

MEMO# 14026

October 4, 2001

HOUSE COMMITTEE APPROVES INVESTMENT ADVICE LEGISLATION

[14026] October 4, 2001 TO: PENSION COMMITTEE No. 67-01 INVESTMENT ADVICE AD HOC COMMITTEE No. 5-01 RE: HOUSE COMMITTEE APPROVES INVESTMENT ADVICE LEGISLATION

Yesterday, the House Committee on Education and the Workforce favorably reported H.R. 2269, the "Retirement Security Advice Act of 2001," by a vote of 29 to 17. Four Democrats joined 25 Republicans in voting in favor of the bill. H.R. 2269, introduced by Committee Chairman John Boehner (R-OH), would provide a statutory exemption from ERISA's prohibited transaction rules for the provision of investment advice by plan service providers. As you are aware, the House Subcommittee on Employer-Employee Relations had approved H.R. 2269 in August of this year.¹ The version of H.R. 2269 approved by the full Committee differs in several respects from prior versions of the bill. These modifications, intended to address concerns expressed by the Department of Labor and Democratic members of the Committee,² would:

- limit the plans to which "fiduciary advisers" may offer advice to those that provide for participant direction of investments;
- clarify that an "employee, agent, or registered representative" of an entity qualified to provide investment advice must satisfy the requirements of applicable insurance, banking, and securities laws relating to the provision of advice;
- clarify that the disclosure required under the statutory exemption must be written in a manner calculated to be understood by the average plan participant and be sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of the information required to be provided;

¹ See Institute Memorandum to Pension Committee No. 52-01 and Investment Advice Ad Hoc Committee 4-01, dated August 3, 2001. For a description of the legislation as approved by the Subcommittee, see Institute Memorandum to Pension Committee No. 40-01 and Investment Advice Ad Hoc Committee 2-01, dated June 25, 2001. ² During the Committee meeting, Representative Rob Andrews (D-NJ) offered a substitute proposal, which was defeated by a vote along party lines. That proposal would have, among other things, required fiduciary advisers to arrange for an "alternative" adviser to be offered to plan participants in order to qualify under the statutory exemption. ²

- provide that in the case of the initial provision of investment advice, the required disclosures must be provided at a time "reasonably contemporaneous" with the provision of such advice; and
- require investment advisers to acknowledge in writing that they are acting as a fiduciary of the plan in connection with the provision of the advice.

We will keep you informed of further developments. Thomas T. Kim Assistant Counsel Attachment (in .pdf format)

should not be considered a substitute for, legal advice.