

MEMO# 3109

September 19, 1991

IRS ISSUES FINAL NONDISCRIMINATION REGULATIONS

September 19, 1991 TO: PENSION COMMITTEE NO. 26-91 RE: IRS ISSUES FINAL NONDISCRIMINATION REGULATIONS

Attached are the final regulations regarding non-discrimination requirements for qualified retirement plans. Also attached are final regulations regarding the definition of compensation, permitted disparity (social security integration), minimum coverage requirements and the annual limitation on compensation for qualified plans. The regulations were proposed last year. (See Institute Memoranda to Pension Members Nos. 25-90 and 35-90 dated May 7, 1990 and September 19, 1990, respectively.) The final regulations generally follow the proposed regulations with miscellaneous enhancements and additional examples. Of particular note is final regulation section 1.411(d)-4 A-1(d) which lists benefits which are not "section 411(d)(6) protected benefits." This means that an employer with an existing plan may eliminate these benefits when adopting a prototype plan which does not contain such provisions without violating the anti-cutback rules of Internal Revenue Code section 411(d)(6). They include, but are not limited to, the availability of loans, the right to make after-tax employee contributions or elective deferrals, the right to direct investments, the right to a particular form of investment (e.g., employer securities), and rights that derive from administrative and operational provisions, such as mechanical procedures for allocating investment experience among accounts in defined contribution plans. We will keep you informed of related developments. W. Richard Mason Assistant Counsel - Pension Attachments

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