

MEMO# 20360

September 8, 2006

Draft Comment Letter to Department of Labor on Proposed Form 5500 Changes

©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. [20360] September 8, 2006 TO: PENSION COMMITTEE No. 30-06 PENSION OPERATIONS ADVISORY COMMITTEE No. 29-06 RE: DRAFT COMMENT LETTER TO DEPARTMENT OF LABOR ON PROPOSED FORM 5500 CHANGES

Attached for your review is a draft comment letter to the Department of Labor regarding proposed changes to Form 5500.¹ The letter notes the Institute has consistently supported initiatives to require more transparency with respect to fees and expenses, but that the adequacy of compensation information available to plan sponsors should be addressed under ERISA Section 408(b)(2). Reporting on Form 5500 should be more narrowly focused. The letter demonstrates that, as proposed, DOL's changes would require extensive and possibly duplicative and misleading information on Schedule C. The letter makes several recommendations to narrow the reporting requirements:

- The Department should confirm that subcontractors are not covered. Providers in a bundled arrangement are covered. A "bundled arrangement" should be defined as an arrangement under which the plan formally contracts with and pays a single entity a "bundled fee," but the role of each of the underlying providers is specifically identified in the services agreement and the plan consents to the role of the underlying providers.
- The Department should confirm that a mutual fund and its service providers, including the investment manager, are not service providers to the plan.
- The Department should not require reporting of payments among affiliates or, alternatively, should allow multiple affiliates to report on an aggregate basis.

1 See Institute Memorandum to Pension Members No. 45-06 [20216], dated July 25, 2006. 2 • The Department should require reporting of a third party payment to a service provider only where the amount of the payment or the service provider's eligibility for the payment is based on a transaction involving the plan.² • The Department should modify the allocation rules for relationship building payments. • The Department should retain the exemption for reporting of brokerage commissions and should defer to the SEC regarding soft dollar disclosure. • The Department should follow Field Assistance Bulletin 2002-03 rather than impose new reporting rules regarding float. Finally the letter recommends that the Department delay additional reporting for 403(b) plans until these plans have had sufficient time to implement the new rules Treasury and the IRS are expected to issue shortly. Please provide any comments you have on the letter to Mary Podesta (202/326-5826 or podesta@ici.org) or Michael Hadley (202/326-5810 or mhadley@ici.org) by Friday, September 15. Michael L. Hadley Assistant Counsel Attachment (in .pdf format) 2

The proposal would require reporting of any third party payment made "in connection" the service provider's position with the plan or services rendered to the plan.

Copyright © by the 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.