

**MEMO# 3007**

August 15, 1991

## **IRS RELEASES FINAL 401 REGULATIONS**

August 15, 1991 TO: PENSION MEMBERS NO. 31-91 RE: IRS RELEASES FINAL 401 REGULATIONS \_\_\_\_\_ The Internal Revenue Service released today final regulations relating to cash or deferred arrangements and employee and matching contributions under employee plans. (See Institute Memorandum to Pension Members No. 38-88, dated August 11, 1988.) The final regulations address various issues raised by the proposed regulations in 1988. For example, the regulations clarify that 401(k) plans may be terminated and the assets rolled over to a SEP without violating the prohibition on distributions when the employer maintains a "successor plan." The regulations also clarify the standards applicable to hardship distributions and that defaulted plan loans need not be considered "distributions" even though the loan is includible in a participant's gross income. The regulations provide for several alternatives in the area of 401(k) plan discrimination testing and correction procedures. Specifically, the regulations allow plans to use any reasonable method to allocate income to excess contributions, excess aggregate contributions and excess deferrals. Plans may also apply the ADP or ACP tests using compensations received by an employee while (i) eligible to participate in the 401(k) plan, (ii) eligible to make employee contributions, (iii) eligible to have matching contributions made on the employee's behalf or (iv) employed for the year. The regulations also permit plans to distribute elective contributions to correct excess annual additions resulting from a reasonable error in determining the amount of elective deferrals that a participant may make under the limits of Code section 415. A copy of the final regulations is attached. We will keep you informed of developments. W. Richard Mason  
Assistant Counsel - Pension Attachment

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