

**MEMO# 22196**

February 6, 2008

## **Revised Draft Comment Letter to Department of Labor on 408(b)(2) Proposal**

URGENT/ACTION REQUESTED

[22196]

February 6, 2008

TO: PENSION COMMITTEE No. 6-08  
PENSION OPERATIONS ADVISORY COMMITTEE No. 6-08  
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 4-08 RE: REVISED DRAFT  
COMMENT LETTER TO DEPARTMENT OF LABOR ON 408(b)(2) PROPOSAL

Attached is a revised version of our comment letter to the Department of Labor regarding DOL's proposed revision of its regulation under ERISA section 408(b)(2). [\[1\]](#)

We wanted to bring to your attention a new section of the letter (I.B.) that addresses the status of service providers to mutual funds under the regulation. Some DOL officials have stated informally that the proposed regulation is intended, much like the final Form 5550 rules, to capture compensation paid to service providers to investments in which a plan invests.

The letter explains why DOL should clarify in the final rule that service providers to mutual funds are not service providers to the plan. The letter states that guidance on what information plan fiduciaries need to know to make informed investment decisions is better done under 404(a) of ERISA, and not in 408(b)(2) regulation. The letter states that if the Department feels compelled to require in the 408(b)(2) regulation that someone provide plan fiduciaries with information on the fees of the plan's investments, this should be a person who has a service contract with the plan, such as a recordkeeper or other service

provider who offers, as a service, access to investment products. In any event, the Department must clarify that with respect to mutual funds, recordkeepers are not required to obtain and provide information beyond that contained in mutual fund disclosure documents.

The letter will be filed on Monday, February 11. If you have any comments please let the undersigned (mhadley@ici.org or 202-326-5810) or Mary Podesta (podesta@ici.org or 202-326-5826) know as soon as possible.

Michael L. Hadley  
Associate Counsel

[Attachment](#)

#### **endnotes**

[\[1\]](#) See Memorandum to Pension Committee No. 4-08, Pension Operations Advisory Committee No. 4-08 and Bank, Trust and Recordkeeper Advisory Committee No. 2-08 [22153], dated January 25, 2008. The separate letter on the proposed class exemption remains largely unchanged from the draft we circulated on January 25.

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