

MEMO# 10012

June 15, 1998

IRS FINAL REGULATION ON PRERETIREMENT DISTRIBUTIONS UNDER SBJPA

1 This regulation was published in proposed form on July 2, 1997. See Institute Memorandum to Pension Members No. 28-97 and Pension Operations Advisory Committee No. 22-97, dated July 17, 1997. 2 See Institute Memorandum to Pension Members No. 59-97, dated December 15, 1997; Institute Memorandum to Pension Members No. 13-97 and Pension Operations Advisory Committee No. 8-97, dated March 7, 1997; and Institute Memorandum to Pension Members No. 68-96, dated December 26, 1996. [10012] June 15, 1998 TO: PENSION MEMBERS No. 32-98 PENSION OPERATIONS ADVISORY COMMITTEE No. 21-98 RE: IRS FINAL REGULATION ON PRERETIREMENT DISTRIBUTIONS UNDER SBJPA

The Internal Revenue Service has published a final regulation that provides relief from the Code's anti-cutback provisions to employers amending plans so that they no longer have to make preretirement distributions to employees who attain age 70½. The regulation assists employers implementing the Small Business Job Protection Act of 1996 (SBJPA) amendments to the section 401(a)(9) distribution requirements. Background. The SBJPA amended the required minimum distribution rules of Code section 401(a)(9) to provide that employers need not make in-service required minimum distributions from a qualified plan to employees who have attained 70½. Under pre-SBJPA law, the employer was required to commence such distributions to employees on April 1 of the calendar year following the year in which they turned age 70½. Employers implementing the SBJPA rule must amend their plans. These plan amendments would eliminate a form of distribution, and thus, without regulatory relief, would violate Code section 411(d)(6) anti-cutback rules. Final Regulation. This guidance, which retains the structure and substance of the proposed regulation,¹ provides relief from section 411(d)(6) anticutback rules for plan amendments that eliminate in-service, pre-retirement distributions to employees attaining age 70½ if the following conditions are satisfied: (1) the amendment applies only to employees who attain 70½ during or after calendar year 1998, and (2) the amendment is adopted no later than the last day of any remedial amendment period that the Internal Revenue Service establishes for the completion of SBJPA-related amendments. These regulations are part of a series of guidance implementing this SBJPA provision.² Russell G. Galer Senior Counsel - 2 - Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Library Services Division at (202)326- 8304, and ask for this memo's attachment number: 10012.

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