

MEMO# 24471

August 6, 2010

Draft ICI Comment Letter on Interim Final 408(b)(2) Regulation; Comments Due August 18

[24471]

August 6, 2010

TO: PENSION COMMITTEE No. 20-10
PENSION OPERATIONS ADVISORY COMMITTEE No. 19-10 RE: DRAFT ICI COMMENT LETTER ON INTERIM FINAL 408(B)(2) REGULATION; COMMENTS DUE AUGUST 18

Attached for your review is a draft comment letter on the Department of Labor's interim final 408(b)(2) regulation. [\[1\]](#) The draft supports the interim final regulation and recommends a number of features of the interim regulation that should be retained in the final regulation (which we urge DOL to adopt as quickly as possible).

The draft suggests DOL issue clarifications relating to the following:

- Updates on investment fees throughout the year
- Application of the recordkeeping definition to participant-level accounts held on mutual fund books
- Investment menu changes designated by the responsible plan fiduciary
- Use of a prospectus for an affiliated fund
- Electronic disclosure
- Off-platform investments
- Indirect compensation for brokerage windows

The letter does not oppose the use of a summary, but expresses concern that DOL could describe a summary requirement in the final regulation in a way that proves unworkable in many cases, and offers suggestions for DOL in considering whether to require a summary.

The letter reiterates the concern we raised in our comments to the participant disclosure proposal [\[2\]](#) about the conclusion in the economic analysis that 401(k) plan participants are overpaying by 11 basis points. The letter points out that DOL later rejected this conclusion

in the final investment advice regulations. [\[3\]](#)

Finally, the letter recommends that DOL extend the effective date if the final regulation imposes new obligations on service providers and recommends it exempt certain pre-2009 annuity contracts and custodial accounts of 403(b) plans.

Please provide any comments on the letter by Wednesday, August 18 to Mike Hadley (mhadley@ici.org or 202-326-5810) or Mary Podesta (podesta@ici.org or 202-326-5826). Comments on 403(b) issues can also be provided to Elena Chism (elena.chism@ici.org or 202-326-5821).

Michael L. Hadley
Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) See [Memorandum](#) to Pension Committee No. 17-10 and Pension Operations Advisory Committee No. 15-10 [24429], dated July 16, 2010.

[\[2\]](#) See [Memorandum](#) to Pension Members No. 52-08, Transfer Agent Advisory Committee No. 49-08, Bank, Trust and Recordkeeper Advisory Committee No. 29-08, Broker/Dealer Advisory Committee No. 31-08, and Operations Committee No. 17-08 [22854], dated September 9, 2008.

[\[3\]](#) See [Memorandum](#) to Pension Members No. 9-09 [23239], dated February 9, 2009.

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