

MEMO# 12854

November 14, 2000

INSTITUTE SUBMITS LETTER TO IRS CONCERNING GROUP VOLUNTARY CORRECTION PROGRAM

[12854] November 14, 2000 TO: PENSION COMMITTEE No. 86-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 83-00 AD HOC COMMITTEE ON IRS GROUP CORRECTION PROGRAM RE: INSTITUTE SUBMITS LETTER TO IRS CONCERNING GROUP VOLUNTARY CORRECTION PROGRAM On November 13, 2000, the Institute submitted a comment letter to the Internal Revenue Service regarding its development of a “group” voluntary correction program, commonly referred to as “group VCR.” As we previously indicated, the IRS is currently designing such a program, under which plan service providers may approach the IRS to correct certain systemic defects that cut across numerous plans.¹ On October 20th, Institute staff met with IRS officials, who provided preliminary details about the program and invited the Institute to provide comments. The Institute’s letter, which responds to the IRS’ contemplated approach to the program, was based on a conference call with members on October 24th and member comments on a draft letter prepared by Stuart Lewis of Silverstein and Mullens.² Under the program structure contemplated by the IRS, a service provider would file an application with the IRS for a minimum number of affected plans, after obtaining a power of attorney from each plan sponsor. The Institute’s letter outlines a number of concerns raised by this approach. First, service providers would be reluctant to identify their plan sponsor clients prior to approval of a correction method by the IRS, and employers would be reluctant to permit disclosure of their identity to the IRS. Second, employers likely would be reticent to delegate broad authority to third parties through a power of attorney. Third, under the power of attorney approach, service providers that serve in a nondiscretionary capacity inadvertently could acquire indicia of fiduciary status. In light of these concerns, the letter provides an alternative framework for the group VCR program, under which a service provider would file a submission with the IRS without identifying its plan sponsor clients. Furthermore, after a correction method — or several

¹ See Institute Memorandum to Pension Committee No. 73-00, Pension Operations Advisory Committee No. 70-00, dated October 5, 2000. ² See Institute Memorandum to Pension Committee No. 83-00, Pension Operations Advisory Committee No. 81-00, Ad Hoc Committee on IRS Group Correction Program, dated November 2, 2000. 2alternative methods — have been agreed to by the service provider and the IRS, the service provider would communicate the matter to affected employers, giving them a reasonable opportunity to reject participation in the correction. Unless the employer affirmatively rejected such participation, the applicable correction would be applied to the employer’s plan. The comment letter also makes several additional recommendations with respect to the details of the program. First, guidance on the group VCR program should provide explicit assurances that plan sponsor clients of service providers that participate in the

program will not be subject to a higher risk of examination. Second, the program should be tailored to account for the particularities of a group, service provider-driven program. Third, 403(b) arrangements should be eligible for correction under group VCR. And fourth, filing fees should be set at a level that encourages participation by service providers. Thomas T. Kim Assistant Counsel Attachment Attachment (in .pdf format)

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