

American Federation of Labor and Congress of Industrial Organizations



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Submitted by Email to e-ORI@dol.gov

June 10, 2014

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: RIN 1210-AB08; 408(b)(2) Guide

Re: Amendment Relating to Reasonable Contract or Arrangement
Under Section 408(b)(2)—Fee Disclosure
Docket ID: EBSA-2014-0002-0001

Ladies and Gentlemen:

These comments on the proposed rule to amend the regulations relating to fee disclosures under Section 408(b)(2) issued by the Department of Labor ("Department")¹ are submitted by the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") and its 56 affiliated unions. The AFL-CIO, together with its community affiliate, Working America, represents more than 12.5 million workers across the country in all sectors of our economy, including those working in manufacturing, construction, transportation, grocery and retail stores, food processing and meatpacking, health care, education, hospitality, entertainment and all levels of government.

¹ The Proposed Rule, Amendment Relating to Reasonable Contract or Arrangement Under section 408(b)(2)—Fee Disclosure, was published in the Federal Register on March 12, 2014 (79 Fed. Reg. 13949) and is available at <http://www.gpo.gov/fdsys/pkg/FR-2014-03-12/pdf/2014-04868.pdf>.

Pensions and retirement savings plans are a significant component of the economic package our affiliates negotiate through collective bargaining with employers. As is the case for most middle class Americans, the retirement money of represented workers is their biggest investment in the capital markets, and, likely their most important financial asset. While a large majority of union-represented workers have guaranteed lifetime pensions through defined benefit pension plans, they also participate in, and rely on, defined contribution plans, typically 401(k) savings plans.²

As the number of 401(k) plans has exploded over the last twenty-five years,³ their shortcomings as the primary means of providing retirement income have become more evident. These plans provide less retirement security than traditional defined benefit plans as they require workers to assume more risk with respect to their future retirement income. They bear the risk of inadequate contributions, inadequate investment returns and excessive fees, market shifts as retirement approaches and outliving their retirement savings.

The impact of fees on the ultimate balances in workers' retirement savings accounts has been well-documented.⁴ And, the Department's regulatory initiative to make fees more transparent to both plan sponsors and participants has been underway for much of the last decade in response to the widespread concerns. The AFL-CIO believes the Department's continuing efforts to ensure workers and retirees are not overpaying for their retirement plans is an essential element of a comprehensive approach to building retirement security for all Americans. The

² According to the most recent survey from the Bureau of Labor Statistics, 68 percent of private sector union-represented workers participate in a defined benefit pension plan and 44 percent participate in a defined contribution plan. US Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2013, Retirement Benefits*, Table 2 available at <http://www.bls.gov/ncs/ebs/benefits/2013/ownership/private/table02a.pdf>.

³ US Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin Historical Tables and Graphs*, Table E20 available at <http://www.dol.gov/ebsa/pdf/historicaltables.pdf>. In 1990, the total number of 401(k) plans was just under 98,000 and by 2011, the number had more than quintupled, reaching 513,500.

⁴ Government Accountability Office, *Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees*, GAO-07-21 (November 2006) available at <http://www.gao.gov/assets/260/253638.pdf>; Government Accountability Office, *Increased Educational Outreach and Broader Oversight May Help Reduce Plan Fees*, GAO-12-325 (April 2012) available at <http://www.gao.gov/assets/600/590359.pdf>; Robert Hiltonsmith, *The Retirement Savings Drain: The Hidden & Excessive Costs of 401(k)s* (Demos May 2012) available at <http://www.demos.org/sites/default/files/publications/TheRetirementSavingsDrain-Final.pdf>; Jennifer Erickson and David Madland, *Fixing the Drain on Retirement Savings: How Retirement Fees Are Straining the Middle Class and What We Can Do about Them* (Center for American Progress April 2014) available at <http://cdn.americanprogress.org/wp-content/uploads/2014/04/401kFees-brief3.pdf>.

Proposed Rule is another step in the right direction. Requiring covered service providers to give plan sponsors and responsible plan fiduciaries a guide will make it easier for them to understand the fee disclosure material they receive from the providers. This will help plan fiduciaries evaluate the propriety of the services being offered and the compensation providers receive and ultimately lead to better retirement outcomes for workers and retirees.

The Proposed Rule offers covered service providers a choice—they can furnish the required disclosures in a single, relatively short document or they can provide a separate guide so the plan fiduciaries have a roadmap and can easily locate the relevant information in lengthy or multiple documents. By limiting the required guide to those circumstances where the mandated disclosures under Section 408(b)(2) might be more difficult to find in lengthy or multiple documents, the Department uses a reasonable approach, one that might even encourage service providers to simplify contracts and other documentation of their arrangements with plans.

The Department proposes that the effective date for the provision of any guide will be 12 months after the final rule is published. We support this delayed effective date as it allows covered service providers adequate time to comply with the requirement.

The AFL-CIO appreciates the opportunity to comment on the Proposed Rule, and we commend the Department for its ongoing efforts to require adequate and meaningful disclosures from service providers. We would be happy to provide additional information or assistance to the Department as it develops the final rule.

Sincerely,

/s/ Karin S. Feldman

Karin S. Feldman
Benefits & Social Insurance Policy Specialist