

MEMO# 1465

October 11, 1989

DEPT OF LAOBR ADVISORY OPINION CLARIFYING FINAL REGULATION

October 11, 1989 TO: PENSION MEMBERS NO. 47-89 RE: DEPARTMENT OF LABOR ADVISORY
OPINION CLARIFYING FINAL REGULATION CONCERNING PLAN LOANS

As we previously advised, the U.S. Department of Labor issued a final regulation in July 1989 under section 408(b)(1) of ERISA, which provides that the prohibited transaction provisions of section 406 shall not apply to loans by a plan to parties in interest who are participants and beneficiaries of the plan under certain circumstances. (See Institute Memorandum to Pension Members No. 35-89, dated July 31, 1989.) In order to qualify under paragraph (A) of section 408(b)(1), loans must be made available to all such participants and beneficiaries on a reasonably equivalent basis. In the attached advisory opinion, the Department of Labor states that it does not interpret this condition to require that participant loan programs be made available to all participants and beneficiaries, regardless of their status as parties in interest. Instead, this provision requires that loans be made available to all participants and beneficiaries who are parties in interest on a reasonably equivalent basis. We will keep you informed of further developments. Kathy D. Ireland Associate General Counsel Attachment

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