MEMO# 11442

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DEPARTMENT OF LABOR RELEASES SMALL PENSION PLAN SECURITY AMENDMENTS

[11442] December 1, 1999 TO: PENSION COMMITTEE No. 68-99 PENSION OPERATIONS ADVISORY COMMITTEE No. 54-99 RE: DEPARTMENT OF LABOR RELEASES SMALL PENSION PLAN SECURITY AMENDMENTS ____ The Department of Labor today released proposed regulations relating to the security of small pension plan assets. Specifically, the proposed amendments to regulations provide guidance on the circumstances under which small pension plans are exempt from the audit requirement under ERISA. Regulation 29 CFR 2520.104-46 provides a waiver of the annual audit requirement by an independent qualified public accountant for employee benefit plans with fewer than 100 participants at the beginning of the plan year. The proposed regulations would condition this waiver on enhanced disclosure information to participants and beneficiaries, and in certain circumstances, on increased bonding requirements. The purpose of the proposed regulations is to enhance the security of pension plan assets in small plans. Currently, the conditions to obtain a waiver from the pension plan audit requirement under section 2520.104-46 are that (1) a pension plan have fewer than 100 participants at the beginning of the plan year, and (2) the plan administrator properly file Form 5500-C/R Return/Report of Employee Benefit Plan (With fewer than 100 participants). The proposed regulations would require the following additional conditions for the waiver: A. Asset requirements (1) At least 95% of the assets of the plan constitute "qualifying plan assets;" OR (2) Any person who handles assets of the plan that do not constitute qualifying plan assets is bonded in accordance with the requirements of section 412 of ERISA, except that the amount of the bond shall not be less than the value of such assets. B. The Summary Annual Report includes the following information, in addition to any other required information: (1) The name of each institution holding qualifying plan assets and the amount of such assets held by each institution at the end of the plan year; (2) The name of the surety company issuing a bond (discussed in paragraph A(2) above); (3) A notice indicating that participants and beneficiaries, may, upon request and without charge, examine or receive copies of evidence of any bond required by paragraph A(2) above and copies of statements received from each institution holding qualifying assets which describe the assets held by the institution as of the end of the plan year; and (4) A notice stating that the participants and beneficiaries should contact the Regional Office of the Labor Department's Pension and Welfare Benefits Administration if they are unable to examine or obtain copies of the statements received from each institution holding qualifying assets or evidence of the bond, if applicable; and C. In response to a request from any participant or beneficiary, the administrator, without charge to the participant or

beneficiary, makes available for examination, or upon request furnishes copies of, evidence of any bond required by paragraph A(2) and the statement of assets from each financial institution holding qualifying assets as of the end of the plan year. D. "Qualifying plan assets" is defined as: (1) Qualifying employer securities, as defined in section 407(d)(1) of ERISA and the regulations thereunder; (2) Any loan meeting the requirements of section 408(b)(1) of ERISA and the regulations thereunder; (3) Any assets held by the following institutions: (a) A bank or similar financial institution as defined in section 2550.408b- 4(c); (b) An insurance company qualified to do business under the laws of a state; (c) An organization registered as a broker-dealer under the Securities and Exchange Act of 1934; or (d) Any other organization authorized to act as a trustee for individual retirement accounts under section 408 of the Internal Revenue Code. For purposes of the proposed regulation, the determination of the percentage of plan assets qualifying as "qualifying plan assets" in any given year is made in the same manner as the amount of the bond determined under sections 2850.412-11, -14, and 15. Note that small plans eligible for the waiver from the audit requirement are still required to file a Form 5500. The Department has asked for specific comments on alternate conditions to obtain a waiver, including requirements to (1) obtain a fidelity bond covering persons who handle plan funds in an amount equal to at least 80% of the value of the plan’s assets; and (2) make available to participants and beneficiaries a schedule of the plan’s assets held for investment purposes as of the end of the plan year similar to the schedule currently required as part of Form 5500 annual report filed by pension plans with 100 or more participants. In addition, the Department requests comments on the investment of small pension plan assets, specifically those that are "qualifying plan assets" as defined under the proposed regulations. Comments on the proposed regulations are due by January 31, 2000. A copy of the proposed regulations is attached. Kathryn A. Ricard Associate Counsel Attachment