

MEMO# 20655

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Department of Labor Issues Requests for Information on PPA Investment Advice; Conference Call Scheduled for December 12

©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. [20655] December 6, 2006 TO: PENSION COMMITTEE No. 39-06 PENSION OPERATIONS ADVISORY COMMITTEE No. 37-06 RE: DEPARTMENT OF LABOR ISSUES REQUESTS FOR INFORMATION ON PPA INVESTMENT ADVICE; CONFERENCE CALL SCHEDULED FOR DECEMBER 12 The Department of Labor has issued two Requests for Information regarding the new prohibited transaction exemption for investment advice under Section 601 of the Pension Protection Act.¹ Copies of the RFIs are attached. Conference Call Scheduled We have scheduled a conference call for Tuesday, December 12 at 3:00 pm ET to discuss the RFIs. If you would like to participate in this call, please complete the attached response form and fax it to Brenda Turner at 202/326-5841 or e-mail it to bturner@ici.org by noon Tuesday, December 12. To participate in the call, please dial 1-888-385-9734 and enter passcode 15665. Computer Models for IRAs Under the PPA, DOL must determine whether a computer model is feasible for IRAs and report to the Congress by December 31, 2007. If DOL determines that no computer model is feasible for IRAs, the PPA requires that DOL issue a class exemption for advice for IRAs that does not require the use of a computer model. In order to be feasible for purposes of the PPA, the computer model for IRAs must:

- utilize relevant information about the IRA beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments;
- 1 For a detailed description of Section 601 of the PPA, see Memorandum to Pension Members No. 48-06, Federal Legislation Members No. 5-06, and 529 Plan Members No. 13-06 [20250], dated August 4, 2006.
- 2 • take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the IRA beneficiary; and
- allow the IRA beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.²

The first RFI requests information from the public on the feasibility of applying computer model investment programs to IRAs. DOL asks a number of specific questions, including whether there are computer models for IRAs that meet the requirements of the PPA, and if not, whether it would be possible to develop one. DOL also asks, if there are no advice programs covering virtually any investment, whether there are investment advice programs that, by design, limit the investments modeled to a subset of the investment universe. The RFI, which is aimed at the general public, is different from the solicitation DOL must undertake of the “top 50 trustees” of

IRAs.³ DOL has advised the Institute that the solicitation has not yet begun, but may commence in the next few weeks. Computer Models for Individual Account Plans Under the PPA, a computer model used to provide advice to participants in individual account plans must be certified by an “eligible investment expert.”⁴ The PPA specifically provides DOL with the authority to issue guidance on the certification process, on when “material modifications” to the model would require recertification, and on the qualifications for a person to be an eligible investment expert. The second RFI includes a number of questions for public comment to allow DOL to develop regulatory guidance and assess the economic cost and benefits. The PPA requires DOL to develop a model form to disclose fees and other compensation received in connection with advice,⁵ and DOL also requests comments to assist in the development of the form. ² PPA 601(b)(3)(B). ³ PPA 601(b)(3)(A)(i). ⁴ ERISA 408(g)(3)(C). ⁵ ERISA 408(g)(6)(A)(iii) requires disclosure of “all fees and other compensation that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property.” ³ Comments Comments are due on both RFIs by January 30, 2007. Comments on the IRA RFI should be sent to the Office of Exemption Determinations, while comments on the Individual Account Plan RFI should go to the Office of Regulations and Interpretations. Michael L. Hadley Assistant Counsel Attachment (in .pdf format)