Richard Mason Assistant General Counsel Attachment