

**MEMO# 2925**

July 11, 1991

## **INSTITUTE TESTIFIES IN FAVOR OF ERISA 404(C) REGULATION**

July 11, 1991 TO: PENSION MEMBERS NO. 24-91 INVESTMENT ADVISER MEMBERS NO. 29-91 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 29-91 RE: INSTITUTE TESTIFIES IN FAVOR OF ERISA 404(c) REGULATION

The Institute presented the opening testimony on July 11, 1991 regarding the Department of Labor's re-proposed regulation concerning participant-directed individual account plans under ERISA section 404(c). As we previously informed you, ERISA section 404(c) provides that, when a participant of an employee benefit plan exercises control over the investment of assets in his individual account, the fiduciaries of the plan are not liable for plan losses which result from the participant's exercise of control. (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 Institute expressed its support for the regulation and urged its prompt adoption in final form. The Institute noted the compatibility between participant-directed plans and mutual funds. The exchange feature offered by families of funds enables participants to exercise control over their individual accounts in the manner intended by Congress when it enacted section 404(c). The Institute also supported the requirement in the proposed regulation that a fiduciary independent of the fund manager is required to select the manager of any look-through investment vehicles offered to ERISA section 404(c) plan participants. The regulation contains an exception to this requirement for in-house retirement plans of financial institutions. Thus, employers (other than financial institutions) who internally manage their retirement plan pools without using outside investment advisers or mutual funds should not be entitled to ERISA 404(c) protections unless an independent fiduciary selects the internally managed pools. Finally, the Institute questioned the characterization of GICs as "look-through investment vehicles" because they do not reflect solely the investment returns of any single pool of investments. The Institute recommended that GICs be subject to additional disclosure requirements regarding the issuer's financial integrity in the event the final regulation treats GICs as "look-through investment vehicles." A copy of the Institute's testimony is attached. We will keep you informed of developments. W. Richard Mason Assistant Counsel - Pension Attachment

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