

**MEMO# 24520**

August 30, 2010

# **Institute Comment Letter on DOL 408(b)(2) Service Provider Disclosure Interim Final Regulation**

[24520]

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TO: PENSION MEMBERS No. 36-10  
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 30-10  
TRANSFER AGENT ADVISORY COMMITTEE No. 52-10  
OPERATIONS COMMITTEE No. 24-10 RE: INSTITUTE COMMENT LETTER ON DOL 408(b)(2)  
SERVICE PROVIDER DISCLOSURE INTERIM FINAL REGULATION

The Institute filed the attached comment letter on the Department of Labor's interim final 408(b)(2) regulation, which requires certain fee disclosures be made by service providers to fiduciaries of pension and retirement plans. [\[1\]](#) The letter 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 letter 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
- Non-ERISA 403(b) plans subsequently determined to be covered by ERISA.

The letter responds to DOL's request for comment on whether DOL should require service providers to provide a summary. 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.

Michael L. Hadley  
Associate Counsel

### [Attachment](#)

#### **endnotes**

[\[1\]](#) See Institute [Memorandum](#) to Pension Members No. 29-10, Bank, Trust and Recordkeeping Advisory Committee No. 21-10; Transfer Agent Advisory Committee No. 18-10 and Operations Committee No. 37-10, dated July 16, 2010 (24432).

[\[2\]](#) 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.