DALBAR
The Measurement of Success

January 24, 2007

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

Attn: 401(k) Plan Investment Advice RFI (Certification)

E-mail to e-ORI@dol.gov

Ladies and Gentlemen:

This letter addresses the certification aspects of the request for information relating to 401(k) Plan Investment Advice (RFI). There is a separate comment letter addressing the disclosure aspects of the RFI.

DALBAR and Zacks IFE appreciate the opportunity to submit comments in response to the request for information relating to the requirements in the new provisions that a computer model which serves as the basis for an eligible investment advice arrangement be certified as meeting specific criteria.

These comments are intended to assist in the development of regulatory guidance and in the assessment of economic costs and benefits relating to ERISA:

1) Section 408(g)(3)(C)(i) that requires that an "eligible investment expert" must certify computer models, in accordance with rules prescribed by the Secretary. (Certification Requirements)

2) Section 408(g)(3)(C)(ii) that permits the Secretary to prescribe regulations, which provide guidance regarding "material modifications" to a computer model that also require certification. (Re-certification Standards)

3) Section 408(g)(3)(C)(iii) that permits the Secretary to establish requirements that a person must satisfy in order to qualify as an "eligible investment expert". (Expert Qualifications)

SUMMARY OF COMMENTS

Comments are provided in the following sections:

- Participant Behavior Segments: Participants in a given plan fall into four segments each requiring different support: Self Supported, Computer Centric, Personal Adviser and Uninvolved.

- When Certification Is Required: Lack of definition of when a certified computer model is required will lead to failure to use or, alternatively, excessive use depending on the interpretation.

- Selection Bias: Selection of eligible investment expert can be used to undermine the intended protections unless there is regulation to prevent "shopping" for an expert.

- Certification of Delivery Method: Delivery of advice from a computer model using phone center representatives can materially affect consistency, bias and reliability of advice provided.

- Certification of Permitted Variables: External variables such as data about investments can bias the results of an otherwise unbiased model.

- Certification Requirements: Suggested certification requirements that comply with section 408(g)(3)(C)(i).

- RE-certification Standards: Suggested standards for what constitutes "material modifications" referenced in section 408(g)(3)(C)(ii).

- Expert Qualifications: Suggested qualifications requirements for an "eligible investment expert" referenced in section 408(g)(3)(C)(iii).

- Specific Answers: Response to five specific requests for information.

- Appendix containing procedures and information required to address each requirement of a computer model as described in ERISA section 408(g)(3)(B).

ABOUT DALBAR

DALBAR was founded in 1976 and has served as the independent expert to financial firms in several areas of business. Financial firms use DALBAR for its unbiased ratings and evaluations and consultation in their pursuit of excellence. DALBAR measures and evaluates how well investors are served, consistent with various financial regulatory requirements in the areas of:

- Technology (Web based, Automated phones, e-business)

- Phone Centers (Service and sales)

- Written Communications (Required disclosures, sales materials, education materials)

- Personal Financial Advice (Due diligence and certification of advisers)

Financial services firms recognize DALBAR's evaluations, recommendations and awards as standards of excellence in these areas.

ABOUT ZACKS IFE

Since 1978, the Zacks group of companies have helped financial service firms avoid self-dealing and institutional bias by providing third party research and consensus earnings estimates.

Zacks IFE, an Independent Financial Expert as described in U.S. Department of Labor directives on advice and 401(k) managed accounts, was founded in anticipation of the Pension Protection Act¹s clarification of "autopilot" investing in defined contribution plans. Zacks IFE is an independent allocator for ERISA 3(38)-compliant customized lifecycle strategies, demographic-adjusted balanced accounts, and managed accounts.

The firm also provides audit services for computer-generated proprietary advice programs, as required in Section 601 of the Act.

PARTICIPANT BEHAVIOR SEGMENTS

Methods of financial decision-making vary greatly in any large group, such as participants in a retirement plan. Regulatory guidance must reflect the varying needs if the guidance is to serve the different behavior segments.

The computer model serves one of these behavior segments but regulation should encourage the use of all tools that are essential to the other segments to co-exist in the same plan. Additionally, participants shift from one behavior segment to another over time. The regulation should also recognize these continuous shifts as participants advance through stages in employment and their personal situations change. The primary behavior segments are:

- Self Supported: This may be the smallest segment and includes participants that conduct their own research and analysis. This group makes investment decisions independently and does not rely on the plan sponsor or provider.

- Computer Centric: This is a larger segment than Self Supported and is likely to grow as computer solutions become more widely adopted in years to come. This segment is willing and able to enter highly sensitive personal information into a computer and then act on the advice that the computer provides. A fiduciary adviser that qualifies under ERISA section 408(g)(3), using a computer model best serves this segment of participants.

- Personal Adviser: This is the next to the largest segment and requires personal interaction with an investment professional. This segment includes a high concentration of pre-retirees and participants with complex financial situations. A fiduciary adviser that qualifies under ERISA section 408(g)(2)(i) best serves this segment of participants.

- Uninvolved: This is the largest segment of participants and consists of a high concentration of participants that are more than a decade from retirement. The Qualified Default Investment Arrangement under ERISA section 404(c)(5) best serves this segment.

WHEN CERTIFICATION IS REQUIRED

The language of ERISA section 408(g)(2)(i) (referring to fees and compensation that "do not vary depending on the basis of any investment option selected") is subject to various interpretations when applied to existing compensation arrangements. Further definition is required to avoid undesirable outcomes of several different subjective interpretations.

These interpretations will lead to two undesirable outcomes:

- Unqualified advisers that should be required to use a certified computer model will avoid the cost and complexity and rely on lack of definition in 408(g)(2)(i), thus requiring enforcement action.

- Highly qualified advisers that are capable of delivering advice under 408(g)(2)(i) will not provide the service out of concern that the computer model restriction may apply to them.

Areas of Concern

- When does the possibility of variance in fees become sufficiently material to require the computer model defined in ERISA section 408(g)(3)?

   > An example of this concern exists with advisers that earn uniform fees based on assets that are managed but earn no fee for company stock in the plan.

   > Does this mean that the adviser must use a computer model?

   > Another example is the adviser in a large firm where the firm has a separate revenue sharing arrangement with an investment manager.

   > Is the individual adviser required to use the computer model if this revenue sharing arrangement has no material effect on that adviser's compensation?

   Solution: The suggested solution is to define a level of variance that is considered material for purposes of 408(g)(2)(i). The level of variance that is considered material (Materiality) should be inflation adjusted, starting from $1,000 in 2007. This Materiality should be tested each year, based on the assets in the plan that can be influenced by the fiduciary adviser.

- When is an adviser affiliation sufficiently close to require the computer model defined in ERISA section 408(g)(3)?

An example of this concern is the situation where an adviser uses a broker/dealer for clearing and custody services but the broker/dealer receives compensation from investment managers, based on assets held by the firm.

Is this adviser required to use a computer model under ERISA section 408(g)(2)(ii)?

Solution: The suggested solution is to define an affiliate of a fiduciary adviser as an entity in which the adviser has a material interest (more than 5%).

- Is it necessary to certify computer models that are already in use to ensure they meet the standards specified in ERISA section 408(g)(3)?

    An example of this is the use of a third party computer model that is used in conjunction with a phone center. Under these arrangements, plan providers have the flexibility to vary the controlling variables and use as much or as little of the computer results as desired.

    Is existing advice delivery enabled by previous rulings expected to co-exist with the advice delivery under ERISA section 408(g)(3)? If so, what basis will determine which applies?

    Solution: The suggested solution is to bring all computer modeled advice under the same regulation. This can be accomplished without disruption to businesses by establishing a transition period for computer models in use before the effective date of the new regulation.

These suggestions will address the intended goal of the legislation of limiting the activities of advisers with conflicts of interest to the certified computer model without creating undue restrictions for the independent advisers.

SELECTION BIAS

After thirty years in business of evaluating financial services firms, DALBAR has found that the single most important and difficult aspect of evaluating the computer model will be the cases where the model fails to meet the standards. The business ramifications for the fiduciary adviser will lead to a number of undesirable outcomes if not anticipated and properly handled:

- Disruption of business that is out of proportion to the failure. This business disruption affects the ability of participants to manage investments for the period of disruption.

- Selection of another evaluator that is willing to lower standards. Providers of computer models will disagree with a negative evaluation because of the cost or other disadvantages and will seek other lower cost solutions.

In order to avoid unnecessary business disruption, the eligible investment expert must have procedures in place to assist the applicant in developing solutions to meet required standards.

Without appropriate rules to prevent fiduciary advisers from selecting eligible investment experts with the most lenient standards for certification, it is necessary to establish rules that prevent such selection. While ERISA section 408(g)(3)(C) prohibits eligible investment experts from any material affiliation or contractual relationship with any investment adviser or a related person, this does not prevent the fiduciary adviser from using the most accommodating expert.

In order for certification required by ERISA section 408(g)(3)(C) to be effective and relevant, the rules for engaging the eligible investment expert must prevent selection based on the expert's willingness to certify. This can be accomplished without business disruption by defining a period (such as 180 days) during which deficiencies found the expert must be corrected while the use of the model continues. During this period another eligible investment expert cannot be used to certify the computer model.

CERTIFICATION OF DELIVERY METHOD

Since their introduction, more than ten years ago, computer models for investment advice have had very low usage. Participants and beneficiaries who enroll with a fiduciary adviser are far more likely to act on a face-to-face recommendation than on the results of a computer model. In surveys conducted since 1998, DALBAR found that implementation of computer model results varied from a high of 5% to below 1%.

In response to this low usage certain providers of retirement plans have integrated the computer modeled advice into phone centers, where representatives are instructed to obtain answers from participants and enter the answers into a computer model. Responses from the model are then read to the participant. These phone representatives act as intermediaries to serve the majority of participants who do not choose to use the computer model on their own.

This practice has been highly effective and has increased usage of investment principles by the participants who most need the advice. With the fiduciary protection offered by PPA, the practice of using intermediaries should be encouraged and permitted to increase significantly, but requires appropriate protections for participants.

There are two disadvantages to this intermediary method of delivery that can circumvent PPA requirements in ERISA section 408(g)(3)(B). The first is the exposure to intermediaries altering or fabricating information entered into the computer system. The second is the exposure to intermediaries altering or fabricating what is read back from the computer model's response.

For certification to offer protection from bias, it is necessary to include evaluation of intermediaries that enter information and/or deliver the results from the computer model to the participant. This certification consists of a random selection of telephone calls that will discourage and detect infractions.

CERTIFICATION OF PERMITTED VARIABLES

Certifying the computer model requires that, in addition to the software, the variables that control the computer model's results comply with ERISA section 408(g)(3)(B). While the underlying software is a critical component, the more complex problem is to determine if the variables that control its output meet the five prerequisites.

These variables are controlled at the implementation for each plan sponsor and not by the third party developer of the computer model. The fiduciary adviser has the flexibility to alter the outcome of the model to favor certain investments by changing these variables.

One key variable is the specific characteristics of investment choices. This can vary across different users of the model. If historical data is incomplete or erroneous for an investment option, the likelihood of inclusion will be different. Consistency of information across investment choices is a critical variable in certification.

A second variable is the nature of questions asked of participants. Variations include the language used, sequence of questions and which questions are included in each implementation of the model. If model's question is "What risks are you willing to take" the bias against risks will be high. If the model's question is "Are you comfortable with market fluctuations" the bias against risks will be low. By changing the language of the question the model can create a bias in favor or against equities.

The eligible investment expert must also certify the range of controlling variables that are permitted in any implementation of the model.

CERTIFICATION REQUIREMENTS [ERISA SECTION 408(G)(3)(C)(I)]

The rules for determining if a computer model is certified must be based on the requirements of ERISA section 408(g)(3)(B) and should include:

1) Overall review for compliance with ERISA section 408(g)(3)(B)

2) Tests for:

- Errors and/or malfeasance

- Consistency of controlling variables

3) Comparison to test results from other models (benchmark)

4) Annual review of results produced for re-certification

Further details are provided below in the "Specific Answers" section, item 1.

RE-CERTIFICATION STANDARDS [ERISA SECTION 408(G)(3)(C)(II)]

ERISA section 408(g)(3)(C)(ii) re-certification after material modification is essential for certification to be effective in meeting the standards of ERISA section 408(g)(3)(B). Without re-certification requirements, fiduciary advisers that use computer models would be certified in perpetuity, regardless of changes or demonstrated bias or ineffectiveness of their model.

Material modification, that requires re-certification should be defined by three standards that reflect the realities of the marketplace:

1) Changes to the software, inputs or controlling variables of the computer model.

   The standard for materiality must consist of factors that fiduciary advisers can measure. The suggested standard is the percentage (approximately 5%) of participants likely to be affected by the change. Any other measure of materiality is subject to differences of opinion and potentially to litigation.

2) The passage of time during which circumstances and technology changes and computer models should be updated to remain current. Without this time requirement, fiduciary advisers will be discouraged from making improvements to their computer models that would trigger re-certification.

   The standard for time should be based on the pace of change of technology, regulations and market factors that could change the metrics used in certification. The suggested standard is one year for re-certification.

3) Credible complaints about the effectiveness of the model. This is necessary to address a certified model that fails in some way after certification.

   The standard for complaints should protect against frivolous complaints triggering re-certification. The complaint standard should require evidence of a failure of the model to be presented to the "eligible investment expert", who will determine if withdrawal of certification is appropriate.

EXPERT QUALIFICATIONS [ERISA SECTION 408(G)(3)(C)(III)]

Qualifications for acting as an "eligible investment expert" fall into four broad categories, all of which are required for effective and credible certification. Prospective "eligible investment experts" should be required to provide evidence of:

1) Experience in providing public certifications and managing the challenges that such certifications create. Specifically including experience in handling the failure of a computer model to meet the standards. The "eligible investment expert" should have minimum experience level of five years.

2) <u>Knowledge</u> of the subject area, including industry practices, technology, investment principles, ERISA, PPA and securities laws and regulations. Evidence of this knowledge, such as published papers and reports on these subjects or current credentials that encompass all of these subjects.

3) <u>Tools</u> that are required to make accurate, consistent assessments and provide fair and defensible results. These include the metrics, procedures and technology to conduct controlled tests and objectively compare results. Evidence of availability of such tools are samples of the work products.

4) <u>Independence</u> from conflicts of interest and biases that could cause certification to be questioned. Such conflicts of interest and biases must be material and subject to selection restrictions described earlier. Materiality should be defined as an affiliation or contractual relationship that represents more than 5% of the expert's gross annual income.

Further details are provided below in the "Specific Answers" section, item 2.

SPECIFIC ANSWERS

1. What procedures and information would be necessary and adequate to determine whether a computer model used in connection with an investment advice program satisfies the criteria described in ERISA section 408(g)(3)(B)?

Specific Procedures

(See Appendix for how each procedure applies to ERISA section 408(g)(3)(B), subsections (i) through (v):

- Determine what investment theory forms the basis of the model.

- Assess the general acceptance of the theory based on the level of usage and actual results over several market cycles.

- Determine if theory takes historic returns of different asset classes over defined periods of time into account.

- Test if the actual results from the model is consistent with the theory

- Test whether the model changes the resulting investment advice based on age (life expectancy is inferred), retirement age, risk tolerance, other assets, other sources of income and preferences for certain investments.

- Compare variations to investment advice produced from other models using similar investment theories.

- Determine if criteria are objective and unbiased towards or against any investment option available in the plan.

- Identify what investments available in the plan are offered by the fiduciary adviser or person with material affiliation or contractual relationship with the fiduciary adviser. (Conflicted Investments)

- Determine the compensation differential among Conflicted Investments.

- Test if the model in the preceding year has selected Conflicted Investments with compensation advantage over other investment options in the plan with comparable or superior risk-adjusted returns.

- Examine the investment options that were most often selected and determine if there is a reasonable basis for the high usage. Reasonable basis may include such factors as risk-adjusted returns, employee demographics or other criteria used in investment selection.

Information Required from Fiduciary Adviser:

- Detailed description of theory used.

- Information necessary to access and test multiple iterations of model.

- Criteria used to select investments and compute asset allocation.

- Modifications made to model that could invalidate a preceding certification.

- Disclosure of any material affiliation or contractual relationship between fiduciary adviser and any person associated with offering each investment option.

- All compensation arrangements that exist among these parties.

- Record of investment recommendations made by the model in the past year.

- List of which investment options comprise 50% of selections made by model in the last year.

Information Obtained Independent of Fiduciary Adviser:

- Inventory of generally accepted investment theories.

- Results produced from other models using similar investment theories.

- Investment options available in the plan.

- Risk adjusted returns of each investment option available in the plan.

- Employee demographics.

2. What types (e.g., technological, financial, other) and levels (e.g., educational, professional experience, professional certification) of expertise would be required to determine whether a computer model used in connection with an investment advice program satisfies the criteria described in ERISA section 408(g)(3)(B)?

Experience

- Expertise at performing independent evaluations and certifications with demonstrated ability to deny certification to those applying.

- Experience in developing technology and metrics to uniformly and fairly determine if standards are met.

Knowledge

- Knowledge of Web based technologies for investments… must understand what current industry capabilities are.

- Background in investment practices

- Knowledge of generally accepted investment advice practices.

- Knowledge of ERISA & PPA as they apply to investment advice.

- Knowledge of securities laws and regulations.

Tools

- Technology to evaluate, compare and report results based on standardized metrics.

- Standards for documentation of evaluation results.

- Process to give guidance on improvements that are required to be certified and improvements that are desirable.

- Ongoing industry monitoring to alter evaluation metrics in response to changes in customer needs, technology, industry practices, regulation and unplanned circumstances.

Independence

- Compensation primarily based on independent evaluations… no conflict of interest.

- No direct or indirect affiliation with fiduciary advisers or their affiliates.

3. With respect to currently-available computer models or programs for providing investment advice to plan participants or beneficiaries in the form of asset allocation portfolios comprised of plan investment:

a. What is the process for designing, developing and implementing the computer model/program? What parties are involved, and what are their roles? What hardware and software technologies are used to construct computer model investment advice programs? What direct economic costs are associated with the process for designing, developing and implementing the computer model/program?

No comments offered.

b. What types of modifications are made to the computer model/program after use has begun? Why and how often are the modifications made (e.g., changes in methodology, technology, economy, marketplace, or plan), and how do the modifications affect the investment advice provided? What parties are involved in the modification process, and what are their roles? What direct economic costs may be associated with the modifications?

Types of Modifications

- Technology Changes: Required to continue to support the new technologies that are introduced and changed. These typically occur several times per year.

  Past Example: Support for a new operating system.

- Plan Changes: Changes to investment options available to participants alter the results that computer models produce. These can be expected to occur several times per year as plans served by the computer model add and remove options.

- Improve Efficiency, Usability, Functionality: These improvements increase productivity and reduce costs. These occur several times per year.

- Legislative/Regulatory Changes: These may require changes to computer models. These have typically occurred annually.

  Past Example: Roth 401(k)

- New Investment Products: New investment products with different performance, risks and costs are introduced from time to time. These have occurred approximately every three to five years.

Past Example: Introduction of Exchange Traded Funds.

- New Market Factors: Changes in securities markets can make it necessary to alter computer models. These have occurred approximately every ten years.

Past Example: Change in trade settlement dates.

- Updates to Investment Theories: These occur from time to time as theories are refined and improved.

- Correction of Errors: Errors can be expected to occur after the computer model is in use and correcting these sometimes introduces other errors. These occur most often when other modifications are made.

Effect of Modifications on Advice

- The effect of the modification must be examined on a case by case basis.

Parties Involved in Modifications

- Originator: The need for change can originate from a variety of sources (see above)

- Funding: Provides the funding required to make the change. This often depends on the origin of the need to make the change.

- Implementer: Alters the technology and conducts test of the altered model.

- Approver: The plan sponsor typically approves the changes.

- Communicator: Communicates the model's availability, improvements and benefits as well as instructions for using the modified model.

Direct Economic Costs of Modifications

- Costs can vary widely and are often subject to a return on investment assessment. Modifications are often grouped into a single release to more effectively manage the two major cost factors of modification and disruption.

c. What economic costs and benefits are associated with the use of the computer model/program for providing investment advice, including changes in investment performance and in retirement wealth due to the provision of such advice? What are the indirect costs and benefits, such as impact on markets for financial services, including investment advice services, and impact on financial markets, including demand for and pricing of securities?

Direct Costs of Using Computer Model

- The direct costs are fees that are charged through the plan. These are often bundled within the plan and translate into marginally lower returns for the participant.

Direct Benefits

- The primary benefit is the increased probability of a more comfortable retirement for participants.

  If market patterns of the past are representative of the future, participants will earn more consistent returns. These returns are likely to be higher than participants would earn without the computer model due to the improved behavior caused by the model:

  o Participants are more likely to take risks when guided to do so by the computer model.

  o Investors are less likely to make untimely switches if they rely on the computer model.

Indirect Costs

- The indirect cost is the lost opportunity for higher returns if model is not used, should that prove to be the case.

Indirect Benefits

- Lower liability for the plan sponsor through the relief granted by the Pension Protection Act translates into improved employment stability for the participant.

The aggregate benefits and impact depend on the number of participants who actually implement the model's results, which have been very low historically. Changes in the method of delivery will increase costs but also significantly increases usage. The future impact is unknown.

4. Would the responses to 3.a., 3.b., or 3.c. differ in the case of a computer model/investment advice program intended to satisfy the requirements of ERISA section 408(g)(3)(B)?

- Yes, requirements to satisfy certification will change costs of development and on-going operations.

5. With respect to the Department's development of regulatory guidance, what special considerations, if any, should be made for small businesses or other small entities? Are there unique costs and benefits for small businesses or other small entities?

Small business considerations affect two entities within the requirements of ERISA section 408(g)(3)(B):

- "Fiduciary advisers" that provide computer models (Computer Model Suppliers).

- "Eligible investment experts" that certify computer models.

Computer Model Suppliers

Innovation and improvements to technology often emerge from small businesses. These small businesses are silenced if the cost of entry, set by certification requirements, is high. Computer Model Suppliers that are small businesses have the same cost of certification, as large businesses. With lower income and capital, these small businesses may never enter the market or may be forced to close due to the burden of certification.

This problem could be alleviated if plan assets were used to pay for the certification. This approach would distribute the cost across several plans, thus relieving the burden of the small Computer Model Suppliers.

Eligible Investment Experts

The requirements for credible "eligible investment experts" require a combination of skills that are present in a limited number of organizations. Small businesses with these skills lack the capital for advertising and promotion necessary to be given a fair chance at serving as "eligible investment experts".

A directory of authorized eligible investment experts that is offered by EBSA could alleviate this problem. This directory would include experts that meet the requirements of ERISA section 408(g)(3)(B). EBSA would invite applications from large and small business to provide equal access to all of the best experts.

Thank you for your consideration of these comments in developing the final regulations.

Signed:

      Louis S. Harvey   Michael Case Smith
      President, DALBAR, Inc.   President, Zacks IFE Services

APPENDIX

ERISA SECTION 408(G)(3)(B): PROCEDURES & INFORMATION REQUIRED

In order for an investment advice program using a computer model to meet the requirements of section 408(g)(3), the program must satisfy subparagraphs (B), (C) and (D) thereof. Section 408(g)(3)(B) requires, in particular, that the investment advice provided under the investment advice program must be provided pursuant to a computer model that:

(i) Applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,

> Procedure:

> Determine what investment theory form the basis of the model.

> Assess the general acceptance of the theory based on the level of usage and actual results over several market cycles.

> Determine if theory takes historic returns of different asset classes over defined periods of time into account.

> Test if the application in the model is consistent with the theory

> Information:

> Detailed description of theory used

> Inventory of generally accepted theories

> Information necessary to access and test multiple iterations of model

(ii) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

> Procedure:

> Test if model varies resulting investment advice based on age (life expectancy is inferred), retirement age, risk tolerance, other assets, other sources of income and preferences for certain investments.

> Compare variations to investment advice produced from other models using similar investment theories.

> Information:

> Results produced from other models using similar investment theories.

(iii) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,

Procedure:

Determine if criteria are objective and unbiased towards or against any investment option available in the plan.

Information:

Criteria used to select investments and compute asset allocation.

Investment options available in the plan.

(iv) operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser, and

Procedure:

Identify what investments available in the plan are offered by the fiduciary adviser or person with material affiliation or contractual relationship with the fiduciary adviser. (Conflicted Investments)

Determine the compensation differential among Conflicted Investments.

Test if the model in the preceding year has selected Conflicted Investments with compensation advantage over other investment options in the plan with comparable or superior risk-adjusted returns.

Information:

Disclosure of any affiliation or contractual relationship between fiduciary adviser and any person associated with offering each investment option.

All compensation arrangements that exist among these parties.

Record of investment recommendations made by the model in the past year.

Risk adjusted returns of each investment option available in the plan.

(v) takes into account all investment options under the plan in specifying how a participant's account balance should be invested and is not inappropriately weighted with respect to any investment option.

Procedure:

Examine the investment options that are most often selected and determine if there is a reasonable basis for the high usage. Reasonable basis may include such factors as risk-adjusted returns, employee demographics or other criteria used in investment selection.

Information:

List of which investment options comprise 50% of selections made by model in the last year.

Employee demographics.