

MEMO# 28119

May 13, 2014

Institute Comment Letter to Department of Labor on Proposed 408(b)(2) Focus Group Study

[28119]

May 13, 2014

TO: PENSION MEMBERS No. 20-14

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 21-14

BROKER/DEALER ADVISORY COMMITTEE No. 25-14

OPERATIONS COMMITTEE No. 26-14

TRANSFER AGENT ADVISORY COMMITTEE No. 28-14 RE: INSTITUTE COMMENT LETTER TO DEPARTMENT OF LABOR ON PROPOSED 408(b)(2) FOCUS GROUP STUDY

The Institute filed the attached comment letter with the Department of Labor in response to the Department's Information Collection Request (ICR) regarding its intended use of focus groups to explore current practices and effects of the final 408(b)(2) service provider regulation (final regulation). The Department intends to use the focus group study to gather information about the need for a guide, summary or other tool to help plan fiduciaries understand and navigate the disclosures. You may recall that the Department issued the proposed ICR on the same day that it issued a proposed regulation (proposed rule) that would amend the final regulation to require covered service providers who meet their obligations under 408(b)(2) by use of multiple or lengthy documents to furnish a guide to assist plan fiduciaries in reviewing the required disclosures. [\[1\]](#)

The comment letter first discusses the timing of the ICR and argues that the Department should have collected information regarding the need for a guide, summary or other tool to the disclosures prior to issuing a proposed rule requiring a guide, given that the focus groups are designed to provide the Department with information as to the necessity of a guide requirement. The letter recommends that the Department extend the proposed rule's comment period to enable the public to review and comment on the focus group results. The letter further notes that, although the Department sought comments in the proposed rule on whether the final regulation should be amended to require a summary of specified key disclosures instead of a guide, the focus group questions do not specifically inquire whether plan fiduciaries would prefer to receive a summary versus a guide. The letter therefore recommends that the Department collect more specific information from plan fiduciaries regarding their preference for a summary of the disclosures.

The letter next addresses the design of the ICR and discusses the limitations of focus groups, including the limited sample size and representation of the proposed focus groups as well as the subjectivity and bias that may be present in a focus group. The letter recommends that the Department use the focus groups to pre-test a survey and collect the information it seeks through a survey instrument rather than solely through the use of focus groups. The letter also addresses our concerns regarding focus group participant recall, given that it has likely been two years since many of the focus group participants received the initial 408(b)(2) disclosures.

The final section of the letter includes specific comments on the proposed focus group script. The letter recommends revisions to certain of the proposed focus group questions and discusses various instances in the script where participant recall issues are a concern and where the focus group script questions appear to illustrate bias or subjectivity.

Howard Bard
Associate Counsel

[Attachment](#)

endnotes

[1] See [Memorandum](#) to Pension Members No. 10-14, Bank, Trust and Retirement Advisory Committee No. 11-14, Broker/Dealer Advisory Committee No. 12-14, Operations Committee No. 11-14 [27960], dated March 14, 2014.