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

August 30, 2010

Dear EBSA:

The interim final rule released July 16, 2010 under Section 408(b)(2) of ERISA is an improvement over the proposal of a couple years ago. However, I am writing to request that the final final rule include definitions of, or examples of recordkeepers who are platform providers because this is critical in determining the required disclosures. The interim final rule says a recordkeeper is what I will call a category B covered service provider *"if one or more designated investment alternatives will be made available (e.g., through a platform or similar mechanism) in connection with such recordkeeping services"*. The reality of the marketplace is that recordkeepers who provide services to daily valued participant directed plans place trades initiated by participants in the plan's designated investment alternatives through an investment platform. How could they not? In our specific case, the majority of our plans use 1 platform offered by a third party not related in any fashion to us. We do not require the use of a specific platform and work with at least 3 others. However, when we make a proposal to a prospective client, it normally includes the services of our most common platform provider. There are basically no restrictions on the funds that a plan using that platform or any of our others can use. The funds are chosen by the plan fiduciary, normally in consultation with an outside investment advisor. We are in no way involved in the selection of investments. Therefore, is this type of situation, which is not uncommon, one in which we are a recordkeeper who must provide investment related disclosures to the responsible plan fiduciary?

If the focus is on, as the preamble notes, *"recordkeepers and brokers that offer, **as part of their contract or arrangement**, a platform of investment options, or a similar mechanism, to a participant directed individual account plan"*, then I don't believe we would be such a provider. The agreement we have with clients does not require the use of a specific platform and in fact the platform is not even addressed in the agreement because we do not view it as a service we are providing. That may be enough. However, the preamble goes on to say *"This category also encompasses service providers who provide recordkeeping or brokerage services that include designated investment alternatives independently selected by the responsible plan fiduciary and which are later added to the covered plan's platform."* That is a much closer description to our situation and the situation of many other independent recordkeepers. We could certainly make explicit in our agreements that we are not offering as part of the agreement a platform of investment options which would make us a covered service provider under Section 2550.408b-2(c)(1)(iii)(A)(2). However, just because we say it is so does not necessarily make it so.

Perhaps the rule is looking for recordkeepers who require the use of a designated investment platform as a condition of providing services. Such investment platform may also perhaps be related in some fashion to the recordkeeper. In that case requiring such a recordkeeper to provide the investment disclosures would not likely be too difficult. However, in our case, being required to provide disclosures on investment options we have no input on, would require significant additional expenditures for tracking, delivering,

etc. the required information. It would also be difficult to provide such information "reasonably in advance of the date the contract or arrangement is entered into" because as a recordkeeping and document provider, we normally enter into a service agreement before the investment options are even determined.

In almost all cases we do receive indirect compensation for our services, which certainly makes us what I will call a category C covered service provider, with all the disclosures that go along with that. However it would not require us to make the investment disclosures.

We applaud the concept of the rule and believe that it will likely enhance our position in the marketplace. Compliance is very important to us and we have always and will always be completely open with our fee disclosures. With some additional guidance we will be sure that we are fully compliant. Thank you for your assistance.

Sincerely,

Tom Mills
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