

MEMO# 19581

January 6, 2006

DRAFT LETTER TO DOL ON PROHIBITED TRANSACTION EXEMPTION PROCEDURE REFORM

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TO: PENSION COMMITTEE No. 2-06 PENSION OPERATIONS ADVISORY COMMITTEE No. 2-06
RE: DRAFT LETTER TO DOL ON PROHIBITED TRANSACTION EXEMPTION PROCEDURE REFORM Attached for your review is a draft Institute letter to the Department of Labor (DOL) regarding reform of DOL's procedures for granting individual and class exemptions from ERISA's prohibited transaction rules.¹ The letter supports reform of the prohibited transaction exemption process and makes specific suggestions for improvement. In particular, the letter suggests that DOL: • increase the number of class exemption granted based on previously issued individual exemptions and make available regular updates on its application backlog; • reflect in the procedures that no exemption will be granted unless the conduct is prohibited by ERISA and that exemption notices must specify the reason relief is needed; • give greater consideration to the benefits of a proposed exemption for participants and beneficiaries; • develop feasible conditions for an exemption that are consistent with other governing laws and regulations; • simplify the notice to interested parties by allowing dissemination of a short summary in lieu of the Federal Register notice and permitting electronic disclosure to participants and beneficiaries; and • eliminate the requirement to list all prior applications. The Senate and House pension reform bills currently awaiting reconciliation in conference both contain prohibited transaction reform, but none of the provisions would directly affect the procedures DOL uses to grant individual or class exemptions.² 1 DOL's current regulatory agenda includes a review of the procedures under the Regulatory Flexibility Act. See 70 Fed. Reg. 64896, 64911 (October 31, 2005). 2 See Memorandum to Pension Members No. 57-05 [19490], dated December 21, 2005. 2 Please provide any comments that you may have on the draft letter to me at 202 326- 5810 or mhadley@ici.org by January 17, 2005. Michael L. Hadley Assistant Counsel Attachment (in .pdf format)