

MEMO# 13922

September 5, 2001

IRS ISSUES SAMPLE PLAN AMENDMENTS AND EFFECTIVE DATE GUIDANCE RELATING TO THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT

[13922] September 5, 2001 TO: PENSION MEMBERS No. 26-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 55-01 RE: IRS ISSUES SAMPLE PLAN AMENDMENTS AND EFFECTIVE DATE GUIDANCE RELATING TO THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT The Internal Revenue Service recently issued (1) Notice 2001-57, which provides sample plan amendment language under the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”),¹ and (2) Notice 2001-56, which addresses effective date issues arising from several EGTRRA provisions. Notice 2001-57 Notice 2001-57 provides sample amendment language intended to help plan sponsors and sponsors and adopters of pre-approved plans to adopt good faith EGTRRA plan amendments on a timely basis. Earlier IRS guidance in Notice 2001-422 had established an “EGTRRA remedial amendment period” (which extends until the end of the 2005 plan year) and conditioned the availability of the remedial period on the timely adoption of good faith plan amendments under EGTRRA. Notice 2001-57 sets forth sample plan language that may be used in drafting such plan amendments. Plans adopting the sample amendment language or amendments that are materially similar to the sample amendments would satisfy the good faith requirement.³ The notice indicates that in some cases, plan sponsors may be able to adopt the sample amendments verbatim; in other cases, plan sponsors may have to modify the sample amendments to make them more appropriate for their specific plans. 1 See Institute Memorandum to Pension Members No. 21-01 and Pension Operations Advisory Committee No. 35-01, dated May 31, 2001, for details regarding the retirement savings provisions in EGTRRA. 2 See Institute Memorandum to Pension Members No. 23-01 and Pension Operations Advisory Committee No. 42-01, dated June 29, 2001. 3 Furthermore, a “plan amendment that represents a reasonable effort to take into account all of the requirements of the applicable EGTRRA provision and does not reflect an unreasonable or inconsistent interpretation of the provision will not fail to be a good faith plan amendment merely because it is not materially similar to a sample EGTRRA plan amendment.” 2 Notice 2001-57, however, provides that the sample amendments should not be viewed as interpretive guidance on EGTRRA changes to the Code’s qualification requirements, noting that other guidance, such as Notice 2001-56 (discussed below), will clarify the changes made by EGTRRA. As a result, plans adopting good faith plan amendments may require subsequent amendments by the end of the EGTRRA remedial amendment period to comply with the additional guidance. Topics addressed by the sample amendments include the following: • Plan loans for owner-employees and shareholder

employees; • Various contribution limitations under defined contribution plans; • Increase in the compensation limit under Code section 401(a)(17); • Modification of the top-heavy rules; • Vesting of employer matching contributions; • “Portability” issues; • Rollovers disregarded in involuntary cash-outs; • Catch-up contributions; and • Suspension period following hardship distribution. Notice 2001-56 Notice 2001-56 addresses certain effective date issues arising from EGTRRA provisions relating to (1) the compensation limit under Code section 401(a)(17); (2) the determination of top-heavy status under Code section 416; and (3) hardship distributions from 401(k) plans. Section 401(a)(17) Compensation Limit. Section 611 of EGTRRA increases the compensation limit of Code section 401(a)(17) from \$170,000 under current law to \$200,000, effective for years beginning after December 31, 2001. Thus, the notice provides that for purposes of determining benefit accruals or the amount of allocations for plan years beginning on or after January 1, 2002, compensation taken into account may not exceed \$200,000. For plans that use annual compensation for periods prior to the first plan year beginning on or after January 1, 2002, the plan is permitted to apply the \$200,000 compensation limit for such prior periods in determining accruals or allocations for plan years beginning on or after January 1, 2002. Determination of Top-Heavy Status. Under section 613 of EGTRRA, the changes to the determination of a plan’s top-heavy status apply to years beginning after December 31, 2001. The notice provides that these EGTRRA changes apply for purposes of determining whether a plan is top-heavy for the first plan year beginning after December 31, 2001, even though the determination date for that plan year (i.e., December 31, 2001) is before the effective date of the EGTRRA provision. Hardship Distributions. Section 636(a) of EGTRRA directs Treasury to modify current regulations to reduce from 12 months to 6 months the period during which an employee is prohibited from making elective deferrals following the receipt of a hardship distribution from a 401(k) plan. Under EGTRRA, the revised regulations are to be effective for years beginning after December 31, 2001. The notice provides that the revised regulations will be effective for 3 calendar years beginning after December 31, 2001, rather than effective only with respect to hardship distributions received after December 31, 2001. Thus, a plan may be amended to permit participants that received hardship distributions in 2001 to resume making elective deferrals the later of (1) 6 months after the hardship distribution or (2) January 1, 2002. Thomas T. Kim Assistant Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachment for memo 13922. ICI Members may retrieve this memo and its attachment from ICINet (<http://members.ici.org>). Attachment (in .pdf format)