

MEMO# 11618

February 8, 2000

INSTITUTE SUBMITS COMMENT LETTER ON THE DEPARTMENT OF LABOR'S SMALL PLAN ASSET PROPOSED REGULATIONS

1 See Institute memorandum to Pension Committee No. 68-99 and Pension Operations Advisory Committee No. 54-99, dated December 1, 1999. [11618] February 8, 2000 TO: PENSION COMMITTEE No. 13-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 11-00 AD HOC COMMITTEE ON SMALL PLAN ASSET REGULATION RE: INSTITUTE SUBMITS COMMENT LETTER ON THE DEPARTMENT OF LABOR'S SMALL PLAN ASSET PROPOSED REGULATIONS

The Institute recently submitted a comment letter to the Department of Labor regarding its proposed regulations on small pension plan security amendments.¹ In the letter, we make two recommendations as follows. First, “qualifying plan assets” should include assets for which registered transfer agents maintain records. Second, the annual audit requirement should be waived for small pension plans whose participants receive investment account statements, at least quarterly, directly from an independent qualifying plan recordkeeper, such as a financial institution or recordkeeping entity. Finally, in response to a Department request for comment, we opposed a requirement for small pension plans to make available to participants and beneficiaries a schedule of plan assets similar to that required under Form 5500 for plans with 100 or more participants. With respect to the first recommendation, the proposed regulations do not explicitly include investments in mutual funds in the definition of “qualifying plan assets,” nor are they necessarily included indirectly. The definition of “qualifying plan assets” includes assets held by institutions qualified to act as a trustee under section 408 of the Code. It is our understanding that many small employer plans are “self-trusteed” and in such cases, mutual funds provide only investment management and/or plan administration and recordkeeping services. In such circumstances, mutual funds generally use an entity that is not authorized to act as a trustee under section 408, such as a registered transfer agent, to process and record the plan’s transactional activity. To ensure that plan assets invested in mutual funds are deemed “qualifying plan assets” for purposes of the proposed regulations, the Institute recommended including a new paragraph for assets for which a registered transfer agent maintains records. Further, we understand that the Department intends to limit the institutions included in the proposed regulations to those that are regulated either by the federal government or by the states. Because registered transfer agents are regulated by the Securities and Exchange Commission, such entities would satisfy the Department’s regulation criterion. With respect to the second recommendation regarding participant statements, we believe that the Department should allow small plans whose participants

and beneficiaries receive account statements directly from a plan recordkeeper to waive the audit requirement. Specifically, we requested that the Department clarify that this provision would be satisfied if the independent qualifying recordkeeper either delivers the individual account statements to participants in paper form or provides participants with electronic access to their account information via “800” numbers, automated voice response systems, website access and other similar technologies. In order to maintain consistency within the regulations, we proposed that the Department define “qualifying plan recordkeeper” by referencing the entities already included in the regulations’ definition of “qualifying plan assets,” including banks, insurance companies, broker-dealers, those organizations authorized under section 408 of the Code to act as trustee and registered transfer agents. A copy of the comment letter is attached for your review. If you have any questions concerning the letter, please call me at (202) 218-3563 or Russ Galer at (202) 326-5835. Kathryn A. Ricard Associate Counsel Attachment

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