

MEMO# 27382

July 17, 2013

Department of Labor Issues Updated Regulatory Agenda

[27382]

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TO: PENSION MEMBERS No. 32-13

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 21-13

OPERATIONS COMMITTEE No. 33-13

TRANSFER AGENT ADVISORY COMMITTEE No. 55-13 RE: DEPARTMENT OF LABOR ISSUES
UPDATED REGULATORY AGENDA

The Department of Labor (Department) has issued its updated Regulatory Agenda, which includes the Department's projected dates for issuance of proposed and final regulations.

[\[1\]](#) Included within the updated Agenda are the following items:

1. Conflict of Interest Rule – Investment Advice (formerly “Definition of Fiduciary”): The Agenda provides that the Department expects to re-issue its proposed fiduciary definition rule in October, 2013. The Department issued a proposed rule in October, 2010 to revise the existing rule on when a person will be considered to be a fiduciary under ERISA by providing investment advice. [\[2\]](#) The Institute submitted a comment letter in response to the proposed rule and testified during the Department's March, 2011 hearing regarding the proposed rule. [\[3\]](#) In September, 2011, the Department announced that it would withdraw and re-propose the rule.
2. Pension Benefit Statements: The Agenda reflects the Department's recent issuance of an Advance Notice of Proposed Rulemaking (ANPRM) regarding the inclusion of lifetime income stream illustrations on pension benefit statements for defined contribution plan participants. [\[4\]](#) The Agenda does not specify a date for issuance of a Notice of Proposed Rulemaking.
3. Target Date Disclosure: The Agenda provides that the Department expects to finalize regulations regarding target date disclosure in November, 2013. The Department's original proposal, issued in November, 2010, would amend the existing rules on qualified default investment alternatives under ERISA §404(c)(5) and participant disclosure under ERISA §404(a) to require additional disclosure about target retirement date funds and similar investments. [\[5\]](#) The Institute submitted a comment letter in response to the proposal. [\[6\]](#) In May 2012, the Department re-opened the comment period in connection with an investor testing study sponsored by

the SEC relating to the SEC's separate proposal on target date fund marketing materials. The Institute submitted comments to both the SEC and DOL on the SEC's study. [7]

4. Guide or Similar Requirement for Section 408(b)(2) Disclosures: The Agenda provides that the Department expects to issue a Notice of Proposed Rulemaking regarding a guide or similar requirement for the 408(b)(2) disclosures in October, 2013. As you may recall, at the time the Department issued the interim final 408(b)(2) rule, it sought comment on whether the final rule should include a guide or similar requirement to accompany the disclosures, to assist fiduciaries in locating disclosure information provided in multiple documents. [8] The final rule, issued in February, 2012, did not require a guide or summary. The final rule reserved a place for future development of a guide or similar tool and the Department stated that it intended to issue a separate proposal for such a guide or summary in the future. [9] It appears that the Department recently submitted its proposed rule to OMB's Office of Information and Regulatory Affairs for review. [10]
5. Abandoned Plan Program: The Department recently issued proposed amendments to the abandoned plan program and the related prohibited transaction exemption (PTE 2006-06). Although the proposed amendments primarily focus on the ability of a chapter 7 bankruptcy trustee to act as a Qualified Termination Administrator and utilize the existing abandoned plan program to terminate, wind up and distribute benefits from such plans, the amendments also include technical changes to the current abandoned plan regulations not related to chapter 7 plans. [11] The Institute submitted a comment letter in response to the proposed amendments. [12] The Agenda provides that the Department expects to issue a final rule in January, 2014.

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endnotes

[1] The Department's Spring 2013 Agency Rule List is available here: http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1200&Image58.x=35&Image58.y=10

[2] For a description of the Department's October, 2010 proposed rule, see [Memorandum to Pension Members No. 43-10 \[24642\]](#), dated October 22, 2010.

[3] For a copy of the Institute's comment letter, see [Memorandum to Pension Members No. 8-11 \[24941\]](#), dated February 3, 2011. For a copy of the Institute's testimony at the March 1, 2011 hearing, see [Memorandum to Pension Members No. 17-11 \[25000\]](#), dated March 2, 2011.

[4] For a summary of the ANPRM see [Memorandum to Pension Members No. 22-13 \[27228\]](#), dated May 8, 2013. In 2010, the Departments of Labor and Treasury jointly published a Request for Information on lifetime income options, asking a number of questions intended to help determine whether and how to facilitate access to and use of lifetime income arrangements. See [Memorandum to Pension Members No. 4-10 \[24125\]](#), dated February 2, 2010. Some of the RFI questions related specifically to lifetime income

estimates on benefit statements. The ANPRM refers to many of the comments received in response to the RFI as background for the proposal as outlined. For ICI's response to the RFI, see Memorandum to Pension Members No. 11-10 and Research Committee No. 2-10 [24278], dated May 3, 2010.

[5] For a description of the proposed rule, see [Memorandum](#) to Pension Members No. 57-10, SEC Rules Members No. 131-10, Small Funds Members No. 79-10, Advertising Compliance Advisory Committee No. 6-10, Transfer Agent Advisory Committee No. 79-10, Bank, Trust and Recordkeeper Advisory Committee No. 51-10, Operations Committee No. 38-10 [24754], dated December 2, 2010.

[6] For the Institute's comment letter on the DOL proposal, see [Memorandum](#) to Pension Members No. 5-11, SEC Rules Members No. 8-11, Advertising Compliance Advisory Committee No. 2-11, Transfer Agent Advisory Committee No. 6-11, Bank, Trust and Recordkeeper Advisory Committee No. 6-11, Operations Committee No. 3-11 [24878], dated January 14, 2011.

[7] See [Memorandum](#) to Pension Members No. 22-12, SEC Rules Members No. 42-12, Small Funds Members No. 15-12 [26185], dated May 23, 2012 (letter to SEC); Memorandum to Pension Members No. 26-12, SEC Rules Members No. 58-12, Small Funds Members No. 24-12 [26287], dated July 10, 2012 (letter to DOL).

[8] For a description of the interim final rule, see [Memorandum](#) to Pension Members No. 29-10, Bank, Trust and Recordkeeper Advisory Committee No. 21-10, Operations Committee No. 18-10, Transfer Agent Advisory Committee No. 37-10 [24432], dated July 16, 2010. For the Institute's comment letter on the interim final rule, see [Memorandum](#) to Pension Members No. 36-10, Bank, Trust and Recordkeeper Advisory Committee No. 30-10, Transfer Agent Advisory Committee No. 52-10, Operations Committee No. 24-10 [24520], dated August 30, 2010.

[9] For a description of the final rule, see [Memorandum](#) to Pension Members No. 8-12 [25876], dated February 7, 2012.

[10] The OMB Office of Information and Regulatory Affairs Executive Order Submissions Under Review website is available here:
<http://www.reginfo.gov/public/do/eoReviewSearch;jsessionid=B8ECBB8DE847C1F1EBDEDA74B309C73F>.

[11] For a description of the proposed amendments, see [Memorandum](#) to Pension Members No. 38-12, Bank, Trust and Retirement Advisory Committee No. 61-12, Transfer Agent Advisory Committee No. 80-12 [26799], dated December 20, 2012.

[12] See [Memorandum](#) to Pension Members No. 12-13, Operations Committee No. 11-13, Bank, Trust and Retirement Advisory Committee No. 6-13, Transfer Agent Advisory Committee No. 21-13 [27050], dated February 26, 2013.