

MEMO# 10596

December 22, 1998

IRS ISSUES TEMPORARY AND PROPOSED REGULATIONS ON CASH-OUT LIMIT

[10596] December 22, 1998 TO: PENSION MEMBERS No. 79-98 PENSION OPERATIONS
ADVISORY COMMITTEE No. 74-98 RE: IRS ISSUES TEMPORARY AND PROPOSED
REGULATIONS ON CASH-OUT LIMIT

The Internal Revenue Service has issued guidance relating to the increase from \$3,500 to \$5,000 of the cash-out limit on involuntary distributions. This increase was made effective by the Taxpayer Relief Act of 1997 for plan years beginning after August 5, 1997. These regulations also eliminate the "lookback rule" for most distributions. The guidance is in two parts - a temporary regulation, designated section 1.411(a)-7T, and a broader proposed regulation. Temporary Regulation Pursuant to the temporary guidance, in determining whether a participant's nonforfeitable accrued benefit may be distributed without consent during plan years beginning on or after August 6, 1997, the new cash-out limit of \$5,000 is permitted to be applied as though it were in effect for all plan years, including those beginning before August 6, 1997. Thus, a plan may be amended to provide for involuntary distributions of an accrued benefit if the benefit does not exceed \$5,000 at the time of distribution - even in the case of a former participant who terminated employment prior to the effective date of the statute, and whose benefit had exceeded \$3,500 at that time, thus eliminating the so-called "lookback rule" of section 1.411(a)-11(c)(3) of the regulations. The temporary regulation, however, provides an exception applicable to participants receiving periodic payments: where a participant has begun to receive an optional form of benefit under which at least one scheduled periodic distribution is still payable and the present value of the benefit exceeded \$5,000 at the time of the first distribution under that optional form of benefit, the remaining present value of the benefit may not be distributed without consent. Also, with respect to the distribution of the present value of a qualified joint and survivor annuity (QJSA) or a qualified preretirement survivor annuity (QJSA), the temporary guidance changes the dollar limit from \$3,500 to \$5,000, but does not revise the lookback rule as applied to plans subject to section 401(a)(11) and 417. The regulation also clarifies that a plan amendment to permit involuntary cash-outs up to \$5,000 with respect to benefits accrued before the amendment was adopted and effective will not violate the anti-cutback rules of section 411(d)(6). Proposed Regulation The proposed regulation follows the temporary regulation. In addition, the proposed regulation would completely repeal the lookback rule both for plans that are and are not subject to sections 401(a)(11) and 417. Comments on the proposed regulation must be received by March 22, 1999.

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