

MEMO# 14079

October 23, 2001

IRS ISSUES GUIDANCE ON "CATCH-UP" CONTRIBUTIONS FOR RETIREMENT PLANS

[14079] October 23, 2001 TO: PENSION MEMBERS No. 32-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 67-01 RE: IRS ISSUES GUIDANCE ON "CATCH-UP" CONTRIBUTIONS FOR RETIREMENT PLANS The Internal Revenue Service has issued proposed regulations on "catch-up" contributions that may be made to retirement plans by individuals age 50 or over. As you know, the Institute submitted comments to the Treasury Department with respect to the development of regulatory guidance under the catch-up provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).¹ The IRS also recently issued Announcement 2001-93, which provides guidance on the reporting of catch-up contributions on Form W-2. Both documents are attached for your review. The proposed regulations address a variety of issues arising from EGTRRA's portability provisions, including the following:

- Eligibility requirements to make catch-up contributions. Under the proposed regulations, a participant who is projected to attain age 50 before the end of a calendar year is deemed to be age 50 as of January 1 of that year. Thus, all participants who will attain age 50 during a calendar year are treated the same beginning January 1 of that year — without regard to whether the participant survives to his or her 50th birthday or terminates employment during the year.
- Determination of catch-up contribution amounts. Under the proposed regulations, catch-up contributions would be determined by reference to three types of limits: statutory limits, employer-provided limits and the actual deferral percentage (ADP) limit. An employer-provided limit is one that is contained in the terms of the plan (e.g., a limit on elective deferrals of highly compensated employees to 10 percent of pay). The amount of elective deferrals in excess of an applicable limit is generally determined as of the end of a plan year by comparing the total elective deferrals for the plan year with the applicable limit for the plan year. ¹ See Institute Memorandum to Pension Committee No. 58-01 and Pension Operations Advisory Committee No. 50- 01, dated August 15, 2001. ²
- Treatment of catch-up contributions. The proposed regulations address how catch-up contributions are taken into account for various Code requirements. For instance, for purposes of ADP testing, any catch-up contribution is disregarded for purposes of calculating the participant's actual deferral ratio. Furthermore, catch-up contributions with respect to the current plan year are not taken into account for purposes of Code sections 416 or 410(b). However, catch-up contributions made to the plan in prior years are considered in determining whether a plan is top heavy under section 416 and for purposes of average benefit percentage testing under section 410(b) to the extent prior years' contributions are taken into account.
- Universal availability. A plan that offers catch-up contributions would satisfy the requirements of section 401(a)(4) only if all catch-up eligible participants are provided with the effective opportunity to make the same dollar

amount of catch-up contributions. An “effective opportunity” could be provided in several ways. For example, in plans that limit elective deferrals on a payroll-by-payroll basis, participants could be offered an opportunity to make catch-up contributions also on such a basis. • Participants in multiple plans. The proposed regulations provide that for purposes of determining whether elective deferrals are in excess of a statutory limit, all elective deferrals in excess of the statutory limit are aggregated in the same manner as the underlying limit; the aggregate amount of elective deferrals treated as catch-up contributions because they exceed the statutory limit must not exceed the applicable dollar catch-up limit. In addition, an eligible participant who participates in plans of two or more employers may make catch-up contributions once the participant’s elective deferrals exceed his or her section 402(g) limit, even though the elective deferrals of the participant do not exceed the applicable limit for either employer’s plan. The regulations are proposed to apply to contributions in taxable years beginning on or after January 1, 2002. Taxpayers may rely on the proposed regulations for guidance pending the issuance of final regulations. To the extent future guidance is more restrictive than the guidance in the proposed regulations, the future guidance will be applied without retroactive effect. Written or electronic comments and requests to speak at a public hearing (scheduled for February 21, 2002) must be received by January 31, 2002. Thomas T. Kim Associate Counsel

Attachments Note: Not all recipients receive the attachments. To obtain copies of the attachments, please visit our members website (<http://members.ici.org>) and search for memo 14079, or call the ICI Library at (202) 326-8304 and request the attachments for memo 14079. Attachment no. 1 (in .pdf format)

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.