Wells Fargo Retirement
MAC D1050-140
Three Wachovia Center
401 S. Tryon Street, 14th Floor
Charlotte, NC 28288-1156
wellsfargo.com/retirement

May 5, 2010

Via Email: *e-ORI@dol.gov*

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

Re: 2010 Investment Advice Proposed Rule

Ladies and Gentlemen:

Wells Fargo & Company and its affiliates ("Wells Fargo") appreciate this opportunity to provide comments to the Department of Labor ("DOL") regarding its proposed rule on investment advice for participants and beneficiaries. Wells Fargo includes Wells Fargo Retirement, a division of Wells Fargo Bank, N.A., and Wells Fargo Advisors, both leading providers of retirement solutions to businesses, institutions and individuals throughout the United States. In combination, Wells Fargo ranks first in annuity distribution, fourth in IRA assets and seventh in retirement plan recordkeeping.[1]

Wells Fargo Retirement is a national leader in providing total retirement management, investments and trust and custody solutions tailored to meet the needs of institutional clients. Since 1952, Wells Fargo Retirement serviced the entire scope of institutional retirement clients; from single participant 401(k) plans to complex billion dollar defined contribution plans for America's Fortune 500 companies. Wells Fargo Retirement is recognized as an industry thought leader and innovator in participant level education, communication and advice.[2]

Wells Fargo Advisors, the third largest provider of retail brokerage services, administers more than $1 trillion in client assets. It accomplishes this task through 15,600 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states.[3] Affiliates of Wells Fargo Advisors assist employers in sponsoring retirement plans, and our financial advisors work with countless investors as they move from active work life into retirement.

Wells Fargo is dedicated to helping individuals plan for a secure retirement in an age of increasing life spans and individual responsibility. Wells Fargo offers a range of services from simple education programs to full service advice products. As a result, the DOL's proposed regulation on investment advice is of great importance to Wells Fargo, its affiliates and the 401(k) industry as a whole.

---

[1] As of December 31, 2009.
[2] Wells Fargo was the top winner at the 2009 Profit Sharing/401(k) counsel of America (PSCA) annual awards ceremony, winning seven signature awards and two honorable mentions for its retirement plan communication and education.
[3] Wells Fargo Advisors includes a number of brokerage operations that have combined as the result of the 2008 purchase of Wachovia Corporation by Wells Fargo & Company. For the ease of discussion, this letter will use Wells Fargo Advisors to refer to all of those brokerage operations.

We strongly support the efforts of the DOL to make investment advice broadly available to participants in employee benefit plans. While much of the legislative and regulatory work done will help achieve that goal, we believe there is an opportunity to greatly expand the availability of advice beyond that current framework. Accordingly, we urge Congress and the DOL to consider the following in furthering the availability of participant investment advice.

The Core Issue: Plan Sponsors are Not Making Advice Programs Available to Participants

As a basic premise, we agree with the DOL's conclusion that asset allocation is a very important component of any retirement planning program for participants. We also agree that although many participants need that help, they are not able to get it. We believe that one of the key reasons that participants are not able to get the help they need is that the current legislative and regulatory framework places significant fiduciary risk on plan sponsors to make advice programs available to their participants. Generally, service providers have developed a myriad of advice programs that are accessible by IRA holders but are not generally accessible to participants in 401(k) plans. The reason for this is that plan sponsors must make an affirmative election to make the advice program available in the retirement plan. In making that decision, the plan sponsor is required to make a fiduciary determination, as it does for all investment options made available to its participants, as to the prudence of the program and the suitability for its participants. This analysis must be done upon making the program available and periodically thereafter. This is a significant undertaking for most plan sponsors that are not equipped with the expertise to make that determination. Unlike selecting an investment line-up consisting of a suite of mutual funds, collective funds, and other investment options, advice programs do not have readily ascertainable or measurable performance data to assist in the analysis. Fund information is easily obtained via the internet or with comparative information obtained from the service providers themselves. The unavailability of comparative information regarding advice products leaves plan sponsors in a precarious position when trying to analyze the prudence of the program.

As a result, the current legislative and regulatory framework (including this current proposal) provides no incentive for plan sponsors to make advice programs available to their participants. Simply put, it is easier and less risky for plan sponsors to just not offer an advice program at all.

The Core Solution: Take Plan Sponsors Out of the Advice Equation

We believe the best way to provide participants with an opportunity to obtain advice within a 401(k) plan is to allow the participants to obtain advice directly from programs offered by service providers. Plan sponsors should no longer be required to undertake the significant fiduciary risk of selecting and monitoring the advice program. As mentioned above, this is something most plan sponsors are not equipped to do anyway.

Many service providers have developed advice programs for 401(k) participants utilizing existing guidance issued by the DOL (e.g., Advisory Opinion 2001-09A). The issue is that the current guidelines, including the proposed rule, continue to rely on plan sponsors for adoption. By removing the plan sponsor from the advice equation, asset allocation and other advice programs will become available to significantly more participants. Some may perceive that this approach could create additional risk for plan participants by removing a layer of fiduciary protection (i.e., the plan sponsor). However, we believe that the current regulatory and legislative framework regarding the requirements for the advice programs (e.g., computer models and fee leveling), along with the fiduciary status of

service providers in providing the advice, would continue to allow participants to enjoy the fiduciary protections afforded under ERISA.

Current Proposal: Specific Concerns

With respect to the current proposed rule, we believe there are a number of areas of concern that the DOL should consider as it finalizes the rule. The following briefly summarizes those concerns:

Recordkeeping Requirements

Initially, we believe that the recordkeeping requirements need modification. The recordkeeping requirements would be a significant challenge for firms the size of Wells Fargo. A plan could be asked to approve multiple advice models since each participant may have a different advice arrangement. The recordkeeping would be quite cumbersome where a plan has thousands of employees. Firms would need to have a limited standardized advice platform in order to track and maintain records of advice provided to individual plan participants. We ask the DOL to consider modifying the recordkeeping requirements to allow participants broad access to advice models.

Certification Requirement

The requirement that a certified independent expert "certify" the advice model also creates a number of questions. One such question is that the proposal does not clearly define who can qualify as the certified independent expert. We would request that further clarification be included in the final rule. In addition, the proposed rule requires the entity certifying the model to be a fiduciary. Under section 412 of ERISA, every fiduciary to a plan must be bonded, regardless of whether that fiduciary handles plan assets, unless an exemption applies. The DOL should issue an explicit statement exempting the entity certifying the model from the bonding requirements.

Audit Requirements

It will be important for the DOL to provide more clarification on the audit of investment advice. Critical to this clarification is gaining an understanding of what form that audit takes. For example, it would be helpful to know if the audit could be a sample of the participant advice given. Some may contend, and the proposal is unclear on this point, that the audit must extend to the advice given to every participant. Such an approach would be extremely onerous on the providers and would not be consistent with most audits in the securities industry. Accordingly, we urge the DOL to clarify that the audit would only require a review of a sampling of the advice given.

Advice and Rollovers

A final concern arises from advice and rollovers. There is confusion over whether offering advice to a plan participant would prohibit an advisor such as Wells Fargo Advisors from accepting a rollover into a firm account. Given the need for advice throughout the retirement structure, it likely does not benefit investors overall if such a prohibition on rollovers is imposed. Accordingly, we urge the DOL to clarify that this prohibition does not apply. Conversely, if the DOL believes that such a prohibition is needed, we would urge that the DOL make it time limited, no more than 24 months from the first time advice is given.

Conclusion

From a policy standpoint, retirement in America has moved to an area where plan participants need to be responsible for their own retirement. Participants should be given all the tools necessary to navigate the retirement landscape, whether invested through an IRA or a 401(k) plan. As the DOL correctly points out, asset allocation is a major, if not the major, tool to be utilized in that process and it is imperative that participants in 401(k) plans have access to the tools they need. By taking the burden off of the plan sponsors to adopt these programs, the significant barrier facing participants in obtaining advice would be removed. We strongly urge Congress and the DOL to consider taking this next very important step to accomplish the goal of making advice available to all plan participants.

Wells Fargo appreciates the opportunity to provide this written commentary. We believe the proposed rule provides a good step towards helping more employees obtain the assistance they need when saving for retirement. We also believe that, for the reasons stated herein, there is a significant opportunity to reach a larger universe of participants through further legislative and regulatory help. Thank you again for your time and consideration of our views. We would welcome any opportunity to discuss this with you further. If you have any questions, please do not hesitate to contact me at the above address.

Sincerely,

John Papadopulos
President – Wells Fargo Retirement
704-383-0485
john.papadopulos@wachovia.com