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Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule; RIN-1210-AB32
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington DC 20210

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Office of Exemption Determinations
Employee Benefits Security Administration (Attention: D-11712)
U.S. Department of Labor
200 Constitution Avenue, NW
Suite 400
Washington, DC 20210

Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Advice; Proposed Rule (RIN 1210-AB32)
Proposed Best Interest Contract Exemption (ZRIN: 1210-ZA25)
Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption 84-24 (ZRIN: 1210-ZA25)
Proposed Amendment to Prohibited Transaction Exemption 75-1 (ZRIN: 1210-ZA25)
Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption 86-128 (ZRIN 1210-ZA25)

Ladies and Gentlemen:

Teachers Insurance and Annuity Association – College Retirement Equities Fund ("TIAA-CREF") is pleased to submit this second comment letter on the Department of Labor's proposal to change the definition of "fiduciary" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and the Internal Revenue Code of 1986, as amended (the "Code"), to add new prohibited transaction exemptions, and to make changes to existing prohibited transaction exemptions (collectively, the "Proposal"). TIAA-CREF previously submitted an initial comment letter on July 20, 2015 and had the opportunity to provide oral testimony at the August 12, 2015 public hearing. In addition, TIAA-CREF representatives met with Department representatives on August 28, 2015 and September 17, 2015 to further discuss issues and modifications to the Proposal. TIAA-CREF reaffirms its comment letter, testimony and the statements made during those discussions.

We attach six documents to this letter, the first three of which are identical to those TIAA-CREF submitted to Department officials at its meeting of September 17, 2015. These Attachments are:

1. a General Principles document summarizing our points;
2. language for a "Hire Me" carveout to the proposed regulation;
3. a rewritten BIC Exemption marked to show suggested changes from the exemption as proposed by the Department;
4. a clean version of our BIC Exemption proposal;
5. language for revising the definition of the term "recommendation" to conform to the FINRA "call to action" standard; and
6. as an alternative to Attachment 2's "Hire Me" carveout, language that clarifies that a person is not providing fiduciary investment advice when it recommends its own or an affiliate's investment advice or management services.

We describe these documents in more detail below.

We reiterate our appreciation for the effort made by the Department in developing the Proposal, and are fully supportive of imposing a clear Best Interest standard in the situations addressed by the Proposal. As detailed in our initial comment letter, our testimony, and meetings with Department representatives, we are concerned, however, that some of the Proposal's details would seriously undermine our ability to fulfill our mission of assisting our customers in achieving retirement security. Some requirements are impractical and would impose significant cost, time and resource burdens that are unnecessary to accomplish the Proposal's purposes. For a company such as TIAA-CREF that operates on a non-profit basis, those burdens will ultimately be borne by participants via additional fees or lower returns on their investments.

We call to your attention the following key issues:

I. Definition of recommendation.

We appreciate the Department's confirmation provided over the course of the hearings that a "recommendation" for purposes of this Proposal would require a "call to action" similar to that contained in FINRA Rule 2111. See, *e.g.*, page 718 of the transcript where Mr. Hauser said:

> "I guess I'd like to just describe what I think we've done here; that something is not going to count as investment advice under this proposal as currently drafted unless it's a recommendation to somebody, you know, in the sense of a call to action to invest in a particular investment product, to pursue a particular investment strategy."

We believe that this is a more appropriate standard than a "suggestion," given the critical importance of ERISA fiduciary status with its attendant duties and prohibitions. Based on our review of the testimony provided during the hearings and the comments made by Department staff, we propose the modifications to the definition of recommendation that we have included with this letter as Attachment 5. This will clarify that a recommendation is defined as a communication that based on its content, context, and presentation would reasonably be viewed as a "call to action" to take or refrain from taking a particular action.

II. Reasonable Compensation.

TIAA-CREF recognizes that ERISA and the Department have long required that the compensation paid for the provision of services must be "reasonable." The Department's regulations under section 408(b)(2) specifically acknowledge that the value of the services provided is a critical factor in evaluating the reasonableness of fees. Given the more than 40-year history of interpretive guidance from the Department and judicial guidance from the courts about determinations of the reasonableness of compensation, we urge the Department to reinforce this fundamental concept as described below.

Proposed Modification

TIAA-CREF urges the Department to include in the final regulation, or the preamble, language reaffirming its position that under ERISA a fiduciary determination as to the reasonableness of compensation involves a qualitative analysis and review of the facts and circumstances with cost being just one of the factors to consider. Accordingly, it follows that an Adviser need not recommend the lowest cost product or service and an Adviser need not maintain identical fee relationships with all investment product providers. Importantly, in the context of an insurance product, reasonable compensation deliberations would take into account not merely the value of services, but also the value of the insurance guarantees included as part of the product. We support others who have stated that it is critical that the reasonableness of compensation be defined as a market based fee in total, consistent with the Department's own prior guidance.

III. The "hire me" exception

In our discussion on September 17, 2015 we advocated an exception from fiduciary treatment for a person or entity who "merely recommends, urges, responds to an RFP or otherwise promotes its own or an affiliate's hiring." See Attachment 1. We also provided language for a carve-out from the definition of fiduciary advice that would accomplish this reflected on Attachment 2. Mr. Hauser and other Department representatives stated that this might better be accomplished by amending the definition of fiduciary advice itself. We agreed to provide suggested language that would make such an amendment. Please see Attachment 6, "Hire me as an amendment to fiduciary advice", for our proposed language. We think either approach would work to permit an entity to recommend itself to participants, IRA owners and plans.

IV. Changes to the BIC exemption

As we outline in our General Principles document (Attachment 1) and as we discussed with the Department representatives in the September 17, 2015 meeting, we think significant changes to the BIC Exemption would make it workable and still achieve the Department's objectives.

The best interest standard itself, here and where used in the other exemptions, should be the same as the ERISA standard of prudence and loyalty. The "without regard to the financial interests" language should be dropped for the reasons described in detail in our July 20, 2015 comment letter.

The scope of the exemption should be broadened: (1) it should apply to all plans including the plans sponsored by a Financial Institution and participant directed plans of all types; (2) it should cover distribution and rollover recommendations; (3) it should cover recommendations to provide advice to purchase investment management services; and (4) it should not restrict the assets that can be recommended.[1] It should also include a "good faith" exception for when a provider tries but fails to meet all of its requirements.

The contract requirements should be changed to permit an agreement binding the Financial Institution to the best interest standard at the time of the transaction without requiring a signature by the Retirement Investor. An undertaking by the Financial Institution to meet the best interest standard, which may be enforced in court or through arbitration, should suffice. We agree that class action suits should not be made subject to arbitration, but damages should be able to be limited in such a way as to make the participant whole where the best interest standard is not met.

The warranties required by the Proposal should be dropped because they are not necessary to enforce a best interest standard and would encourage frivolous litigation. Instead, the Department should encourage a principles-based approach focusing on the prudent person and loyalty requirements of ERISA. For example, when an adviser is compensated through a variable compensation program without a formulaic link to sales, a fiduciary may well consider adopting internal policies and compliance procedures that mitigate, to the extent practicable, conflicts of interest arising from the Advisor's variable compensation. Determinations regarding methods to comply with the best interest standard of conduct are best left to the individual Financial Institution, which would be required to proceed in accordance with the principles of ERISA.

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[1] If the Department believes that the best interest standard would not adequately address the entire range of possible assets, we would suggest that the Department review its proposed list of asset classes in the "Assets" definition and add other assets that may be less common than those listed but still may be used appropriately in retirement plans and IRAs. For example, investors may hold unit investment trusts (UITs) in many retirement plans and IRAs, and the Department should clarify that principal transactions in UITs are permitted under the BIC exemption, as advocated by a number of other commenters.

We believe the BIC disclosures should be limited and mirror the relevant investment-related fee and expense disclosures under the Department's 404a-5 participant disclosure regulations[2] and, upon request, the Department's 408(b)(2) regulation. Under our proposed revisions, persons acting on behalf of IRAs and participants in non-ERISA plans would be provided the cost and performance information needed to properly evaluate the investment advice provided. We now estimate that we will incur a one-time cost of approximately \$19.7 million, and ongoing annual costs of approximately \$10.2 million, to implement the BIC exemption if our suggested changes are made. Contrast this to the initial estimates of \$24.7 million and ongoing costs of \$37.8 million described on page 45 of our first comment letter. Additional expenses will arise from tailoring the disclosures to individuals in IRAs and other non-ERISA covered plans (assuming SEC no-action letter relief is available). Currently plan sponsors supervise the 404a-5 disclosures even though service providers assist them with templates and information electronically that enables sponsors to comply with the regulation. Under our view of the BIC Exemption, TIAA would have to provide these disclosures without the aid of a sponsor and must hire the staff and make the systems changes to enable it to do so.

[2] These disclosures require a comparative chart that discloses identifying information with respect to each "designated investment alternative": the type and category of investment, and performance data that generally includes (1) if the return is not fixed, the average total return for 1, 5 and 10 year periods and, (2) if the return is fixed, the current rate of return, the minimum rate guaranteed under the contract and a statement that the issuer may adjust the rate of return and how to obtain the most recent rate of return. If the return is not fixed, appropriate benchmark information for the 1, 5, and 10 year periods must also be given. In addition, detailed fee and expense information must be disclosed as well as any restrictions or limitations that may be applicable to the purchase, transfers or withdrawals for the designated investment alternative. Additional disclosure rules apply to annuity contracts explaining restrictions and fees applicable to those contracts.

We also estimate that we will need considerably more time than the eight months contemplated in the proposal to implement these changes. A time frame of at least two, and preferably three, years would be more practical. Finally, we wish to call your attention to the changes we propose to Section VII of the BIC Exemption, which would allow the continued provision of services in connection with grandfathered client relationships.

Please refer to our suggested rewrite of the BIC Exemption attached as Attachment 3. It is the same as the one distributed to Department representatives at the September 17, 2015 meeting. [3]

TIAA-CREF appreciates this opportunity to provide a second written comment on the Department's wide-ranging and complex proposal. We trust that our review and comments will help the DOL develop a more refined means of implementing a "best interest" standard that will help participants and IRA owners achieve more successful retirement outcomes without causing unnecessary burdens on service providers such as TIAA-CREF and its affiliates.

We would be happy to discuss any of these comments with representatives of the Department.

Sincerely yours,

Steven R. Kraulein

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3 We also recommended that all proprietary annuity contracts should be covered in PTE 84-24 including variable annuities in IRAs and that revenue sharing should also be covered. We note that in our comment letter, pages 30-33, that changes were also needed to the Proposal with respect to PTE 86-128 as proposed so that, among other things, revenue sharing would be an acceptable form of payment under that exemption. We reiterate these comments here.

ATTACHMENT 1

September 17, 2015

TIAA-CREF Proposal for BIC Exemption – General Principles

Assumptions for Definition of Fiduciary Advice

- The standard for “advice” is the FINRA guidance about what is a “recommendation” -- a “call to action”
- A “hire me” carveout will be available for a person or an entity who merely recommends, urges, responds to an RFP, or otherwise promotes its or an affiliate’s hiring

General Changes to the Proposed BIC Exemption

- Provides relief for compensation related to advice to fiduciaries of all plans (not only non-participant-directed plans with < 100 participants), and transactions with participants and beneficiaries in the institution’s own employee plans
- Provides relief for recommending another fiduciary advice provider or investment manager (affiliated or not), for rollover or distribution recommendations, and for specific investment recommendations
- Adds a “good faith” compliance provision to protect against inappropriate loss of exemption, modeled after the Department’s 408(b)(2) regulation
- Redefines “Asset” to include all securities, other property or instruments, and IRA vehicles, and recommendations of individuals to provide advice and management services

Contract

Every advice recipient is covered by a written contract enforceable requiring the provider to act in the Best Interest of the Retirement Investor:

- Delivered before recommended transaction is executed
- “Best Interest” defined strictly according to the ERISA 404 prudence standard (including duty of loyalty); potentially confusing language has been removed
- The provider acknowledges it is acting as a fiduciary when giving the advice
- May be documented by a promissory undertaking from the advisor’s firm to the recipient (unilateral contract) that the recipient may reasonably rely on; no need for signatures
- Preserves the Department’s prohibition on class action waivers
- Maintains the Department’s Impartial Conduct Standards requiring no misleading statements and reasonable compensation, and clarifies that guaranty features or other benefits should be considered in that determination, e.g., in the case of an annuity
- Adopts FINRA’s suggestion that the contract may restrict contractual damages within limits specified in the PTE

Disclosure

- Follows the 404a -5 investment related fee and expense disclosure requirements for all recommended investments

ATTACHMENT 1

- Informs the investor that upon request the Financial Institution will supply information as if (i) the investor were the responsible fiduciary under the 408(b)(2) regulations, (ii) the Institution is a covered service provider, and (iii) the plan or IRA is a covered plan
- No specific disclosure of individual Advisor's compensation would be required
- If the Financial Institution offers only products within a limited range of asset classes the exemption would still be available if that fact is disclosed

ATTACHMENT 2

September 17, 2015

Hire Me Carve-Out

Our proposed changes to the Best Interest Exemption are premised on anticipated changes to the regulation itself. In particular, we expect that there will be a clarification regarding the "selling of investment advice or managed account services"- as distinguished from the provision of investment recommendations. Many in the industry commented during the first round of comments on the fact that merely selling investment advice or managed account services cannot be a fiduciary act and this concept was discussed as a "hire me" provision during the August hearings. Consistent with DOL guidance under ERISA section 408(b)(2), a person must be permitted to advocate for his or her own hiring to provide investment advice or managed account services. While there are many ways to address this issue, we believe that an appropriate approach would be to include a "hire me" provision as an additional carve-out as set forth below:

> (b) *Carve-outs – investment advice*. Except for persons described in paragraph (a)(2)(i) of this section, the rendering of advice or other communications in conformance with a carve-out set forth in paragraph (b)(1) through (7) of this section shall not cause the person who renders the advice to be treated as a fiduciary under paragraph (a) of this section.
>
> . . .
>
> (7) *Recommendations of One's Own Engagement*. The person merely recommends that itself or an affiliate be engaged to provide investment advice or management services for a fee, if such person:
>
> (i) is providing the recommendation in its capacity as a seller of its own services or those of an affiliate;
>
> (ii) is not undertaking to provide impartial recommendation in connection with such recommendation;
>
> (iii) fairly informs the plan fiduciary, plan participant or beneficiary, or the beneficial owner of an IRA acting on behalf of the IRA (who is receiving the recommendation) of the existence and nature of the person's financial interests in the transaction; and
>
> (iv) does not receive any fee or other compensation directly from the plan or the IRA for the provision of such recommendation (as opposed to other services).

DRAFT
September 17, 2015

Proposed Exemption

Section I – Best Interest Contract Exemption

(a) In general. ERISA and the Internal Revenue Code prohibit fiduciary advisers to employee benefit plans (Plans) and individual retirement plans (IRAs) from receiving compensation that varies based on their investment recommendations. Similarly, fiduciary advisers are prohibited from receiving compensation from third parties in connection with their advice. This exemption permits certain persons who provide investment advice to Retirement Investors, and their associated financial institutions, affiliates and other related entities, to receive such otherwise prohibited compensation as described below.

(b) Covered transactions. This exemption permits Advisers, Financial Institutions, and their Affiliates and Related Entities to receive compensation for services provided in connection with a purchase, sale or holding of an Asset by a Plan, participant or beneficiary account, or IRA, as a result of the Adviser's and Financial Institution's advice, which includes distribution recommendations, recommendations as to the management of securities and other property, and recommendation of persons to provide investment advice or management services to any of the following "Retirement Investors:"

(1) A participant or beneficiary of a Plan subject to Title I of ERISA with authority to direct the investment of assets in his or her Plan account or to take a distribution, including a participant or beneficiary of a Plan subject to Title I of ERISA sponsored by the Financial Institution or sponsored by a member of its controlled group or under common control with the Financial Institution as defined in Code

section 414(b) and (c), respectively;

(2) The beneficial owner of an IRA acting on behalf of the IRA; or

(3) A ~~plan sponsor as described in ERISA section 3(16)(B) (or any employee, officer or director thereof) of a non-participant-directed~~fiduciary of a Plan subject to Title I of ERISA ~~with fewer than 100 participants, to the extent it acts as a fiduciary~~ who has authority to make investment decisions for the Plan.

As detailed below, parties seeking to rely on the exemption must ~~contractually~~ agree to adhere to Impartial Conduct Standards in rendering advice regarding Assets~~; warrant that they have adopted policies and procedures designed to mitigate the dangers posed by Material Conflicts of Interest~~; disclose important information relating to fees, compensation, and Material Conflicts of Interest; and retain documents ~~and data~~ relating to ~~investment recommendations regarding Assets~~compliance with the exemption conditions. The exemption provides relief from the restrictions of ERISA section 406(a)(1)(D) and 406(b) and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(D), (E) and (F). The Adviser ~~and~~or Financial Institution, as applicable, must comply with the conditions of Sections II-V to rely on this exemption.

(c) Exclusions. This exemption does not apply if:

(1~~) The Plan is covered by Title I of ERISA, and (i) the Adviser, Financial Institution or any Affiliate is the employer of employees covered by the Plan, or (ii) the Adviser or Financial Institution is a named fiduciary or plan administrator (as defined in ERISA section 3(16)(A)) with respect to the Plan, or an affiliate thereof, that was selected to provide advice to the Plan by a fiduciary who is not Independent;(2~~) The compensation is received as a result of a transaction in which the Adviser is acting on behalf of its own account or the account of the Financial Institution, or the account of a person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Financial Institution (i.e., a principal transaction~~)~~; for avoidance of doubt, the sale or disposition of a Proprietary Product is not a principal transaction);

(~~3~~2) The compensation is received as a result of investment advice to a Retirement Investor generated solely by an interactive website in which computer software-based models or applications provide investment advice based on personal information each investor supplies through the website without any personal interaction or advice from an individual Adviser (i.e., "robo advice"); or

(~~4~~3) The Adviser ~~(i)~~ exercises any discretionary authority or discretionary control respecting management of the Plan or IRA ~~assets involved in the~~with respect to a transaction recommended by the Adviser or exercises any authority or control respecting management or disposition of the ~~assets, or (ii) has any discretionary authority or discretionary responsibility in the administration of the Plan or IRA~~Assets with respect to a transaction recommended by the Adviser. That is, the Adviser may not utilize this exemption if it exercises authority or control over whether to act upon the investment advice.

(d) Good faith. Notwithstanding any other provision to the contrary, the failure to comply with any term, condition or requirement of this exemption will not result in the loss of the exemption if the failure to comply was inadvertent and a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements.

Section II – Contract, Impartial Conduct, and Other Requirements

(a) Contract. Prior to ~~recommending that the Plan, participant or beneficiary account, or IRA purchase, sell or hold the Asset, the Adviser and~~engaging in a transaction described in Section I, Financial Institution ~~enter into a written contract with~~furnishes, delivers, publishes or otherwise makes available to the Retirement Investor a promise that incorporates the terms required by Section II(b)- (e) and which, when reasonably relied upon by the Retirement Investor for purposes of such transaction, may be enforced by the Retirement Investor as a contract ("Contract").

(b) Fiduciary. The ~~written contract~~Contract affirmatively states that the Adviser and Financial Institution are fiduciaries under ERISA or the Code, or both, with respect to ~~any~~the investment recommendations to the Retirement Investor made by the Adviser or Financial Institution.

(c) Impartial Conduct Standards. The ~~Adviser and the Financial Institution~~Contract affirmatively ~~agreeto, and comply with, the following~~states:

(1) When providing investment advice to the Retirement Investor regarding the Asset, the ~~Adviser and~~ Financial Institution and its authorized Advisers will provide investment advice that is in the Best Interest of the Retirement Investor ~~(i.e., advice that reflects the care, skill, prudence, and diligence under the circumstances then~~

~~prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party)~~;

(2) When providing investment advice to the Retirement Investor regarding the Asset, the ~~Adviser and~~ Financial Institution and its authorized Advisers will not recommend an Asset if the total amount of compensation anticipated to be received by the Adviser, Financial Institution, Affiliates and Related Entities in connection with the purchase, sale or holding of the Asset by the Plan, participant or beneficiary account, or IRA, will exceed reasonable compensation in relation to the investment features, guarantees, and related benefits of the Asset and the total services they provide to the Retirement Investor; and

(3) The ~~Adviser's and~~statements of the Financial Institution~~'s statements~~ and its authorized Advisers about the Asset, fees, Material Conflicts of Interest, and any other matters relevant to a Retirement Investor's investment decisions, will not be misleading.

(d) ~~Warranties. The Adviser and Financial Institution affirmatively warrant~~Policies and Procedures. The relief under Section I shall be further conditioned upon the following:

(1~~) The Adviser, Financial Institution, and Affiliates will comply with all applicable federal and state laws regarding the rendering of the investment advice, the purchase, sale and holding of the Asset, and the payment of compensation related to the purchase, sale and holding of the Asset;(2~~) The Financial Institution has adopted written policies and procedures reasonably designed to mitigate the impact of Material Conflicts of Interest and ensure that its ~~individual~~authorized Advisers adhere to the Impartial Conduct Standards set forth in Section II(c);

(~~3) In formulating its policies and procedures,~~2) If the Financial Institution ~~has specifically identified Material Conflicts of Interest and adopted measures to prevent the Material Conflicts of Interest from causing violations of the Impartial Conduct Standards set forth in Section II(c); and~~or (to the best of its knowledge) any Affiliate or Related Entity pays any form of compensation to Advisers that varies based on the Assets that they recommend, including payouts based upon commissions, trail commissions or 12b-1 fees, ticket charge discounts, awards, or product contests, and not solely on neutral factors such as the difference in time, effort, and analysis necessary to provide prudent advice, then the written policies and procedures described in paragraph (1) must be reasonably designed to ensure that such Advisers only make recommendations that are in the Best Interest of the Retirement Investor. These policies and procedures must include procedures to mitigate, to the extent practical, the effects of these forms of compensation on an Adviser's choice of Asset, to supervise the recommendations made by those Advisers, to promptly detect possible recommendations that may not be in the Best Interest of the Retirement Investor, and to take prompt and appropriate action concerning any recommendation that is found to have not been in the Best Interest of the Retirement Investor.

~~(4) Neither the Financial Institution nor (to the best of its knowledge) any Affiliate or Related Entity uses quotas, appraisals, performance or personnel actions, bonuses,~~

~~contests, special awards, differential compensation or other actions or incentives to the extent they would tend to encourage individual Advisers to make recommendations that are not in the Best Interest of the Retirement Investor.~~

~~Notwithstanding the foregoing, the contractual warranty set forth in this Section II(d)(4) does not prevent the Financial Institution or its Affiliates and Related Entities from providing Advisers with differential compensation based on investments by Plans, participant or beneficiary accounts, or IRAs, to the extent such compensation would not encourage advice that runs counter to the Best Interest of the Retirement Investor (e.g., differential compensation based on such neutral factors as the difference in time and analysis necessary to provide prudent advice with respect to different types of investments would be permissible).~~

(e) Disclosures. The ~~written contract~~Financial Institution must specifically:

(1) Identify and disclose any Material Conflicts of Interest;

(2) Inform the Retirement Investor that, upon request, the Financial Institution shall furnish the Retirement Investor ~~has the right to obtain complete information about all the fees currently associated with the Assets in which it is invested, including all of the direct and indirect fees paid payable to the Adviser, Financial Institution, and any Affiliates; and~~with a disclosure containing the information described in 29 C.F.R. section 2550.408b-2(c)(1)(iv)(C) as though the Retirement Investor were the "responsible plan fiduciary" under 29 C.F.R. section 2550.408b-2 (c)(1)(viii)(E) entitled to a 29 C.F.R. section 2550.408b-2 disclosure from the Advisor as a "covered service provider" with respect to the recommendation provided to the Retirement Investor and the Plan or IRA were a "covered plan"

under 29 C.F.R. section 2550.408b-2 (c)(1)(ii).

~~(3) Disclose to the Retirement Investor whether the Financial Institution offers Proprietary Products or receives Third Party Payments with respect to the purchase, sale or holding of any Asset, and of the address of the website required by Section III(c) that discloses the compensation arrangements entered into by Advisers and the Financial Institution.~~

(f) Prohibited Contractual Provisions. The written contract shall not contain the following:

(1) Exculpatory provisions disclaiming or otherwise limiting liability of the ~~Adviser or~~Financial Institution and its authorized Advisers for a violation of the contract's terms; and

(2) A provision under which the Plan, IRA or Retirement Investor waives or qualifies its right to bring or participate in a class action or other representative action in court in a dispute with the ~~Adviser or~~ Financial Institution and its authorized Advisers, provided that the Contract may limit damages to an amount equal to the return an investor would have earned from an investment that was in the Best Interest of the Retirement Investor at the time of the recommendation and the return that the Retirement Investor actually earned, and to preclude the right to rescind any transaction the rescission of which is not otherwise contemplated by federal law.

Section III – ~~Disclosure Requirements~~Transaction Disclosure Requirements

~~(a) Transaction Disclosure.~~

~~(1) Disclosure. Prior to the execution of the purchase of the Asset by the Plan, participant or beneficiary account, or IRA, the Adviser furnishes to the Retirement Investor~~

~~a chart that provides, with respect to each Asset recommended, the Total Cost to the Plan, participant or beneficiary account, or IRA, of investing in the Asset for 1-, 5- and 10-year periods expressed as a dollar amount, assuming an investment of the dollar amount recommended by the Adviser and reasonable assumptions about investment performance that are disclosed.~~

~~The disclosure chart required by this section need not be provided with respect to a subsequent recommendation to purchase the same investment product if the chart was previously provided to the Retirement Investor within the past twelve months and the Total Cost has not materially changed.~~

~~(2) Total Cost. The "Total Cost" of investing in an Asset means the sum of the following, as applicable:~~

~~(A) Acquisition costs. Any costs of acquiring the Asset that are paid by direct charge to the Plan, participant or beneficiary account, or IRA, or that reduce the amount invested in the Asset (e.g., any loads, commissions, or mark-ups on Assets bought from dealers, and account opening fees, if applicable).~~

~~(B) Ongoing costs. Any ongoing (e.g., annual) costs attributable to fees and expenses charged for the operation of an Asset that is a pooled investment fund (e.g., mutual fund, bank collective investment fund, insurance company pooled separate account) that reduces the Asset's rate of return (e.g., amounts attributable to a mutual fund expense ratio and account fees). This includes amounts paid by~~

~~the pooled investment fund to intermediaries, such as sub-TA fees, sub- accounting fees, etc.~~

~~(C) Disposition costs. Any costs of disposing of or redeeming an interest in the Asset that are paid by direct charge to the Plan, participant or beneficiary account, or IRA, or that reduce the amounts received by the Plan, participant or beneficiary account, or IRA (e.g., surrender fees, back-end loads, etc., that are always applicable (i.e., do not sunset), mark-downs on assets sold to dealers, and account closing fees, if applicable).~~

~~(D) Others. Any costs not described in (A)-(C) that reduce the Asset's rate of~~

~~return, are paid by direct charge to the Plan, participant or beneficiary account, or IRA, or reduce the amounts received by the Plan, participant or beneficiary account, or IRA (e.g., contingent fees, such as back-end loads that phase out over time (with such terms explained beneath the table)).~~

~~(3) Model Chart. Appendix II to this exemption contains a model chart that may be used to provide the information required under this Section III(a). Use of the model chart is not mandatory. However, use of an appropriately completed model chart will be~~

~~deemed to satisfy the requirements of this Section III(a).~~

~~(b) Annual Disclosure. The Adviser or Financial Institution provides the following written~~

~~information to the Retirement Investor, annually, within 45 days of the end of the applicable year, in a succinct single disclosure:~~

~~(1) A list identifying each Asset purchased or sold during the applicable period and the price at which the Asset was purchased or sold;~~

~~(2) A statement of the total dollar amount of all fees and expenses paid by the Plan, participant or beneficiary account, or IRA (directly and indirectly) with respect to each Asset purchased, held or sold during the applicable period; and~~

~~(3) A statement of the total dollar amount of all compensation received by the Adviser and Financial Institution, directly or indirectly, from any party, as a result of each Asset sold, purchased or held by the Plan, participant or beneficiary account, or IRA during the applicable period.~~

~~(c) Webpage.~~

~~(1) The Financial Institution maintains a webpage, freely accessible to the public, which shows the following information:~~

~~(A) The direct and indirect material compensation payable to the Adviser, Financial Institution and any Affiliate for services provided in connection with each Asset (or, if uniform across a class of Assets, the class of Assets) that a Plan, participant or beneficiary account, or an IRA is able to purchase, hold, or sell through the Adviser or Financial Institution, and that a Plan, participant or beneficiary account, or an IRA has purchased, held, or sold within the last 365 days. The compensation may be expressed as a monetary amount, formula or percentage~~

~~of the assets involved in the purchase, sale or holding; and~~

~~(B) The source of the compensation, and how the compensation varies within and among Assets.~~

~~(2) The Financial Institution's webpage provides access to the information in (1)(A) and~~

~~(B) in a machine readable format.~~

In connection with any covered transaction described in Section I, the Financial Institution and its authorized Advisers shall furnish to the Retirement Investor information that provides, with respect to each Asset recommended, an investment-related fee and expense disclosure in the form described by 29 C.F.R. section 2550.404a-5(d)(1)(iv).

Section IV – Range of Investment Options

(a) General. The Financial Institution offers for purchase, sale or holding, and the Adviser makes available to the Plan, participant or beneficiary account, or IRA for purchase, sale or holding, a range of Assets that is broad enough to enable the Adviser to make recommendations with respect to all of the asset classes reasonably necessary to serve the Best Interests of the Retirement Investor in light of its investment objectives, risk tolerance, and specific financial circumstances.

(b) Limited Range of Investment Options. ~~Section (a) notwithstanding,~~To the extent that a Financial Institution ~~may limit~~limits the Assets available, such that paragraph (a) above is not met, for purchase, sale or holding based on whether the Assets are Proprietary Products, generate Third Party Payments, or for other reasons, ~~and still rely on the exemption, provided that:~~

~~(1) The Financial Institution makes a specific written finding that the limitations it has placed on the Assets made available to an Adviser for purchase, sale or holding by Plans, participant and beneficiary accounts, and IRAs do not prevent the Adviser from providing advice that is in the Best Interest of the Retirement Investor (i.e., advice that reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party) or otherwise adhering to the Impartial Conduct Standards;~~

~~(2) Any compensation received in connection with a purchase, sale or holding of the Asset by a Plan, participant or beneficiary account, or an IRA, is reasonable in relation to the value of the specific services provided to the Retirement Investor in exchange for the payments and not in excess of the services' fair market value;(3) Before giving~~the exemption may nevertheless be relied upon, provided that, prior to the Retirement Investors acting upon the investment recommendations~~ to Retirement Investors~~, the Adviser or Financial Institution gives the Retirement Investor clear written notice of the limitations placed on the Assets that the Adviser may offer for purchase, sale or holding by a Plan, participant or beneficiary account, or an IRA. Notice is insufficient if it merely states that the Financial Institution or Adviser "may" limit investment recommendations based on whether the Assets are Proprietary Products or generate Third Party Payments, or for other reasons, without specific disclosure of the extent to which recommendations are, in fact, limited on that basis~~; and(4)~~

~~The Adviser notifies the Retirement Investor if the Adviser does not recommend a sufficiently broad range of Assets to meet the Retirement Investor's needs~~.

(c) ERISA plan participants and beneficiaries. Some Advisers and Financial Institutions provide advice to participants in ERISA-covered participant directed individual account Plans in which the menu of investment options is selected by an Independent Plan fiduciary. In such cases~~, provided the Adviser and Financial Institution did not provide investment advice to the Plan fiduciary regarding the composition of the menu~~, the Adviser and Financial Institution do not have to comply with Section IV(~~a) (c~~b) in connection with their advice to individual participants and beneficiaries on the selection of Assets from the menu provided. This exception is not available for advice with respect to investments within open brokerage windows or otherwise outside the Plan's designated investment options.

Section V –Disclosure to the Department and Recordkeeping

(a) ~~EBSA Disclosure. Before receiving compensation in reliance on the exemption in Section I, the Financial Institution notifies the Department of Labor of the intention to rely on this class exemption. The notice will remain in effect until revoked in writing by the Financial Institution. The notice need not identify any Plan or IRA.~~

~~(b) Data Request. The Financial Institution maintains the data that is subject to request pursuant to Section IX in a manner that is accessible for examination by the Department for six (6) years from the date of the transaction subject to relief hereunder. No party, other than the Financial Institution responsible for complying with this paragraph (b), will be subject to the taxes imposed by Code section 4975(a) and (b), if applicable, if the data is not maintained or not available for examination as required by paragraph (b).(c)~~ Recordkeeping. The Financial Institution maintains for a period of six (6) years, in a manner that is accessible for examination, the records necessary to enable the persons described in paragraph (~~d~~b)(1) of this Section to determine whether the conditions of this exemption have been met, except that:

(1) If such records are lost or destroyed, due to circumstances beyond the control of the Financial Institution, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party, other than the Financial Institution responsible for complying with this paragraph (c), will be subject to the civil penalty that may be assessed under ERISA section 502(i) or the taxes imposed by Code section 4975(a) and (b), if applicable, if the records are not maintained or are not available for examination as required by paragraph (~~d~~b), below.

(~~d~~b) (1) Except as provided in paragraph (~~d~~b)(2) of this Section, and notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records referred to in paragraph (~~c~~a) of this Section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan that engaged in a purchase, sale or holding of an Asset described in this exemption, or any authorized employee or representative of such fiduciary;

(C) Any contributing employer and any employee organization whose members are covered by a Plan described in paragraph (~~d~~b)(1)(B), or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan described in paragraph (B), IRA owner, or the authorized representative of such participant, beneficiary or owner; and

(2) None of the persons described in paragraph (~~d~~b)(1)(B)-(D) of this Section are authorized to examine privileged trade secrets or privileged commercial or financial information, of the Financial Institution, or information identifying other individuals.

(3) Should the Financial Institution refuse to disclose information on the basis that the information is exempt from disclosure, the Financial Institution must, by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

Section VI – Insurance and Annuity Contract Exemption

(a) In general. In addition to prohibiting fiduciaries from receiving compensation from third parties and compensation that varies on the basis of the fiduciaries' investment advice, ERISA and the Internal Revenue Code prohibit the purchase by a Plan, participant or beneficiary account, or IRA of an insurance or annuity product from an insurance company that is a service provider to the Plan or IRA. This exemption permits a Plan, participant or beneficiary account, or IRA to purchase an Asset that is an insurance or annuity contract in accordance with an Adviser's advice, from a Financial Institution that is an insurance company and that is a service provider to the Plan or IRA. This exemption is provided because purchases of insurance and annuity products are often prohibited purchases and sales involving insurance companies that have a pre-existing party in interest relationship to the Plan or IRA.

(b) Covered transaction. The restrictions of ERISA section 406(a)(1)(A) and (D), and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) and (D), shall not apply to a fiduciary's causing the purchase of an Asset that is an insurance or annuity contract by a ~~non-participant-directed~~ Plan subject to Title I of ERISA ~~that has fewer than 100 participants~~, participant or beneficiary account, or IRA, from a Financial Institution that is an insurance company and that is a party in interest or disqualified person, if:

(1) The transaction is effected by the insurance company in the ordinary course of its business as an insurance company;

(2) The combined total of all fees and compensation received by the insurance company and any Affiliate is not in excess of reasonable compensation under the circumstances; and

(3~~) The purchase is for cash only; and(4~~) The terms of the purchase are at least as favorable to the Plan, participant or beneficiary account, or IRA as the terms generally available in an arm's length transaction with an unrelated party.

~~(c) Exclusion: The exemption in this Section VI does not apply if the Plan is covered by Title I of ERISA, and (i) the Adviser, Financial Institution or any Affiliate is the employer of employees covered by the Plan, or (ii) the Adviser and Financial Institution is a named fiduciary or plan administrator (as defined in ERISA section 3(16)(A)) with respect to the Plan, or an affiliate thereof, that was selected to provide advice to the plan by a fiduciary who is not Independent.~~

Section VII – Exemption for Pre-Existing Transactions

(a) In general. ERISA and the Internal Revenue Code prohibit Advisers, Financial Institutions and their Affiliates and Related Entities from receiving variable or third-party compensation as a result of the Adviser's and Financial Institution's advice to a Plan, participant or beneficiary, or IRA owner. Some Advisers and Financial Institutions did not consider themselves fiduciaries within the meaning of 29 CFR section 2510-3.21 before the applicability date of the amendment to 29 CFR section 2510-3.21 (the Applicability Date). Other Advisers and Financial Institutions entered into transactions involving Plans, participant or beneficiary accounts, or IRAs before the Applicability Date, in accordance with the terms of a prohibited transaction exemption that has since been amended. This exemption permits Advisers, Financial Institutions, and their Affiliates and Related Entities, to receive compensation, such as 12b-1 fees, in connection with the purchase , sale or holding of an Asset by a Plan, participant or beneficiary account, or an IRA, as a result of the Adviser's and Financial Institution's advice, that occurred prior to the Applicability Date, as described and limited below.

(b) Covered transaction. Subject to the applicable conditions described below, the restrictions of ERISA section 406(a)(1)(D) and 406(b) and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(D), (E) and (F), shall not apply to the receipt of compensation by an Adviser, Financial Institution, and any Affiliate and Related Entity, for services provided in connection with the purchase, holding or sale of an Asset, as a result of the Adviser's and Financial Institution's advice, that was purchased, sold, or held by a Plan, participant or beneficiary account, or an IRA before the Applicability Date if:

(1) ~~The compensation is not excluded pursuant to Section I(c) of the Best Interest~~

~~Contract Exemption;(2)~~ The compensation is received pursuant to an agreement, arrangement or understanding that was entered into prior to the Applicability Date;

(~~3) The Adviser and Financial Institution do not provide additional advice to the Plan regarding the purchase, sale or holding of the Asset after the Applicability Date; and(4~~2) The purchase or sale of the Asset was not a non-exempt prohibited transaction pursuant to ERISA section 406 and Code section 4975 on the date it occurred.

Section VIII – Definitions

For purposes of these exemptions:

(a) "Adviser" means an individual who:

(1) Is a fiduciary of a Plan or IRA solely by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the Assets involved in the transaction;

(2) Is an employee, independent contractor, agent, or registered representative of a Financial Institution; and

(3) Satisfies the applicable federal and state regulatory and licensing requirements of insurance, banking, and securities laws with respect to the covered transaction.

(b) "Affiliate" of an Adviser or Financial Institution means –

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution. For this purpose, "control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(2) Any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Adviser or Financial Institution; and

(3) Any corporation or partnership of which the Adviser or Financial Institution is an officer, director or employee or in which the Adviser or Financial Institution is a partner.

(c) An "Asset," for purposes of this exemption, includes ~~only the following investment products: bank deposits, certificates of deposit (CDs), shares or interests in registered~~

~~investment companies, bank collective funds, insurance company separate accounts, exchange-traded REITs, exchange-traded funds, corporate bonds offered pursuant to a registration statement under the Securities Act of 1933, agency debt securities as defined in FINRA Rule 6710(l) or~~securities, other property, and other financial instruments or arrangements recommended to a Retirement Investor including, in the case of a recommendation that a plan participant or beneficiary or beneficial owner of an IRA acting on behalf of the IRA take a distribution of benefits in a rollover transaction, a rollover IRA vehicle recommended for purposes of accepting the proceeds of such rollover distribution and in the case of a recommendation that a plan participant or beneficiary or beneficial owner of an IRA acting on behalf of the IRA utilize the services of an investment advice or management services provider, the recommendation of such fiduciary services.

~~its successor, U.S. Treasury securities as defined in FINRA Rule 6710(p) or its successor, insurance and annuity contracts, guaranteed investment contracts, and equity securities~~

~~within the meaning of 17 CFR section 230.405 that are exchange-traded securities within the meaning of 17 CFR 242.600. Excluded from this definition is any equity security that is a security future or a put, call, straddle, or other option or privilege of buying an equity security from or selling an equity security to another without being bound to do so.~~

(d) Investment advice is in the "Best Interest" of the Retirement Investor when the Adviser ~~and~~or Financial Institution providing the advice ~~act~~acts i) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person ~~would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs~~acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and (ii) solely in the interest of the Retirement Investor, ~~without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party.~~in each case as such standards are interpreted under Section 404 of ERISA.

(e) "Financial Institution" means the entity that employs the Adviser or otherwise retains such individual as an independent contractor, agent or registered representative and that is:

(1) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 USC 80b-1 et seq.) or under the laws of the state in which the adviser maintains its principal office and place of business;

(2) A bank or similar financial institution supervised by the United States or state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 USC 1813(b)(1)), but only if the advice resulting in the compensation is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by federal or state banking authorities;

(3) An insurance company qualified to do business under the laws of a state, provided that such insurance company:

(A) Has obtained a Certificate of Authority from the insurance commissioner of its domiciliary state which has neither been revoked nor suspended,

(B) Has undergone and shall continue to undergo an examination by an Independent certified public accountant for its last completed taxable year or has undergone a financial examination (within the meaning of the law of its domiciliary state) by the state's insurance commissioner within the preceding 5 years, and

(C) Is domiciled in a state whose law requires that actuarial review of reserves be conducted annually by an Independent firm of actuaries and reported to the appropriate regulatory authority; or

(4) A broker or dealer registered under the Securities Exchange Act of 1934 (15 USC 78a et seq.).

(f) "Independent" means a person that:

(1) Is not the Adviser, the Financial Institution or any Affiliate relying on the exemption,

(2) Does not receive compensation or other consideration for his or her own account from the Adviser, the Financial Institution or Affiliate; and

(3) Does not have a relationship to or an interest in the Adviser, the Financial Institution or Affiliate that might affect the exercise of the person's best judgment in connection with transactions described in this exemption.

(g) "Individual Retirement Account" or "IRA" means any trust, account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in section 408(a) of the Code and a health savings account described in section 223(d) of the Code.

(h) A "Material Conflict of Interest" exists when an Adviser or Financial Institution has a financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to a Retirement Investor regarding an Asset.

(i) "Plan" means any employee benefit plan described in section 3(3) of the Act and any plan described in section 4975(e)(1)(A) of the Code.

(j) “Proprietary Product” means a product that is managed or issued by the Financial Institution or any of its Affiliates.

(k) “Related Entity” means any entity other than an Affiliate in which the Adviser or Financial Institution has an interest which may affect the exercise of its best judgment as a fiduciary.

(l) “Retirement Investor” means –

(1) A participant or beneficiary of a Plan subject to Title I of ERISA with authority to direct the investment of assets in his or her Plan account or to take a distribution, including a participant or beneficiary of a Plan subject to Title I of ERISA sponsored by the Financial Institution or sponsored by a member of its controlled group or a under common control with the Financial Institution as defined in Code section 414(b) and (c) respectively;

(2) The beneficial owner of an IRA acting on behalf of the IRA~~,~~; or

(3) A ~~plan sponsor as described in ERISA section 3(16)(B) (or any employee, officer or director thereof), of a non-participant-directed~~fiduciary of a Plan subject to Title I of ERISA~~ that has fewer than 100 participants~~, to the extent it acts as a fiduciary with authority to make investment decisions for the Plan.

(m) “Third-Party Payments” mean sales charges when not paid directly by the Plan, participant or beneficiary account, or IRA, 12b-1 fees and other payments paid to the Financial Institution or an Affiliate or Related Entity by a third party as a result of the purchase, sale or holding of an Asset by a Plan, participant or beneficiary account, or IRA.

~~**Section IX - Data Request**~~

~~Upon request by the Department, a Financial Institution that relies on the exemption in~~

~~Section I shall provide, within a reasonable time, but in no event longer than six (6) months, after receipt of the request, the following information for the preceding six (6) year period:~~

~~(a)~~ Inflows. ~~At the Financial Institution level, for each Asset purchased, for each quarter: (1) The aggregate number and identity of shares/units bought;~~

~~(2) The aggregate dollar amount invested and the cost to the Plan, participant or beneficiary account, or IRA associated with the purchase;~~

~~(3) The revenue received by the Financial Institution and any Affiliate in connection with the purchase of each Asset disaggregated by source; and~~

~~(4) The identity of each revenue source (e.g., mutual fund, mutual fund adviser) and the reason the compensation was paid.~~

~~(b)~~ Outflows. ~~At the Financial Institution level for each Asset sold, for each quarter:~~

~~(1) The aggregate number of and identity of shares/units sold;~~

~~(2) The aggregate dollar amount received and the cost to the Plan, participant or beneficiary account, or IRA, associated with the sale;~~

~~(3) The revenue received by the Financial Institution and any Affiliate in connection with the sale of each Asset disaggregated by source; and~~

~~(4) The identity of each revenue source (e.g., mutual fund, mutual fund adviser) and the reason the compensation was paid.~~

~~(c)~~ Holdings. ~~At the Financial Institution level for each Asset held at any time during each quarter:~~

~~(1) The aggregate number and identity of shares/units held at the end of such quarter;~~

~~(2) The aggregate cost incurred by the Plan, participant or beneficiary account, or IRA,~~

~~during such quarter in connection with the holdings;~~

~~(3) The revenue received by the Financial Institution and any Affiliate in connection with the holding of each Asset during such quarter for each Asset disaggregated by source; and~~

~~(4) The identity of each revenue source (e.g., mutual fund, mutual fund adviser) and the reason the compensation was paid.~~

~~(d) Returns. At the Retirement Investor level:~~

~~(1) The identity of the Adviser;~~

~~(2) The beginning-of-quarter value of the Retirement Investor's Portfolio; (3) The end-of-quarter value of the Retirement Investor's Portfolio; and~~

~~(4) Each external cash flow to or from the Retirement Investor's Portfolio during the quarter and the date on which it occurred.~~

~~For purposes of this subparagraph (d), "Portfolio" means the Retirement Investor's combined holding of assets held in a Plan account or IRA advised by the Adviser.~~

~~(e) Public Disclosure. The Department reserves the right to publicly disclose information provided by the Financial Institution pursuant to subparagraph (d). If publicly disclosed, such information would be aggregated at the Adviser level, and the Department would not disclose any individually identifiable financial information regarding Retirement Investor accounts.~~

~~**Appendix I Financial Institution ABC - Website Disclosure Model**~~

~~**Form**~~

~~Type of Investment~~	~~Provider, Name, sub-type~~	~~Transactional~~			~~Ongoing~~			~~Affiliate~~	~~Special Rules~~
		~~To investor~~	~~To firm~~	~~To adviser~~	~~To investor~~	~~To firm~~	~~To adviser~~		
~~Non-Proprietary Mutual Fund~~ ~~(Load Fund)~~	~~XYZ MF Large Cap Fund, Class A Class B Class C~~	~~[•]% sales load as applicable~~	~~[•]% dealer concession~~	~~[•]% of transactional fee~~ ~~Extent considered in annual bonus~~	~~[•]% expense ratio~~	~~[•]% 12b-1 fee, revenue sharing (paid by fund/ affiliate)~~	~~[•]% of ongoing fees~~ ~~Extent considered in annual bonus~~	~~N/A~~	~~Breakpoints (as applicable)~~ ~~Contingent deferred shares charge (as applicable)~~
~~Proprietary Mutual Fund~~ ~~(No load)~~	~~ABC MF Large Cap Fund~~	~~No upfront charge~~	~~N/A~~	~~N/A~~	~~[•]% expense ratio~~	~~[•]% asset-based annual fee for shareholder servicing (paid by fund/ affiliate)~~	~~[•]% of ongoing fees~~ ~~Extent considered in annual bonus~~	~~[•]% asset-based investment advisory fee paid by fund to affiliate of Financial Institution~~	~~N/A~~
~~Equities, ETFs, Fixed Income~~		~~$[•] commission per transaction~~	~~$[•] commission per transaction~~	~~[•]% of commission~~ ~~Extent considered in annual bonus~~	~~N/A~~	~~N/A~~	~~N/A~~ ~~Extent considered in annual bonus~~	~~N/A~~	~~N/A~~
~~Annuities (Fixed and Variable)~~	~~Insurance Company A~~	~~No upfront charge on amount invested~~	~~$[•] commission (paid by insurer)~~	~~[•]% of commission~~ ~~Extent considered in annual bonus~~	~~[•]% M&E fee~~ ~~[•]% underlying expense ratio~~	~~$[•] Ongoing trailing commission (paid by underlying investment providers)~~	~~[•]% of ongoing fees~~ ~~Extent considered in annual bonus~~	~~N/A~~	~~Surrender charge~~

~~**Appendix II Financial Institution XZY - Transaction Disclosure Model Chart**~~

	~~YOUR INVESTMENT~~	~~TOTAL COST OF YOUR INVESTMENT IF HELD FOR:~~		
		~~1 year~~	~~5 years~~	~~10 years~~

~~Asset 1~~				
~~Asset 2~~				
~~Asset 3~~				
~~Account fees~~				
~~Total~~				

ATTACHMENT 4

DRAFT
September 17, 2015

Proposed Exemption

Section I – Best Interest Contract Exemption

(a) In general. ERISA and the Internal Revenue Code prohibit fiduciary advisers to employee benefit plans (Plans) and individual retirement plans (IRAs) from receiving compensation that varies based on their investment recommendations. Similarly, fiduciary advisers are prohibited from receiving compensation from third parties in connection with their advice. This exemption permits certain persons who provide investment advice to Retirement Investors, and their associated financial institutions, affiliates and other related entities, to receive such otherwise prohibited compensation as described below.

(b) Covered transactions. This exemption permits Advisers, Financial Institutions, and their Affiliates and Related Entities to receive compensation for services provided in connection with a purchase, sale or holding of an Asset by a Plan, participant or beneficiary account, or IRA, as a result of the Adviser's and Financial Institution's advice, which includes distribution recommendations, recommendations as to the management of securities and other property, and recommendation of persons to provide investment advice or management services to any of the following "Retirement Investors:"

(1) A participant or beneficiary of a Plan subject to Title I of ERISA with authority to direct the investment of assets in his or her Plan account or to take a distribution, including a participant or beneficiary of a Plan subject to Title I of ERISA sponsored by the Financial Institution or sponsored by a member of its controlled group or under common control with the Financial Institution as

defined in Code section 414(b) and (c), respectively;

(2) The beneficial owner of an IRA acting on behalf of the IRA; or

(3) A fiduciary of a Plan subject to Title I of ERISA who has authority to make investment decisions for the Plan.

As detailed below, parties seeking to rely on the exemption must agree to adhere to Impartial Conduct Standards in rendering advice regarding Assets; disclose important information relating to fees, compensation, and Material Conflicts of Interest; and retain documents relating to compliance with the exemption conditions. The exemption provides relief from the restrictions of ERISA section 406(a)(1)(D) and 406(b) and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(D), (E) and (F). The Adviser or Financial Institution, as applicable, must comply with the conditions of Sections II-V to rely on this exemption.

(c) Exclusions. This exemption does not apply if:

(1) The compensation is received as a result of a transaction in which the Adviser is acting on behalf of its own account or the account of the Financial Institution, or the account of a person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Financial Institution (i.e., a principal transaction; for avoidance of doubt, the sale or disposition of a Proprietary Product is not a principal transaction);

(2) The compensation is received as a result of investment advice to a Retirement Investor generated solely by an interactive website in which computer software-based models or applications provide investment advice based on personal information each investor supplies through the website without any personal

interaction or advice from an individual Adviser (i.e., "robo advice"); or

(3) The Adviser exercises any discretionary authority or discretionary control respecting management of the Plan or IRA with respect to a transaction recommended by the Adviser or exercises any authority or control respecting management or disposition of the Assets with respect to a transaction recommended by the Adviser. That is, the Adviser may not utilize this exemption if it exercises authority or control over whether to act upon the investment advice.

(d) Good faith. Notwithstanding any other provision to the contrary, the failure to comply with any term, condition or requirement of this exemption will not result in the loss of the exemption if the failure to comply was inadvertent and a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements.

Section II – Contract, Impartial Conduct, and Other Requirements

(a) Contract. Prior to engaging in a transaction described in Section I, Financial Institution furnishes, delivers, publishes or otherwise makes available to the Retirement Investor a promise that incorporates the terms required by Section II(b)-(e) and which, when reasonably relied upon by the Retirement Investor for purposes of such transaction, may be enforced by the Retirement Investor as a contract ("Contract").

(b) Fiduciary. The Contract affirmatively states that the Adviser and Financial Institution are fiduciaries under ERISA or the Code, or both, with respect to the investment recommendations to the Retirement Investor made by the Adviser or Financial Institution.

(c) Impartial Conduct Standards. The Contract affirmatively states:

(1) When providing investment advice to the Retirement Investor regarding the Asset,

the Financial Institution and its authorized Advisers will provide investment advice that is in the Best Interest of the Retirement Investor;

(2) When providing investment advice to the Retirement Investor regarding the Asset, the Financial Institution and its authorized Advisers will not recommend an Asset if the total amount of compensation anticipated to be received by the Adviser, Financial Institution, Affiliates and Related Entities in connection with the purchase, sale or holding of the Asset by the Plan, participant or beneficiary account, or IRA, will exceed reasonable compensation in relation to the investment features, guarantees, and related benefits of the Asset and the total services they provide to the Retirement Investor; and

(3) The statements of the Financial Institution and its authorized Advisers about the Asset, fees, Material Conflicts of Interest, and any other matters relevant to a Retirement Investor's investment decisions, will not be misleading.

(d) Policies and Procedures. The relief under Section I shall be further conditioned upon the following:

(1) The Financial Institution has adopted written policies and procedures reasonably designed to mitigate the impact of Material Conflicts of Interest and ensure that its authorized Advisers adhere to the Impartial Conduct Standards set forth in Section II(c);

(2) If the Financial Institution or (to the best of its knowledge) any Affiliate or Related Entity pays any form of compensation to Advisers that varies based on the Assets that they recommend, including payouts based upon commissions, trail commissions or 12b-1 fees, ticket charge discounts, awards, or product contests,

and not solely on neutral factors such as the difference in time, effort, and analysis necessary to provide prudent advice, then the written policies and procedures described in paragraph (1) must be reasonably designed to ensure that such Advisers only make recommendations that are in the Best Interest of the Retirement Investor. These policies and procedures must include procedures to mitigate, to the extent practical, the effects of these forms of compensation on an Adviser's choice of Asset, to supervise the recommendations made by those Advisers, to promptly detect possible recommendations that may not be in the Best Interest of the Retirement Investor, and to take prompt and appropriate action concerning any recommendation that is found to have not been in the Best Interest of the Retirement Investor.

(e) Disclosures. The Financial Institution must specifically:

(1) Identify and disclose any Material Conflicts of Interest;

(2) Inform the Retirement Investor that, upon request, the Financial Institution shall furnish the Retirement Investor with a disclosure containing the information described in 29 C.F.R. section 2550.408b-2(c)(1)(iv)(C) as though the Retirement Investor were the "responsible plan fiduciary" under 29 C.F.R. section 2550.408b-2 (c)(1)(viii)(E) entitled to a 29 C.F.R. section 2550.408b-2 disclosure from the Advisor as a "covered service provider" with respect to the recommendation provided to the Retirement Investor and the Plan or IRA were a "covered plan" under 29 C.F.R. section 2550.408b-2 (c)(1)(ii).

(f) Prohibited Contractual Provisions. The written contract shall not contain the following:

(1) Exculpatory provisions disclaiming or otherwise limiting liability of the Financial

Institution and its authorized Advisers for a violation of the contract's terms; and

(2) A provision under which the Plan, IRA or Retirement Investor waives or qualifies its right to bring or participate in a class action or other representative action in court in a dispute with the Financial Institution and its authorized Advisers, provided that the Contract may limit damages to an amount equal to the return an investor would have earned from an investment that was in the Best Interest of the Retirement Investor at the time of the recommendation and the return that the Retirement Investor actually earned, and to preclude the right to rescind any transaction the rescission of which is not otherwise contemplated by federal law.

Section III – Transaction Disclosure Requirements

In connection with any covered transaction described in Section I, the Financial Institution and its authorized Advisers shall furnish to the Retirement Investor information that provides, with respect to each Asset recommended, an investment-related fee and expense disclosure in the form described by 29 C.F.R. section 2550.404a-5(d)(1)(iv).

Section IV – Range of Investment Options

(a) General. The Financial Institution offers for purchase, sale or holding, and the Adviser makes available to the Plan, participant or beneficiary account, or IRA for purchase, sale or holding, a range of Assets that is broad enough to enable the Adviser to make recommendations with respect to all of the asset classes reasonably necessary to serve the Best Interests of the Retirement Investor in light of its investment objectives, risk tolerance, and specific financial circumstances.

(b) Limited Range of Investment Options. To the extent that a Financial Institution limits the Assets available, such that paragraph (a) above is not met, for purchase, sale or holding based on whether the Assets are Proprietary Products, generate Third Party Payments, or for other reasons, the exemption may nevertheless be relied upon, provided that, prior to the Retirement Investors acting upon the investment recommendations, the Adviser or Financial Institution gives the Retirement Investor clear written notice of the limitations placed on the Assets that the Adviser may offer for purchase, sale or holding by a Plan, participant or beneficiary account, or an IRA. Notice is insufficient if it merely states that the Financial Institution or Adviser "may" limit investment recommendations based on whether the Assets are Proprietary Products or generate Third Party Payments, or for other reasons, without specific disclosure of the extent to which recommendations are, in fact, limited on that basis.

(c) ERISA plan participants and beneficiaries. Some Advisers and Financial Institutions provide advice to participants in ERISA-covered participant directed individual account Plans in which the menu of investment options is selected by an Independent Plan fiduciary. In such cases, the Adviser and Financial Institution do not have to comply with Section IV(b) in connection with their advice to individual participants and beneficiaries on the selection of Assets from the menu provided. This exception is not available for advice with respect to investments within open brokerage windows or otherwise outside the Plan's designated investment options.

Section V –Disclosure to the Department and Recordkeeping

(a) Recordkeeping. The Financial Institution maintains for a period of six (6) years, in a manner that is accessible for examination, the records necessary to enable the persons described in paragraph (b)(1) of this Section to determine whether the conditions of this exemption have been met, except that:

(1) If such records are lost or destroyed, due to circumstances beyond the control of

the Financial Institution, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party, other than the Financial Institution responsible for complying with this paragraph (c), will be subject to the civil penalty that may be assessed under ERISA section 502(i) or the taxes imposed by Code section 4975(a) and (b), if applicable, if the records are not maintained or are not available for examination as required by paragraph (b), below.

(b) (1) Except as provided in paragraph (b)(2) of this Section, and notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan that engaged in a purchase, sale or holding of an Asset described in this exemption, or any authorized employee or representative of such fiduciary;

(C) Any contributing employer and any employee organization whose members are covered by a Plan described in paragraph (b)(1)(B), or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan described in paragraph (B), IRA owner, or the authorized representative of such participant, beneficiary or owner; and

(2) None of the persons described in paragraph (b)(1)(B)-(D) of this Section are

authorized to examine privileged trade secrets or privileged commercial or financial information, of the Financial Institution, or information identifying other individuals.

(3) Should the Financial Institution refuse to disclose information on the basis that the information is exempt from disclosure, the Financial Institution must, by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

Section VI – Insurance and Annuity Contract Exemption

(a) In general. In addition to prohibiting fiduciaries from receiving compensation from third parties and compensation that varies on the basis of the fiduciaries' investment advice, ERISA and the Internal Revenue Code prohibit the purchase by a Plan, participant or beneficiary account, or IRA of an insurance or annuity product from an insurance company that is a service provider to the Plan or IRA. This exemption permits a Plan, participant or beneficiary account, or IRA to purchase an Asset that is an insurance or annuity contract in accordance with an Adviser's advice, from a Financial Institution that is an insurance company and that is a service provider to the Plan or IRA. This exemption is provided because purchases of insurance and annuity products are often prohibited purchases and sales involving insurance companies that have a pre-existing party in interest relationship to the Plan or IRA.

(b) Covered transaction. The restrictions of ERISA section 406(a)(1)(A) and (D), and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) and (D), shall not apply to a fiduciary's causing the purchase of an Asset that is an insurance or annuity contract by a Plan subject to Title I of ERISA, participant or beneficiary account, or IRA, from a Financial Institution that is an insurance company and that is a party in interest or disqualified person, if:

(1) The transaction is effected by the insurance company in the ordinary course of its business as an insurance company;

(2) The combined total of all fees and compensation received by the insurance company and any Affiliate is not in excess of reasonable compensation under the circumstances; and

(3) The terms of the purchase are at least as favorable to the Plan, participant or beneficiary account, or IRA as the terms generally available in an arm's length transaction with an unrelated party.

Section VII – Exemption for Pre-Existing Transactions

(a) In general. ERISA and the Internal Revenue Code prohibit Advisers, Financial Institutions and their Affiliates and Related Entities from receiving variable or third-party compensation as a result of the Adviser's and Financial Institution's advice to a Plan, participant or beneficiary, or IRA owner. Some Advisers and Financial Institutions did not consider themselves fiduciaries within the meaning of 29 CFR section 2510-3.21 before the applicability date of the amendment to 29 CFR section 2510-3.21 (the Applicability Date). Other Advisers and Financial Institutions entered into transactions involving Plans, participant or beneficiary accounts, or IRAs before the Applicability Date, in accordance with the terms of a prohibited transaction exemption that has since been amended. This exemption permits Advisers, Financial Institutions, and their Affiliates and Related Entities, to receive compensation, such as 12b-1 fees, in connection with the purchase , sale or holding of an Asset by a Plan, participant or beneficiary account, or an IRA, as a result of the Adviser's and Financial Institution's advice, that occurred prior to the Applicability Date, as described and limited below.

(b) Covered transaction. Subject to the applicable conditions described below, the restrictions of ERISA section 406(a)(1)(D) and 406(b) and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(D), (E) and (F), shall not apply to the receipt of compensation by an Adviser, Financial Institution, and any Affiliate and Related Entity, for services provided in connection with the purchase, holding or sale of an Asset, as a result of the Adviser's and Financial Institution's advice, that was purchased, sold, or held by a Plan, participant or beneficiary account, or an IRA before the Applicability Date if:

(1) The compensation is received pursuant to an agreement, arrangement or understanding that was entered into prior to the Applicability Date;

(2) The purchase or sale of the Asset was not a non-exempt prohibited transaction pursuant to ERISA section 406 and Code section 4975 on the date it occurred.

Section VIII – Definitions

For purposes of these exemptions:

(a) "Adviser" means an individual who:

(1) Is a fiduciary of a Plan or IRA solely by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the Assets involved in the transaction;

(2) Is an employee, independent contractor, agent, or registered representative of a Financial Institution; and

(3) Satisfies the applicable federal and state regulatory and licensing requirements of insurance, banking, and securities laws with respect to the covered transaction.

(b) “Affiliate” of an Adviser or Financial Institution means –

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution. For this purpose, “control’’ means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(2) Any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Adviser or Financial Institution; and

(3) Any corporation or partnership of which the Adviser or Financial Institution is an officer, director or employee or in which the Adviser or Financial Institution is a partner.

(c) An “Asset,” for purposes of this exemption, includes securities, other property, and other financial instruments or arrangements recommended to a Retirement Investor including, in the case of a recommendation that a plan participant or beneficiary or beneficial owner of an IRA acting on behalf of the IRA take a distribution of benefits in a rollover transaction, a rollover IRA vehicle recommended for purposes of accepting the proceeds of such rollover distribution and in the case of a recommendation that a plan participant or beneficiary or beneficial owner of an IRA acting on behalf of the IRA utilize the services of an investment advice or management services provider, the recommendation of such fiduciary services.

(d) Investment advice is in the "Best Interest" of the Retirement Investor when the Adviser or Financial Institution providing the advice acts i) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and (ii) solely in the interest of the Retirement Investor, in each case as such standards are interpreted under Section 404 of ERISA.

(e) "Financial Institution" means the entity that employs the Adviser or otherwise retains such individual as an independent contractor, agent or registered representative and that is:

(1) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 USC 80b-1 et seq.) or under the laws of the state in which the adviser maintains its principal office and place of business;

(2) A bank or similar financial institution supervised by the United States or state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 USC 1813(b)(1)), but only if the advice resulting in the compensation is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by federal or state banking authorities;

(3) An insurance company qualified to do business under the laws of a state, provided that such insurance company:

(A) Has obtained a Certificate of Authority from the insurance commissioner of its domiciliary state which has neither been revoked nor suspended,

(B) Has undergone and shall continue to undergo an examination by an Independent certified public accountant for its last completed taxable year or has undergone a financial examination (within the meaning of the law of its domiciliary state) by the state's insurance commissioner within the preceding 5 years, and

(C) Is domiciled in a state whose law requires that actuarial review of reserves be conducted annually by an Independent firm of actuaries and reported to the appropriate regulatory authority; or

(4) A broker or dealer registered under the Securities Exchange Act of 1934 (15 USC 78a et seq.).

(f) "Independent" means a person that:

(1) Is not the Adviser, the Financial Institution or any Affiliate relying on the exemption,

(2) Does not receive compensation or other consideration for his or her own account from the Adviser, the Financial Institution or Affiliate; and

(3) Does not have a relationship to or an interest in the Adviser, the Financial Institution or Affiliate that might affect the exercise of the person's best judgment in connection with transactions described in this exemption.

(g) "Individual Retirement Account" or "IRA" means any trust, account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in section 408(a) of the Code and a health savings account described in section 223(d) of the Code.

(h) A "Material Conflict of Interest" exists when an Adviser or Financial Institution has a financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to a Retirement Investor regarding an Asset.

(i) "Plan" means any employee benefit plan described in section 3(3) of the Act and any plan described in section 4975(e)(1)(A) of the Code.

(j) "Proprietary Product" means a product that is managed or issued by the Financial Institution or any of its Affiliates.

(k) "Related Entity" means any entity other than an Affiliate in which the Adviser or Financial Institution has an interest which may affect the exercise of its best judgment as a fiduciary.

(l) "Retirement Investor" means –

(1) A participant or beneficiary of a Plan subject to Title I of ERISA with authority to direct the investment of assets in his or her Plan account or to take a distribution, including a participant or beneficiary of a Plan subject to Title I of ERISA sponsored by the Financial Institution or sponsored by a member of its controlled group or a under common control with the Financial Institution as defined in Code section 414(b) and (c) respectively;

(2) The beneficial owner of an IRA acting on behalf of the IRA; or

(3) A fiduciary of a Plan subject to Title I of ERISA, to the extent it acts as a fiduciary with authority to make investment decisions for the Plan.

(m) "Third-Party Payments" mean sales charges when not paid directly by the Plan, participant or beneficiary account, or IRA, 12b-1 fees and other payments paid to the Financial Institution or an Affiliate or Related Entity by a third party as a result of the purchase, sale or holding of an Asset by a Plan, participant or beneficiary account, or IRA.

Amendment to the definition of Fiduciary Advice as a Call to Action

"(f) *Definitions*. For purposes of this section—

(1) "Recommendation" means ~~a~~

(i) A particularized communication that, based on its content, context, and presentation, would reasonably be viewed as a ~~suggestion that the advice recipient engage in or~~ call to take action or to refrain from taking a particular ~~course of~~ action; and

(ii) With respect to a Financial Institution or Adviser that recommends a transaction or investment strategy involving a security or securities, "recommendation" shall have the same meaning as Financial Industry Regulatory Authority (FINRA) Rule 2111 (Suitability) or any successor rule, as interpreted by FINRA.

We further propose that the Department include the following in the preamble to the final regulation:

> With respect to the scope or types of communications that might constitute a "call to action," it is the Department's view that communications that merely inform or educate but do not result in a "call to action" to invest in a particular investment product or pursue a particular investment strategy, would not result in a recommendation. By way of example, descriptions on how an annuity works, what the features are of the annuity and what fees and charges might apply, would not cross the line and constitute a recommendation under the regulation even though the information might relate to proprietary products or services. Another example of education would include an explanation about what options would be available to an employee participating in a 401(k) plan where the employee is separating from employment. In this context, information about the benefits of staying in a plan or rolling over assets to an IRA, the advantages of annuitization or other forms of lifetime income benefits, including

proprietary products and services, would constitute non-fiduciary education under the regulation, absent a "call to action" referencing a specific course of action to be taken.

We believe these proposed modifications would help draw the line between education and fiduciary recommendation and thus open the door for the flow of critical education assistance to plan participants and IRA holders.

ATTACHMENT 6

Hire me as an amendment to fiduciary advice

Our proposed changes to the Best Interest Exemption are premised on there being reasonable changes to the regulation itself. In particular, we expect that there will be clarification regarding the “selling of investment advice services”- as distinguished from the provision of investment advice. Many in the industry commented during the first round of comments on the fact that merely selling investment advice services cannot be a fiduciary act and this concept was discussed as a “hire me” provision during the August hearings. Consistent with DOL guidance under section 408(b)(2), a person must be permitted to advocate for his or her own hiring to provide investment advice, especially in a Request For Proposal or “RFP.” While there are many ways to address this issue, we believe that an appropriate approach would be to provide under section 2550.3-21(a)(iv) new language as shown by the following underlined language:

(iv) A recommendation of a person who is also going to receive a fee or other compensation for providing any of the types of advice described in (i) through (iii); ~~and~~ <u>provided however, that a recommendation of one’s self, one’s employer, or an affiliate to provide any of the types of advice described in (i) through (iii) or to provide investment advisory or management services, through a response to a request for proposals or any other urging, shall not be deemed the provision of investment advice.</u>