

MEMO# 16434

August 18, 2003

DRAFT INSTITUTE COMMENT LETTER ON SECOND IRS WHITE PAPER CONCERNING DETERMINATION LETTER PROCESS

[16434] August 18, 2003 TO: PENSION COMMITTEE No. 27-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 50-03 RE: DRAFT INSTITUTE COMMENT LETTER ON SECOND IRS WHITE PAPER CONCERNING DETERMINATION LETTER PROCESS As we previously informed you,¹ the Internal Revenue Service issued a second white paper on the future of the determination letter program. The white paper described two options for revising the program, and requested comment on whether either of these options (or a combination thereof) would improve upon the status quo. The Institute has prepared the attached draft comment letter that discusses the impact of the stated options upon prototype plans. The letter states that neither of the options discussed in the white paper would improve upon the status quo with respect to prototype plans and could discourage financial institutions from sponsoring prototype plans. As an alternative, the letter recommends changes to the option that would stagger the remedial amendment period (RAP) on a five-year cycle. Under an alternative rule described in Section V.E. of the white paper, the Service proposed staggering RAP cycles by basing the RAP of the prototype sponsor (and its adopting employers) on the sponsor's taxpayer identification number (TIN). In order to avoid the competitive and other issues that the white paper proposal would create, the letter suggests that a uniform five-year RAP apply to all prototype sponsors, and that adopting employers be required to adopt approved prototype documents within one year of their approval. The letter also includes a section that would allow (but not require) prototype sponsors to adopt IRS model plan amendments on behalf of their adopting employers annually, and then "roll up" these amendments into a restated plan that is submitted for an opinion letter every five years. Please especially review this section (which appears in bold brackets on page 4), and consider whether this section should be included in the final letter. ¹ See Institute Memorandum to Pension Committee No. 13-03 and Pension Operations Advisory Committee No. 26- 03 (16051), dated May 13, 2003. ² Comments on the white paper are due by September 2, 2003. If you have any comments on the draft Institute letter, please contact me by phone at (202) 371-5432, by fax at (202) 326-5841, or by e-mail at kireland@ici.org not later than Thursday, August 28. Kathy D. Ireland Senior Associate Counsel Attachment (in .pdf format)