PENSION
consultants inc.

April 30, 2010

Submitted Electronically by E-mail to *e-ORI@dol.gov*

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: 2010 Investment Advice Proposed Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: 2010 Investment Advice Proposed Rule

Dear Sir or Madam:

Pension Consultants, Inc. is an innovative pioneer in objectively managing and evaluating all facets of employer-sponsored retirement plans. Most importantly, we are an independent advocate for our clients. We have a strong interest in assisting participants in obtaining the information they need to make informed and reasonable decisions about the investment of their retirement savings. We appreciate the opportunity to comment on the Department of Labor's (DOL) proposed rule regarding the providing of investment advice to participants and beneficiaries.

Our firm recognizes the importance of providing investment advice to participants and beneficiaries and supports the DOL's efforts to give participants greater access to advice and be better equipped to manage their retirement plans. We reviewed the proposed rule and respectfully submit our comments.

We agree with the DOL's determination to withdraw the final rule that was published in the Federal Register on January 21, 2009 (74 FR 3822). As we stated in our comment letter to the DOL on October 6, 2008:

> *We strongly oppose the fee-leveling requirement under paragraph (f) of section III which applies only to the individual who provides the investment advice. We disagree with the DOL's belief that limiting this requirement at the individual level, rather than the fiduciary adviser entity level, can be applied 'without compromising the availability of informed, unbiased, and objective investment advice for participants and beneficiaries'. On the contrary, we believe this proposed class exemption will pollute the market place of investment advice programs for participants.*

We support the decision to apply the fee-leveling requirement both to an entity that is retained to render advice, and to any employee, agent, or registered representative of such an entity. We further believe that this proposal of Sec. 2550.408-1(b)(3)(i)(D) will help protect participants and beneficiaries by ensuring the advice they receive is truly in their best interest. However, we urge the DOL to revise the language of Sec. 2550.408-1(b)(3)(i)(D):

> *No fiduciary adviser (including any employee, agent, or registered representative) that provides investment advice receives from any party (including an affiliate of the fiduciary adviser), directly or indirectly, any fee or other compensation (including commissions, salary, bonuses, awards, promotions, or other things of value) that is based in whole or in part on a participant's or beneficiary's selection of an investment option; and..."*

While we agree that the mere receipt of compensation will create a conflict of interest in most circumstances, and therefore this regulation will help to curb potential abuses by conflicted advisers, there are many situations that exist whereby the mere receipt of compensation by a fiduciary adviser does not create conflicted advice. We believe the current language will unnecessarily ensnare the exact type of adviser model that the Department wants to encourage.

It is a growing trend among independent retirement plan advisers to offset their stated fee (whether flat fee or asset based) with any compensation received from plan investments or other sources. In this case, the adviser is free from conflict of interest as it pertains to the compensation received as the actual end-compensation paid to the adviser is not changed. Such compensation in this case is fully disclosed to the client and its effects on the stated fee are also known. It benefits the plan in that the compensation is put to use, whereby otherwise it might be paid to a service provider as additional compensation and not reduce plan expenses.

If such an adviser also serves as a fiduciary adviser to plan participants, their receipt of compensation from third parties in no way impacts the advice provided to the participants as it will not affect the ultimate compensation paid to them. Therefore, we believe that the Department's emphasis should be placed upon the conflicted adviser where the end-compensation varies dependent upon the advice given. As it is currently written, the emphasis is placed upon the operational mechanism of receiving compensation without regard to how that compensation is being handled.

We also appreciate the DOL's invitation for comments regarding investment advice arrangements that use computer models under proposed § 2550.408g-1(b)(4)(i). The following paragraphs represent our comments to these questions.

We believe the current language stating investment advice arrangements using fee-leveling (§ 2550.408g-1(b)(3)) or computer models (§ 2550.408g-1(b)(4)(i)(A)) be based on "*generally accepted investment theories that take into account the historic risk and returns of different asset classes*" to be sufficient. Citing specific investment theories would not be advantageous due to ongoing modifications to these theories. If specific theories were cited and later found to no longer be generally accepted, the final rule would need to be changed. We believe this is impractical and unnecessary. Furthermore, we do not feel it is the DOL's role to regulate which specific investment theories should be used and which should not.

We believe the language "defined periods of time" found in § 2550.408g-1(b)(4)(i)(A) to be unclear and that the DOL should state a time period of no less than 20 years be used. The use of a shorter time period will be greatly influenced by recent market events and recent asset class performance, whether that is positive or negative. We believe the use of at least a 20 year time period provides a more realistic performance indicator as it will have

included a full market cycle. In addition, using longer historical time periods will minimize the impact of recent significant up or down market performance, thus providing a more realistic long-term performance indication.

We acknowledge that there are many different criteria that could be used as the bases for development of asset allocation portfolios pursuant to proposed § 2550.408g-1(b)(4)(i)(A). We believe that portfolios should be constructed by bringing together asset classes that are imperfectly correlated. It is our opinion that portfolio construction in this manner will reduce the overall risk of a portfolio given a desired rate of return and will increase the return of a portfolio give a desired level of risk. In identifying imperfectly correlated asset classes, we believe in segmenting both equity and fixed income markets. We believe the most effective way to delineate equity asset classes is on the basis of style, level of capitalization and whether the equity investment is foreign or domestic. We also believe the most effective way to delineate fixed income investments is on the basis of credit quality, maturity, issuer (i.e. public or private) as well as whether the fixed income investment is domestic or foreign. We acknowledge that there are differing ways in which diversification may be achieved in constructing portfolios (e.g. sector, industry). However, we believe that segmenting equity and fixed income markets as we described is most effective and pragmatic.

Our firm appreciates the opportunity to provide information on this important issue and we would be happy to provide additional input or clarification. You may contact us during regular business hours at (417) 889-4918.

Sincerely,

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