

MEMO# 4878

June 17, 1993

SENATE LABOR AND HUMAN RESOURCES COMMITTEE VOTES TO AMEND ERISA ENFORCEMENT PROVISIONS

June 17, 1993 TO: PENSION COMMITTEE NO. 20-93 RE: SENATE LABOR AND HUMAN
RESOURCES COMMITTEE VOTES TO AMEND ERISA ENFORCEMENT PROVISIONS

Attached is a copy of an amendment to the budget reconciliation legislation offered by Senator Metzenbaum and passed, without hearings, out of the Senate Labor and Human Resources Committee yesterday. The amendment is designed to overturn the recent Supreme Court decision in *Mertens v. Hewitt Associates*, which held that nonfiduciaries cannot be held liable for money damages under ERISA for knowing participation in fiduciary breaches. (See Institute Memorandum to Pension Committee No. 19-93, dated June 7, 1993.) It would amend section 409 of ERISA to provide a cause of action and joint and several liability against a nonfiduciary who knowingly participated in an act or omission of a fiduciary knowing that the act or omission was a breach of fiduciary duty. In addition, it would expand the remedies and civil penalties available under ERISA. Also attached is a copy of a letter signed by the Institute and a number of other organizations opposing the consideration of these changes without public hearings. The budget reconciliation legislation is scheduled to reach the Senate floor next week. We will keep you informed of further developments.
Kathy D. Ireland Associate Counsel - Pension Attachments