

MEMO# 18067

October 5, 2004

TREASURY RELEASES FINAL AND TEMPORARY DEEMED IRA REGULATIONS

[18067] October 5, 2004 TO: PENSION MEMBERS No. 51-04 PENSION OPERATIONS ADVISORY COMMITTEE No. 67-04 RE: TREASURY RELEASES FINAL AND TEMPORARY DEEMED IRA REGULATIONS Treasury and the Internal Revenue Service (the "Service") have released final, temporary and proposed regulations under Code section 408(q)¹ that permit a qualified employer plan² to allow employees under the plan to make voluntary employee contributions to a deemed IRA. Temporary and Proposed Regulations The temporary regulations provide special rules for governmental units that maintain plans qualified under Code sections 401(a), 403(a), 403(b), or 457 to qualify as a nonbank trustee for deemed IRAs under section 408(q). The text of the temporary regulations also serves as the text for simultaneously issued proposed regulations.³ Final Regulations The final regulations⁴ provide guidance under Code section 408(q) regarding deemed IRAs - accounts or annuities that are part of a qualified employer plan. If the deemed IRA meets the requirements applicable to either a traditional individual retirement account ("IRA") or a Roth IRA, then the deemed IRA will be treated as either a traditional IRA or Roth IRA, as applicable, for all purposes of the Code. Additionally, if statutory requirements are satisfied, then the deemed IRA will not be treated as part of the qualified employer plan. 1 All section references are to the Internal Revenue Code of 1986, as amended. 2 For purposes of the regulations, a "qualified employer plan" is a plan described in section 401(a), an annuity plan described in section 403(a), a section 403(b) plan, or a governmental plan under section 457(b). 3 Go to http://www.treas.gov/press/releases/reports/fedreg408nprm_07202004_.pdf to see the proposed regulations. 4 Go to http://www.treas.gov/press/releases/reports/fedreg408qfinal_07202004_.pdf to see the final and temporary regulations. 2 The final regulations eliminate the requirement that qualified plan assets and deemed IRA assets be kept in a separate trust.⁵ These assets can now be kept in a single trust, provided that the plan sponsor maintains separate accounts for the deemed IRA and the qualified plan. The final regulations also provide that a disqualified deemed IRA will not disqualify the entire qualified plan. However, in order to protect the qualified plan in the event of a disqualification of the deemed IRA, the assets of the deemed IRA and the qualified plan must be kept in separate trusts. Separate Rules Apply to Qualified Plan and Deemed IRA The final regulations, like the proposed regulations, generally treat a qualified employer plan and a deemed IRA as separate entities under the Code and apply the rules applicable to each entity. The regulations state that issues regarding "eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration are generally to be resolved under the separate rules (if any) applicable to each entity under the Code." Reg. 1.408(q)-1(c). For example, the regulations specifically provide that the rules applicable to rollovers and transfers to and from IRAs also apply to rollovers and transfers to and from deemed IRAs.

Thus, the plan may provide that an employee may request and receive a distribution of his or her deemed IRA account balance and may roll it over to an eligible retirement plan in accordance with the IRA rules of Code section 408, regardless of whether that employee may receive a distribution of any other plan benefits. Effective Date The proposed regulations are intended to be effective beginning on or after July 22, 2004. The temporary and proposed regulations that provide special rules for governmental units to qualify as a nonbank trustee are applicable to written applications made on or after August 1, 2003, or such earlier application as the Commissioner deems appropriate. The final regulations providing guidance under Code section 408(q) regarding deemed IRAs are applicable to accounts or annuities established under section 408(q) on or after August 1, 2003. Lisa Robinson Assistant Counsel 5 See Institute Memorandum (16094) to Pension Members No. 24-03, dated May 20, 2003; and Institute Memorandum (16095) to Pension Committee No. 14-03 and Pension Operations Advisory Committee No. 29-03, dated May 20, 2003, describing the deemed IRA proposed regulations.

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