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May 12, 2014

*Filed Electronically*

Office of the Assistant Secretary for Policy/  
Chief Evaluation Office  
United States Department of Labor  
Room S-2312  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Re: Proposed Information Collection Request – Evaluating the Effectiveness of the  
408(b)(2) Disclosure Requirements Focus Groups

Dear Sir/Madam:

The Investment Company Institute<sup>1</sup> appreciates the opportunity to provide comments on the Department of Labor's proposed Information Collection Request (ICR)<sup>2</sup> regarding the conduct of focus groups to explore current practices and effects of the final 408(b)(2) service provider disclosure regulation,<sup>3</sup> and to gather information about the need for a guide, summary, or tool to help plan fiduciaries navigate and understand the disclosures. The Institute strongly supported DOL's service provider disclosure initiative<sup>4</sup> and has long supported effective disclosure to plan fiduciaries that enables them to fulfill their duties under the Employee Retirement Income Security Act of 1974 (ERISA). As an organization with established research capabilities, the Institute is in a unique position to comment on this matter.<sup>5</sup>

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<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$16.8 trillion and serve more than 90 million shareholders.

<sup>2</sup> 79 Fed. Reg. 14085 (March 12, 2014).

<sup>3</sup> 77 Fed. Reg. 5632 (Feb. 3, 2012).

<sup>4</sup> See, e.g., Letter from Mary Podesta, Senior Counsel – Pension Regulation, Investment Company Institute, to Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, dated August 30, 2010, available at [www.dol.gov/ebsa/pdf/1210-AB08-0027.pdf](http://www.dol.gov/ebsa/pdf/1210-AB08-0027.pdf).

<sup>5</sup> One of the major roles the Institute serves is as a source for statistical data on the investment company industry. With a research department comprising more than 40 people, including seven PhD-level economists, the Institute conducts public policy research on fund industry trends, shareholder characteristics, the industry's role in U.S. and international financial markets, and the retirement market. For example, the Institute publishes reports focusing on the overall U.S. retirement market, fees and expenses, and the behavior of defined contribution plan participants and IRA investors. In its research on mutual fund investors, IRA owners, and 401(k) plan participants, the Institute conducts periodic household surveys that connect directly with investors.

We understand that the Department intends to use information collected from the focus groups to (1) assess plan fiduciaries' experience in receiving the 408(b)(2) disclosures; (2) assess the effectiveness of these disclosures in helping plan fiduciaries make decisions; (3) determine how well plan fiduciaries understood the disclosures, especially in the small plan marketplace; and (4) evaluate whether, and how, a guide, summary, or similar tool would help fiduciaries understand the disclosures.<sup>6</sup> The Department intends to conduct approximately eight to ten focus group sessions with approximately 70 to 100 plan fiduciaries to small pension plans (those with less than 100 participants), and the focus group results will be used to inform and support the Department's notice of final rulemaking for the guide requirement.<sup>7</sup>

The Department seeks comment on whether the proposed ICR (*i.e.*, the proposed conduct of focus groups) will have practical utility. As discussed below, our review of the ICR materials did raise several concerns regarding the practical utility of the proposed focus group study. In particular, as discussed in Part I of the letter, we have general concerns regarding the timing of the focus groups given the Department's issuance of a proposed rule requiring a guide to the disclosures, as well as the lack of consideration, in the proposed focus group script, of alternatives to a guide requirement. Part II of the letter discusses our concerns with respect to the proposed ICR design. Part III of the letter provides specific comments on the focus group issue areas and questions.

## I. General Comments

### A. The Timing of the ICR

On the same day the ICR was published in the *Federal Register*, the Department also published a notice of proposed rulemaking, *Amendment Relating to Reasonable Contact or Arrangement Under Section 408(b)(2) – Fee Disclosure* (the "Proposed Rule").<sup>8</sup> The Proposed Rule would amend the final 408(b)(2) service provider disclosure regulation (the "Regulation") under ERISA to require covered service providers to furnish a guide to assist plan fiduciaries in reviewing the required disclosure documents provided pursuant to 408(b)(2), 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. While we applaud the Department in its effort to collect information to evaluate whether, and how, a guide, summary, or other tool would help fiduciaries understand the disclosures, we believe that the Department should have collected such information prior to issuing a proposed rule requiring a guide to the disclosures, given that the focus groups are designed to provide the Department with information as to the necessity of a guide requirement.

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<sup>6</sup> See page 3 of the "Supporting Statement for the Paperwork Reduction Act of 1995" provided by the Department.

<sup>7</sup> *Id.*

<sup>8</sup> 79 Fed. Reg. 13949 (March 12, 2014).

We question the practical utility of focus groups designed to assist the Department in determining whether a guide to the disclosures is necessary concurrent with the issuance of a proposed rule that would require a guide. The Department states that “the focus group results will be used to inform and support the Department’s notice of final rulemaking for the guide requirement.”<sup>9</sup> We believe the Department should have conducted the ICR and evaluated the ICR results as an initial step in determining whether the Proposed Rule is necessary. By conducting the ICR concurrent with the issuance of the Proposed Rule, the Department is eliminating the opportunity for the public to provide comment on the ICR results and the impact that such results would have on any rule requiring a guide to the disclosures. Although the Department states in the Proposed Rule that it may decide to reopen the Proposed Rule’s comment period to solicit comments on the focus group results, given the concurrent issuance of the ICR and the Proposed Rule, we recommend that the Department extend the Proposed Rule’s comment period to enable the public to review and comment on the ICR results.

#### B. Consideration of a Summary versus a Guide

We note that in the preamble to the Proposed Rule, the Department invites comments on whether the amendment should require a summary of specified key disclosures instead of a guide to the disclosures.<sup>10</sup> Despite that, the focus group questions do not specifically inquire whether participants would prefer to receive a summary of the disclosures as opposed to a guide, and whether a summary would assist them in understanding the disclosures. Additionally, we understand that many of our members provided a summary-type document with the required disclosures. We recommend that the Department collect more specific information from plan fiduciaries regarding a summary of the disclosures, including (1) the format of any summary of the disclosures plan fiduciaries received; (2) whether the summary helped in understanding the disclosures; and (3) whether a summary would be preferable to a guide.

## II. The ICR Design

The Institute has significant experience with surveys relating to the mutual fund industry, mutual fund shareholders, IRA owners, and defined contribution plan participants. For example, each spring the Institute conducts the *Annual Mutual Fund Shareholder Tracking Survey* to gather information on the demographic and financial characteristics of mutual fund-owning households in the United States.<sup>11</sup> The most recent survey was conducted in May 2013 and was based on a sample of 4,001 U.S. households selected by random digit dialing. The Institute also conducts the *IRA Owners Survey* each spring to gather information on the characteristics and activities of IRA-owning

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<sup>9</sup> See page 3 of the “Supporting Statement for the Paperwork Reduction Act of 1995” provided by the Department.

<sup>10</sup> 79 Fed. Reg. at 13953.

<sup>11</sup> See Burham, Bogdan, and Schrass, “Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2013,” *ICI Research Perspective* 19, no. 9 (October 2013), available at [www.ici.org/pdf/per19-09.pdf](http://www.ici.org/pdf/per19-09.pdf).

households in the United States.<sup>12</sup> The most recent survey was conducted in May 2013 and was based on a sample of 3,006, randomly selected, representative U.S. households owning traditional IRAs, Roth IRAs, and employer-sponsored IRAs.

Based on our experience in the collection of information and the conduct of surveys, we have the following general comments with regard to the proposed ICR design.

A. Limitations of Focus Groups

While we appreciate the Department's effort to collect information to evaluate whether, and how, a guide, summary, or other tool would help plan fiduciaries understand the 408(b)(2) disclosures, as discussed below, we do not believe that the conduct of focus groups is the appropriate vehicle for the collection of such information.

As we have previously cautioned, while focus groups may serve certain purposes (*e.g.*, in helping to craft a survey instrument), their results cannot and should not be taken as an indication of broad population sentiment.<sup>13</sup> Mainstream market research literature suggests that focus groups are a useful tool for getting desired information quickly, particularly as a means for establishing the appropriate way to conduct quantitative research using a survey-based approach in a follow-up.<sup>14</sup> For example, in response to the Department's January 2013 ICR regarding a proposed survey on pension benefit statements, the Institute supported the Department's methodology in using focus groups for pre-testing a survey instrument before fielding it through the RAND American Life Panel.<sup>15</sup> However, focus groups have at least two important shortcomings that severely limit the utility of the conclusions that can be drawn from them: (1) limited sample size and potential selection bias; and (2) subjectivity.<sup>16</sup> We discuss each of these areas below, with respect to the ICR.

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<sup>12</sup> See Holden and Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2013," *ICI Research Perspective* 19, no. 11 (November 2013), available at [www.ici.org/pdf/per19-11.pdf](http://www.ici.org/pdf/per19-11.pdf).

<sup>13</sup> See, *e.g.*, Letter from Elizabeth R. Krentzman, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated Apr. 4, 2005 (commenting on the SEC's proposed point of sale and confirmation disclosure requirements), available at [www.sec.gov/rules/proposed/s70604/ekrentzman040405.pdf](http://www.sec.gov/rules/proposed/s70604/ekrentzman040405.pdf).

<sup>14</sup> See, *e.g.*, Cox, Chinnappa, Christianson, Colledge, and Kott, *Business Survey Methods* (New York: John Wiley and Sons, Inc., 1995), 285–287.

Focus groups are conducted to develop, assess, and clarify survey concepts and their indicators, to evaluate questions and instruction, and to identify errors or burdens associated with understanding and answering questions and retrieving data.

<sup>15</sup> See, *e.g.*, Letter from David M. Abbey, Senior Counsel, and Sarah Holden, Senior Director, Investment Company Institute, to G. Christopher Cosby, U.S. Department of Labor, dated Mar. 25, 2013, available at [www.dol.gov/cbsa/pdf/icr-0004.pdf](http://www.dol.gov/cbsa/pdf/icr-0004.pdf).

<sup>16</sup> See, *e.g.*, Tull and Hawkins, *Marketing Research* (New York: Macmillan, Inc., 1993), 451.

## 1. Limited Sample Size and Representation

As noted above, the Department's proposed focus groups will include fiduciaries of 70 to 100 small pension plans (pension plans with less than 100 participants) in eight to ten focus group sessions. Presumably the focus group sessions will include both defined benefit (DB) and defined contribution (DC) pension plan fiduciaries since the 408(b)(2) disclosures are required for both DB and DC plans. We are concerned that limiting the focus groups to include only fiduciaries of small pension plans will create a biased sample. According to the Department's 2011 Form 5500 data about 88% of DC plans are small plans and 12% of DC plans are large plans (pension plans with 100 or more participants).<sup>17</sup> Although small plans make up the majority of DC plans, 85% of active participants and assets are in large DC plans. Further, the sample appears to be less representative with respect to DB plans. Although 22% of DB plans have 100 or more participants, 98% of active participants and assets are in large DB plans. Using answers from 70 to 100 small pension plan fiduciaries as the sole basis for making observations about the preferences of over 45,000 small and large DB plans and nearly 640,000 small and large DC plans with over 90 million active participants would strain statistical credibility.<sup>18</sup> It

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The combined effects of potential nonresponse errors, small sample sizes caused by high costs, abnormal behavior by participants, and the potential for interviewer effects makes generalization from a few focus groups to the larger population a risky undertaking.

*See also* Aaker, Kumar, and Day, *Marketing Research* (New York: John Wiley and Sons, Inc., 2004), 209–210.

The dangers of accepting the unstructured output of a focus group or a brief series of informal interviews are twofold. First, the results are not necessarily representative of what would be found in the population, and hence cannot be projected. Second, there is typically a good deal of ambiguity in the results. The flexibility that is the hallmark of these methods gives the moderator or interviewer great latitude in directing the questions; similarly, an analyst with a particular point of view may interpret the thoughts and comments selectively to support that view. In view of these pitfalls, these methods should be used strictly for insights into the reality of the consumer perspective and to suggest hypotheses for further research.

*See also* Phipps, Butani, and Chun, "Research on Establishment-Survey Questionnaire Design," *Journal of Business & Economic Statistics*, 1995, 340.

Focus groups were developed as qualitative research tool, and as such they prevent social scientists from making quantitative estimates. This limitation stems primarily from the nature of focus-group samples, which are small and nonprobability based.... Because analysis of these data further involves the researcher's subjective judgment, we interpret the results with caution.

<sup>17</sup> The Institute tabulated 2011 Form 5500 data. For aggregate 2011 Form 5500 data, *see* U.S. Department of Labor, Employee Benefits Security Administration, *Private Pension Plan Bulletin: Abstract of 2011 Form 5500 Annual Reports* (Version 1.0; June 2013), available at [www.dol.gov/ebsa/pdf/2011pensionplanbulletin.pdf](http://www.dol.gov/ebsa/pdf/2011pensionplanbulletin.pdf).

<sup>18</sup> To some extent, all surveys face the risk of sampling variability.

is misleading to analyze a focus group as representative of a population.<sup>19</sup>

## 2. Subjectivity and Bias

The second shortcoming of focus groups is deciphering the “take-away message.” The conclusions drawn from focus groups by nature involve a level of subjectivity. Subjectivity can be injected into the process at two junctures. First, the moderator has a great deal of flexibility to ask participants questions in a certain manner, or to emphasize certain elements over others, which can affect the answers given. While formal surveys may also include questions that may appear to invoke bias, careful survey design can minimize this risk. Further, by specifying that the questions be asked using the precise language provided, it is possible to limit the opportunity for an individual interviewer to introduce bias. Second, subjectivity can also be incorporated into focus group results as they are compiled. Typically, such results are assembled in a written report, in which the opinions elicited from the group are listed, characterized, and summarized in a qualitative way. By contrast, the results of a formal survey are compiled in a quantitative manner.

We are concerned that the proposed focus group script includes elements of subjectivity and bias and thus may lead participants to answer in a particular way. The script’s introduction states that the focus group is being used by the Department of Labor. Although the script states that the responses will not be used for enforcement purposes, the repeated references in the introduction to the Department may influence the responses - as focus group participants are likely to be aware that the Department is tasked with enforcing compliance with ERISA and may therefore be influenced to respond in a manner they believe the Department would support. For example, the script’s introduction refers to the fees service providers receive for their services as “hidden fees.” Use of the term “hidden fees” could signal to participants that the fees are supposed to be difficult for them to find or that the administrator of the focus groups wants them to find the fees difficult to locate within the disclosures. Further elements of subjectivity and bias in the focus group script are discussed in Section III, below.

## 3. The Department Should Conduct a Survey

Under certain circumstances focus groups are likely to provide answers that are consistent with formal surveys, but it is impossible to recognize those circumstances without conducting both types of research. If the range of opinions in the population being studied is very narrow, the chance of small-sample bias is mitigated, because the focus group is less likely to (randomly) include people who disagree with the commonly held opinion. As a result of the limitations of focus groups described above, the Institute cautions against relying on their results, in isolation, for the purposes of crafting regulations.

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<sup>19</sup> See Sandburg, “Marketing Feature – Focusing on the Benefits-Sharpening the Focus of Focus Groups,” *Harvard Business School Working Knowledge* (July 2002), available at [hbswk.hbs.edu/archive/3004.html](https://hbswk.hbs.edu/archive/3004.html).



We therefore recommend that the Department use the focus groups to pre-test a survey and collect the information it seeks through the use of a survey instrument (subject to notice and comment) rather than solely through the conduct of focus groups.

**B. Focus Group Participant Recall**

We have concerns about the level of recall expected from focus group participants with regard to the disclosures, given that it has likely been almost two years since many of the participants would have received the disclosures. The focus group script questions include inquiries about when the disclosures were received as well as the type of disclosures received. There are also specific questions regarding the focus group participants' ability to locate information about the services provided and the costs of such services, whether the disclosures clearly differentiated between direct compensation and indirect compensation, whether the disclosures were useful, and whether the presentation or delivery method of the disclosures was helpful. We have concerns about a focus group participant's ability to accurately respond to such questions given the almost two-year passage of time between the time the disclosures were received and the conduct of the focus groups.<sup>20</sup> Further, plan sponsors may receive many communications regarding the plan over the course of two or more years. With a long recall period, focus group participants could report impressions from other documents that may have been received before or after the 408(b)(2) disclosures.<sup>21</sup>

**III. Specific Comments on the Draft Focus Group Script**

As discussed above, we do not believe that focus groups are the appropriate vehicle for the ICR. However, in the event that the Department determines it appropriate to collect the information it seeks through the use of focus groups, we have the following specific comments on the draft focus group script.

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<sup>20</sup> See Crossley and Winter, "Asking Households About Expenditures: What Have We Learned?" *NBER Working Paper*, no. 19543 (October 2013), 7.

There is now substantial evidence of 'forgetting': that memory declines with the length of the recall period...complicated by the fact that forgetting does not occur at random.

<sup>21</sup> See Bradburn, "Recall Period in Consumer Expenditure Surveys Program," *Bureau of Labor Statistics Consumer Expenditure Survey Methods Workshop*, 2010, 4–6, available at [www.copafs.org/seminars/labor\\_statistics.aspx](http://www.copafs.org/seminars/labor_statistics.aspx).

The longer ago the event, the more difficult it is to remember....When people experience many similar incidents, such as repeated purchase of common goods, recalling each event is more difficult...Initially distinguishable events may become confused or blended with later similar events...With a longer reference period, the amount of telescoping will increase, because respondent uncertainty about when events happened becomes greater the further away from the present the event occurred.

A. Introduction

- We recommend that the introduction be redesigned to elicit more candid responses. For example, we recommend removing references to the Department and instead use the term “our client.” We also recommend removing references to “enforcement” in order to put participants at ease and elicit candid and honest responses. As discussed above, we are concerned that plan fiduciaries participating in the focus groups may be more focused on responding in a manner they believe the Department would support than providing candid responses.
- We also recommend that the script eliminate statements that illustrate bias or have the potential of leading focus group participants toward specific conclusions, such as the statement that some people refer to the fees service providers receive for providing services as “hidden fees.” Further, the introduction states that the 408(b)(2) regulation “requires pension plan service providers to be more transparent about the fees they are receiving for their services.” The use of the words “more transparent” indicates that prior to the rule, service providers were not being transparent regarding the fees they charged for services. We recommend that the focus group script describe the 408(b)(2) regulation’s requirements in a factual, unbiased, and objective manner.

B. Issue Area # 1

- Although the questions contained in Issue Area # 1 may serve as icebreakers, we recommend the use of a pre-screening tool to confirm the appropriate composition of the focus group. For example, Question 1 asks focus group participants to describe their role with respect to the plan. If a participant is not a responsible plan fiduciary who received the disclosures, he or she should not be in the focus group. A pre-screening process to ensure that all focus group participants are “responsible plan fiduciaries” would solve this problem.

C. Issue Area # 2

- Prior to seeking information in Issue Area #2 regarding focus group participants’ experiences with the 408(b)(2) disclosures, we recommend that the moderator provide a factual overview of the disclosure requirements, given that the disclosures were likely received by the focus group participants approximately two years ago.
- Question 6 asks the focus group participants the purpose of the disclosures. We believe that asking the question in this manner may be seen as asking each focus group participant if he or she knows what his or her responsibilities are as an ERISA fiduciary.



We suggest that this question be revised to ask the focus group participants how they would describe the purpose of the 408(b)(2) disclosures to another person.

- Question 7 asks the focus group participants when they received the disclosure materials, and includes additional possible probes regarding contact with service providers to obtain the disclosures. Again, we are concerned that participants may not recall when they received the disclosures given that the disclosures were likely received approximately two years ago. The Department should consider revising question 7 to obtain information as to whether focus group participants had to proactively contact service providers to obtain the disclosure materials and the results of the participant's request.

D. Issue Area # 3

- Given the specificity of the questions in Issue Area # 3, we have concerns regarding the level of recall expected from focus group participants with regard to the disclosures, given that it has likely been almost two years since many of the participants would have received the disclosures.
- Question 8 asks if the disclosure materials were “easy to understand.” The perceived ease of understanding of the disclosure materials will likely differ based on the experience and general knowledge of each focus group participant. Additionally, asking focus group participants if there were particular sections or components of the disclosure materials that were difficult to understand may produce bias and lead participants to believe that the “right” answer is that there were sections or components of the disclosure materials that were difficult to understand. We recommend that the question be revised to focus on the clarity of the disclosure materials, as opposed to the participants' understanding of the disclosure materials. The Department may wish to ask focus group participants to rate the clarity of the disclosures they received on a scale of one to ten, with ten being “very clear” and one being “very unclear.”

E. Issue Area #4

- Question 13 asks focus group participants if they asked service providers for more information or requested clarification after receiving the disclosures. As the Proposed Rule would require a guide to the disclosures, we suggest that question 13 be revised to ask if focus group participants followed up with service providers to locate specific information contained within the disclosure materials.

F. Issue Area #5

- Questions 15 and 16 raise additional recall issues. Focus group participants are being asked to not only recall the information provided perhaps as long ago as July 2012, but also to recall the information provided by service providers prior to that time.
- Question 16 asks if focus group participants received “better” information than they had before. How are participants to define “better” in this context? We suggest the question be revised to ask participants if they had a clearer understanding of the fees charged by service providers for services as a result of the disclosures.
- We suggest that question 18 be revised to prevent answers in a yes or no manner. We recommend revising question 18 to state “What, if any, disclosure information do you feel you are not receiving or would like to receive from your service providers?”

G. Issue Area #6

- Question 19 also raises recall concerns by asking focus group participants to think about their own disclosure experience and the presentation or delivery method of disclosure that may have been provided almost two years ago. Instead of asking questions regarding specific information participants would have liked to receive, or a preferred format for such information, we suggest that the Department ask participants “What, if anything, would you change about the way you received the disclosures?”
- Question 20 seeks information regarding the usefulness of a summary or guide to the disclosures that may have been provided. Again, we are concerned about recall issues as any summary or guide would likely have been provided almost two years ago. Further, in order to avoid potential confusion, we suggest the Department discuss the characteristics of both a “summary” and a “guide.” As noted above, we understand that many of our members provided a “summary” to the disclosures, with references or links to provisions within the disclosures where the fiduciary could obtain more detailed information. Further, as noted above, we suggest that Question 20 specifically ask (1) if a summary was received, whether it helped in understanding the disclosures; and (2) given the choice between a summary or a guide, which would the focus group participant prefer?
- Question 21 asks focus group participants to review an organizational tool called a “disclosure guide.” Pursuant to the directions in the ICR, as published in the *Federal Register*, we contacted the Department to obtain the ICR materials. A sample

“disclosure guide” was not included in the materials the Institute received from the Department<sup>22</sup> and therefore we are not able to comment on the “disclosure guide.” However if the sample “disclosure guide” is similar to the sample guide included as an appendix to the final 408(b)(2) regulation (which includes references to a “Master Service Agreement”), we are concerned that the Department continues to believe that many client service agreements are “master” agreements with no variation by client. As we have previously discussed with the Department,<sup>23</sup> plan agreements and disclosure materials vary significantly for each service provider by product line, investment products, plan design and plan sponsor’s needs and preferences. They are often individually negotiated (and designed) on a client-by-client basis. In addition, the guide presented to the respondents does not relate to the particular disclosures received by the respondents. Without their particular disclosures present with an applicable guide it will be difficult if not impossible for respondents to know if the particular guide presented would help or not help with the document they received possibly as long as two years ago.

- Question 22 involves the distribution of cards with dollar amounts (with ranges from roughly \$10 to \$200, the exact values to be determined) and seeks information regarding the amount focus group participants would be willing to pay for a disclosure guide. We recommend that the Department delete this question for several reasons. First, as the Department stated in the preamble to the Proposed Rule that it “lacks complete data and empirical evidence to estimate the cost for covered service providers to create the guide.”<sup>24</sup> Lacking such data, there is no relationship between the card values presented to focus group participants and the actual cost that may be incurred to create a guide. Second, the proposed rule does not provide an “option” allowing a plan fiduciary to “purchase” a guide – it makes the provision of a guide to the disclosures mandatory. Third, we do not believe any results from this question will provide statistically valid data. We suggest that the Department ask focus group participants if they would support a rule requiring a guide, if such a rule resulted in increased plan administrative costs, to be paid by either the plan sponsor or plan participants.<sup>25</sup>

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<sup>22</sup> The Institute received ICR materials on March 14, 2014 and March 31, 2014 from the Department in response to our requests. Both times the only documents sent by the Department were the “Supporting Statement for the Paperwork Reduction Act of 1995” and the “Draft Script for 408(b)(2) Disclosure Focus Groups.”

<sup>23</sup> Institute staff discussed this issue with the Department during a November 14, 2013 meeting with representatives from the Office of Management and Budget.

<sup>24</sup> 79 Fed. Reg. at 13958.

<sup>25</sup> We note that in the preamble to the Interim Final Rule, the Department acknowledged the possibility that the costs associated with providing disclosures in a required format could ultimately be passed along to plan participants and beneficiaries. *See* 75 Fed. Reg. 41600 (July 16, 2010), at 41607.

Office of the Assistant Secretary for Policy/  
Chief Evaluation Office  
May 12, 2014  
Page 12 of 12

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We appreciate your consideration of these comments and we are available to meet with you to discuss our comments or to provide additional information or clarification.

Sincerely,

/s/

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Pension Regulation

/s/

Sarah Holden  
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cc: Howard Shelanski, Administrator  
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