

**MEMO# 11385**

November 4, 1999

## **NONSPOUSAL IRA BENEFICIARY'S DESIGNATION OF NEW BENEFICIARY**

1 See Institute Memorandum to Pension Committee No. 43-99, dated July 1, 1999. 2 See Institute Memorandum to Pension Members No. 33-99, Pension Operations Advisory Committee No. 42-99 and Ad Hoc committee On IRA Beneficiary Designation, dated September 16, 1999. [11385] November 4, 1999 TO: PENSION COMMITTEE No. 63-99 AD HOC COMMITTEE ON IRA BENEFICIARY DESIGNATIONS RE: NONSPOUSAL IRA BENEFICIARY'S DESIGNATION OF NEW BENEFICIARY

Attached is a revised, final version of an earlier draft legal memorandum that addresses the issue of whether a nonspousal IRA beneficiary may designate a new beneficiary. The memorandum specifically addresses whether such designation is permissible under federal law, analyzes the application of the required minimum distribution rules in cases where there has been such designation and reviews applicable state law in ten selected states. A chart summarizing the state laws discussed in the memorandum is appended. A draft of this memorandum had been circulated to and discussed by Institute Pension Committee members that had attended a July 28 meeting.<sup>1</sup> Outside counsel has revised the memorandum to include a recent Internal Revenue Service Private Letter Ruling ("PLR") on this issue<sup>2</sup> and to address issues and questions raised at that meeting. For instance, we have added a discussion of the impact of state community property laws on an IRA beneficiary's ability to designate a beneficiary. In brief, the memorandum concludes that federal law does not expressly authorize or restrict the ability of a nonspousal IRA beneficiary to designate a new beneficiary to receive the remainder of payments after his or her death. The memorandum concludes, however, that section 401(a)(9) of the Internal Revenue Code would restrict the timing of payments to be made to the new beneficiary. Specifically, the new beneficiary must receive distributions at least as rapidly as distributions were required to be made to the original IRA beneficiary under Code section 401(a)(9) rules. The memorandum also concludes that state law may affect whether a nonspousal IRA beneficiary may designate a new beneficiary. The trust, property, probate and contract laws of a specific state may be relevant. Two notable issues that warrant special attention in this regard are whether there are requirements or exemptions from the applicable state wills statutes, the formalities of which (witnesses, notary requirements, etc.) may be relevant to the validity of the designation, and whether the state is a community property state. Russell G. Galer Senior Counsel Attachment

should not be considered a substitute for, legal advice.