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SUBMITTED ELECTRONICALLY

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

Attention: 408(b)(2) Hearing on Fee Disclosures to Welfare Benefit Plans

Ladies and Gentlemen:

This comment letter is submitted on behalf of FMR LLC, the parent corporation of a group of financial services companies known as Fidelity Investments, and its subsidiary Fidelity Workplace Services LLC (collectively, "Fidelity"). Fidelity is a leading provider of employee benefit plan recordkeeping services, offering services to plan sponsors in support of a variety of benefit plans and programs including defined benefit, defined contribution, and welfare plans.

On December 7, 2010, the U.S. Department of Labor (the "Department") held a hearing to consider issues concerning the application of the 408(b)(2) fee disclosure requirements set forth in interim-final regulation §2550.408b-2(c) to welfare plans. We appreciate the Department's careful consideration of the application of the requirements in recognition of the differences in the welfare and retirement areas, and we offer this brief comment letter on a narrow point not addressed in any of the testimony provided at the hearing in December.

For purposes of the fee disclosure rule, recordkeepers should not be required to serve as aggregators of disclosures for the benefit options offered under welfare plans in the same way that recordkeepers are required to do for investment options offered under participant-directed defined contribution plans. Although recordkeepers facilitate enrollment in the various options available under each type of plan, the relationship that recordkeepers have with investment option vendors in connection with defined contribution plans is different than the relationship recordkeepers have with insurance companies and TPAs in connection with welfare plans. Whereas plan sponsors typically do not enter into contracts with the vendors of the investment options that they choose for their defined contribution plans, plan sponsors do contract directly with the insurance

companies/TPAs that they choose for their welfare plans. Correspondingly, defined contribution recordkeepers generally enter into contracts with the vendors of the investment options, but welfare recordkeepers usually do not have contracts with insurance companies/TPAs.

Further, plan sponsors pay their welfare recordkeeper and their insurance companies/TPAs directly and separately for their services. While defined contribution recordkeepers commonly receive compensation from investment option vendors, welfare recordkeepers do not normally receive any compensation from insurance companies/TPAs. Consequently, welfare recordkeepers are not as well-situated as the plan sponsors who select and pay the insurance companies/TPAs to obtain information from them. Although it is not Fidelity's practice, we understand that some welfare recordkeepers may accept commissions generated by insured benefit options to offset their recordkeeping fees. The existence of any such arrangement would be known to the plan sponsor because the plan sponsor would have to designate the recordkeeper as the broker of record. To the extent that the Department determines that additional disclosure is needed for welfare plans, recordkeepers receiving some of their compensation in the form of insurance commissions should be required to disclose such compensation, but the receipt of commission compensation by some recordkeepers should not put the burden of aggregating disclosures for welfare benefit options on all recordkeepers.

Finally, recordkeepers are not as commonly used in connection with welfare plans as they are with defined contribution plans;[1] therefore, the insurance companies and TPAs will have to accommodate reporting directly to the plan sponsors/plan administrators in most cases anyway.

For these reasons, welfare plan recordkeepers should be regarded as any other vendor and should be responsible only for disclosing their own compensation. Please do not hesitate to contact me if I can provide you with any additional information.

Respectfully,

Denise Hilger
Vice President & Associate General Counsel

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[1] According to a survey of 416 buyers of employee benefits services conducted by IDC in 2009, firms are most likely to outsource defined contribution functions (84%) and least likely to outsource health and welfare functions (30% for reporting enrollment data to carriers and less than 30% for open enrollment). *Benefits Administration in Turbulent Times: U.S. Buying Behavior and Intentions 2009: Special Study*, Volume 1 (IDC #220576, Nov. 2009).