

**MEMO# 12121**

June 27, 2000

## **NEW BILL WOULD ALLOW MUTUAL FUNDS TO PROVIDE PERSONAL INVESTMENT ADVICE TO ERISA PLANS**

[12121] June 27, 2000 TO: BOARD OF GOVERNORS No. 36-00 FEDERAL LEGISLATION MEMBERS No. 9-00 PRIMARY CONTACTS - MEMBER COMPLEX No. 44-00 PUBLIC INFORMATION COMMITTEE No. 25-00 RE: NEW BILL WOULD ALLOW MUTUAL FUNDS TO PROVIDE INVESTMENT ADVICE TO RETIREMENT PLAN PARTICIPANTS On June 26, House Education and Workforce Subcommittee Chairman John A. Boehner (R-OH) introduced legislation to allow financial service providers, including mutual funds, to provide personal investment advice to employer-sponsored retirement plans and their participants. Currently, the Employee Retirement Income Security Act of 1974 (ERISA) prevents participants from obtaining individualized advice from the plan's service provider. H.R. 4747, "The Retirement Security Advice Act," would amend ERISA to allow a plan, its participants and beneficiaries to receive investment advice from regulated financial service providers. The Institute testified on this legislation in March.<sup>1</sup> Before or at the initial delivery of investment advice, H.R. 4747 would require the advice provider, also called a "fiduciary adviser," to supply a disclosure with the following information: • any fees for the investment advice or resulting sales or purchases; • any interest the adviser or its affiliates have in assets recommended, bought or sold; • any limitation placed on the adviser's ability to provide advice; • the types of services offered by the adviser; and • any information required to be disclosed under applicable securities laws. The legislation requires that the provision of personal advisory services be on terms that are no less favorable than the terms of an arm's-length transaction, and that any compensation the advice provider receives for sales or purchases resulting from the advice is reasonable. H.R. 4747 also clarifies that an employer who arranges for the provision of personal advice would be responsible for prudently selecting and performing periodic reviews of the advice provider. Furthermore, only the advice provider would have a fiduciary responsibility for the personal advice it provides to plan participants. Also on June 26, Chairman Boehner introduced a companion bill that would provide broad relief from ERISA's "prohibited transaction" restrictions, which prevent ERISA fiduciaries and "parties-in-interest" from conducting certain types of transactions. Under 1 See Memorandum to Board of Governors No. 16-00; Federal Legislation Members No. 3-00; Primary Contacts - Member Complex No. 20-00; Public Information Committee No. 10-00. 2H.R. 4748, the "ERISA Modernization Act of 2000," an exemption from these restrictions would be allowed for an arm's-length transaction that is in the interest of the plan or its participants, and is supported by a written contract or arrangement. In addition, the legislation would narrow the definition of "parties-in-interest" to exclude service providers and their affiliates, such as mutual fund

companies. Finally, H.R. 4748 would change the Department of Labor's (DOL) standards for processing "prohibited transaction" exemption requests. When granting exemptions, the DOL would be required to determine that any condition it sets forth which exceeds existing federal and state laws (including securities laws) is a necessary addition to those laws. We will advise you about further developments regarding this legislation. Matthew P. Fink  
President  
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