

MEMO# 20511

October 25, 2006

Draft Letter to DOL Requesting Guidance on Provision of Investment Advice under the Pension Protection Act

©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/ACTION REQUESTED [20511] October 25, 2006 TO: PENSION COMMITTEE No. 35-06 PENSION OPERATIONS ADVISORY COMMITTEE No. 33-06 RE: DRAFT LETTER TO DOL REQUESTING GUIDANCE ON PROVISION OF INVESTMENT ADVICE UNDER THE PENSION PROTECTION ACT Attached for your review is a draft letter the Institute plans to send to the Department of Labor requesting guidance on how the Department will interpret provisions of the investment advice exemption enacted in the Pension Protection Act. The letter asks the Department to issue clarifying guidance with respect to several provisions that are unclear or ambiguous and to address how it will harmonize the exemption with advice programs operating under prior Department guidance. Your comments are requested by October 31, 2006. The draft requested guidance covers the following matters: Under the fee level option, the Department should interpret the condition to apply to the fees and compensation paid to the individual providing advice to plan participants and not to the firm sponsoring the advice program or its affiliates. The Institute requests specific comment from members on this aspect of the letter and whether there are alternative approaches the Institute could recommend to the Department to make the fee level condition workable and harmonize it with prior DOL guidance. The Department should clarify that advice programs under pre-existing Department guidance (e.g. Frost Bank fee level programs and Sun America advice programs) remain viable. The Department also should clarify that the duty and liability of plan sponsors and fiduciaries under programs operating under prior guidance are comparable to the duty and liability of plan sponsors and fiduciaries in a PPA advice arrangement. The fiduciary must prudently select and monitor the adviser but is not required to monitor the specific advice given by the adviser to participants. The Department should make workable the provision of the PPA that permits participants to request advice not generated by the computer model used in the advice program. The Department 2 should clarify that a fiduciary adviser may provide specific investment recommendations at the request of the participant, provided the adviser does not actively market its ability to respond to such requests. The Department should clarify how the computer model should take into account employer stock, self-directed brokerage accounts, and how it should operate in the context of 403(b) plans. The letter makes specific recommendations on these issues. Please review the letter carefully and provide any comments to me at 202-326-5826 (podesta@ici.org) or Michael Hadley at 202-326-5810 (mhadley@ici.org) by October 31. Mary S. Podesta Senior Counsel - Pension

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