

MEMO# 22232

February 13, 2008

ICI Comment Letter on DOL Service Provider Disclosure Proposal

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TO: PENSION MEMBERS No. 8-08
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 6-08
STATISTICAL ADVISORY GROUP TRANSFER AGENT ADVISORY COMMITTEE No. 8-08 RE: ICI
COMMENT LETTER ON DOL SERVICE PROVIDER DISCLOSURE PROPOSAL

The Institute submitted the attached comment letter to the Department of Labor on DOL's proposed revision of its regulation under ERISA section 408(b)(2). [\[1\]](#) This proposal would require that service providers to ERISA-governed plans provide plan fiduciaries with significant compensation and conflict of interest disclosures as a condition of the contract between the service provider and the plan.

The letter explains why DOL should not treat entities that provide services to a mutual fund such as the fund's adviser as providing services to a plan simply because the plan invests in the fund. If DOL believes that this regulation must require that fiduciaries receive information on the costs of plan investments, this obligation should be placed on someone with a contract with the plan, such as a recordkeeper who offers, as its service, access to investment options. The letter states that with respect to mutual funds, recordkeepers should not be required to obtain and provide information beyond that contained in mutual fund disclosure documents available to all investors.

The letter makes a number of recommendations to narrow the breadth of DOL's proposed conflict of interest disclosure to focus on information that will be useful to fiduciaries. The letter also recommends that DOL delay its proposed effective date (90 days) to at least 12

months after final rules are issued and that DOL not apply the new rules to existing contracts until they are materially modified.

Also attached is a comment letter on DOL's proposed class exemption. The letter recommends that to the extent service providers must rely on information provided by others to satisfy the disclosure obligations, the class exemption should be available if the information cannot be obtained despite reasonable efforts.

Michael L. Hadley
Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) See Memorandum to Pension Members No. 75-07 [22053], dated December 17, 2007.

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