

MEMO# 15661

February 20, 2003

DOL ADVISORY OPINION 2003-01A - ESTABLISHMENT OF DEEMED IRA DOES NOT SUBJECT DEEMED IRA OR GOVERNMENTAL PLAN TO TITLE I OF ERISA

[15661] February 20, 2003 TO: PENSION MEMBERS No. 10-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 9-03 RE: DOL ADVISORY OPINION 2003-01A - ESTABLISHMENT OF DEEMED IRA DOES NOT SUBJECT DEEMED IRA OR GOVERNMENTAL PLAN TO TITLE I OF ERISA The Department of Labor has released DOL Advisory Opinion 2003-01A, which responds to a request for guidance from the Kentucky Public Employees' 401(k) Deferred Compensation Plan (the "Plan"). The Plan was established and is maintained by the Kentucky Public Employees' Deferred Compensation Authority (the "Authority") on behalf of the Commonwealth of Kentucky for employees of the state, the state university system, public school districts and certain other local governmental entities. The Authority amended the plan to establish a deemed IRA as part of the Plan, in accordance with section 408(q) of the Internal Revenue Code (the "Code") and Ky. Rev. Stat. Ann. 18A.245. Section 408(q) provides that, if a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and under the terms of the qualified employer plan such account or annuity meets the applicable requirements of Code section 408 or Code section 408A for an individual retirement account or annuity, then such account or annuity shall be treated for purposes of the Code in the same manner as an individual retirement plan rather than as a qualified employer plan. Section 408(q) further provides that contributions to such a "deemed IRA" shall be treated as contributions to the "deemed IRA" rather than to the qualified employer plan. The Authority requested clarification that the addition of a deemed IRA to the Plan (i) would not result in the deemed IRA being treated as one or more pension plans subject to Title I of ERISA and (ii) would not otherwise adversely affect the status of the Plan as a "governmental plan" within the meaning of ERISA 3(32). The DOL ruled that establishing "deemed IRAs" as part of a plan would not subject the "deemed IRAs" or the plan to any provisions of Title I of ERISA if the plan otherwise continues to meet the definition of a governmental plan. Lisa Robinson Assistant Counsel Attachment (in .pdf format)

should not be considered a substitute for, legal advice.