

MEMO# 4369

December 29, 1992

IRS NOTICE CONCERNING APPLICATION OF TWENTY-PERCENT WITHHOLDING TO PLAN LOANS

December 29, 1992 TO: PENSION MEMBERS NO. 38-92 OPERATIONS MEMBERS NO. 52-92
TRANSFER AGENT ADVISORY COMMITTEE NO. 76-92 RE: IRS NOTICE CONCERNING
APPLICATION OF TWENTY-PERCENT WITHHOLDING TO PLAN LOANS

Attached is a copy of IRS Notice 93-3, which clarifies the treatment of distributions attributable to qualified plan loans under the temporary and proposed regulations concerning the Unemployment Compensation Amendments of 1992 (the "UCA"). (See Institute Memorandum to Pension Members No. 28-92, Operations Members No. 39-92, Transfer Agent Advisory Committee No. 62-92, dated October 22, 1992.) The Notice provides that the only type of distribution related to a plan loan that cannot be an eligible rollover distribution under the UCA is a deemed distribution based on the provisions of section 72(p) of the Code. Such a deemed distribution can occur when the loan is made or at a later time, such as when the loan is in default because it is not repaid in a manner that satisfies section 72(p)(2). The other type of distribution related to a plan loan is a distribution of an offset amount, which occurs when, under the terms governing a plan loan, the participant's accrued benefit is offset in order to repay the loan (including the enforcement of the plan's security interest in the accrued benefit). Under the Notice, such an offset amount qualifies as an eligible rollover distribution, if it otherwise satisfies the basic definition. Under the Notice, a plan will not fail to satisfy section 401(a)(31) of the Code merely because the plan does not permit the direct rollover of an offset amount that is an eligible rollover distribution. In addition, for income tax withholding purposes, the offset amount is treated in the same manner as a distribution of employer securities. Although the offset amount must be included in the amount that is multiplied by 20 percent, the total amount required to be withheld does not exceed the sum of the cash and the fair market value of the property received by the participant, excluding any amount of the distribution that is an offset amount or that is distributed in the form of employer securities. The Notice contains a number of examples illustrating these rules, as well as certain transition rules. We will keep you informed of developments. Kathy D. Ireland Associate Counsel - Pension Attachment