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January 31, 2007

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attn: 401(k) Plan Investment Advice RFI

Ladies and Gentlemen:

On behalf of the more than 10 million working men and women of the AFL-CIO, we offer our response to the 401(k) Plan Investment Request for Information, published on December 4, 2006 ("RFI"). In the RFI, the Department seeks information with respect to two issues under Section 408(g) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"): the computer model certification requirements (Section 408(g)(3)(C)) and the model form for the disclosure of fees and other compensation (Section 408(g)(8)(B)).

The growth over the past twenty years in employer-provided individual account plans, primarily plans providing workers the opportunity for pre-tax savings under Section 401(k) of the Internal Revenue Code of 1986, as amended, is well documented. Most of these plans require participating workers to make their own investment decisions so it is critical that appropriate participant investment education and other assistance, including investment advice, be provided. Otherwise, worker savings may not be a meaningful supplement to what should be the primary sources of retirement income: Social Security and an appropriately funded pension plan providing a guaranteed lifetime income in retirement.

We believe professional investment advice would benefit workers in making Office of Regulations and Interpretations investment decisions. However, this advice is best provided by a truly independent adviser as we stated during consideration of the Pension Protection Act ("PPA"). Unfortunately, Section 408, as enacted, does not meet that goal.

Computer Model Certification

The RFI lists five issues for which information is solicited in connection with the computer model certification requirements. Our response addresses some, but not all of those issues, as several can only be answered by the entities that design and utilize computer models.

With respect to the procedures and information needed to determine whether a computer model satisfies the statutory criteria, it is our view it would be necessary to examine the underlying computer programs, algorithms, software and hardware. It is important for the "eligible investment expert" to be able to examine the actual code in order to determine how the program operates and perform sufficient tests to assure that, for example, generally accepted investment theories are being used and there is no bias in favor of certain investment options available under the plan.

The expertise required for an eligible investment expert suggests that it may be difficult for any single person to qualify. Knowledge of computing, both hardware and software, is obviously a necessity. Experience and training in investment and financial advice is also critical. The information provided in response to the Department's request concerning current computer models or programs providing investment advice may be helpful in determining the kinds of firms that can meet the necessary criteria.

While we do not have any specifics to offer with respect to Issue 3, we do note the information, while obviously relevant, may be difficult to obtain from the appropriate entities. As a general matter, the lack of available information on the design and operation of these programs contributes to the lack of transparency in this area.

Disclosure of Fees and Other Compensation

The fees charged against workers' investments in Section 401(k) plans are an ongoing area of concern, one we know the Department shares. The Government Accountability Office, in its recent report titled "Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees" (GAO-07-021), reviews some of the difficulties participants face in obtaining information. While the model form to be developed under Section 408(g)(8)(B) may not need to address all of the fees associated with savings plans, it may serve as a helpful guide for future fee disclosure requirements.

We believe the most helpful information item to provide to workers is the single amount that represents the total of all fees and other compensation to be received by the fiduciary adviser accompanied by a breakdown of the components included in the single figure and a brief description explaining the nature of each charge. This kind of display would be valuable as it

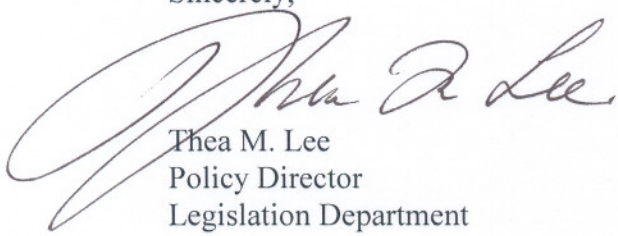
addresses one of the roadblocks participants now face: collecting the documents showing the various investment fees and determining the total amount of any charges.

In addition, to address one of the most important risks participants face as a result of the exemption now available under Section 408 is the likelihood that conflicted investment advice will steer them toward investment products that are high margin for the adviser but not appropriate for the participant. While high fee products typically have higher margins, that is not always the case, and margins, not fees, drive the incentive to steer. Consequently, to provide participants with some ability to protect themselves from this type of steering, the Department should require disclosure of some information about the profitability to the provider of the various investment options under the plan. We recommend that the provider of conflicted investment advice be required to prepare a separate table ranking the available options in order of their profitability.

In our view, the format for presenting the fee and compensation information is best done by a combination of narrative text and charts, including examples showing the affect the fees have on available investment options and long-term investment earnings. We believe examples are useful to illustrate the impact different fees may have.

We hope our response is helpful and should there be any questions about it, please do not hesitate to contact me at (202) 637-3907.

Sincerely,



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