

MEMO# 20154

July 5, 2006

Submission to DOL on 401(k) Plan Model Fee Disclosure

©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. URGENT/IMMEDIATE ACTION REQUESTED [20154] July 5, 2006 TO: PENSION COMMITTEE No. 23-06 PENSION OPERATIONS ADVISORY COMMITTEE No. 22-06 RE: SUBMISSION TO DOL ON 401(k) PLAN MODEL FEE DISCLOSURE

As we have discussed with the Pension and Pension Operations Advisory Committees, the Institute has been working with the American Benefits Council to develop recommendations for the Department of Labor 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. The American Council of Life Insurers and the American Bankers Association have joined these efforts. As DOL expects to move quickly with its project to propose additional guidance on plan sponsor responsibilities under section 408(b)(2), we need to make our submission to DOL as soon as possible. We thank you in advance for your quick turn-around in providing comments on this draft prepared by counsel retained by ICI and ABC. Because plan sponsors, consultants, and service providers tend to use their own forms, rather than the 401(k) Model Fee Disclosure Form that currently appears on DOL's website, we have tentatively decided not to redesign the Model Form but to provide DOL with a list of fee and service elements that 401(k) and other defined contribution plan sponsors would need to know (and that service providers could provide) in order for the plan sponsor to make informed decisions about the plan's services and fairly compare providers and investment products. Attached is a draft of the list of data elements for your review. The list is based on the existing model form (which was developed by ICI, ACLI, and ABA in 1999), the schedule developed by ICI last year to disclose revenue sharing and other payments among service providers to a plan, and SEC guidance on payments involving plan consultants. The draft includes some specific questions the group has not resolved. When the Institute submitted its revenue sharing schedule to DOL last year we recommended that the schedule be limited to third party payments and not include payments or revenue sharing among affiliates. The rationale for treating payments among affiliates differently was that these payments typically are only bookkeeping allocations and any potential conflict created by the payment 2 will be readily apparent to a plan sponsor. This aspect of our model schedule is controversial with plan sponsors and DOL. We understand that since last year, Institute members increasingly are providing information on affiliate payments as a matter of policy or in response to plan sponsor requests. In light of these developments, the Institute is considering dropping the distinction. Please provide any comments or suggestions that you have to Mary Podesta (202-326-5826 or podesta@ici.org) or Mike Hadley (202-326-5820 or mhadley@ici.org) by July 7. Mary S. Podesta Senior Counsel - Pension Regulation Attachment (in .pdf format)

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