



**FAX Transmission**

**National Economic Council  
The White House**

Mark Clury  
Stuart Surkin  
Penny Boston  
Elena Kagan (125)  
To: Cluyd Schroeder

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

**From: ELLEN SEIDMAN**

**Phone: 202-456-2802 FAX: 202-456-2223**

Date: 9/11 Time: 1145

Pages to follow: 6

Comments: The SEC is comfortable with either  
one of these, although as a policy matter they'd prefer  
the second. However, they recognize that - as to  
Church Plans - they've already given away more.  
This also doesn't cure DOT's problem entirely, but  
may help. Elena - please let's talk before sending  
anything to DOT. Pension folks - please let me know (1 of)  
those with + (2) which you prefer ASAP. Ellen



Office of  
Legislative Affairs

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FAX TRANSMITTAL SHEET

Please deliver the following pages to:

NAME: Ellen Seidman

AGENCY/ORGANIZATION: National Economic Council

LOCATION: The White House

FAX TELEPHONE NUMBER: (202) 456-2223

DIRECT TELEPHONE NUMBER: (202) 456-5359

FROM: Kaye Williams

TOTAL NUMBER OF PAGES (including cover sheet): 6

DATE: 9/10/96

TIME: 5:10

If you do not receive all the pages, please call back as soon as possible:  
(202) 942-0010.

Name: \_\_\_\_\_

REMARKS: Ellen,

Per your request for  
technical assistance from the  
Div. of Investment Mgt.

To transmit to this office, please dial (202) 942-9650.

Copy sent to Nell Hennessy

MEMORANDUM

September 10, 1996

To: Ellen Seidman  
Special Assistant to the President  
National Economic Council of the White House

From: Amy R. Doberman  
Assistant Chief Counsel,  
Division of Investment Management  
Securities and Exchange Commission

cc: Kaye F. Williams  
Director, Office of Legislative Affairs  
Securities and Exchange Commission

Subject: Technical Assistance in Connection with The  
Securities Investment Promotion Act of 1996  
(S.1815)

As you requested, we are providing you with two options designed to address the concerns raised by the Department of Justice. The first option grants an exemption from regulation under the federal securities laws to certain Section 457 plans. This approach may deflect criticism that S.1815 singles out Church Plans, but does not change the fact that Church Plans would be subject to broader exemptions than other plans, including Section 457 plans. The second option, in addition to adding an exemption for Section 457 Plans, would provide a more limited exemption for Church Plans than is currently contemplated by S.1815. This option may be more effective in addressing the Department of Justice's concerns because it places Church Plans in the same regulatory position as other pension plans.

Please note that the proposed exemption for Section 457 Plans is limited to those plans sponsored by state and local governments, and does not include Section 457 Plans sponsored by nonprofit organizations. The reason for this is that plans sponsored by nonprofit organizations cannot be placed in trust for the exclusive benefit of employees, because the grant of tax-qualified status afforded by new Section 457(g) (added by the Small Business Job Protection Act of 1996) applies only if the plan is sponsored by a state or local government. Assets of Section 457 Plans sponsored by a nonprofit organization still must remain available to the organization's general creditors and therefore cannot be placed in trust for the exclusive benefit of their employees.

We hope this is helpful. Please feel free to call me at 942-0645 with any questions you may have about these options.

Technical Assistance Regarding the Securities  
Investment Promotion Act of 1996

Version 1 (Adds exemption for Section 457 plans.)

I. Section 3(a)(2) of the Securities Act of 1933 is amended as follows:

(1) a new subparagraph (D) is added:

(D) an eligible deferred compensation plan as defined in Section 457(b) of the Internal Revenue Code of 1986 that is established by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, the assets of which are held in trust, or in a custodial account or contract, as described in Section 457(g) of such Code; and

(2) the language "other than any plan described in clause (A), (B), or (C) of this paragraph" will be amended to read "other than any plan described in clause (A), (B), (C), or (D) of this paragraph".

II. Section 3(c)(11) of the Investment Company Act of 1940 is amended as follows:

(1) the term "governmental plan" will be modified to read "plan" to accommodate the addition of Section 457 Plans to Section 3(a)(2) above; and

(2) All references to "section 3(a)(2)(C)" will be substituted with a reference to "section 3(a)(2)(C) or (D)".

III. Section 3(a)(12)(A) of the Securities Exchange Act of 1934 is amended as follows:

(note that new clause (vi) was already added by Section 315 of S.1815 to exempt interests in Church Plans)

clause (vii) is changed to clause (viii) and a new clause (vii) is added:

(vii) solely for purposes of sections 12, 13, 14, and 16 of this title, any security issued by or any interest or participation in an eligible deferred compensation plan as defined in Section 457(b) of the Internal Revenue Code of 1986 that is established by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, the assets of which are held in trust, or in a custodial

account or contract, as described in Section  
457(g) of such Code;

Technical Assistance Regarding the Securities  
Investment Promotion Act of 1996

Version 2 (Replaces Section 315 of S.1815 in its entirety.)

I. Section 3(a)(2) of the Securities Act of 1933 is amended as follows:

(1) a new subparagraph (D) is added:

(D) an eligible deferred compensation plan as defined in Section 457(b) of the Internal Revenue Code of 1986 that is established by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, the assets of which are held in trust, or in a custodial account or contract, as described in Section 457(g) of such Code; and

(2) a new subparagraph (E) is added:

(E) any church plan as defined in section 414(e) of the Internal Revenue Code of 1986, if, under such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefit of plan participants or beneficiaries; and

(3) the language "other than any plan described in clause (A), (B), or (C) of this paragraph" will be amended to read "other than any plan described in clause (A), (B), (C), (D), or (E) of this paragraph".

II. Section 3(c)(11) of the Investment Company Act of 1940 is amended as follows:

(1) the term "governmental plan" will be modified to read "plan" to accommodate the addition of Section 457 Plans and Church Plans to Section 3(a)(2) above; and

(2) All references to "section 3(a)(2)(C)" will be substituted with a reference to "section 3(a)(2)(C), (D), or (E)".

III. Section 3(a)(12)(A) of the Securities Exchange Act of 1934 is amended as follows:

clause (vi) is changed to clause (vii) and a new clause (vi) is added:

(vi) solely for purposes of sections 12, 13, 14, and 16 of this title, any security issued by or any interest or participation in: (1) an eligible

deferred compensation plan as defined in Section 457(b) of the Internal Revenue Code of 1986 that is established by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, the assets of which are held in trust, or in a custodial account or contract, as described in Section 457(g) of such Code; and (2) any church plan as defined in section 414(e) of the Internal Revenue Code of 1986, if, under such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefit of plan participants or beneficiaries;