

MEMO# 26838

January 7, 2013

Department of Labor Issues Updated Regulatory Agenda

[26838]

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TO: PENSION MEMBERS No. 6-13

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 1-13

BROKER/DEALER ADVISORY COMMITTEE No. 1-13

OPERATIONS COMMITTEE No. 2-13

TRANSFER AGENT ADVISORY COMMITTEE No. 5-13 RE: DEPARTMENT OF LABOR ISSUES
UPDATED REGULATORY AGENDA

The Department of Labor (Department) has issued its updated Regulatory Agenda, which includes the Department's projected dates for issuance of proposed and final regulations.

[1] Included within the updated Agenda are the following items:

1. Pension Benefit Statements: Although the Agenda states that the Department expected to issue an Advance Notice of Proposed Rulemaking (ANPRM) in December 2012, the proposal has not yet been published and currently is awaiting clearance by the White House's Office of Management and Budget. The rulemaking will explore whether and how an individual's benefit statement should and could include lifetime income stream estimates. As you may recall, in 2010, the Department and the Treasury Department jointly issued a Request for Information on Lifetime Income Options. [2] The Institute responded to the RFI and testified at the September 2010 joint hearing. [3]
2. Fiduciary Definition: The Agenda provides that the Department expects to re-issue its proposed fiduciary definition rule in July 2013. The Department issued a proposed rule in October 2010 to revise the existing rule on when a person will be considered to be a fiduciary under ERISA by providing investment advice. [4] The Institute submitted a comment letter in response to the proposed rule and testified during the Department's March 2011 hearing regarding the proposed rule. [5] In September 2011, the Department announced that it would withdraw and re-propose the rule.
3. Target Date Funds: The Agenda provides that the Department expects to finalize regulations regarding target date funds in November 2013. The Department's original proposal, issued in November 2010, would amend the existing rules on qualified default investment alternatives under ERISA §404(c)(5) and participant disclosure

under ERISA §404(a) to require additional disclosure about target retirement date funds and similar investments. [6] The Institute submitted a comment letter in response to the proposal. [7] In May 2012, the Department re-opened the comment period in connection with an investor testing study sponsored by the SEC relating to the SEC's separate proposal on target date fund marketing materials. The Institute submitted comments to both the SEC and DOL on the SEC's study. [8]

4. Abandoned Plan Program: The Department recently issued proposed amendments to the abandoned plan program and the related prohibited transaction exemption (PTE 2006-06). Although the proposed amendments primarily focus on the ability of a chapter 7 bankruptcy trustee to act as a Qualified Termination Administrator and utilize the existing abandoned plan program to terminate, wind up and distribute benefits from such plans, the amendments also include technical changes to the current abandoned plan regulations not related to chapter 7 plans. [9] The Agenda provides that the comment period ends on February 11, 2013, but does not specify a date for the final rule.
5. Guide or Similar Requirement for Section 408(b)(2) Disclosures: The Agenda provides that the Department expects to issue a Notice of Proposed Rulemaking regarding a guide or similar requirement for the 408(b)(2) disclosures in May 2013. As you may recall, at the time the Department issued the interim final 408(b)(2) rule, it sought comment on whether the final rule should include a guide or similar requirement to accompany the disclosures, to assist fiduciaries in locating disclosure information provided in multiple documents. [10] The final rule, issued in February 2012, did not require a guide or summary. The final rule reserved a place for future development of a guide or similar tool and the Department stated that it intended to issue a separate proposal for such a guide or summary in the future. [11]

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endnotes

[1] The Department's Fall 2012 Agency Rule List is available here: http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1200&Image58.x=41&Image58.y=15.

[2] See [Memorandum](#) to Pension Members No. 4-10 [24125], dated February 2, 2010 (memorandum describing the RFI).

[3] See [Memorandum](#) to Pension Members No. 11-10 and Research Committee No. 2-10 [24278], dated May 3, 2010 (Institute letter responding to RFI); [Memorandum](#) to Pension Members No. 38-10 and Research Committee No. 5-10 [24549], dated September 20, 2010 (describing the Institute's testimony).

[4] For a description of the Department's October 2010 proposed rule, see [Memorandum](#) to Pension Members No. 43-10 [24642], dated October 22, 2010.

[5] For a copy of the Institute's comment letter, see [Memorandum](#) to Pension Members No. 8-11 [24941], dated February 3, 2011. For a copy of the Institute's testimony at the March

1, 2011 hearing, see [Memorandum](#) to Pension Members No. 17-11 [25000], dated March 2, 2011.

[6] For a description of the proposed rule, see [Memorandum](#) to Pension Members No. 57-10, SEC Rules Members No. 131-10, Small Funds Members No. 79-10, Advertising Compliance Advisory Committee No. 6-10, Transfer Agent Advisory Committee No. 79-10, Bank, Trust and Recordkeeper Advisory Committee No. 51-10, Operations Committee No. 38-10 [24754], dated December 2, 2010.

[7] For the Institute's comment letter on the DOL proposal, see [Memorandum](#) to Pension Members No. 5-11, SEC Rules Members No. 8-11, Advertising Compliance Advisory Committee No. 2-11, Transfer Agent Advisory Committee No. 6-11, Bank, Trust and Recordkeeper Advisory Committee No. 6-11, Operations Committee No. 3-11 [24878], dated January 14, 2011.

[8] See [Memorandum](#) to Pension Members No. 22-12, SEC Rules Members No. 42-12, Small Funds Members No. 15-12 [26185], dated May 23, 2012 (letter to SEC); [Memorandum](#) to Pension Members No. 26-12, SEC Rules Members No. 58-12, Small Funds Members No. 24-12 [26287], dated July 10, 2012 (letter to DOL).

[9] For a description of the proposed amendments, see [Memorandum](#) to Pension Members No. 38-12, Bank, Trust and Retirement Advisory Committee No. 61-12, Transfer Agent Advisory Committee No. 80-12 [26799], dated December 20, 2012.

[10] For a description of the interim final rule, see [Memorandum](#) to Pension Members No. 29-10, Bank, Trust and Recordkeeper Advisory Committee No. 21-10, Operations Committee No. 18-10, Transfer Agent Advisory Committee No. 37-10 [24432], dated July 16, 2010. For the Institute's comment letter on the interim final rule, see [Memorandum](#) 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 [24520], dated August 30, 2010.

[11] For a description of the final rule, see [Memorandum](#) to Pension Members No. 8-12 [25876], dated February 7, 2012.