

MEMO# 22924

September 26, 2008

Draft Investment Advice Comment Letter; Comments Requested by October 2

ACTION REQUESTED

[22924]

September 26, 2008

TO: PENSION COMMITTEE No. 28-08

PENSION OPERATIONS ADVISORY COMMITTEE No. 28-08 RE: DRAFT INVESTMENT ADVICE COMMENT LETTER; COMMENTS REQUESTED BY OCTOBER 2

Attached for your review is a draft comment letter on the Department of Labor's investment advice proposal. [\[1\]](#)

The draft letter recommends clarifications, mostly to the proposed class exemption, to enhance its usefulness. It recommends that DOL clarify that:

- advisers need not take into account every factor listed in section III(c) of the class exemption in formulating advice;
- advisers can provide advice to employees of the firm's in-house ERISA covered plan;
- participants need not separately consent to automatic rebalancing;
- advice programs can limit the advice given to a subset of available investment options, so long as the options remaining are sufficient to construct a prudently diversified portfolio; and
- in the case of securities sold based on a spread, it is sufficient to disclose the usual or typical spread that can be expected under normal market conditions.

Finally, the letter recommends DOL eliminate the rule in section V of the proposed class exemption that in the case of a pattern or practice of noncompliance with any of the exemption's conditions, relief will be unavailable for any advice by a fiduciary adviser during the period of noncompliance.

Please provide comments by Thursday, October 2 to the undersigned (mhadley@ici.org or 202-326-5810) or Mary Podesta (podesta@ici.org or 202-326-5826).

Michael L. Hadley
Associate Counsel

[Attachment](#)

endnotes

[1] See Memorandum to Pension Committee No. 25-08 and Pension Operations Advisory Committee No. 25-08 [22822], dated August 27, 2008.

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