

**MEMO# 14636**

April 16, 2002

## **HOUSE APPROVES PENSION LEGISLATION; INCLUDES INVESTMENT ADVICE PROVISIONS**

[14636] April 16, 2002 TO: BOARD OF GOVERNORS No. 16-02 FEDERAL LEGISLATION MEMBERS No. 5-02 PRIMARY CONTACTS - MEMBER COMPLEX No. 32-02 PUBLIC INFORMATION COMMITTEE No. 11-02 RE: HOUSE APPROVES PENSION LEGISLATION; INCLUDES INVESTMENT ADVICE PROVISIONS On April 11, the House of Representatives passed the "Pension Security Act of 2002" (H.R. 3762) by a 255-163 vote. The bill, which was approved by the House Education and the Workforce Committee on March 20, incorporates provisions of a separate bill approved by the House Ways and Means Committee and addresses a variety of rules governing retirement plans. The Institute's leadership regarding the investment advice provisions of the bill was instrumental in the bill's passage. The bill incorporates Chairman John Boehner's investment advice legislation that passed the House last November. H.R. 3762 would allow 401(k) plan participants to receive professional investment advice from financial institutions regardless of whether the financial institution provides investment options for the plan, provided that the following conditions are met: • advice providers would have full fiduciary responsibility under ERISA and applicable securities laws to provide prudent, objective advice to plan participants; • timely, clear, and conspicuous disclosure must be provided to advice recipients, including disclosures regarding fees, potential conflicts of interest, and the scope of the investment advice provided; and • employers that arrange for the provision of advice to their retirement plan participants would be responsible for prudently selecting and performing periodic reviews of the advice provider in accordance with their ERISA fiduciary obligations. H.R. 3762 also includes a provision from the bill approved by the House Ways and Means Committee which would allow employees to purchase qualified retirement planning services, including investment advice, through salary deduction on a tax-favored basis. In addition, H.R. 3762 would require 401(k) plan administrators to provide a quarterly benefit statement to plan participants and beneficiaries that includes information such as the 2 value of investments in their account and an explanation of any restrictions on the participant's right to change investment options. Employees would also receive a quarterly investment education notice explaining generally accepted investment principles, such as diversification and risk management. Plan administrators would be required to notify employees at least 30 days in advance of a suspension period during which participants are limited in their ability to direct their account investments. H.R. 3762 would require employers to allow 401(k) plan participants to diversify out of company stock received as an employer contribution under one of two alternatives. Under the first option, participants would be allowed to diversify after three years of service with the employer. Alternatively, the plan must allow such diversification no later than three years after the end of each year

in which the stock was allocated to the account. A five-year transition rule would apply to company stock in the account on the effective date. The Senate Health, Education, Labor, and Pensions Committee has approved pension legislation (S. 1992) introduced by Chairman Edward Kennedy. S. 1992 includes an investment advice provision that would provide a safe harbor from the fiduciary duties under ERISA for employers that enter into arrangements for the provision of advice by “independent” investment advisers, but would not provide the prohibited transaction relief sought by the mutual fund industry and contained in the House-passed bill. The Senate Finance Committee, which shares jurisdiction over pension issues, may mark up separate legislation in the near future. We will inform you of further developments. Matthew P. Fink President

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.