

**MEMO# 16282**

July 9, 2003

## **PROPOSED REGULATIONS MODIFY ANTI-CUTBACK RULES BY REMOVING 90-DAY NOTICE PROVISION; REQUEST FOR COMMENTS**

[16282] July 9, 2003 TO: PENSION COMMITTEE No. 20-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 39-03 RE: PROPOSED REGULATIONS MODIFY ANTI-CUTBACK RULES BY REMOVING 90- DAY NOTICE PROVISION; REQUEST FOR COMMENTS The IRS has issued proposed regulations relating to the elimination of certain forms of distribution from qualified plans (the "anti-cutback rules"). The proposed regulations eliminate a notice requirement previously included in the regulations in order to reflect changes enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). Anti-Cutback Rules Section 411(d)(6) of the Internal Revenue Code (the "Code") generally provides that a plan will not be treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Prior to its amendment by EGTRRA, Code section 411(d)(6) provided that an amendment is treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (except as provided by regulations) eliminating an optional form of benefit. The IRS published final regulations on September 6, 2000 (TD 8900, 65 FR 53901) that amended section 1.411(d)-4 of the Income Tax Regulations by adding paragraph (e) of Q&A-2 to provide for additional circumstances under which a defined contribution plan can be amended to eliminate or restrict a participant's right to receive payment of accrued benefits under certain optional forms of benefit. Notice Requirement Section 1.411(d)-4, Q&A-2(e)(1) provides that a defined contribution plan may be amended to eliminate or restrict a participant's right to receive payment of accrued benefits under a particular optional form of benefit without violating the section 411(d)(6) anti-cutback rules if, once the plan amendment takes effect for a participant, the alternative forms of payment that remain available to the participant include payment in a single-sum distribution form that is "otherwise identical" to the eliminated or restricted optional form of benefit. The amendment cannot apply to a participant for any distribution with an annuity starting date 2 before the earlier of the 90th day after the participant receives a summary that reflects the plan amendment and that satisfies the Department of Labor's requirements for a summary of material modifications under 29 CFR 2520.104b-3, or the first day of the second plan year following the plan year in which the amendment is adopted. EGTRRA Changes EGTRRA revised section 411(d)(6) in a manner that is similar to section 1.411(d)-4, Q&A- 2(e), except that the EGTRRA provision does not include the advance notice requirement. Section 411(d)(6)(E) of the Code now provides that, except to the extent

provided in regulations, a defined contribution plan is not treated as reducing a participant's accrued benefit where a plan amendment eliminates a form of distribution previously available under the plan if a single-sum distribution is available to the participant at the same time as the form of distribution eliminated by the amendment, and the single-sum distribution is based on the same or greater portion of the participant's account as the form of distribution eliminated by the amendment. The proposed regulations would amend section 1.411(d)-4, Q&A-2(e) to reflect the addition of section 411(d)(6)(E) by EGTRRA. The proposed regulations retain the rules under which a defined contribution plan may be amended to eliminate or restrict a participant's right to receive payment of accrued benefits under a particular optional form of benefit without violating the section 411(d)(6) anti-cutback rules if, once the plan amendment takes effect for a participant, the alternative forms of payment that remain available to the participant include payment in a single-sum distribution. However, these proposed regulations would remove the 90-day notice requirement previously applicable to these plan amendments. Effective Date The proposed regulations are intended to be effective on the date of publication of final regulations in the Federal Register. Request for Comments Written and electronic comments and requests for a public hearing must be received by October 6, 2003. Please provide me with any comments on these proposed regulations by Friday, September 5, 2003. You may call me at 202-326-5835 or e-mail me at lrobinson@ici.org. Lisa Robinson Assistant Counsel Attachment (in .pdf format)