

MEMO# 3476

January 28, 1992

INSTITUTE SUPPLEMENTARY COMMENTS ON DEPARTMENT OF LABOR PROPOSED REGULATION UNDER ERISA SECTION 404(C)

January 28, 1992 TO: PENSION COMMITTEE NO. 6-92 RE: INSTITUTE SUPPLEMENTARY COMMENTS ON DEPARTMENT OF LABOR PROPOSED REGULATION UNDER ERISA SECTION 404(C) _____ Attached is a copy of supplementary comments submitted by the Institute to the Department of Labor concerning the repropoed regulation under section 404(c) of ERISA. (See Institute Memorandum to Pension Members No. 11-91, Investment Adviser Members No. 11-91, and Investment Adviser Associate Members No. 12-91, dated March 13, 1991.) The supplementary comments relate to the provision of the repropoed regulation that states that in determining whether a plan provides a broad range of investment alternatives, only those alternatives for which sufficient information is available to the participant to permit informed investment decisions are to be taken into account. If the plan limited investment choices to designated investments, information would not be considered to be available unless an identified plan fiduciary is available to provide participants with directions as to how such information may be obtained, such as by providing the participant with the appropriate address or telephone number. The Institute comment letter submits that this provision of the repropoed regulation should be amended in two respects. First, the letter states that if plan investments are limited to designated alternatives, plan fiduciaries should be required to provide sufficient investment information in order to receive section 404(c) protection, and not merely notify participants as to where to obtain the information. Second, the Institute submission specifies certain investment information, drawn from the mutual fund prospectus, that should be deemed "sufficient" under the regulation with respect to designated investment options that constitute "look-through investment vehicles." We will keep you informed of developments. Kathy D. Ireland Associate Counsel - Pension Attachment