

MEMO# 13016

January 10, 2001

ICI COMMENT LETTER ON DOL'S REQUEST FOR INFORMATION ON FIDUCIARY DISCLOSURE

[13016] January 10, 2001 TO: PENSION COMMITTEE No. 3-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 2-01 AD HOC COMMITTEE ON ERISA DISCLOSURE ISSUES RE: ICI COMMENT LETTER ON DOL'S REQUEST FOR INFORMATION ON FIDUCIARY DISCLOSURE The Institute filed yesterday a comment letter in response to the Department of Labor's request for information on ERISA's disclosure obligations.¹ The comment letter was developed based on discussions from conference calls on October 10 and December 12, 2000, and member comments on a circulated draft.² The letter makes the general point that the disclosures currently required under ERISA, coupled with the stringent duties imposed on plan fiduciaries, assure that participants obtain sufficient information regarding their plans. The letter notes, however, that in certain respects, ERISA presupposes the world of 1974. In particular, because Congress, when it enacted ERISA, could not have foreseen the proliferation of participant-directed plans, there are gaps in ERISA's regulatory framework that unnecessarily limit the ability of employers to provide, and participants to receive, the information and assistance they need. The letter, therefore, highlights a number of areas where the Department's attention would be appropriate. First, participants in self-directed plans, such as plans that fall under ERISA section 404(c), should receive adequate information about all investment options available under their plans, rather than only those registered under securities laws. Second, the Department should facilitate the delivery of investment advisory services to participants by replacing current prohibitions with standards that rely on disclosure and strict fiduciary standards. Third, the Department should adopt and encourage electronic delivery of plan information, consistent with the recently enacted "E-SIGN" legislation. Lastly, the letter cautions the Department against duplicating or introducing inconsistency with existing federal standards. Thomas T. Kim Assistant Counsel Attachment 1 See Institute Memorandum to Pension Committee No. 68-00, dated September 19, 2000. 2 See Institute Memorandum to Pension Committee No. 87-00 and Ad Hoc Committee on ERISA Disclosure Issues, dated November 28, 2000. 2Attachment (in .pdf format)