

MEMO# 11890

May 18, 2000

INSTITUTE SUBMITS COMMENT LETTER ON DOL'S VOLUNTARY FIDUCIARY CORRECTION PROGRAM

1 A memorandum describing VFC was previously provided. See Institute Memorandum to Pension Members No. 18-00 and Pension Operations Advisory Committee No. 19-00, dated March 21, 2000. 2 See Institute Memorandum to Pension Committee No. 29-00, Pension Operations Advisory Committee No. 31-00 and Ad Hoc Committee on DOL Voluntary Correction Program, dated April 26, 2000. [11890] May 18, 2000 TO: PENSION COMMITTEE No. 35-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 35-00 AD HOC COMMITTEE ON DOL VOLUNTARY CORRECTION PROGRAM RE: INSTITUTE SUBMITS COMMENT LETTER ON DOL'S VOLUNTARY FIDUCIARY CORRECTION PROGRAM

_____ The Institute recently submitted a comment letter to the Department of Labor regarding its Voluntary Fiduciary Correction Program ("VFC"). Under VFC, persons potentially liable for certain fiduciary violations under ERISA may, if program conditions are met, correct the breach and avoid certain penalties under ERISA as well as potential civil actions by the Department's Pension and Welfare Benefits Administration.¹ The comment letter was developed based on discussions from an April 6th conference call and comments on a circulated draft.² The Institute's letter makes a number of recommendations regarding the general structure of VFC that would provide greater incentives for program participation. Specifically, the letter requests that the Department (i) permit anonymous applications under VFC and expressly allow pre-application discussions with the Department; (ii) establish a self-correction component to the program analogous to the Internal Revenue Service's APRSC program; (iii) coordinate relief under VFC with the Solicitor of Labor; and (iv) enhance coordination with the Service to address section 4975 excise taxes and assure remedies under VFC are consistent with those acceptable under the Service's voluntary correction program, EPCRS. With respect to specific features of VFC, the letter recommends that the Department (i) modify the program's notice requirement; (ii) modify VFC's requirement relating to the provision of supporting documentation; and (iii) modify and expand permissible calculation methods for determining correction amounts under the program. Thomas T. Kim Assistant Counsel Attachment