

MEMO# 22153

January 25, 2008

Draft Comment Letters to Department of Labor on 408(b)(2) Proposal; Comments Requested by February 1

URGENT/ACTION REQUESTED

[22153]

January 25, 2008

TO: PENSION COMMITTEE No. 4-08
PENSION OPERATIONS ADVISORY COMMITTEE No. 4-08
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 2-08 RE: DRAFT
COMMENT LETTERS TO DEPARTMENT OF LABOR ON 408(B)(2) PROPOSAL; COMMENTS
REQUESTED BY FEBRUARY 1

Attached for your review are draft comment letters to the Department of Labor regarding DOL's proposed revision of its regulation under ERISA 408(b)(2) and associated proposed class exemption. [\[1\]](#)

The draft letter on the 408(b)(2) proposal recommends that DOL retain the basic structure of the compensation disclosures which focus on service provider direct and indirect compensation, allows the use of formulas, and does not require a service provider to generate "prices" for services sold as a package. The letter focuses on one piece of the bundled service rule that requires disclosure of compensation or fees that are a separate charge against a plan investment or that are set on a transaction basis. The letter recommends that the Department clarify that this is to be read narrowly or, if it is to be read broadly, then DOL should clarify that with respect to mutual funds, 401(k) recordkeepers are not required to provide information on unaffiliated mutual funds beyond that contained in existing mutual fund disclosure documents.

The draft letter makes a number of other recommendations on the compensation and conflict of interest disclosures, including that DOL include a procedure allowing service providers to correct inadvertent failures. The letter also asks DOL to clarify that the rules do not apply to IRAs and similar individual plans. Finally, the letter recommends that DOL extend the effective date for 12 months and provide that the rules do not apply to existing contracts until they are materially modified.

The draft letter on the proposed class exemption asks the Department to make the exemption available to service providers who must rely on information from another party.

Please provide comments by Friday, February 1, to the undersigned (mhadley@ici.org or 202-326-5810) or Mary Podesta (podesta@ici.org or 202-326-5826).

Michael L. Hadley
Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) See Memorandum to Pension Committee No. 40-07, Pension Operations Advisory Committee No. 41-07 and Bank, Trust and Recordkeeper Advisory Committee No. 58-07 [22054], dated December 17, 2007.

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