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By Electronic Mail to e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: 408(b)(2) Interim Final Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Comments on Interim Final Fee Disclosure Rule Under Section 408(b)(2) of ERISA

Ladies and Gentlemen:

Groom Law Group, Chtd. represents a number of financial institutions and administrative services providers that offer insurance, investment products and/or services, including investment, recordkeeping, plan administrative services, consulting and advisory services to employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This letter represents the comments of a group (the "Groom Comment Group" or "Group") of these companies on the interim final regulation interpreting what constitutes a reasonable contract or arrangement under ERISA section 408(b)(2) (the "Interim Final Regulation") published by the Department of Labor (the "Department") on July 16, 2010.¹ We appreciate this opportunity to file comments on behalf of the Group.

Executive Summary

The Group commends the Department on the Interim Final Regulation, which represents a substantial improvement over the proposed regulation issued by the Department in December, 2007.² We appreciate the care and diligence with which the Department addressed comments made on the proposed regulation. In particular, we think that certain of the changes made by the Department and embodied in the Interim Final Regulation will significantly improve compliance while providing plan fiduciaries with valuable information regarding service provider compensation. For example, we note the Department's statement in the preamble to the Interim

¹ 75 Fed. Reg. 41600 (July 16, 2010).

² 72 Fed. Reg. 70988 (Dec. 13, 2007).

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Final Regulation recognizing that the requirements of the Interim Final Regulation are intended to apply to certain service providers "dealing directly with covered plans,"³ and agree with the Department's decision to limit the application of the Interim Final Regulation's requirements to such persons. We urge the Department not to enlarge the scope of the definition of covered service provider in the final regulation.⁴

As a result of these and other improvements realized in the Interim Final Regulation, the Group is largely confident in the ability of plan service providers to comply with the requirements contained in the Interim Final Regulation. There are, however, some points we ask that the Department clarify, and we request some changes to the Interim Final Regulation. These comments are detailed, below.

Comments

I. The final regulation should not require a summary disclosure document.

In the preamble to the Interim Final Regulation, the Department specifically asked for comments on questions related to whether the final regulation should require that covered service providers furnish a "summary" disclosure document.⁵ The Group asks the Department not to require a summary disclosure document. As the Department considers whether to add this requirement, the Department should be aware that each large plan service provider has literally tens of thousands of contracts, which have been entered into over a period of several years. As a result, a service provider may have multiple versions of contracts that include compensation disclosure information in different places within the contract. It would likely be impossible to devise a summary disclosure document that would work with all of the contracts that even a single large service provider currently has in place.

While the costs and burdens of a mandated summary requirement outweigh, in the Group's opinion, any associated benefits, the Group understands that plan fiduciaries may reasonably want help in identifying the required disclosures within multiple documents. To this end, the Group requests that the Department clarify that a covered service provider *may* (but is not required to) provide a summary supplying the required disclosures. We would also suggest the Department clarify that if a service provider provides a summary document for some services or customers, it need not do so for all. This will allow the covered service provider sufficient flexibility to offer a summary where doing so makes sense. For example, many service

³ 75 Fed. Reg. 41604.

⁴ To the extent the Department is considering limiting the application of the reporting requirements on Schedule C to the Form 5500 in a similar fashion, the Group would generally support such an approach.

⁵ 75 Fed. Reg. 41607.

providers may have simple compensation arrangements that are easily understood by plan fiduciaries, for which a summary document would be redundant. In addition, we request that the final regulation specifically allow (but not require) covered service providers to provide a "roadmap" identifying the location of the required disclosures. For example, such a "roadmap" might include a description of the required disclosure (i.e., some or all of those disclosures described in sections (c)(1)(iv) of the Interim Final Regulation) and a reference to the current location of the information (e.g., a website address or a contract). This clarification is necessary in order to encourage covered service providers, where appropriate, to provide this additional information to their plan customers.

The Group also requests that the Department clarify that a covered service provider is not required to disclose the same information twice, so long as it is made clear to the responsible plan fiduciary that disclosed information may be required under more than one provision of the regulation.

II. The Department should clarify the types of disclosure information that recordkeepers and brokers may provide to meet obligations under (c)(1)(iv)(G)(2) of the Interim Final Regulation.

The Interim Final Regulation provides that certain recordkeepers and brokers must provide fee information to their plan clients regarding investment funds available in participant directed individual account plans, and that these obligations may be fulfilled by providing "current disclosure materials of the issuer" provided certain conditions are met. The Group asks the Department to clarify that "current disclosure materials of the issuer" would include any information created or organized by the issuer or using information provided by the issuer (including, e.g., a "fund fact sheet") whether or not such materials themselves, are specifically regulated by a state or federal agency. The Group believes it is more important that the *issuer* (such as a mutual fund, bank or insurance company) is regulated by a state or federal agency, rather than whether the specific disclosure materials are so regulated.⁶ The Group also requests that the Department clarify that a recordkeeper or broker will not fail to meet the requirements of this section if the recordkeeper or broker provides such information to its plan clients with respect to a fund where the issuer is an affiliate of the recordkeeper or broker.

III. The time period for measuring compensation for purposes of the Covered Service Provider definition and for purposes of including non-monetary compensation within the definition of "Compensation" should be annually, not based on the term of the contract or arrangement.

⁶ While the SEC regulates prospectus information, state and federal banking and insurance regulators typically focus on regulation of the entity (bank or insurance company) not specific materials.

The Department has recognized that ERISA section 408(b)(2) does not require a specific term for a contract or arrangement, and the Department is aware that many existing contracts have no stated term. Thus, to the extent the final regulation requires an entity who may be a covered service provider to assess the likelihood that it (or its affiliates or subcontractors) will receive at least \$1,000 in compensation, it is necessary that the covered service provider have a reasonable time period over which to assess whether the compensation threshold is expected to be met. The Group suggests that the final regulation provide a time period of one year, unless the context of the contract or arrangement requires otherwise.

Similarly, the Group suggests that the final regulation exclude from the definition of "compensation" non-monetary compensation valued at \$250 or less, in the aggregate, measured on an annual basis. This change would eliminate any disparity in disclosure of compensation based solely on the term of the contract.

IV. The final regulation's effective date for existing contracts or arrangements should be extended to allow service providers time to prepare disclosures for existing customers. To the extent that the final regulation includes requirements different from those contained in the Interim Final Regulation, the Department should extend the effective date of the final regulation.

The Group requests an extended effective date with respect to existing arrangements. As noted above, large covered service providers typically have thousands of existing arrangements that may be covered by the final regulation. With respect to these arrangements, it may not be possible, or even desirable to require compliance with the regulation by July 16, 2011. In order to offer more effective communications, and allow service providers to focus resources on responding to customer questions regarding new disclosures, the Group suggests that for arrangements in effect on or before July 16, 2011, the effective date for the final regulation should be 120 days after the end of the plan year following July 16, 2011 (or other effective date(s) available under the final regulation).

The Group generally supports the effective date of the Interim Final Regulations as it relates to the requirements in the Interim Final Regulation applied to new arrangements. That is, the Group believes it is reasonable to expect that most plan service providers will be able to identify their arrangements with covered plans, identify affiliates and subcontractors for purposes of the requirements, and prepare necessary disclosures for contracts and arrangements starting on or after July 16, 2011. However, if additional requirements are added by the Department (e.g., a summary requirement, or additional or revised disclosure obligations) the Group requests that the Department extend the final regulation's effective date to one year from the date the final regulation is published in the Federal Register. The value of the current effective date of July 16, 2011 is that it allows service providers to begin gathering information and preparing systems changes necessary to comply with the requirements well in advance. However, the ability to initiate systems changes is limited by any uncertainty surrounding the content of the final regulation. Therefore, the Group also requests that the final regulation provide that a service

provider who furnishes disclosures in compliance with the requirements of the Interim Final Regulation on or before July 16, 2011, will not be required to furnish additional disclosures to comply with the final regulation until there is a change to the service provider's disclosable compensation.

V. The final regulation should allow covered service providers to deliver information regarding compensation changes annually, rather than within 60 days.

The Group requests that the final regulation allow annual updates regarding changes to the required compensation disclosures, rather than requiring such updates to be made within 60 days. The Interim Final Regulation requires the disclosure of multiple types of compensation, often with respect to multiple plan investments. Given the comprehensive nature of the required disclosures, it is likely that dozens of small changes to required disclosures may occur throughout a given year. If each change requires a separate update covered service providers will constantly be sending out change notices, and plan fiduciaries will likely receive multiple such notices every month. For both service providers and plan fiduciaries, tracking such irregular notices will be extremely difficult. Moreover plan fiduciaries may not be able to develop systems to track such information, with the result that they may be less informed about compensation paid to service providers after the effective date of the regulation than before. The Group suggests that this problem could be avoided by allowing covered service providers to provide annual notices of changes to the information required by paragraph (c)(1)(iv). This type of annual update is consistent with the plan administrator's annual obligation to complete the Form 5500, a time at which the sponsor will review the provider's compensation in connection with Schedule C.

VI. The Department should provide alternatives for responding to a request by a responsible plan fiduciary for information in order to enable the plan to file its Form 5500.

As the Department is aware, many covered service providers are responsible for compiling information necessary to assist the plan in filing its annual Form 5500. The Interim Final Regulation requires that covered service providers furnish, within 30 days of a request, compensation information required for the covered plan to comply with the reporting and disclosure requirements of, among other things, the Form 5500. The Group is concerned that as drafted, the Interim Final Regulation may be read to require this disclosure to be made at any time during the plan year, regardless of when the plan needs the information to complete its Form 5500. The Group requests that the Department retain the "upon request" portion of this requirement, but require covered service providers to furnish the information within 30 days of a request made on or after 120 days after the end of the plan year. This would allow covered service providers 120 days after the end of the plan year (consistent with the requirements under ERISA section 103) to compile the required information and also allow plan administrators adequate time to use the information in preparation of the plan's Form 5500.

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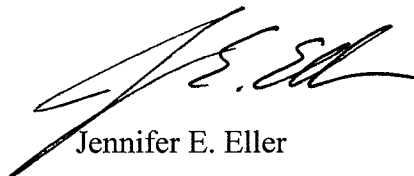
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The Group appreciates the opportunity to comment to the Department on this matter. We would be happy to meet with the Department to discuss these comments or to provide additional input as you work to finalize the regulations.

Best regards,



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