

MEMO# 8630

February 10, 1997

REQUEST FOR COMMENT: DRAFT ICI SUBMISSION TO DOL

February 10, 1997 TO: PENSION COMMITTEE No. 5-97 AD HOC COMMITTEE ON BUNDLED SERVICES RE: REQUEST FOR COMMENT: DRAFT ICI SUBMISSION TO DOL

As you were previously informed, on October 17, 1996, the Institute and American Bankers Association jointly filed an advisory opinion request with the Department of Labor regarding the application of ERISA prohibited transaction rules to bundled services products. Attached is a DRAFT supplemental submission, which responds to Department of Labor (DOL) inquiries regarding that filing. In particular, the DOL has sought (1) clarification of the frequency and nature of fee disclosure and (2) specific examples of the notice and opportunity which a plan fiduciary would have to make plan-level decisions regarding the modification of a bundled services product's investment menu. With regard to fee disclosure, the DOL has asked ICI and ABA to include a statement that a nondiscretionary trustee discloses on a quarterly basis the precise dollar amount that the trustee earns from mutual funds with respect to a plan's investment in each fund. In the draft submission we state that the Department should not impose a single, precise disclosure standard. Such a standard is impractical, and prospectus disclosure is sufficient to provide a plan fiduciary with the necessary information to make a prudent decision regarding the appropriateness of a particular bundled services product. We invite you to provide comments on the draft. In particular, we seek confirmation of two points made in the draft submission. First, the draft states that prospectus disclosure is currently the standard practice in the bundled services market. If other types of disclosures are regularly being made, please let us know. Second, the draft indicates that plan-by-plan, dollar amount disclosure is burdensome and difficult to provide. It is our understanding that nondiscretionary trustees offering a bundled services product often hold plan assets in aggregated "omnibus" accounts with mutual funds. The funds, in turn, calculate service fees based on assets in those omnibus accounts, not on a plan-by-plan basis. Furthermore, it is our understanding that many nondiscretionary trustees do not have the current technological ability to make such fee computations on a plan-by-plan basis. Please inform us whether this characterization is accurate. Any comments should be made by telephone or facsimile to Russ Galer, (202) 326-5835, or Cathy Heron, (202) 326-5830. Our fax number is (202) 326-5839/5841. Please comment by close of business, Thursday, February 13. We will keep you informed of developments. Russell G. Galer Assistant Counsel - Pension

should not be considered a substitute for, legal advice.