

MEMO# 2748

May 10, 1991

INSTITUTE COMMENT LETTER ON PROPOSED REGULATION

May 10, 1991 TO: PENSION MEMBERS NO. 18-91 RE: INSTITUTE COMMENT LETTER ON
PROPOSED REGULATION CONCERNING ERISA SECTION 404(c) PARTICIPANT DIRECTED
INDIVIDUAL ACCOUNT PLANS _____

Attached is a copy of the Institute comment letter on the Department of Labor proposed regulation concerning participant directed individual account plans under section 404(c) of ERISA. (See Institute Memorandum to Pension Members No. 11-91, dated March 13, 1991.) The letter supports the regulation and urges its prompt adoption in final form. The Institute also recommends several clarifications to the regulation. First, the letter suggests that participants in ERISA section 404(c) plans who have the opportunity to invest their savings in guaranteed investment contracts should be able to learn the financial condition of the GIC issuer. Second, the letter urges the Department of Labor to clarify in the final regulation or the preamble thereto that ERISA section 404(c) is not designed to provide participants with less valuable protections than are provided by the general fiduciary rules under ERISA section 404(a). As such, an ERISA section 404(c) plan fiduciary retains the ongoing duty to determine whether to replace existing investment options, include additional options or alter the frequency of transfer among options. Finally, with regard to employer securities, the letter requests the Department of Labor to specifically state in the regulation that employer securities cannot function as one of the three core options under an ERISA section 404(c) plan. The Institute also requests clarification that ERISA section 404(c) may apply to employer securities even if participants must disclose their plan purchases of such stock to their employer in order to comply with Federal securities law obligations. The letter provides the Department of Labor with a discussion of mutual fund experience with individual account plans. Most of the statistics provided were gathered through the individual account plan survey conducted last year. (See Institute Memorandum to Pension Members No. 31-90, dated August 3, 1990.) We will keep you informed of further developments. W. Richard Mason Assistant Counsel - Pension Attachment