

MEMO# 9147

August 8, 1997

IRS ISSUES REVENUE PROCEDURE ON PLAN AMENDMENT DEADLINES AND FINAL, TEMPORARY AND PROPOSED REGULATIONS FOR REMEDIAL AMENDMENT PERIOD

1 See Institute Memorandum to Pension Members No. 13-97 and Pension Operations Advisory Committee No. 8-97, dated March 7, 1997 and Institute Memorandum to Pension Members No. 28-97 and Pension Operations Advisory Committee No. 22-97, dated July 17, 1997. [9147] August 8, 1997 TO: PENSION MEMBERS No. 31-97 PENSION OPERATIONS ADVISORY COMMITTEE No. 27-97 RE: IRS ISSUES REVENUE PROCEDURE ON PLAN AMENDMENT DEADLINES AND FINAL, TEMPORARY AND PROPOSED REGULATIONS FOR REMEDIAL AMENDMENT PERIOD

The Internal Revenue Service has released a revenue procedure on the deadline for amending qualified plans to comply with changes in the law made by the Small Business Job Protection Act of 1996 (SBJPA), the Uruguay Round Agreements Act of 1994 (GATT) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The Service has also issued final, temporary and proposed regulations concerning the remedial amendment period during which a sponsor of a qualified retirement plan may make retroactive amendments to a plan in order to eliminate qualification defects of the plan. The regulations address changes to the plan qualification rules made in the SBJPA and GATT. As you were previously informed, the Service has issued guidance regarding the SBJPA's amendment to the required minimum distribution rules of Code section 401(a)(9) as they apply to individuals who attain age 70 ½ while still employed.¹ The Service has issued Revenue Procedure 97-41, which is effective August 18, 1997 and provides guidance on the deadline for amending qualified plans under sections 401(a) and 403(a) and (b) to comply with changes in the law made by the SBJPA, GATT and USERRA. Under Rev. Proc. 97-41, the deadline for adopting SBJPA, GATT and USERRA amendments is the last day of the first plan year beginning on or after January 1, 1999. In addition, the deadline for adopting plan amendments that reflect limitations under section 415(b) is the last day of the first plan year beginning on or after January 1, 1999. Rev. Proc. 97-41 also provides that qualified plans have a remedial amendment period under section 401(b) with respect to SBJPA, GATT or USERRA amendments through the last day of the first plan year beginning on or after January 1, 1999. Thus, these amendments will not have to be adopted before the last day of a plan's 1999 plan year. Also, sponsors of 403(b) plans or annuity contracts purchased under section 403(b) plans do not have to adopt SBJPA amendments before the first day of

the first plan year beginning on or after January 1, 1998. Rev. Proc. 97-41 outlines the types of provisions that have become disqualifying provisions as a result of changes in the law made by the SBJPA, GATT and USERRA. It also permits plan sponsors to anticipate specific plan amendments that they intend to adopt as a result of changes to qualification requirements. The Service has indicated that it intends to publish procedures for obtaining determination letters that include consideration of the recent changes to the qualification requirements as soon as possible after issuing necessary guidance. The Service has also issued regulations under which plan sponsors and employers may amend their retirement plans retroactively to eliminate provisions that disqualify the plans under section 401(b). The amendments must occur within a specified period of time, known as the remedial amendment period. The regulations provide rules for determining the remedial amendment period. The regulations also specify the types of provisions that would disqualify a plan under section 401(b). The regulations are effective August 1, 1997. The regulations provide that a plan is considered to satisfy the qualification requirements of section 401(a) for the period beginning on the date it was adopted or for the period beginning with the earlier of the date the disqualifying amendment was adopted or effective and ending with the due date for filing the employer's return for the tax year in which the disqualifying amendment was adopted. The relief provided under the regulations applies only if all provisions of the plan necessary to satisfy the qualification requirements are in effect by end of the specified period and are effective for all purposes for the entire period. The temporary regulations, which also serve as the proposed regulations, make certain changes to clarify the scope of the Commissioner's authority to provide relief from plan disqualification under section 401(b). These clarifications are necessary in order to determine the rules relating to plan provisions that may be designated as "disqualifying provisions" based on amendments to the plan qualification requirements of the Code. The temporary regulations provide that a disqualifying provision includes a plan provision designated by the Commissioner, at the Commissioner's discretion that either (1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements; or (2) is integral to a qualification requirement of the Code that has been changed. In addition, the temporary regulations also provide the Commissioner with explicit authority to impose limits and provide additional rules regarding the amendments that may be made with respect to the disqualifying provisions during the remedial amendment period. The proposed regulations are effective August 1, 1997. Comments on the proposed regulations must be received by October 30, 1997. We will keep you informed of developments.

Kathryn A. Ricard Assistant Counsel - Pension Attachments (in .pdf format) Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 9147.