

MEMO# 9567

January 5, 1998

EDUCATION IRA FORMS 5305-E AND 5305-EA RELEASED

g[9567] January 5, 1998 VIA FACSIMILE TO: PENSION COMMITTEE No. 1-98 PENSION OPERATIONS ADVISORY COMMITTEE No. 1-98 AD HOC COMMITTEE ON EDUCATION IRA RE: EDUCATION IRA FORMS 5305-E AND 5305-EA RELEASED

The Internal Revenue Service has published the attached Forms 5305-E and 5305-EA, form custodial and trust agreements that may be used to establish an Education IRA account. Some highlights of the form requirements are as follows: Parties Identified. The forms require the identification of three parties -- the "depositor," the "responsible individual" and the designated beneficiary and require the provision of an identification number (typically, the social security number) for both the designated beneficiary and the depositor. The depositor is defined as the person who establishes the account. Controlling Party. Article V of the forms generally grants the "responsible individual" with authority to direct investments in the Education IRA and to direct distributions from the account. Article V indicates that the depositor has the power to direct the custodian/trustee with regard to initial investments (as limited by the investment choices offered by the custodian or trustee) and requires the depositor to designate an individual -- the "responsible individual" -- to control the account. The "responsible individual" has the power to redirect the investment and to direct all additional investments and account distributions. Article VI states that the "responsible individual" shall be a parent or guardian of the designated beneficiary. The forms contain an optional election (to be made by the depositor establishing the account) that would permit the "responsible individual" to continue to control the account after the designated beneficiary attains age of majority under state law. If this election is not made, the designated beneficiary gains control over the Education IRA at age of majority. Article VI also contains explicit successor provisions in the event of the death or incapacity of the "responsible individual." Redesignating Beneficiary. Article VII provides the depositor establishing the account with an election either to permit or prohibit the changing of the account beneficiary designation to another family member. Disclosure Statements. The forms require the custodian or trustee to provide both the depositor and "responsible person" with a "concise" disclosure statement, which must include an "explanation of the statutory requirements applicable to, and the income tax consequences of establishing and 1 See Institute Memorandum to Pension Members, dated October 29, 1997. maintaining an account under section 530." Provision of a copy of IRS Notice 97-601 is deemed a sufficient disclosure statement. Russell G. Galer Associate Counsel - Pension Attachments

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