

**MEMO# 15947**

April 25, 2003

## **DOL FIELD ASSISTANCE BULLETIN CLARIFYING ERISA RULES APPLICABLE TO PLAN LOANS IN LIGHT OF SARBANES- OXLEY ACT**

[15947] April 25, 2003 TO: PENSION MEMBERS No. 17-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 21-03 RE: DOL FIELD ASSISTANCE BULLETIN CLARIFYING ERISA RULES APPLICABLE TO PLAN LOANS IN LIGHT OF SARBANES-OXLEY ACT The Department of Labor recently issued Field Assistance Bulletin (FAB) 2003-1, which clarifies that a plan administrator may deny plan loans to directors and executive officers of a plan sponsor on the basis that such loans may violate a provision of the Sarbanes-Oxley Act. As you may be aware, section 402 of that Act (codified as section 13(k) of the Securities Exchange Act of 1934 ('34 Act)) prohibits issuers from extending, maintaining, arranging or renewing a personal loan for any director or executive officer of the issuer. Long-standing rules under ERISA, however, require that plan loans be made available to all participants and beneficiaries on a reasonably equivalent basis.<sup>1</sup> Noting that ERISA practitioners have raised questions about whether section 13(k) prohibits directors and executive officers from taking plan loans, the FAB provides that it has long been the Department's view that fiduciaries are responsible for administering their plans to assure compliance with both ERISA and other applicable Federal laws. The FAB, therefore, concludes that in light of the uncertainty surrounding the scope of section 13(k) of the '34 Act, plan fiduciaries of public companies may deny participant loans to officers and directors without violating ERISA section 404(a)(1) (containing fiduciary requirements) and section 408(b)(1)(A) (requiring, in effect, that loans be made available to all participants and beneficiaries on a reasonably equivalent basis). Finally, noting that it does not have interpretive authority with regard to the '34 Act, the Department states that it takes no position on the application of section 13(k) to plan loans. Thomas T. Kim Associate Counsel Attachment (in .pdf format) 1 The Institute has requested clarification from the SEC regarding the permissibility of plan loans to executives and directors of issuers that sponsor retirement plans. See Institute Memorandum to Pension Members No. 60-02, Pension Operations Advisory Committee No. 83-02, Closed-End Investment Company Members No. 66-02 and SEC Rules Members No. 112-02, dated December 13, 2002.