

MEMO# 16699

October 24, 2003

FINAL COMMENT LETTER REGARDING PROPOSED 401(K) REGULATIONS

[16699] October 24, 2003 TO: PENSION MEMBERS No. 46-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 71-03 RE: FINAL COMMENT LETTER REGARDING PROPOSED 401(K) REGULATIONS Earlier this year the Internal Revenue Service issued proposed regulations setting forth the requirements for cash or deferred arrangements under Code section 401(k) and matching or employee contributions under Code section 401(m).¹ These proposed regulations are generally intended to restate and consolidate prior guidance on 401(k) plans, as well as reflect the legislative changes that have been enacted since the existing final regulations were last amended in December 1994. In the attached comment letter, which reflects member comments made during our recent conference call on this issue, the Institute urges the following: Calculation of gap period income. Clarify that the gap period only includes the date through which the amount of any excess contribution and earnings (or losses) is calculated, which includes a time delay for plans using daily valuations. In the alternative, retain the existing rule that allows plans using daily valuations to elect not to calculate gap period income. Notice requirements. Clarify whether plans, including plans that do not contain an automatic enrollment feature, must provide notice at least annually to participants. If so, permit flexibility in complying with this new rule, i.e., permit plans to provide the required notice electronically. Automatic increase in deferrals. Clarify that the automatic enrollment permitted by the proposed regulations includes automatic contributions of compensation increases and bonuses received after employment has begun. Tax treatment of corrective distributions. Amend the provision addressing the tax treatment of corrective distributions in the proposed regulations to use the same language as the corresponding provision of the existing regulations, which the Institute urges will more clearly and accurately reflect income. ¹ See Institute Memorandum (No. 16324) to Pension Members No. 34-03 and Pension Operations Advisory Committee No. 44-03, dated July 18, 2003. You may view the press release and proposed regulations on Treasury's website at: <http://www.treas.gov/press/releases/js567.htm>. Scroll to the bottom of the press release page and click on the link to the proposed regulations. ² Amendments to change ADP and ACP testing provisions. Clarify that a plan has at least until the end of the 2 ½ month period immediately following the close of the plan year to incorporate amendments regarding ADP and ACP testing. Electronic submissions. Permit plans to use electronic media to provide notices and information to plan participants. Lisa Robinson Assistant Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 16699, or call the ICI Library at (202) 326-8304 and request the attachment for memo 16699. Attachment (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.