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VIA E-MAIL

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U. S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Proposed Regulations to Increase Disclosure of Fees and Conflict of Interests Affecting 401(k) and Other Employee Benefit Plans

I understand that the Department of Labor will soon be finalizing regulations that will enhance disclosure to fiduciaries of 401(k) and other employee benefit plans to assist them in determining the reasonableness of compensation paid to plan service providers and conflicts of interest that may effect a service provider's performance under a service contract or arrangement. I commend the Department for undertaking this much-needed initiative and have a few comments regarding the proposed regulation. I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries with 37 years experience in defined benefit and defined contribution plan markets. Among other positions, I have headed the Portfolio Strategy Group and the Stable Value Products Group for two major insurance companies.

My first comment is that I believe the required disclosure should be provided through a separate, self-contained document. I believe this is the most effective way to assure that disclosure is not only provided, but that it is properly brought to the attention of the plan's fiduciaries and plan sponsor. The document need not be long, but should clearly be identified as the document providing fee and conflict of interest disclosures required under ERISA. Such fees and conflicts of interest could be summarized in this separate document, while referring the plan's fiduciaries and plan sponsor to other documents for more detailed disclosures. To further assure that these disclosures are not only made, but brought to the attention of the plan sponsor, I strongly suggest that the proposed regulation also be amended to require not only that the fee and conflict of interest disclosures be provided in a separate document, but that this separate document also be signed and dated by both the service provider(s) and the plan's fiduciaries and/or plan sponsor.

Secondly, the proposed regulation, as written, would appear to apply only to new service contracts and arrangements. I believe the regulation should be amended to also require that existing service contracts and agreements need to provide the required fee and conflict of interest disclosures within a

specified period of time after the date that the final regulations become effective. I suggest 12 months as the specified period. Also, I think it would be wise to require that the disclosure document be automatically updated, say every three years, for service contracts and arrangements that have been in effect for that period of time without modification. Such a provision would assure that the plan's service provider(s) carefully review the existing disclosure document, at some reasonable periodicity, to assure that it continues to be complete and accurate. If it is, the document could be simply updated by a written statement that says prior disclosures continue to be appropriate (such statement also signed and dated both by the plan's service provider(s) and plan's fiduciaries and/or plan sponsor).

Finally, with respect to conflict of interest disclosures, I believe the regulation should also require a statement as to whether any disclosed conflict of interest is avoidable or not. If the conflict of interest is avoidable, the service provider should explain why it intends to provide its service in a manner which creates a conflict of interest. An example may be helpful here. Consider a 401(k) plan's bundled service provider that offers a series of target date funds that may invest in a large number of mutual funds, which provide varying amounts of 12b-1 fees to the bundled service provider. Further consider that the bundled service provider, or its affiliate, also determines that actual allocation of mutual funds for each target date fund. This situation clearly creates a conflict of interest since the bundled service provider can directly affect its compensation by allocating more money to mutual funds with higher 12b-1 fee reimbursements. The conflict of interest, however, is not unavoidable. For example, the conflict of interest could be eliminated by using an independent advisor to determine each target date fund's asset allocation; or perhaps the conflict of interest could be eliminated by setting a specific amount of 12b-1 revenue required for each target date fund, and refunding/charging the plan for any excess/shortfall resulting from the actual asset allocations employed for each target date fund.

WAMA greatly appreciates the opportunity to provide these comments. If the Department is interested in discussing any of the above in greater detail, or if WAMA can be of any further assistance, please either call me at (860) 306 – 9205 or e-mail me at jake.auger@wamallc.com.

Respectfully submitted,

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