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February 27, 2002

Honorable Mark A. Weinberger
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Washington, DC 20220

Honorable Charles O. Rossotti
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Sirs:

I am pleased to enclose the New York State Bar Association Tax Section Report No. 1006 on Section 411(d)(6) of the Internal Revenue Code and the regulations thereunder, which restrict the degree to which a sponsor of a qualified retirement plan may remove or limit the availability of forms of benefit payment under the plan.

Part I of the report sets forth our overall conclusions and recommendations. The remainder of the report addresses three distinct topics in greater detail. First, in Part II we suggest that Treasury reconsider its treatment as inherently violative of Section 411(d)(6) any plan provision that gives the plan administrator or sponsor discretionary authority with respect to the payment of benefits. Second, in Part III we discuss the divergent views as to whether contingent benefits are protected under Section 411(d)(6), and suggest Treasury or the Service issue more formal guidance on this matter.

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In Part IV, the principal focus of our report, we suggest six new exceptions to the anti-cutback rules. As discussed in the report, we believe adoption of these exceptions would substantially lessen the compliance burden on plan sponsors without materially undermining participant protections. The following four exceptions would be predicated on the plan's providing a lump sum payment as one of the available forms of benefit:

1. Benefit payment form changes made in connection with a plan merger, spin-off, direct transfer of assets or similar event following a corporate transaction.
2. Benefit payment form changes made in connection with a change from one prototype or volume submitter plan to another.
3. An amendment that eliminates optional forms of benefit whose utilization is demonstrably very low.
4. An amendment that eliminates optional forms of benefit that apply to only a small portion of participants' benefits.

The following two exceptions would not be predicated on the plan's providing a lump sum as one of the available forms of benefit:

5. An amendment that eliminates optional forms of benefit if the effective date of the amendment is deferred for five or more years.
6. An amendment that eliminates one of several similar forms of benefit.

If you have any questions or would like to discuss our comments further, please do not hesitate to call me at 212-450-4037.

Respectfully submitted,



Samuel J. Dimon
Chair

cc: Honorable Pamela C. Olson
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