

MEMO# 18090

October 13, 2004

DOL PROPOSES REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA)

[18090] October 13, 2004 TO: PENSION COMMITTEE No. 49-04 PENSION OPERATIONS ADVISORY COMMITTEE No. 70-04 RE: DOL PROPOSES REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA) The Department of Labor's Veterans' Employment and Training Service (VETS) has issued proposed regulations implementing the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).¹ This legislation was designed to protect the rights of persons who voluntarily or involuntarily leave employment positions to undertake military service. USERRA establishes specific rights for reemployed service members with respect to their employee pension benefit plans, including defined contribution plans. Once the service member is reemployed for purposes of USERRA, he or she is treated as not having a break in service with the employer maintaining the plan even though the service member was away from work performing military service. In addition, each period served by a person in the uniformed services, must, upon reemployment, be deemed to constitute service with the employer for purposes of determining the nonforfeitability and accrual of benefits.² USERRA also requires that "make-up" contributions, such as elective deferrals, be made available to reemployed individuals with respect to their period of military service. The proposed regulations, which follow a question-and-answer format, address pension plan benefits in sections 1002.259 through 1002.267. Under section 1002.262, a reemployed individual who could not make up missed contributions as an elective deferral, because he or she was no longer employed, would be required to be given an "equivalent opportunity" to receive the maximum employer matching contributions through a match of after-tax contributions. In addition, the proposed regulations would require that any employer contributions attributable to the period of military service that were not contingent on employee contributions or elective deferrals be made no later than thirty days after the date of the individual's reemployment. Section 1002.264 would require that reemployed individuals be 1 69 Fed. Reg. 56265 (2004). The proposed regulations are available at <http://www.regulations.gov/fredpdfs/04-20844.pdf>. 2 38 U.S.C. 4318(a)(2). 2 permitted to repay, within a specified period of time, any amounts withdrawn from the plan before reemployment. The Department of Labor specifically requests comment on the proposed thirty-day rule for employer contributions and the application of the proposed rule concerning repayment of withdrawals to defined contribution plans. The deadline for comments is November 19, 2004. If you have any comments on these or other issues raised by the proposed regulations, please contact the undersigned by phone at (202)

371-5432, by fax at (202) 326-5841, or by email at kireland@ici.org by Monday, November 1, 2004. Kathy D. Ireland Senior Associate Counsel

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