

MEMO# 2728

May 1, 1991

DRAFT INSTITUTE COMMENT ON PROPOSED ERISA 404(C) REGULATION

- 1 - May 1, 1991 TO: PENSION COMMITTEE NO. 11-91 RE: DRAFT INSTITUTE COMMENT ON
PROPOSED ERISA 404(c) REGULATION

Attached is a draft copy of the Institute's comments regarding the Department of Labor's proposed regulation regarding participant-directed individual account plans under ERISA section 404(c). (See Institute Memorandum to Pension Members No. 8-91, dated March 13, 1991.) The draft comment letter expresses the Institute's support for the proposed regulation, discusses the Institute's understanding of the regulation's provisions, and contains several comments regarding the regulation and participant-directed individual account plans, in general. Pursuant to the recommendations of the ERISA section 404(c) subcommittee which met on April 19, 1991, the Institute intends to comment that the final regulation, or the preamble thereto, should clarify the following matters: (1) Since GICs differ from other look-through investment vehicles because of their non-participatory nature, GICs should not be treated like other look-through vehicles for purposes of disclosure of the financial condition of the issuers; (2) Employers retain ongoing fiduciary obligations to monitor the suitability of 404(c) plan investments, add additional options and review the frequency of transfer among investment options; (3) Employer stock cannot be one of the three basic investment options under a 404(c) plan; (4) ERISA section 404(c) protection is available to participant-directed account plans which offer employer stock even if employees must obtain pre-clearance for purchases of employer stock because of securities law requirements; and - 2 - (5) Offering employer stock under a 404(c) plan may require transferability more frequently than quarterly to and from the least volatile option under the plan. As we discussed at the Pension Committee meeting last week, comment letters in support of the proposed regulation may help expedite the release of the final regulation. Therefore, it is important for fund organizations to individually express their support for the Department of Labor's proposal during the comment period. Written comments must be received by the Department of Labor on or before May 13, 1991. Three copies should be submitted to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N5669, U.S. Department of Labor, Washington, DC 20210 and marked, "Attention: Section 404(c) Regulation". If you have any questions regarding the enclosed, please call me at 202/955-3516. W. Richard Mason Assistant Counsel - Pension Attachment

should not be considered a substitute for, legal advice.