

MEMO# 5175

September 27, 1993

INSTITUTE TESTIFIES BEFORE ERISA ADVISORY COUNCIL

September 27, 1993 TO: BOARD OF GOVERNORS NO. 84-93 PENSION MEMBERS NO. 34-93
RE: INSTITUTE TESTIFIES BEFORE ERISA ADVISORY COUNCIL

On September 22 and 23, 1993, the Institute presented the attached testimony before two work groups of the U.S. Department of Labor's ERISA Advisory Council. The Prohibited Transactions Work Group asked the Institute to recommend improvements to the Department of Labor's procedures governing exemptions from ERISA's prohibited transaction provisions. In its testimony, the Institute stated that the Department does not provide sufficient interpretive guidance concerning the scope of ERISA's prohibited transaction provisions and that the exemption process may be clogged by unnecessary requests for exemptions. The Institute recommended that the Department consider adopting a process similar to the "no-action" process used by the Securities and Exchange Commission under the Investment Company Act of 1940 in order to provide more guidance to plan sponsors and financial institution service providers. In addition, the Institute suggested that, in each exemption, the Department identify the prohibited transaction and explain why the exemption was necessary. James Gately of The Vanguard Group testified on behalf of the Institute before a second work group of the ERISA Advisory Council, which is examining the growth of defined contribution plans, especially 401(k) plans. Among other things, this work group is exploring whether employees participate in 401(k) and other defined contribution plans in sufficient numbers. For example, the work group has cited 1987 statistics indicating that only 59 percent of those employees eligible to participate in 401(k) plans actually contribute. Mr. Gately testified that current participation rates are much higher, generally in the 70 to 80 percent range, and described the plan features and communications techniques that mutual funds and employers are using to increase participation levels. The Institute also intends to testify before this work group next year when it examines investment returns under defined contribution plans. We will keep you informed of developments. Catherine L. Heron Vice President - Tax and Pension Attachments