

MEMO# 20190

July 19, 2006

Revised Submission to DOL on 401(k) Plan Model Fee Disclosure and Draft Cover Letter

©2006 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. [20190] July 19, 2006 TO: PENSION COMMITTEE No. 24-06 PENSION OPERATIONS ADVISORY COMMITTEE No. 23-06 RE: REVISED SUBMISSION TO DOL ON 401(k) PLAN MODEL FEE DISCLOSURE AND DRAFT COVER LETTER

As you know, the Institute is working with the American Benefits Council, the American Council of Life Insurers, and the American Bankers Association on a joint¹ submission to the Department of Labor of a compliance tool on the information that plan sponsors should receive from service providers in evaluating the reasonableness of plan service provider arrangements under section 408(b)(2) of ERISA. Attached for your review is a revised list of data elements and proposed cover letter.² The list of data elements is largely similar to the list we circulated in a memorandum on July 5, although it has been reorganized into a chart format and reflects comments received on the earlier draft. Of particular note, the list includes an item for disclosure of payments and other revenue sharing among affiliates. As our July 5 memo stated, we understand that Institute members increasingly are providing information on affiliate payments as a matter of policy or in response to plan sponsor requests. The cover letter explains the process by which these groups arrived at this list. It states that the list is a reference tool for plan sponsors and service providers to use in complying with their responsibilities under 408(b)(2) and recommends that DOL make the list available on its website. In addition, the cover letter states the signatory groups believe that disclosure of the data elements on the list would satisfy the 408(b)(2) legal obligations of plan fiduciaries and service providers and asks that DOL confirm this. The letter also states that the list is not intended to be incorporated as a requirement into the Department's forthcoming 408(b)(2) regulation and is not intended for disclosure on Form 5500 or to plan participants. ¹ We are currently reaching out to a few other associations to invite them to join the submission. ² See Memorandum to Pension Committee No. 23-06 and Pension Operations Advisory Committee No. 22-06 [20154], dated July 5, 2006. ² We must ask again for your quick turnaround in providing comments, because DOL expects to release proposed guidance shortly. Please provide any comments or suggestions that you have to Mary Podesta (202-326-5826 or podesta@ici.org) or Mike Hadley (202-326-5810 or mhadley@ici.org) by Friday, July 21. Mary S. Podesta Senior Counsel - Pension Regulation Attachment no. 1 (in .pdf format)

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