

**MEMO# 28179**

June 11, 2014

# **Institute Comment Letter on Department of Labor Proposed 408(b)(2) Service Provider Disclosures Guide Requirement**

[28179]

June 11, 2014

TO: PENSION MEMBERS No. 23-14  
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 24-14  
BROKER/DEALER ADVISORY COMMITTEE No. 31-14  
OPERATIONS MEMBERS No. 3-14  
TRANSFER AGENT ADVISORY COMMITTEE No. 33-14 RE: INSTITUTE COMMENT LETTER ON  
DEPARTMENT OF LABOR PROPOSED 408(b)(2) SERVICE PROVIDER DISCLOSURES GUIDE  
REQUIREMENT

The Institute filed the attached comment letter with the Department of Labor (Department) in response to the Department's Notice of Proposed Rulemaking (Proposed Rule) that would amend the final 408(b)(2) service provider disclosure regulation (Regulation) to require service providers to provide plan fiduciaries with a guide to the disclosures. [\[1\]](#) Specifically, the Proposed Rule would amend the Regulation to require covered service providers to furnish a guide that enables plan fiduciaries to "quickly and easily" find the required disclosures, unless the covered service provider furnishes the required disclosures in a single summary document that does not exceed a yet-to-be-determined number of pages. In the letter, the Institute requests that the Department withdraw the Proposed Rule and determine whether to reissue it after (1) conducting a statistically valid survey and review of disclosure materials obtained as part of its audits/investigations of service providers and plans, and (2) publishing a Request for Information, to identify what, if any, difficulties plan fiduciaries may be encountering in connection with the receipt of 408(b)(2) disclosures as well as cost-effective solutions to address those specific problems.

Part I of the letter makes the following points in support of the Institute's request that the Proposed Rule be withdrawn.

- The letter states that the Department is proposing a rule to require a guide to the disclosures without having first demonstrated a compelling public need for a guide requirement and the Department has not provided factual evidence or data to support

the need for a guide.

- The letter discusses the technological issues associated with preparing a guide to the disclosures and states that the Department does not properly address or understand the complexity or time necessary to construct a guide to the disclosures. The letter states that a guide requiring references to specific section or page numbers will generally have to be customized on a client-by-client basis and, given current technology, service providers will be required to manually build and maintain systems necessary to construct a guide with specific section or page number references.
- The letter discusses the Department's cost analysis and states that the Department has vastly underestimated the cost to service providers associated with the proposed guide requirement. The letter notes that the Department's cost analysis ignores the fact that the relevant disclosures required by the Regulation include information contained in documents beyond mutual fund prospectuses, including documents generated by other covered service providers.

Part II of the letter discusses the Department's consideration of alternative tools to a guide requirement and states that the Department's proposed "one-size-fits-all" format requirement ignores the fact that covered service providers seek to tailor the format of their disclosures based on the specific details of their relationship with their client. The letter next provides comments in response to certain of the Department's requests included in the preamble to the Proposed Rule, including a further discussion of the technological challenges associated with preparing the guide, the content and structure of the guide, the Proposed Rule's "quickly and easily" compliance standard, and changes to the guide.

Finally, the letter responds to the Department's proposal that the guide requirement be effective 12 months after publication of a final amendment in the Federal Register. The letter states that the Department's proposed effective date will not provide covered service providers with sufficient time to develop and implement systems required to prepare the guide, and that a period considerably longer than 12 months will be necessary to establish the processes and procedures necessary to ensure compliance with the Proposed Rule.

Howard Bard  
Associate Counsel

### [Attachment](#)

#### **endnotes**

[1] The Proposed Rule is available here: <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=27415>. For the Institute's summary of the Proposed Rule, 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.

should not be considered a substitute for, legal advice.