A·C·L·I AMERICAN COUNCIL OF LIFE INSURERS
FINANCIAL SECURITY FOR LIFE

GREGORY F. JENNER
EXECUTIVE VICE PRESIDENT, TAXES & RETIREMENT SECURITY

ANN B. CAMMACK
SENIOR VICE PRESIDENT, TAXES & RETIREMENT SECURITY

NICHOLAS S. CURABBA
SENIOR COUNSEL, PENSIONS

September 19, 2006

FILED ELECTRONICALLY

U.S. Department of Labor
Employee Benefit Security Administration
Office of Regulations and Interpretations
200 Constitution Avenue, N.W.
Room N-5669
Washington, D.C. 20210

Re: Proposed Revisions of Annual Information Return/Reports; RIN 1210-AB06

To Whom It May Concern,

Please accept these comments from the American Council of Life Insurers ("ACLI"), with regard the Proposed Revision of Annual Information Return/Reports published in the Federal Register on July 21, 2006 by the Departments of Labor and Treasury, and the Pension Benefit Guaranty Corporation ("Proposed Revisions"). The ACLI is the primary trade association of the life insurance industry. Our 377 member companies account for 91 percent of the life insurance industry's total assets in the United States and offer life insurance; annuities; pensions, including 401(k)s; long-term care insurance; disability income insurance; reinsurance; and other retirement and financial protection products to millions of Americans.

As the Department of Labor ("the Department") knows, the ACLI has been supportive of your goal of requiring more extensive informational disclosures to plan fiduciaries from service providers. As some of the most significant service providers in the market, ACLI member companies are keenly interested in making certain that their clients – plan sponsors and fiduciaries – have before them accurate and complete information. That is why we have worked closely with other trade associations representing plan sponsors and others in the financial services industry to develop a compliance tool to be used in discussion between fiduciaries and services providers.

As an industry, insurers have also worked diligently and at no small expense to update internal tracking and accounting systems in order to comply with the Department's recent guidance regarding information that is required to be reported on Schedule A of the Form 5500. Indeed, the ACLI provided the Department with information on current types of compensation practices prevalent in the insurance industry and asked for clarification of how disclosure of those practices should be accomplished. Following the release of that guidance,[1] ACLI members set about the task of significantly reconsidering current information gathering and reporting practices to comply with the Department's interpretation of Schedule A reporting obligations. While precise figures are not available, ACLI member companies have informally reported that millions of dollars of expenditures were required as a result of that advisory opinion.

As our actions have made clear, therefore, ACLI members support the Department's initiative on information disclosure, and we look forward to continuing our working relationship with the Department to provide helpful input on current industry practice. Because of our members' interest in and commitment to providing adequate disclosure, we appreciate that Department's effort in providing marked-up copies of both the instructions and the forms, which were helpful as a tool to understand the proposed changes and we appreciate the Department's efforts in this regard.

However, we have very serious concerns with the substance of the Proposed Revisions that we believe must be addressed. In particular, we highlight eight issues of concern that we request the Department to consider:

1. The Department should reconsider the elimination of the limited reporting rule for section 403(b) plans, since we believe that repeal of limited reporting is not justified on the facts, would fundamentally alter the current composition of the 403(b) marketplace and would require the wasteful expenditure of the limited resources available to 403(b) sponsors.

2. The Proposed Revisions should add a requirement for Schedule A that the insurer be directly informed by the plan administrator when the administrator is reporting an insurer's failure to provide information; a similar change should be made to the Schedule C to require notice to the service provider by the plan administrator when the administrator is reporting a failure to provide information.

3. The Proposed Revisions to Schedule C should be clarified so that insurers are able to avoid "double-counting" of compensation information.

4. The Department should reconsider the proposal for reporting on Schedule C, service provider Information, specific types of compensation, such as float income and gift and entertainment expenses.

5. The Proposed Revisions should clarify that the reporting exemptions for pooled separate accounts and common or collective trusts still apply.

6. The Department should consider whether the value of the additional reporting of plan asset data on Schedule B would outweigh the expense of undertaking this additional reporting.

[1] Advisory Opinion 2005-02A.

7. The 2008 effective date does not provide sufficient time for the industry to make all the systems and other process changes necessary to ensure reasonable compliance for the substantial number of plans for which our members provide products and services; we therefore request the Department to delay the effective date of the proposed changes for at least two additional years.

8. The reporting and disclosure requirements imposed on insurers should not be more burdensome than the requirements imposed on other industries. The Proposed Revisions should create a level playing field across industry sectors.

Discussion

1. The Department Should Not Eliminate the Limited Reporting and Disclosure Rule for Section 403(b) Plans.

The Proposed Revisions contemplate a reversal of a decades-old rule that has recognized the structural differences between employer-sponsored pension plans qualified under Code section 401(a) from plans that use as their exclusive funding vehicle(s) tax deferred annuity arrangements under Code section 403(b)(1) and/or custodial accounts under section 403(b)(7) (collectively, "403(b) plans"). We urge the Department to reconsider its proposed revocation of the limited reporting rule for 403(b) plans.

The Department has historically recognized that 403(b) plans should not be subject to the same reporting and disclosure rules as other plans, and has stated in the instructions to the Form 5500 since 1975 that such plans must only "complete Part I and Part II, lines 1 through 5, and 8" of the Form.[2] In information letters in 1996 and 1998, the Department confirmed that 403(b) plan administrators are not required to engage an independent public account pursuant to ERISA section 103(a)(3)(A) and attach the account's opinion to the Form 5500[3], or attach a Schedule A to the Form 5500.[4]

In 2000[5], the Department finalized regulations that codified its position on the filing obligations of 403(b) plan administrators. Those regulations were promulgated under section 110 of ERISA, which authorizes the Secretary to create alternative filing methods, provided the Secretary determines:

(1) that the use of an alternative method is consistent with the purpose of ERISA and that it provides adequate disclosure to the participants and beneficiaries of the plan, and adequate reporting to the Secretary,

(2) that compliance with the full reporting and disclosure obligations would increase the costs to the plan, or impose unreasonable administrative burdens with respect to

---

[2] Instructions to the 2006 Form 5500.
[3] Information Letter to Gary H. Friedman, November 15, 1996.
[4] Information Letter to Theresa Lensander, CPC, QPA, January 12, 1998.
[5] 29 CFR 2520.104-44, 65 Fed. Reg. 21068, April 19, 2000.

the operation of the plan, having regard to the particular characteristics of the plan or type of plan involved; and

(3) application of the full reporting and disclosure obligations would be adverse to the interests of the plan participants in the aggregate.

None of the conditions that justified the Department's creation of the limited reporting rule under ERISA section 110 have changed. Looking to those same standards, we believe that continuation of the limited reporting rule remains consistent with the purposes of ERISA and allows adequate disclosure to plan participants and adequate reporting to the Secretary. Moreover, elimination of the limiting reporting rule for 403(b) plans will increase the costs to those plans, impose new administrative burdens with respect to the operation of 403(b) plans, do not promote the interests of 403(b) plan participants and beneficiaries and may indirectly be adverse to their interests by serving as a disincentive to plan sponsors to continue to maintain such plans, or requiring reduction in contribution levels to provide benefits to participants to offset increased costs of expanded reporting. In addition, we do not see the value for making such a dramatic change to a long-standing rule on which plans have relied since the first Form 5500 was made available in 1975.

a. Consistency with ERISA. The current limited disclosure rules for 403(b) plans recognize the balance that Congress struck in enacting ERISA between requiring plans to disclose and report on its financial matters and encouraging the continued sponsorship of voluntary, employer-sponsored plans. In particular, sponsors of ERISA-covered 403(b) plans, by statutory definition, are plans covering employees of tax-exempt entities established for religious, charitable, scientific, public safety, literary, educational, or other similar purposes that do not have large budgets for non-core operations. In addition, by virtue of their tax-exempt nature, 403(b) plan sponsors do not have same tax incentives to sponsor retirement plans for their employees, and are less likely to continue doing so if the cost or burden of doing so outweighs the benefit they and their employees receive through the plan. Such a result is not consistent the ERISA's purpose of encouraging continued plan sponsorship.

b. Adequate Disclosure to Participants, Beneficiaries and Secretary. Under the current limited reporting rule, participants and beneficiaries of 403(b) plans and the Secretary are able to obtain information detailing basic plan information such as the plan sponsor's name, administrator's names, and contact information. The information available from the Form 5500 is sufficient for plan participants and beneficiaries to learn where and from whom they can obtain additional information, if needed.

Apart from the information that is available on the Form 5500, 403(b) plan participants and beneficiaries receive much more detailed information directly from plan sponsors and plan vendors, such as prospectuses or prospectus-like disclosures required under state insurance laws or federal securities laws and regulations. Additional information that may duplicate information provided in other forms has the potential to overwhelm or confuse participants.

We believe the current Form 5500 reporting by 403(b) plans also permits the Secretary to gather sufficient information about the identity and location of ERISA-covered 403(b) plans. Such information can be used in conjunction with the Secretary's investigative authority under ERISA section 504 to "make an investigation," and "enter such places, inspect such books and records and question such persons" to determine if a violation of ERISA has occurred or is occurring. If the Department receives a complaint from a 403(b) participant or is otherwise informed of an alleged violation of ERISA, there are sufficient tools at its disposal to uncover and remedy such violation. By proposing the elimination of the limited reporting rule, the Department is suggesting that non-profit entities established for religious, charitable, scientific, public safety, literary or educational purposes are in a better position than the federal government to absorb the costs of ensuring compliance with ERISA. We see no reason to shift the burden of information gathering in that way.

c. Expense and Administrative Burdens. The administrative burdens associated with elimination of the limited reporting rule would be severe. Sponsors of many 403(b) plans will need to hire additional staff and increase information technology budgets in order to comply. In particular, the expense of engaging an independent qualified public accountant ("IQPA") to conduct a financial examination of the plan's financial statements would outweigh any benefit that would be gained by such an exercise. As discussed in more detail below, 403(b) plans have an inherently different architecture from typical plans qualified under Code section 401(a). For instance, since 403(b) plans can only be funded with annuity contracts and/or registered investment company stock held in custodial accounts, it is unclear what useful information would be yielded by such audits. We urge the Department to consider that the costs associated with gathering and reporting information of such limited utility could have an adverse impact on continued sponsorship of 403(b) plans.

d. Harm to Participants. The added costs associated with elimination of the limited reporting rule for 403(b) plans would be borne by plan participants and beneficiaries either directly by a deduction from individual accounts or contracts, or indirectly because the added cost will cause plan sponsors to restrict the investment options available under the plan.

e. Unclear Justification. The preamble to the Proposed Revisions recounts certain "developments (that) warrant a reexamination of the continued reporting exemptions for Code section 403(b) plans."[6] Those "developments" referred to by the Department are: (i) a growth in size and number of 403(b) plans; (ii) the "increasing similarity" of section 403(b) plans with section 401(k) plans; and (iii) "compliance issues" with section 403(b) plans.

(i) Size and Number of 403(b) Is Not Relevant. The Department does not offer a rationale for connecting the elimination of the limited reporting rule to the size and number of 403(b) plans. As noted above, there are several factors under ERISA section 110 that the Secretary must consider when making a determination about alternative methods of

[6] 71 Fed. Reg. 41619.

compliance with a plan's reporting and disclosure obligations. The number of 403(b) plans in existence does not appear among those factors Congress thought important to consider, and consistent with that statutory directive the Department did not base the limited reporting rule on the size or number of 403(b) plans in existence at the time.[7]

(ii) Important Distinctions Between 403(b) Plans and Other Defined Contributions Plans Justify Continuation of the Limited Reporting Rule. The Department also asserts that the "growing similarity" between 403(b) plans and 401(k) plans warrants the elimination of the limited reporting rule for 403(b) plans. Indeed, there are some similarities between the two types of plans, but there are also several important distinctions between 403(b) plans and other types of plans that bear directly on the plan administrator's ability to track, gather, compile, and report and disclose the information necessary to complete a Form 5500. For instance, 403(b) plans are generally comprised of individually owned contracts, and are not a collective pool of assets held in trust for the benefit of participants as is the case for 401(k) plans.

The architecture of a 403(b) is another important distinction from a typical 401(k) plan. In general, 403(b) plans are not comprised of a single product vendor who provides the investment vehicles for plans. Unlike the typical 401(k) plan, most 403(b) plans are made up of multiple trading platforms which utilize several vendors and/or multiple custodial arrangements provided by unrelated financial institutions. Whether the 403(b) plan is funded with annuity contracts or registered investment company stock held in custodial accounts, the financial institutions providing investment products to 403(b) plans are already heavily regulated under state law. Layering additional regulation on these plans would defeat the policy goal of encouraging tax exempt entities to sponsor retirement plans. Moreover, coordination and collection of information from these multiple sources will make completing a full-blown Form 5500 exponentially more burdensome for 403(b) plans than it is for 401(k) plans.

Another important distinction between 403(b) plans and 401(k) plans is eligibility. The 403(b) plans that are covered by Title I of ERISA are limited to employees of employers that are tax-exempt entities under section 501(c)(3). As noted above, these are non-profit entities established for religious, charitable, scientific, public safety, literary or educational purposes that do not have large budgets for non-core operations. Many of these entities would not, but for the nature of 403(b) plans, provide retirement savings plans to their employees. Increasing the administrative burdens on these plans through more extensive reporting and disclosure requirements than are even required from 401(k) plans sponsored by for-profit corporations, will have the effect of reducing the retirement security of individuals devoted to working for the common good.

---

[7] Even if the number of plans in existence was a relevant factor, contrary to the Department's assertions, the number of ERISA-covered 403(b) plans has remained flat in recent years. According to the most recent information compiled by the Department, there were 16,784 ERISA-covered 403(b) plans in 1998 and 16,309 in 2002, a **decrease** of 475 plans.

(iii) We Disagree With the Department's Suggestion that 'Compliance Issues' Justify the Rule Change. The preamble to the Proposed Revisions also suggests that "compliance issues" warrant more extensive reporting and disclosure obligations. We find the Department's statement that it has "detected violations of Title I (of ERISA) in a high percentage of its Code section 403(b) plan investigations" to be misleading. Since a "major source of enforcement leads"[8] is participant complaints and inquiries lodged with the Department, it is utterly unsurprising that a "high percentage" of EBSA investigations would result in the detection of a violation.

The same can be said for investigations of all types of plans in a complaint-driven investigatory regime. Indeed, according to the Department's own statistics, more than 75 percent of all of its 3,782 civil investigations that were closed in fiscal year 2005 resulted in monetary recovery or other corrective action,[9] yet there is no suggestion in the preamble that there are wide-spread violations of ERISA taking place in other types of plans. Similarly, there is no reasonable basis to insinuate that "compliance issues" are widespread among 403(b) plans. Such unsupported comments, as well as others that will be discussed below, create a government-endorsed prejudice against the products and services offered by life insurers that we find objectionable.

The Department also makes incorrect statements when attempting to justify the rule change on a cost-benefit basis. The preamble to the proposed revisions notes that under ERISA section 107, "every person who is required to file a report under Title I of ERISA, but for exemption or simplified reporting requirement under section 104(a)(2) or (3), already is required to maintain records on which disclosure would be required "but for the simplified reporting requirement." The implication here is that the added burden to ERISA-covered 403(b) plans will be slight because they are already required to collect and maintain the information on which disclosure would be required. That suggestion is at odds with ERISA's statutory provisions and the Department's own regulations.

ERISA section 107 requires that "every person subject to a requirement to file any report or to certify any information therefor...shall maintain records on ***the matters of which disclosure is required***" (emphasis added). In other words, as a general rule plan administrators do not have to maintain records of information unless they are required to also disclose that information under Title I of ERISA.

Section 107 contains a limited exception to that general rule for plans that "would be subject to such a (reporting or certification) requirement but for an exemption or simplified reporting requirement under section 104(a)(2) or (3)" of ERISA. Plans subject to those simplified reporting requirements are nonetheless required to maintain the records they would be required to disclose, but for their special reporting rule. The flaw with the Department's reasoning is that the simplified reporting requirement under ERISA section 104(a)(2) or (3) simply does **not** apply to 403(b) plans.

---

[8] "EBSA Achieve Total Monetary Results Exceeding $1.7 Billion," U.S. Department of Labor, Employee Benefits Security Administration, January 2006, posted at http://www.dol.gov/ebsa/newsroom/fs2005enforcementresults.html

[9] Id.

Authorization for the limited reporting rule for 403(b) plans is found under section 110 of ERISA, which notably is not referred to in the limited exception to section 107's record-maintenance rule. Rather, as was discussed above, ERISA section 110 provides the Secretary with authority to prescribe an alternative method for meeting any requirement of the reporting and disclosure provisions of ERISA, provided there is a determination that application of the requirements would increase the costs to the plan, or impose "unreasonable administrative burdens" that would be adverse to the interests of the plan participants in the aggregate.

The practical implications on the suggestion in the Department's preamble that 403(b) plans are already required to maintain records on which disclosure would be required but for their simplified reporting requirement are potentially vast. Without correction or clarification, the Department's suggestion in its preamble will lead to confusion regarding 403(b) plan administrators' obligations. The statement in the preamble will also likely be cited by EBSA field offices as guidance from the National Office regarding 403(b) plans' record maintenance requirement, making exceedingly more expensive and time-consuming a defense of a plan audit or investigation.

2. Proposed Revisions to Form 5500 Schedules A and C to Report Failures To Provide Information.

The Proposed Revisions also contain revisions to the Schedule A of the Form 5500. Under ERISA section 103, insurers are required to transmit and certify information to plan administrators necessary to complete the Schedule A, which generally discloses the compensation paid to insurance brokers and agents in connection with the sale of insurance related products to plans. Among the changes was the addition of text that allows a sponsor to notify the Department of any insurer that fails to provide information necessary to complete Schedule A.

We request the Department refrain from imposing any mechanism for allowing plan sponsors identify alleged failures to report information needed for Schedule A. Such a mechanism presents a serious potential for misreporting by plan sponsors or their service providers who do not understand an insurance product or have some unrelated grievance with an insurer. Such are better handled between the insurer and their client directly. The Department can follow and review any such situation if it deems necessary. If the Department insists on retaining the mechanism, we suggest that the Department require plan administrators who report that they did not receive information to send notice of that fact to the insurer.

Similarly, the proposed Schedule C includes a section for plan administrators to report service providers who did not provide needed information. Unlike Schedule A, which requires reporting of what was not provided, there is no such requirement for Schedule C. We advocate making Schedule C consistent with Schedule A in requiring the plan administrator to specify the information not provided. In addition, as we suggest for Schedule A, adding a requirement that the plan administrator notify the service provider of the reporting of missing information will best help all parties achieve better reporting compliance.

3. The Department Should Clarify That Certain Compensation Information Will Not Be Double-Counted.

Proposed revisions to Schedule C of the Form 5500 would require for the first time, disclosure and reporting of direct and indirect compensation, including commissions, earned by service providers to employee benefit plans. There are numerous potential issues that may arise under the Proposed Revisions to Schedule C, not all of which may be identified by practitioners, and we will make every effort to identify and communicate additional issues of concern to the Department as they come up.

As a general matter, however, we are concerned that certain compensation information currently required to be disclosed on the Schedule A not also be required to be reported on the Schedule C. This kind of double counting will artificially inflate the reported cost of insurance products and will provide misleading information to plan sponsors, participants and beneficiaries, and the Department. While our understanding is that overlapping information need not be disclosed on two separate Schedules, we believe a clarification to that effect would be helpful.

4. The Department Should Consider Problems with Specific Types of Compensation.

The Department should consider problems for service providers in reporting specific types of compensation and the corresponding benefit. These compensation types include, but are not limited to, the following:

a. Investment Float. Four years ago, the Department effectively required service providers to provide written "float" policies to ERISA plan customers that describe how float arises and information to allow the customer to determine the reasonableness of float retained by the service provider. It is unclear why the Department believes it is necessary now to provide more information. ACLI members generally do not capture float at a plan level basis and report that the amount of float is typically low for any individual plan and, in any event, under the control of the customer (e.g., float may be earned when a customer transmits funds without complete partieipant information). One ACLI member reports the need to change five different computer systems to allocate float income at the plan level. Among the changes, the systems would need to identify how and when a service provider received plan contributions, distinguish ERISA plans from other plans, calculate the daily interest rates and store the amounts calculated.

b. Gift and Entertainment. Many ACLI members capture gift and entertainment information on a per recipient or per event basis but not on a basis that allocates any gift or entertainment to a particular plan. Major policy and system changes would be necessary to accommodate allocation of this information to particular plans, particularly for events involving multiple clients. ACLI requests that the Department establish reasonable de minimis reporting thresholds for entertainment (*e.g.*, dollar amounts per event and maximum number of events per year).

5. <u>The Department Should Clarify That The Proposed Changes For Service Provider Information Do Not Change the Annual Reporting Exemption For Pooled Separate Account and Common Or Collective Trusts.</u>

Historically, plans have not been required to include in their annual report information on the individual transactions of pooled separate accounts and common or collective trusts, regulations CR 29 2520.103-3 and CR 29 2520.103-4. The structure and operational set-up of these pooled investment funds were not designed to provide such information.

By imposing greater disclosure of service provider compensation, the Department has put into question whether such disclosure is required for pooled investment funds. As a change to these exemptions is not mentioned in either the preamble or the proposed revisions, it is our understanding that existing exemptions will continue to apply. We strongly urge the Department issue a clarification to that effect.

6. <u>The Department Should Consider Whether the Proposed Changes For Plan Asset Reporting On Schedule B Will Provide the PBGC With Meaningful Data At Reasonable Expense.</u>

Providing plan asset information has always been an important function of Form 5500 reporting. Extensive plan asset information is currently reported on large plans. The plans report general asset information on Schedule H and information on individual holdings on supplemental schedules. Certain pooled investment funds (Direct Filing Entities or "DFEs") separately report their holding via their own 5500 filings. Given all the data currently reported, we request that the Department refrain from imposing an additional reporting requirement until it explains why the Department cannot provide the PBGC with sufficient information to "estimate the impact of economic change on the financial status of plans it insures." To that end, we recommend that a study be done to see if the plan asset data currently provided can support the *estimates* the PBGC is looking for.

The proposed changes require that a plan must "look through" pooled investment funds to categorize plan assets by class. Historically, plans have never been required to do so and do not have the necessary information to do so. The Department has, from the beginning, recognized that the underlying assets and activities of pooled investments are of little value for reporting on the state of plans. We ask that the Department explain the need for this additional information reporting burden.

Further, the asset categorization proposed asks for differentiating debt holdings by investment grade and high-yield. Such categorization is required nowhere else on Form 5500 filings. We request that the Department explain the value of such reporting given the additional cost.

Finally, the proposed revisions ask for a Macaulay Duration to be determined. Although the proposed form mark-up asks for a percentage (%), the Macaulay Duration is measured in years. We do not understand the value or use for this measure. Some ACLI member companies report that Macaulay Duration is generally no longer employed as a valid measure of debt instruments' interest sensitivity. The calculation of Macaulay does not take into account the likelihood that a debt will not deliver on its expected cash flow, due to refinancing, calls, etc. We request that the Department explain the value of adding this determination to the administrative burden on defined benefit plans.

7. The Department Should Delay the Effective Date the Proposed Revisions For At Least Two Additional Years.

As the forgoing comments suggest, there are significant concerns with the substance of Proposed Revisions. Rapid finalization of the Proposed Revisions would cause a substantial disruption in the way plan administrators and service providers collect necessary information and prepare Form 5500s. The industry is faced with implementing changes from the enactment of the Pension Protection Act, which is arguably the most sweeping change to pension law since the enactment of ERISA. Complying with the new statutory mandates will require a significant expenditure of time and resources. Even with the proposed delayed effective date of 2008, there would not be adequate time to incorporate all of the changes into internal tracking systems. We therefore request a delay in the effective date for at least two additional years.

In particular, the proposed changes for Schedule C represent a major change from prior reporting. As such, it will require major changes in the way service providers keep and maintain their business records. We anticipate that service providers will need to revamp their business processes, their reporting processes, and numerous computer systems. We have serious concerns about the ability of major service providers to comply with the proposed changes on a timely basis.

The proposed changes represent a major change to the business models of service providers. Significant time will be needed just to analyze the effect on business and supporting systems, before programming can even begin. Since some of the information proposed to be reported has never been captured before in the reporting systems, programming changes will have to include changes to multiple, not necessarily compatible, systems to allow data feeds to be delivered consistently. The interconnectivity between multiple systems combined with the reporting detail required are major changes which must be carefully developed. Service providers will need to revamp their business processes and their reporting processes. Significant changes to multiple computer systems will be required. For instance, one member indicates that changes to at least ten major systems may be required. Additionally, new systems may need to be developed and installed.

We ask the Department to take appropriate consideration of the potential disruption that would result from requiring compliance for 2008. Major service providers service their clients through extensive use of information technology that is continually being updated.

Changes are made to enhance business opportunities and, equally important, to maintain legal compliance. Such changes are expensive and require major commitments in staff and budget in advance of the actual time for implementing those changes. Generally, for major service providers, commitments and resources for computer system changes have already been established and committed for the 2007 year. These plans and commitments would need to be totally revised.

An enlightening contrast can be made between the changes needed for electronic filing and the changes necessary for disclosure of service provider compensation on Schedule C. While the effective date for electronic filing and the Proposed Revisions are the same, (*i.e.*, plan years beginning in 2008), the dates that computer system changes must be in place are drastically different. Computer enhancements to support electronic filing must be complete in early 2009 to accommodate electronic filings by sponsors as soon as July 31, 2009, for 2008 calendar year plans. In contrast, computer enhancements to support enhanced disclosure of service provider compensation must be in place by January 1, 2008, in order to permit ongoing collection of information throughout 2008. This is more than 12 months earlier than is required for electronic filing. One member has indicated the proposed changes for Schedule C would require more than 12 months to program and install.

The Schedule C and service provider reporting requirements should be delayed until plan years beginning on or after January 1, 2010. This will allow sufficient time to finalize the regulations, appropriately schedule and allocate resources for making the required systems changes and help the change to electronic filing proceed smoothly.

8. <u>The Reporting And Disclosure Requirements Imposed On Insurers Should Not Be More Burdensome Than The Requirements Imposed On Other Industries</u>.

In several places in the preamble to the Proposed Revisions, the Department makes unsupported statements that can accurately be described as unfair and potentially prejudicial to the insurance industry. For instance, we do not think it responsible for the Department to recite unsubstantiated anecdotal reports of "continuing difficulties" plan administrators have in obtaining Schedule A information as a way to propose regulatory changes, particularly when there are potential criminal sanctions at stake.

We note that 2004 ERISA Advisory Council Working Group on Health and Welfare Plan Reporting, the final report of which is the basis for the statements made in the preamble, received testimony from 10 witnesses. Three private sector witnesses testified about some concerns associated with obtaining Schedule A information from insurers. None of the witnesses appeared to provide hard data to substantiate those allegations, and at least one witness indicated that the "problem" was regulated to a "smaller number" of insurers.

Further, the Proposed Revisions impose greater burdens on insurers when it comes to complying with the requirements of the new Short Form 5500. Despite the fact that small plan sponsors are not required to file a full Form 5500 or complete and attach any of the

Schedules, they are required to collect and maintain information that would be reported on Schedule A, but for their eligibility for Short Form filing.

We do not believe such statements and requirements are helpful, as they appear to create more burdens on the insurance industry than those imposed on other industries. We believe the Department should amend the Proposed Revisions to make clear that no one industry has a higher reporting threshold to meet than any other.

* * *

We appreciate the opportunity to comment on these Proposed Revisions. Because of their scope and breadth, we cannot be certain that all issues of concern have been identified in the short window for comments that was made available, and therefore request an opportunity to supply additional comments to the Department after the September 19, 2006 deadline, if needed. If you have any questions about our recommendations or would like to discuss them further, please do not hesitate to contact us at 202-624-2000.

Very sincerely,

Gregory F. Jenner | Ann B. Cammack | Nicholas S. Curabba