

MEMO# 26040

April 16, 2012

Draft ICI Issues List for Department of Labor 408(b)(2) Frequently Asked Questions; Comments Due April 24, 2012

ACTION REQUESTED

[26040]

April 16, 2012

TO: PENSION COMMITTEE No. 11-12

PENSION OPERATIONS ADVISORY COMMITTEE No. 11-12

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 16-12 RE: DRAFT ICI ISSUES LIST FOR DEPARTMENT OF LABOR 408(b)(2) FREQUENTLY ASKED QUESTIONS; COMMENTS DUE APRIL 24, 2012

As was discussed during our February 14, 2012 conference call regarding the Department of Labor's (DOL) issuance of the final 408(b)(2) regulation, [\[1\]](#) we have prepared a draft list of issues to be submitted to the DOL for further clarification through the issuance of Frequently Asked Questions (FAQs). The Institute had previously provided the DOL with comment letters on both the 408(b)(2) interim final regulation [\[2\]](#) and on the initial service provider disclosure regulation proposed in December 2007. [\[3\]](#)

The draft suggests DOL issue clarifications relating to the following:

- Disclosure requirements in the context of abandoned/orphan plans;
- Disclosure requirements for model portfolio investment options;
- Utilization of a regulated data utility, directly or indirectly, to obtain information, required by the final rule and inclusion of a contractual provision that makes the third-party provider responsible for ensuring that the information is passed on accurately to the covered service provider; and
- Clarification regarding the term "at least annually" in the context of required disclosures of changes to investment information.

Additionally, the draft states that the Department should provide covered service providers and plan administrators with a limited period of transition relief. We recommend that the limited transition period begin on the date that the regulations became effective [\[4\]](#) and

end 12 months after the issuance of the FAQs, and that the DOL issue guidance stating that a service provider or plan administrator would be viewed as meeting the requirements of the 408b-2 and 404a-5 regulations, [5] respectively, if for the transition period, the service provider or plan administrator relied (a) on a reasonable and good faith interpretation of the regulations or (b) on the regulations as interpreted by the FAQs.

Please provide any comments on the draft issues list by April 24, 2012 to Howard Bard (howard.bard@ici.org or 202-326-5810) or David Abbey (david.abbey@ici.org or 202-326-5920).

Howard Bard
Associate Counsel - Pension Regulation

[Attachment](#)

endnotes

[1] A copy of the final regulation can be found here: <http://www.dol.gov/ebsa/pdf/2012-02262-PI1.pdf>. For a description of the Final Regulation, see [Memorandum](#) to Pension Committee No. 6-12, Pension Operations Advisory Committee No. 6-12, Operations Committee No. 4-12, Bank Trust and Retirement Advisory Committee No. 6-12, Broker/Dealer Advisory Committee No. 5-12, Transfer Agent Advisory Committee No. 7-12 [25875], dated February 7, 2012.

[2] See [Memorandum](#) to Pension Members No. 36-10, Bank Trust and Recordkeeper Advisory Committee No. 30-10, Operations Committee No. 24-10, Transfer Agent Advisory Committee No. 52-10 [24520], dated August 30, 2010. For a description of the Interim Final Regulation, 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.

[3] See [Memorandum](#) 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 [22232], dated February 13, 2008. For a description of the initial proposed regulation see [Memorandum](#) to Pension Members No. 75-07 [22053], dated December 17, 2007.

[4] The effective date of the final 408(b)(2) rule is July 1, 2012. Although the effective date of the participant-level disclosure rule is December 20, 2010, the Department amended the transition rule contained in the final participant-level disclosure rule to require that the initial disclosures be furnished no later than the later of 60 days after the first day of the first plan year beginning on or after November 1, 2011, or 60 days after the effective date of the 408(b)(2) rule. Therefore, the July 1, 2012 effective date of the 408(b)(2) rule delays the compliance date of the participant-level disclosure rule to August 30, 2012 (60 days after the effective date of the 408(b)(2) regulation). The first quarterly statement to participants that includes the new required participant disclosures is to be made no later than November 14, 2012 --45 days after the end of the third quarter (July-September) in which the initial disclosure was required. See [Memorandum](#) to Pension Members No. 40-11, Operations Members No. 14-11, Bank Trust and Recordkeeper Advisory Committee No. 41-11, Transfer Agent Advisory Committee No. 55-11 [25330], dated July 14, 2011.

[5] For a description of the Final Participant Disclosure regulation, see [Memorandum](#) to Pension Members No. 49-10, Transfer Agent Advisory Committee No. 76-10, Bank, Trust and Recordkeeper Advisory Committee No. 49-10, Broker/Dealer Advisory Committee No. 56-10, Operations Committee No. 37-10 [24702], dated November 11, 2010.

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