MEMO# 12669

September 22, 2000

DOL ACTING ASSISTANT SECRETARY KRAMERICH DELIVERS REMARKS ON INVESTMENT ADVICE

[12669] September 22, 2000 TO: PENSION COMMITTEE No. 69-00 AD HOC COMMITTEE ON INVESTMENT ADVICE RE: DOL ACTING ASSISTANT SECRETARY KRAMERICH DELIVERS REMARKS ON INVESTMENT ADVICE Leslie B. Kramerich, Acting Assistant Secretary for the Pension and Welfare Benefits Administration, U.S. Department of Labor, delivered remarks on the topic of investment advice at a recent American Society of Pension Actuaries Conference. Noting the increasing significance of participant-directed defined contribution plans as a major retirement savings vehicle, she emphasized that many workers need tools, education, and specific advice with respect to making investment decisions with their retirement savings. Kramerich cautioned, however, that someone who undertakes the responsibility of providing investment advice will most likely be an ERISA fiduciary and owe participants a special duty of care and loyalty, including the duty not to deal with plan assets in its own interest. In this regard, Kramerich stated that “[m]utual fund vendors providing advice about their own funds where, for example, different funds have different fees could present a conflict of interest if the vendor is a fiduciary.” Kramerich stressed the need to maintain safeguards to deal with conflicts of interest, particularly because of the increasing complexity of the financial markets and the consolidation occurring in the financial services industry. Kramerich directed several points to employers on the topic of investment advice. They are as follows: • Many workers need investment assistance, given their responsibility for making investment decisions in their 401(k) plans; • Although investment education is an important tool, investment education may not be enough for some workers; some workers may need professional investment advice;1 1 On this point, Kramerich noted that a plan may pay reasonable expenses attendant to the provision of investment advice to plan participants. 2• Employers are not liable for the acts of an investment advisor designated to provide advice to participants in an ERISA section 404(c) plan for a loss that is the “direct and necessary result of a participant’s exercise of control” over his or her account; and • As with the selection of service providers in general, an employer must prudently select an investment advisor, and plan fiduciaries are expected to periodically monitor service providers to determine whether the retention of the provider continues to be prudent. Kramerich concluded her remarks by emphasizing that employers can be responsive to their employees’ need for investment education and advice without significant burdens or liability risks, and by encouraging the selection of providers that offer informed, unbiased and appropriate investment education and investment advice. Thomas T. Kim Assistant Counsel Attachment Attachment (in .pdf format)