

MEMO# 9328

October 10, 1997

DRAFT EDUCATION IRA CUSTODIAL AGREEMENT FOR REVIEW AND COMMENT

ACTION REQUESTED [9328] VIA FAX October 10, 1997 TO: PENSION COMMITTEE No. 39-97
PENSION OPERATIONS ADVISORY COMMITTEE No. 38-97 AD HOC COMMITTEE ON
EDUCATION IRA RE: DRAFT EDUCATION IRA CUSTODIAL AGREEMENT FOR REVIEW AND
COMMENT

Attached for your review please find a draft Education IRA Custodial Agreement. The agreement is based on discussions occurring at the September 23 meeting of the Ad Hoc Committee, which was formed for this purpose. Upon finalization of the draft, the Institute hopes to discuss with the IRS the possibility of expeditiously obtaining its approval of the custodial agreement. Please inform the undersigned of comments, concerns or suggested revisions before 1:00 p.m. on Thursday, October 16, by either fax at 202/326-5839, telephone at 202/326-5835 or e-mail at rgaler@ici.org. This document reflects certain substantive decisions made at the September 23 meeting including the following: (1) the "authorized person" controlling the Education IRA will be a parent or legal guardian of the designated beneficiary, or upon designation at age of majority or a later date, the beneficiary (Section 1.03); (2) the agreement provides for "authorized person" successorship in the case of his or her incapacity or death (Section 1.03); (3) the agreement clearly defines the duties of both the "authorized person" (Section 6.02) and the custodian (Sections 6.01 and 6.04); and (4) the agreement would permit, upon account termination when the beneficiary attains age 30, that the account may be re-registered as a noncustodial account in the name of the beneficiary (Section 9.02). With regard to this termination provision, we specifically seek your input and thoughts. Should the agreement simply provide for lump sum payment or should it provide for a "deemed distribution" (and taxable event) with the account converting via re-registration to a retail account owned by the beneficiary? Are there technical, operational, or legal issues arising from such an automatic re-registration of the account? We have also set forth alternative language in the Section 9.02 termination provision providing for lump sum distributions of the account, which would be made either (1) to any person designated by the "authorized person" or (2) only to the "authorized person" for the benefit of the beneficiary. Is there a preference for one or the other? Again, please provide comments by 1:00 p.m. on Thursday October 16.

Russell G. Galer Assistant Counsel - Pension

should not be considered a substitute for, legal advice.