

MEMO# 1267

July 20, 1989

INSTITUTE AND OTHER GROUPS REQUEST REVENUE RULING CONCERNING TRANSFERS AMONG SECTION 403(B) ARRANGEMENT FUNDING VEHICLES

- 1 - July 20, 1989 TO: PENSION MEMBERS NO. 33-89 RE: INSTITUTE AND OTHER GROUPS
REQUEST REVENUE RULING CONCERNING TRANSFERS AMONG SECTION 403(b)
ARRANGEMENT FUNDING VEHICLES

As you know, for a number of years the Institute has urged the IRS to issue formal guidance concerning the circumstances under which a participant in a section 403(b) arrangement may transfer an existing accumulation to another investment vehicle. The Institute's most recent written request was submitted in August 1988. (See Institute Memorandum to Pension Members No. 39-88, dated August 24, 1988.) The IRS recently indicated that a revenue ruling concerning section 403(b) transfers is currently under consideration. However, the proposed revenue ruling would address only those situations in which the participant transferred his or her entire accumulation to another vehicle under section 1035 and not address partial transfers. The lack of guidance in this area is especially disturbing because of the changes that will take place after final SEC approval of the settlement agreement filed in the proceeding involving the Teachers Insurance and Annuity Association of America (TIAA) and the College Retirement Equities Fund (CREF), collectively referred to as TIAA-CREF. As we advised earlier, final SEC approval of this agreement will enhance the investment flexibility of participants in the section 403(b) arrangements of colleges and universities and other tax-exempt organizations. (See Institute Memorandum to Board of Governors No. 81-88, SEC Rules Members No. 62-88 and Pension Members No. 51-88, dated December 21, 1988.) Uncertainty over the tax consequences of transfers, however, will inhibit the exercise of this investment flexibility. In light of these developments, the Institute has formed a coalition of active participants in the TIAA-CREF proceeding, including TIAA-CREF, to join in the attached letter to Treasury and IRS officials. Specifically, the letter requests that the - 2 - IRS publish a revenue ruling or other guidance of general applicability that expressly would permit employees to transfer all or part of their section 403(b) retirement accumulations in one funding vehicle to another vehicle under an employer's program on a tax-free basis without imposing undue burdens on the employee. In addition, the coalition urges that such guidance rely not on section 1035, but rather on a theory comparable to that permitting such transfers among funding vehicles within a qualified plan under section 401(a). We will keep you informed of further developments.

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