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**Submitted electronically to e-ORI@dol.gov**

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: 408(b)(2) Hearing on Fee Disclosures to Welfare Benefit Plans  
Rooms N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Written Request to be Heard and Outline of Proposed Testimony on Welfare Plan Fee Disclosures Under Section 408(b)(2)

Dear Sir or Madam:

In response to the Notice of Public Hearing on Reasonable Contracts or Arrangements for Welfare Benefit Plans Under Section 408(b)(2)—Welfare Plan Fee Disclosure, published in the Federal Register on November 5, 2010 (75 Fed. Reg. 214, Nov. 5, 2010), the Law Offices of David A. Balto submits this written request to testify at the public hearing to be held on December 7, 2010 on behalf of consumers. In the past, the Law Offices of David A. Balto has advised a wide range of health care market participants including consumers, health care plans, pharmacy benefit managers (PBMs), and pharmacies. We propose the following testimony as a response to the concerns surrounding the application of 408(b)(2) disclosure standards to welfare benefit plans and specifically PBMs. We expect the testimony to take 10 minutes and will be delivered by David A. Balto, Attorney. An outline of the topics to be discussed, including the time allotted to each topic is included below.

## **Outline of Testimony**

- I. PBMs originally served as “honest brokers” between drug manufacturers, health plan, and pharmacies by negotiating drug costs and discounts. However, facing weak standards for transparency, PBMs have been able to engage in a wide range of anticompetitive and deceptive conduct leading to numerous enforcement actions and efforts to regulate PBMs. (2 minutes)

II. As the PBM market currently stands, PBMs are free to “play the spread” between manufacturers, pharmacists and plans because of a lack of disclosure. For example, PBMs often fail to disclose and pass along the full amount of rebates they receive from the drug manufacturer. PBMs often charge health plans significantly more for drugs than they reimburse the pharmacies that distribute the drugs to patients. PBMs may also switch patients to a drug that is more expensive for the health plan, but earns the PBM higher rebates. Unclear and inadequate disclosure of rebates and discounts undermine the ability of plan sponsors to compare competing proposals. Because rebates, discounts, and other fee structures remain undisclosed, plan sponsors cannot clearly identify and choose PBMs offering the highest value services. (3 minutes)

III. Increased disclosures by PBMs have resulted in price decreases and significant savings for health plans. Limited disclosure of PBM payment practices leads to higher prices paid by health plans and translates to increased premiums and overall costs for consumers. (3 minutes)

IV. Conclusion: To foster healthy competition, the fee disclosures established by the 408(b)(2) interim final regulations should also apply to welfare benefit plans including PBMs. The term “compensation or fees” should include discounts received by a PBM or an affiliate with respect to the acquisition of goods or services for resale to PBM clients and any related profits. (2 minutes)

We appreciate the opportunity to testify on 408(b)(2) welfare benefit plans and the need for greater transparency in health care.

Sincerely,



David A. Balto