

MEMO# 12282

July 18, 2000

INTERNAL REVENUE SERVICE RELEASES GUIDANCE ON DIRECT ROLLOVERS FOR INVOLUNTARY DISTRIBUTIONS

[12282] July 18, 2000 TO: PENSION MEMBERS No. 36-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 50-00 RE: INTERNAL REVENUE SERVICE RELEASES GUIDANCE ON DIRECT ROLLOVERS FOR INVOLUNTARY DISTRIBUTIONS The Internal Revenue Service recently released Revenue Ruling 2000-36, which permits a plan to change the default method of payment from the plan to a direct rollover when a distributee fails to affirmatively elect to make a direct rollover or to elect a cash payment. Rev. Rul. 2000-36 provides the following facts: a plan provides for an involuntary distribution upon separation from service if the participant's vested account balance is \$5,000 or less. The plan includes a direct rollover option for all distributions. The plan provides that if a separating employee's vested account balance is \$5,000 or less, and the separating employee does not elect a direct rollover either to another qualified plan or to an IRA, the vested account balance is to be paid in a single sum cash payment to the employee. The plan sponsor wishes to amend the plan to provide that the default form of payment of any involuntary cash-out from the plan greater than \$1,000 but less than or equal to \$5,000 will be a direct rollover to an IRA, but that separating employees will receive a cash payment if they so elect. Under the plan amendment, the default direct rollover only would apply if the separating employee fails to affirmatively elect (1) a cash payment; or (2) a direct rollover to another qualified plan or IRA. The plan amendment also provides that in the case of a default rollover, the plan administrator will select an IRA trustee, custodian or issuer unrelated to the employer, establish the IRA on behalf of the separating employee who fails to elect a cash payment or direct rollover and make the initial investment choices for the account. As part of the default rollover, the employer will provide information regarding the IRA account as part of the section 402(f) notice. The default rollover would occur not less than 30 days and not more than 90 days after the section 402(f) notice. In Rev. Rul. 2000-36, the Service states that an amendment to change the default method of payment to a direct rollover as the default method of distribution under these facts would not cause a plan to fail to satisfy section 401(a)(31) or section 411(d)(6). In addition, Rev. Rul. 2000-36 clarifies that the Department of Labor has notified the Treasury Department and the Service that the selection of an IRA trustee, custodian or issuer and IRA investments under a default direct rollover arrangement would constitute a fiduciary act subject to the fiduciary standards and prohibited transaction rules under ERISA. In addition, plan provisions governing the default direct rollovers of distribution, including the participant's ability to affirmatively opt out of this arrangement, must be described in the plan's summary plan description furnished to participants and beneficiaries. A copy of Rev. Rul. 2000-36 is attached. 2Kathryn A. Ricard Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a

copy of the attachment to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachment for memo 12282. ICI Members may retrieve this memo and its attachment from ICINet (<http://members.ici.org>). Attachment (in .pdf format)

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