

MEMO# 8048

July 10, 1996

INSTITUTE LETTER TO DEPARTMENT OF LABOR REGARDING BUNDLED SERVICES ARRANGEMENTS

July 10, 1996 TO: PENSION COMMITTEE No. 32-96 RE: INSTITUTE LETTER TO DEPARTMENT
OF LABOR REGARDING BUNDLED SERVICES ARRANGEMENTS

_____ The Institute staff recently met with the Department of Labor to discuss pending interpretive letter requests regarding the applicability of ERISAs prohibited transaction rules to bundled services arrangements. In particular, discussions have focused on the applicability of ERISA section 406(b)(3) to fee arrangements between custodial trustees that provide bundled service arrangements to retirement plans and mutual funds that are offered as investment options in the bundled services arrangement. The attached letter identifies concerns we have expressed to the Department. In the letter and meetings, we have emphasized three points. First, the assembling of a bundled services product that includes a menu of investment options does not constitute a fiduciary activity. Second, the plan sponsor or other plan fiduciary who evaluates the bundled services product on behalf of a plan is provided disclosure of fee arrangements, has the opportunity to inquire further as to such fee arrangements when engaged in arms-length negotiations with the bundled services provider, and therefore, is able to ensure that the plan pay only reasonable compensation for services. Third, ERISA section 406(b)(3) is not violated in such cases because the custodial trustee receives, in the aggregate, only reasonable compensation for services provided to the plan. Additionally, we have urged that the Department not issue guidance regarding bundled services arrangements without first assuring that guidance will not unduly disrupt the bundled services market. We will keep you informed of developments. Russell G. Galer Assistant Counsel - Pension Attachment