

MEMO# 12752

October 18, 2000

IRS ISSUES GUIDANCE ON AMENDMENT OF QUALIFIED PLANS UNDER FINAL 411(D)(6) REGULATIONS

[12752] October 18, 2000 TO: PENSION MEMBERS No. 49-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 74-00 RE: IRS ISSUES GUIDANCE ON AMENDMENT OF QUALIFIED PLANS UNDER FINAL 411(d)(6) REGULATIONS The Internal Revenue Service recently issued Announcement 2000-71, which provides that effective September 6, 2000, plan sponsors may adopt plan amendments permitted by the final regulations under Code section 411(d)(6).¹ The final section 411(d)(6) regulations, issued in September, permit the amendment of qualified defined contribution plans, including prototype plans, to eliminate alternative forms of benefit distribution, eliminate or modify certain rights to in-kind distributions and expand the types of permissible transfers of account balances between defined contribution plans. The Announcement provides that determination letters issued for applications filed with the Service on or after September 6, 2000, may be relied upon with respect to whether a plan satisfies the requirements of the final regulations. Plan sponsors that filed determination letter applications with the Service prior to September 6, 2000, should contact the Service if they wish to amend their plans in light of the final regulations. The Announcement provides that the Service will try to accommodate such requests; however, if the "EP specialist" assigned to review the application has already completed the review, a new application and user fee will be required. The Announcement highlights that an amendment may be required for plans that contain provisions permitting the elimination of optional forms of benefit pursuant to the voluntary direct transfer rules in effect prior to the final regulations. The final regulations eliminate the duplication between previously issued voluntary transfer rules and section 401(a)(31), which permits direct rollovers of eligible rollover distributions. Specifically, the final regulations provide that relief from section 411(d)(6) is not available under the voluntary transfer rules where the participant is eligible to receive an immediate distribution consisting entirely of an eligible rollover distribution within the meaning of section 401(a)(31)(C). Accordingly, plans containing provisions that are inconsistent with the final regulations must be amended to provide that such a benefit may be voluntarily transferred only through a section 401(a)(31) direct rollover. Any plan amendment required to comply with the final regulations need not be adopted prior to the end of the plan's GUST remedial amendment period, as described in Revenue Procedure 2000-272 and Revenue Procedure 2000-20.³ However, a required plan amendment must be adopted in connection with a determination letter application if it is filed on or after September 6, 2000, and the plan amendment must be effective no later than January 1, 2002. Thomas T. Kim Assistant Counsel Attachment

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