

**MEMO# 20230**

August 1, 2006

## **Joint Submission to DOL on 401(k) Plan Fees**

©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. [20230] August 1, 2006 TO: PENSION MEMBERS No. 47-06 RE: JOINT SUBMISSION TO DOL ON 401(k) PLAN FEES The Investment Company Institute, American Benefits Council, American Council of Life Insurers and Securities Industry Association yesterday made a joint submission to the Department of Labor of a 401(k) plan fee and expense reference tool, in the form of a list of fee and expense data elements that plan sponsors and service providers may want to discuss when entering into service arrangements. A copy of the data elements list and cover letter is attached. As explained in the cover letter, the list is intended as a reference tool for plan sponsors and service providers to use in complying with their responsibilities under section 408(b)(2) of ERISA<sup>1</sup> and we recommend that DOL make the list available on its website. The signatory groups believe that disclosure of the data elements on the list is one way, but not the exclusive way, to satisfy the 408(b)(2) legal obligations of plan fiduciaries and service providers and asks that DOL confirm this.<sup>2</sup> The data element list builds on the Model 401(k) Fee Disclosure Form that the Institute and other groups developed (currently available on DOL's website<sup>3</sup>) and the supplemental schedule developed by the Institute last year to disclose payments among service providers<sup>4</sup> (e.g. finder's fees and revenue sharing.) The data element list includes disclosure of the receipt by a service provider of payments from third parties in connection with the provision of services to the plan and similar but more limited disclosure of the receipt of payments from affiliates. <sup>1</sup> DOL currently has on its regulatory agenda a project to amend the current regulation under Section 408(b)(2) of ERISA, to clarify plan sponsor and service provider obligations regarding contracts for services to a plan. See Institute Memorandum to Pension Members No. 32-06 [20013], dated May 5, 2006. <sup>2</sup> The list is not intended for disclosure to plan participants or on Form 5500. DOL has proposed changes to Schedule C of Form 5500, which would require additional disclosure of service provider compensation. See Institute Memorandum to Pension Members No. 45-06 [20216], dated July 25, 2006. <sup>3</sup> The Model 401(k) Fee Disclosure Form is available at <http://www.dol.gov/ebsa/pdf/401kfefm.pdf>. <sup>4</sup> See Institute Memorandum to Pension Members No. 25-05 [18897], dated May 27, 2005. <sup>2</sup> The cover letter explains that the list is intended to accommodate service bundling; for a bundled service the provider would not show separate charges for the various elements covered by the bundled fee but would make clear what services are included in the bundled fee. The signatory groups intend to publicize and distribute the list within their respective memberships and encourage its use. If you have any questions about the submission please contact Mary Podesta (202-326-5826 or [podesta@ici.org](mailto:podesta@ici.org)) or the undersigned (202-326-5820 or [mhadley@ici.org](mailto:mhadley@ici.org)). Michael L. Hadley Assistant Counsel Attachment (in

.pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 20230, or call the ICI Library at (202) 326-8304 and request the attachment for memo 20230.

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