

MEMO# 992

February 17, 1989

IRS PROPOSED REGULATIONS CONCERNING MINIMUM PARTICIPATION STANDARDS

February 17, 1989 TO: PENSION MEMBERS NO. 11-89 RE: IRS PROPOSED REGULATIONS
CONCERNING MINIMUM PARTICIPATION STANDARDS

Attached is a copy of the IRS proposed regulations issued under section 401(a)(26), which was added to the Internal Revenue Code by the 1986 Tax Reform Act and applies to plan years beginning after December 31, 1988. Section 401(a)(26) requires that a qualified plan benefit at least the lesser of 50 employees or 40 percent of all employees of the employer. Under the proposed regulations, all plans must satisfy section 401(a)(26) with respect to each current benefit structure, but only defined benefit plans must satisfy section 401(a)(26) with respect to prior benefit structures. The analysis section preceding the proposed regulations states that a defined contribution plan's prior benefit structure is deemed to satisfy section 401(a)(26). According to this discussion, a frozen defined contribution plan will satisfy section 401(a)(26) without regard to the number of employees who have benefits under the plan. The proposed regulations also contain a number of transitional rules. For example, a defined contribution plan that terminates on or before May 31, 1989 generally will not be treated as disqualified upon termination for failure to satisfy section 401(a)(26) provided that no highly compensated employee receives a contribution allocation for any plan year beginning after December 31, 1988. We will keep you informed of further developments. Kathy D. Ireland Assistant General Counsel Attachment