

MEMO# 12383

July 25, 2000

ERISA INVESTMENT ADVICE BILL APPROVED BY HOUSE EDUCATION AND WORKFORCE SUBCOMMITTEE

[12383] August 3, 2000 TO: BOARD OF GOVERNORS No. 47-00 FEDERAL LEGISLATION MEMBERS No. 11-00 PRIMARY CONTACTS - MEMBER COMPLEX No. 54-00 PUBLIC INFORMATION COMMITTEE No. 31-00 RE: ERISA INVESTMENT ADVICE BILL APPROVED BY HOUSE EDUCATION AND WORKFORCE SUBCOMMITTEE The House Education and Workforce Subcommittee on Employer-Employee Relations recently approved H.R. 4747, 1 which would allow financial service providers, including mutual funds, to provide personal investment advice to employer-sponsored retirement plan participants. Currently, the Employee Retirement Income Security Act of 1974 (ERISA) prevents participants from obtaining individualized advice from the plan's service provider. The "Retirement Security Advice Act" would establish a statutory exemption from ERISA's prohibited transaction rules for the provision of investment advice. The Institute testified on this legislation in March. 2 Before or at the initial delivery of investment advice, H.R. 4747 would require the advice provider to supply a "clear and conspicuous" disclosure of the following information: • any fees or compensation received for the investment advice or resulting acquisitions or sales; • any material affiliation or contractual relationship of the adviser with the investment options for which advice is provided; • any limitation placed on the adviser's ability to provide advice; • the types of services offered by the adviser in connection with the provision of advice; and • any information required to be disclosed under applicable securities laws. The legislation requires that the provision of advice be on terms that are no less favorable than the terms of an arm's-length transaction. It also mandates that any acquisition or sale resulting from the advice occurs solely at the direction of the advice recipient, and that any compensation the advice provider receives for sales or purchases resulting from the advice be reasonable. Under H.R. 4747, the advice provider would have a fiduciary responsibility for the personal advice it provides to plan participants, and an employer that arranges for the provision of personal advice would be responsible for prudently selecting and performing periodic reviews of the advice provider. 1 See Board of Governors No. 36-00; Federal Legislation Members No. 9-00; Primary Contacts - Member Complex No. 44-00; Public Information Committee No. 25-00. 2 See Memorandum to Board of Governors No. 16-00; Federal Legislation Members No. 3-00; Primary Contacts - Member Complex No. 20-00; Public Information Committee No. 10-00. 2We will keep you informed of further developments with this legislation. Matthew P. Fink President

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.