

MEMO# 17334

April 1, 2004

IRS APPLIES EGTRRA REMEDIAL AMENDMENT PERIOD TO ALL DISQUALIFYING PROVISIONS PUT INTO EFFECT OR ADOPTED AFTER 2001

[17334] April 1, 2004 TO: PENSION MEMBERS No. 23-04 PENSION OPERATIONS ADVISORY COMMITTEE No. 28-04 RE: IRS APPLIES EGTRRA REMEDIAL AMENDMENT PERIOD TO ALL DISQUALIFYING PROVISIONS PUT INTO EFFECT OR ADOPTED AFTER 2001 As we previously advised,¹ the Internal Revenue Service announced in Notice 2001-42 that the remedial amendment period applicable to retroactive remedial plan amendments for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) would end no earlier than the end of the 2005 plan year. The availability of the EGTRRA remedial amendment period is conditioned, however, on the plan's timely adoption of required "good faith" EGTRRA plan amendments. In Revenue Procedure 2004-25, a copy of which is attached, the Service states that the EGTRRA remedial amendment period will apply to all disqualifying provisions that are put into effect (in the case of new plans) or adopted (in the case of existing plans) after December 31, 2001. The Service also notes, however, that the revenue procedure does not extend the time by which good faith EGTRRA plan amendments must be adopted.² The revenue procedure also includes an example of its application to a new plan that was put into effect during 2002. According to the revenue procedure, if the required EGTRRA good faith amendments were adopted by the due date (including extensions) for filing the employer's 2002 tax return, the remedial amendment period for all disqualifying provisions of the plan, whether or not related to EGTRRA, would end no earlier than the end of the plan's 2005 plan year. Kathy D. Ireland Senior Associate Counsel Attachment (in .pdf format) 1 See Institute Memorandum to Pension Members No. 23-01 and Pension Operations Advisory Committee No. 42-01 [13692], dated June 29, 2001. 2 In general, a good faith EGTRRA plan amendment is adopted timely if it is adopted by the later of the end of the plan year that includes the effective date of the EGTRRA change or the end of the plan's GUST remedial amendment period. 2 Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 17334, or call the ICI Library at (202) 326-8304 and request the attachment for memo 17334.