

**MEMO# 9068**

July 17, 1997

## **IRS ISSUES ADDITIONAL GUIDANCE ON SBJPA MODIFICATION OF SECTION 401(A)(9)**

1 In prior guidance, the Internal Revenue Service stated that for employees attaining age 70½ in 1996, the required beginning date is determined under the amended section 401(a)(9). See Institute Memorandum to Pension Members No. 68-96, dated December 26, 1996. The Service also has permitted employers to operationally implement section 401(a)(9), as amended, while delaying making necessary plan amendments. See Institute Memorandum to Pension Members No. 13-97, dated March 7, 1997. July 17, 1997 TO: PENSION MEMBERS No. 28-97 PENSION OPERATIONS ADVISORY COMMITTEE No. 22-97 RE: IRS ISSUES ADDITIONAL GUIDANCE ON SBJPA MODIFICATION OF SECTION 401(a)(9)

The Internal Revenue Service has issued guidance in the form of (1) an announcement and (2) a proposed amendment to regulations promulgated under Code section 411(d)(6) to provide further relief for employers implementing the Small Business Job Protection Act of 1996 (SBJPA) amendment of Code section 401(a)(9). Background. The SBJPA amended the required minimum distribution rules of Code section 401(a)(9) as they apply to individuals who attain age 70½ while still employed. Under pre-SBJPA law, a plan was required to commence in-service distributions to such individuals on April 1 of the calendar year following the year in which they turned age 70½. Under the SBJPA, however, the "required beginning date" for minimum distributions from a qualified plan is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires.<sup>1</sup> Announcement 97-70. Announcement 97-70 provides additional transitional relief to employers who have not made plan distributions in accordance with their plans' terms to employees who attained age 70½ in 1996, but who did not retire in 1996. Pursuant to the announcement, a plan will not be disqualified for failure to make distributions to such employees if the following criteria are satisfied: (1) the employee is offered an option to defer and elects to defer the distribution until a date no later than retirement, (2) the employer provides by December 31, 1997, a "make-up" distribution to affected employees who do not elect to defer distributions, and (3) the implementation of the employee option and "make-up" distribution satisfy other requirements of Code section 401(a), such as sections 401(a)(11) and 417, relating to joint and survivor annuities. 2 As a result of this limitation, this relief is inapplicable to employees who have attained age 70½ in 1996 and 1997. In the preamble to the regulation the Service explains that such employees, who were near age 70½ at the time of enactment of the SBJPA, may have had an expectation of receiving in-service, pre-retirement distributions and may have made plans that took those expectations into account. - 2 - This guidance applies only to distributions required under the terms of a plan

between August 20, 1996 and December 31, 1997. Furthermore, employees are required to make any election to defer distributions by December 31, 1997. Proposed Regulation 1.411(d)-4, Q&A-10(d). Proposed amendment to current regulations would provide relief from Code section 411(d)(6) for plan amendments that eliminate in-service, pre-retirement distributions to employees attaining age 70½ if the following conditions are satisfied: (1) the amendment applies only to employees who attain age 70½ in or after calendar year 19982 and (2) the amendment is adopted no later than the last day of any remedial amendment period that the Internal Revenue Service establishes for the completion of SBJPA- related amendments. Absent this proposed relief, if an employer chooses to eliminate the option for an employee to obtain an in-service, pre-retirement distribution, it would violate the Code section 411(d)(6) "anti-cutback rule", which generally prevents an employer from making plan amendments that would reduce accrued benefits. Plan amendments that eliminate an optional form of benefit, except to the extent authorized by regulations, generally are treated as reducing an accrued benefit. As noted in Example 3 of the proposed regulation, certain plans permitting employees to elect in-service distributions, notwithstanding the elimination of mandatory in-service, pre- retirement distributions, may not require this section 411(d)(6) relief. Written comments on the proposed regulation must be submitted to the Internal Revenue Service by September 30, 1997, and a public hearing has been scheduled for October 28, 1997. We will keep you informed of further developments. Russell G. Galer Assistant Counsel - Pension Attachment (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: 9068.