

MEMO# 12129

June 28, 2000

INSTITUTE SUBMITS COMMENT LETTER ON PROPOSED SECTION 411(D)(6) RELIEF

[12129] June 28, 2000 TO: PENSION COMMITTEE No. 44-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 44-00 MAY 4TH AND JUNE 12TH CONFERENCE CALL PARTICIPANTS RE: INSTITUTE SUBMITS COMMENT LETTER ON PROPOSED SECTION 411(D)(6) RELIEF Attached is a copy of the Institute's comment letter addressing the Internal Revenue Service's proposed section 411(d)(6) regulations.¹ These proposed regulations would provide special rules under section 411(d)(6) to permit (1) the amendment of a defined contribution plan to eliminate forms of distribution offered under the plan, (2) certain transfers between defined contribution plans that are not currently permitted under the regulations, and (3) the modification of certain rights to in-kind distributions. The comment letter reiterates certain points previously raised by the Institute in a prior comment letter² and raises points discussed with Institute members on May 4th and June 12th conference calls. Specifically, the Institute in its comments requests that the Service modify its proposal so that plans eliminating optional forms of distribution need only offer a lump sum distribution option. Alternatively, the Institute recommends that plans eliminating distribution options be required to provide only a lump sum distribution and one extended form of distribution as options, regardless of whether that extended form of distribution had been available in the plan. Such a rule would enable a plan sponsor to select an extended form of distribution that best suits its current workforce. The Institute also suggests that, at a minimum, the Service exempt plans involved in mergers, plan sponsors using a prototype document and prototype sponsors from the requirement that the extended distribution form be one that was previously offered in the plan. The Institute also recommends that plans of small businesses be wholly exempt from any requirement to retain any extended distribution form. Second, the letter, responding to questions raised in the IRS's proposal, states that it would be unnecessary for the Service to impose special rules, such as phase-in or age-based rules, for participants near retirement age, because, given the availability of a lump sum distribution, these individuals can replicate any extended form of distribution. Further, such rules would unnecessarily add administrative burdens and delay the implementation of amendments that would simplify plans and provide cost savings beneficial to plans and participants. Third, with respect to the proposed rules addressing the distribution of in-kind securities, the Institute recommends that the Service clarify that a plan sponsor need not create a list of participants 1 Institute Memorandum to Pension Committee No. 23-00 and Pension Operations Advisory Committee No. 24-00, dated March 31, 2000. 2 Institute Memorandum to Pension Committee No. 55-98, dated August 28, 1998. 2holding the relevant securities. Finally, we renew the request made in our previous comment letter, that the Service expand this guidance to

address the elimination of in-service distribution options. Russell G. Galer Senior Counsel
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