MEMO# 9960

May 22, 1998

IRS INVITES COMMENTS ON OPTIONAL FORMS OF BENEFIT FOR DEFINED CONTRIBUTION PLANS AND PERMITS AN OPTIONAL METHOD OF REPORTING USERRA MAKE-UP CONTRIBUTIONS

[9960] May 22, 1998 TO: PENSION COMMITTEE No. 31-98 PENSION OPERATIONS ADVISORY COMMITTEE No. 19-98 RE: IRS INVITES COMMENTS ON OPTIONAL FORMS OF BENEFIT FOR DEFINED CONTRIBUTION PLANS AND PERMITS AN OPTIONAL METHOD OF REPORTING USERRA MAKE-UP CONTRIBUTIONS ____ The Internal Revenue Service recently announced that it intends to exercise its authority to develop exceptions to the plan amendment prohibition described in section 411(d)(6) of the Code in Notice 98-29. The Service also has provided an optional method for employers to report make-up contributions to pension plans under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") in Announcement 98-45. Notice 98-29 Section 411(d)(6) of the Code prohibits qualified retirement plan amendments that have the effect of eliminating optional forms of benefit. However, section 411(d)(6) states that the Secretary of the Treasury may provide exceptions to this provision. The Treasury Department and the Service are considering further guidance exercising this authority to provide exceptions to this provision, and are inviting comments on possible approaches before the Service proposes such regulations. Notice 98-29 states that Treasury and the Service recognize that the accumulation of a variety of payment choices under plans may increase the cost and complexity of plan operations. Similar issues arise where employers merge with or acquire other businesses. The goal of the Treasury Department and the Service is to balance the interests of participants and the practical needs of employers, including the need to adapt plans to changing circumstances, and to propose regulations that would allow greater flexibility with respect to plan payment forms. One approach under consideration is to permit defined contribution plans to adopt amendments eliminating alternative forms of payment if, after the amendment, each affected participant could elect between a single-sum distribution form and at least one extended payment form. The extended payment form condition would be satisfied if the plan offered at least one of the following three alternatives: (1) a single and a joint life annuity; (2) installments payable over a single and joint life expectancy; or (3) in the case of a plan that did not previously provide for payment of benefits to the participant in any form described in option (1) or (2), installments payable over the longest installment period permitted under the plan prior to the amendment. In addition to comments on this approach, comments are invited on possible variations, which might include providing that the extended payment form condition could be satisfied by installments for a fixed number of years or by a provision under which a participant could elect to receive any amount of the participant's account balance at any time, or not requiring an extended payment form. Other approaches that Treasury and the Service are considering include permitting amendments that eliminate optional forms of benefit with respect to which participation utilization is demonstrably very low; permitting amendments that eliminate optional forms of benefit that apply with respect to no more than a small portion of participants' benefits; and permitting amendments that eliminate optional forms of benefit if the effective date of the amendment is deferred for some period of years. - 2 - Treasury and the Service are also considering whether it would be appropriate to develop additional relief for elective transfers between defined contribution plans. Such relief would apply under certain conditions, for example, where employees are transferred to a new controlled group in connection with an acquisition. This would permit employers to allow employees in an acquired business to elect to have their benefits transferred between defined contribution plans, even though the benefits may not yet be distributable. The Service invites comments on the possible approaches described in Notice 98-29, as well as variations on these approaches. In addition, comments are requested on the development of additional relief for elective transfers, including whether it should be limited to situations in which both plans are of the same type, or whether the transferee plans should merely be required to retain the distribution restrictions and other relevant characteristics of the transferor plan. Finally, the Service invites comments on whether additional relief should be developed for defined benefit plans and, if so, how the relief would adequately account for the special characteristics of defined benefit plans. Comments are due by August 31, 1998. Individuals may comment by mail to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Att: CC:CORP:T:R (Notice 98-29), Room 5226, Washington, D.C. 20044; via hand-delivery between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 98-29), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue N.W., Washington, D.C.; or via the Internet at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. Announcement 98-45 USERRA requires that an employee who is absent from work because of military service be permitted, upon return to work, to make up certain contributions to pension plans that the employee could have made if actually employed during the period of military service. The Service has indicated that some employers have experienced difficulty with their payroll systems in reporting the make-up contributions on Form W-2. Announcement 98-45 permits employers to provide a separate statement to its employees indicating the USERRA make-up contributions, rather than reporting these make-up contributions in Box 13 of Form W-2. The statement must identify the type of plan, the years to which the contributions relate and the amounts. Announcement 98-45 permits employers to continue to report USERRA make-up contributions on Form W-2. Note, however, that contributions to pension plans for the current year are required to be reported on Form W-2. Copies of Notice 98-29 and Announcement 98-45 are attached. Kathryn A. Ricard Assistant Counsel Attachments

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