

MEMO# 963

February 8, 1989

IRS TO BEGIN REVIEW OF MASTER AND PROTOTYPE PLAN AMENDMENTS

- 1 - February 8, 1989 TO: PENSION MEMBERS NO. 7-89 RE: IRS TO BEGIN REVIEW OF MASTER AND PROTOTYPE PLAN AMENDMENTS

Attached is a copy of Revenue Procedure 89-9, which describes the procedures for IRS issuance of opinion letters concerning the acceptability of master and prototype plans under section 401(a) of the Internal Revenue Code, as amended by the 1986 Tax Reform Act and other recent legislation. The following memorandum provides a general description of the revenue procedure as well as an update on the Institute's prototype plans. The Revenue Procedure As under prior revenue procedures, the IRS National Office will review master and prototype plans submitted by sponsoring organizations, including regulated investment companies and their investment advisers and principal underwriters, as to the acceptability of the form of a master or prototype plan under section 401(a) of the Code. If the sponsoring organization receives a favorable opinion letter concerning the acceptability of the form of the plan, it may offer the plan to adopting employers, who may rely upon the sponsoring organization's opinion letter under certain circumstances. In the absence of such circumstances, the adopting employer may seek a determination letter concerning the qualification of its plan. Continued and Interim Reliance Generally, an employer that adopted a master or prototype plan with a favorable TEFRA opinion letter before February 6, 1989 and either was entitled to rely on the opinion letter or received a favorable determination letter, may continue to rely on the opinion or determination letter for plan years beginning after December 31, 1988 under the following circumstances: (1) the employer must operate its plan in accordance with those requirements that are effective for plan years beginning before - 2 - 1989 as of the effective dates of such requirements; (2) the sponsoring organization must submit a replacement plan to the IRS for review on or before October 31, 1989; and (3) the employer must adopt the IRS-approved version of the replacement plan (and request a determination letter if not entitled to rely on the sponsoring organization's opinion letter) on or before the later of (a) the last day of the twelfth calendar month beginning after the date of the opinion letter, or (b) the end of the remedial amendment period applicable to the employer's plan under section 401(b). On the other hand, an employer that adopts such a master or prototype plan on or after February 6, 1989 can rely upon the applicable opinion or determination letter only if the following conditions, in addition to those described above, are satisfied: (1) in the case of a replacement plan, the sponsoring organization submitted the plan to the IRS for review on or before the earlier of (a) the date of the employer's adoption of the plan, or (b) October 31, 1989; and (2) in the case of a master or prototype or replacement plan that amends or restates a plan of the employer, the employer is entitled to rely, at the time of such adoption, on a favorable opinion or determination letter issued with respect to the plan that

is amended or restated. Mass Submitter Program The experimental mass submitter program established by Revenue Procedure 84-23 will be made permanent under the new revenue procedure. This program permits entities that represent at least ten sponsoring organizations that will sponsor a word-for-word identical plan to seek opinion letters on behalf of the sponsoring organizations and receive expedited processing. After the initial submission, the mass submitter may submit additional applications on behalf of sponsoring organizations that adopt word-for-word identical plans or plans that contain minor modifications from the mass submitter's plan. Mass submitters now may submit "flexible plans" which include optional provisions within the basic plan document. The allowable optional provisions are limited to (1) investment provisions, such as those permitting loans, investments in insurance contracts or other funding media, or self-directed investments; (2) administrative provisions, such as those describing the allocation of responsibilities among fiduciaries, the resignation or replacement of fiduciaries, claims procedures, or recordkeeping requirements; and (3) cash or deferred arrangements. A flexible plan adopted by a sponsoring organization which differs from the mass submitter plan only in that optional provisions have been deleted generally will be treated as a word-for-word identical adoption rather than as a - 3 - minor modification. Additional optional provisions may be added by the mass submitter after a favorable opinion letter is issued. Effective Dates Effective February 6, 1989, the IRS will suspend review of applications for opinion letters with respect to master and prototype plans and will return any such applications received after February 16. Applications from mass submitters will be accepted in early April, but non-mass submitter applications will not be accepted before July. Institute Prototype Plans The Institute intends to submit to the IRS in early April replacement plans for its prototype paired defined contribution plans and its prototype 401(k) plan that will update the plans to comply with 1986 Tax Reform Act and other changes. The paired defined contribution plans are available to Institute members at no charge. The 401(k) plan involves a one-time charge of \$1,000. Utilization of the Institute's prototype plans saves members the cost of plan drafting and IRS user fees. A non-mass submitter must pay a user fee of \$1,000 per adoption agreement, while a sponsoring organization that adopts a mass submitter's plan on a word-for-word identical basis pays only \$50 per adoption agreement. In addition, as noted above, only mass submitter plans will be reviewed during the first three months of the procedure. Because applications from non-mass submitters will not be accepted until July, sponsoring organizations that adopt a mass submitter's plan generally will be able to offer employers an approved plan earlier than those that do not participate in a mass submitter program. For further information on the Institute's prototype plans, please contact the undersigned. Kathy D. Ireland Assistant General Counsel Attachment