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VIA ELECTRONIC MAIL: e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Attn: Revision of Form 5500 (RIN 1210-AB06)

Re: Proposed Revision of Annual Information Return/Reports

Dear Madam/Sir:

This letter responds to the request by the Department of Labor (the "Department") for comments regarding the proposed revisions to the Form 5500 Annual Return/Report ("Form 5500") and the proposed new Form 5500-SF Short Form Annual Return/Report, which are filed for certain employee pension and welfare benefit plans under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

These comments are submitted on behalf of FMR Corp. and its subsidiaries, a group of financial services companies known as Fidelity Investments ("Fidelity"). Fidelity affiliates provide recordkeeping, investment management, and trustee or custodial services to thousands of employee benefit plans, covering millions of employees and their beneficiaries.

We understand that the Department's goals in updating Form 5500 and creating Form 5500-SF are to facilitate electronic filing, reduce and streamline annual reporting burdens, and ensure that plan fiduciaries obtain the necessary information to determine the reasonableness of compensation paid for services rendered to employee benefit plans. We have performed an accelerated review of the Department's proposals in order to meet today's comment deadline. Our review identified a number of issues which are not intuitive and may not have been recognized by personnel at the Department, due to the complex and ever-evolving nature of the current benefit plan business environment. We therefore appreciate the ability to bring these issues to the Department's attention, with the hope that they will be addressed by the Department prior to finalization of the new Form 5500 and Form 5500-SF reporting requirements.

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Our comments fall into three general categories:

1. Schedule C Reporting
2. Other General Comments
3. Effective Date of the Proposals

1. Schedule C Reporting

Changes to Schedule C, "Service Provider Information," were prompted by the Department's desire to clarify the reporting requirements for service provider compensation, and to ensure that plan officials obtain the information they need to assess the reasonableness of the compensation paid for services rendered to the plan, taking into account revenue sharing and other financial relationships or arrangements and potential conflicts of interest that might affect the quality of those services. (71 CFR 41621 (2006))

We respectfully request that the Department clarify the Schedule C reporting requirements with respect to the affiliates of service providers, in order to minimize potential confusion or misinterpretation of the Department's requirements. As described below, we do not believe that it is necessary to report the internal allocation of compensation or revenue sharing among a group of affiliated companies which provide services, provided that the total compensation received by the affiliated group for such services is reported and any person who is a fiduciary or provides one or more of the listed services[1] is separately identified, and that any service providers receiving compensation on a per-transaction basis are appropriately identified.

It is our understanding that the proposed changes to Schedule C require that, in the case of service provider arrangements where one person (the "primary service provider") offers a bundle of services priced to the plan as a package rather than on a service-by-service basis, generally only the primary service provider offering the bundled service package should be identified in Part I,[2] unless an investment service provider's compensation is set on a per transaction basis. However, if the person providing services is a fiduciary to the plan or provides one or more specifically listed services to the plan, then each such person (the "additional service provider(s)") must be separately identified regardless of whether the payment received by such

[1] The listed services are: contract administrator, securities brokerage (stock, bonds, commodities), insurance brokerage or agent, custodial, consulting, investment advisory (plan or participants), investment or money management, recordkeeping, trustee, appraisal or investment evaluation.

[2] Part I of the proposed Schedule C requires the identification of each reportable service provider (Lines 1(a) and (b)), information about the service provider's relationship or services provided to the plan (Line 1(c)), relationship to the employer, employee organization or party-in-interest (Line 1(d)), and the total amount of compensation received for such services (either an actual or estimated amount) (Line 1(e)).

additional service provider is included as part of a bundle of services priced to the plan as a package.

We respectfully request that the Department consider clarifying the instructions to Part I as follows, based on the reasoning set forth below. With respect to bundled service arrangements for which identification of additional service provider(s) is required as described above:

(1) Each additional service provider (within a bundled package of service providers), which is a fiduciary to the plan or provides one or more specifically listed services, must be separately identified on Schedule C, Lines 1(a)-(d).

(2) Schedule C, Line 1(e) for each additional service provider should state that the compensation received by the additional service provider is not determinable because its compensation is part of the overall compensation received by the primary service provider, and provide the name of the primary service provider. Schedule C, Line 1(e) for the primary service provider would be used to report the total compensation received with respect to the bundle of services.

(3) For each additional service provider whose compensation is determined on a "per transaction" basis, Schedule C, Line 1(e) for such service providers should report compensation receivable per transaction (such as would be provided on a fee schedule), instead of in total for the plan. Compensation per transaction would provide more useful comparison data than a total compensation amount that does not also indicate the number of transactions which generated the total compensation.

(4) In the event that any additional service provider is engaged to provide services to the plan or plan sponsor in addition to the services provided through the bundled package, the compensation for such additional services would be separately reportable on Schedule C, Lines (1)(a)-(e).

As background information, Fidelity provides services to benefit plans through separate, yet affiliated, entities, as part of a bundled recordkeeping service package. Sharing responsibilities among Fidelity affiliates may also occur when one affiliate is engaged to provide a discrete service to the plan, such as investment management services for a particular plan investment option.

The internal allocation of responsibilities among affiliates may be the result of a particular legal structure and requirements imposed by the regulator(s) with jurisdiction over such company (for example, Fidelity Management Trust Company is a Massachusetts-chartered trust company authorized to act as a benefit plan trustee and/or investment manager, while its affiliate, Fidelity Investments Institutional Operations Company, Inc. is a transfer agent under the federal securities laws). Alternatively, the internal allocation of responsibilities may be the result of internal business structuring or other considerations of the affiliated group of companies. The actual ownership structure, revenue and cost sharing arrangements, and other details of the interactions between and among Fidelity affiliates, are proprietary and confidential (except where disclosure is required by law), and are generally unrelated to servicing a particular plan. (Similarly, the compensation agreements reached between Fidelity affiliates and unaffiliated service providers (that is, subcontractors and vendors to Fidelity) which are involved in providing a bundled package of services to a plan are usually the result of extensive arms' length negotiations and directly influenced by the facts and circumstances of the particular service configuration. Those arrangements are also generally confidential and unrelated to servicing a particular plan.) Changes to these structures or arrangements generally will not impact the amount of compensation payable to the primary service provider by the plan or plan sponsor for the provision of the agreed-upon services.

In addition, plan sponsors (or other contracting parties) typically enter into plan servicing agreements with only one of the entities within the affiliated group,[3] with an understanding (which is generally documented in the contract or agreement) that the services provided under such agreement will be provided by the contracting entity, by one of its affiliates, or by an unaffiliated subcontractor or vendor (for which the contracting entity retains responsibility for the provision of services). The plan sponsor agrees to a fee arrangement for services rendered (which generally includes a fee schedule for any services for which compensation is transaction-based). Generally, only one entity within the affiliated group receives compensation for the services described in the agreement, with the implicit understanding that such revenues and related expenses may be allocated within the affiliated group and will be used to compensate subcontractors and vendors, if any. The total amount of fees paid for specific, agreed-upon services is therefore disclosed to the plan fiduciary at the outset of the relationship, and additional reporting on Schedule C of Form 5500 would not provide additional information to the plan officials regarding the reasonableness of compensation paid for services rendered to the plan.

[3] To the extent that an affiliated entity is providing fiduciary services to the plan, such as investment management services, a separate agreement between the plan fiduciary and such affiliated entity may be required, and such affiliated entity would be reported separately on Schedule C. However, even in such cases, the plan fiduciary understands that ancillary services provided under such separate agreements may, in fact, be provided by one or more of such entity's affiliates or other service providers.

2. Other General Comments

We appreciate the opportunity to share the following general comments with the Department, which we hope will be addressed in the final Form 5500 and Form 5500-SF guidance.

Application of ERISA to Certain 403(b) Plans. We request that the Department provide additional guidance regarding the application of ERISA to 403(b) arrangements maintained by certain employers. There is much uncertainty in the 403(b) plan community, which Fidelity serves, about whether satisfying the IRS' anticipated plan document requirement in the final Internal Revenue Code Section 403(b) regulations will cause certain salary-reduction-only 403(b) arrangements to be subject to ERISA and accordingly, the Form 5500 or Form 5500-SF reporting requirements. If the execution of a plan document does indeed create a plan subject to ERISA in the view of the Department, we respectfully request that the Department ensure that the affected employers clearly understand their obligations under ERISA, including Form 5500 or Form 5500-SF reporting. The Department may wish to address in their guidance the unique issues related to the transition to ERISA coverage for these salary-reduction-only 403(b) plans, such as how to report the effective date of the plan and how to count participants whose 403(b) account balances may have been transferred to other vendors. On the other hand, if the execution of a plan document will not cause a 403(b) salary-reduction-only agreement to be subject to ERISA in the Department's view, employers would greatly appreciate a reconfirmation of the safe harbor.

Form 5500, Line 9: We respectfully request that, in order to reduce confusion for 403(b) plan filers, either the instructions for Line 9 be revised to explicitly include individual and group custodial account arrangements for 403(b)(7) plans in the definition of "Trust," or add "Custodial Account" as a new option and defined term.

Form 5500, Schedule H, Line 4n and Schedule I, Line 4n: On both schedules, Line 4n queries whether the blackout period notice requirement was met. DOL Reg. 29 CFR 2520.101-3 provides exceptions from the notice requirement. However, a plan administrator who met one of the exceptions to the notice requirement, and therefore did not provide a blackout notice, is apparently instructed to answer "no" to Line 4n – which would be stating that the plan administrator did not comply with the blackout period notice requirements. We respectfully request that the Department rectify this apparent inconsistency to avoid confusion. One solution may be to divide question 4n into two questions:

(1) 4n: "Did the plan administrator provide a blackout notice?", and
(2) 4o: "If a blackout notice was not provided, did the plan administrator meet one of the exceptions to the notice requirement provided in DOL Reg. 29 CFR 2520.101-3?"

Form 5500, Schedule I: We anticipate that sponsors of small plans may be confused about the proper use of Schedule I, "Financial Information – Small Plan," based on our past experiences. The instructions for the schedule state that "Schedule I (Form 5500) must be attached to a Form 5500 filed for pension benefit plans and welfare benefit plans that covered fewer than 100 participants as of the beginning of the plan year and that are not eligible to file Form 5500-SF," with an exception for certain plans. Otherwise, Form 5500 filers must use Schedule H. Form 5500-SF filers are not required to use either Schedule H or I.

In some cases, therefore, Form 5500 filers will have to decide between Schedule H and Schedule I. Plans that are eligible to use Schedule I may file Schedule H instead, and plans that are ineligible to use Schedule I may nonetheless erroneously use it. We respectfully suggest that the Department consider adding Schedule I to Form 5500-SF (to be used in specific situations only). Alternatively, the Department may require that all plans that are required to file Form 5500 use Schedule H, and completely eliminate Schedule I as an option for Form 5500 filers.

IRS-Required Schedules: The Department has indicated that although Schedule SSA has been eliminated from Form 5500, the IRS is evaluating the information collected on Schedule SSA and considering whether that data could be collected through other, existing information collection mechanisms. We respectfully request that the Department inform the IRS that their prompt attention to replacement reporting requirements would be appreciated, so that the transition from reporting this data on Schedule SSA to the replacement IRS reporting mechanism can be performed without any gaps in plan years or other transition issues. Otherwise, retroactive reporting may be necessary, with additional costs and expense.

3. Effective Date of the Proposals

Our last comment topic addresses the Department's proposal to require these changes for the 2008 Form 5500 and 2008 Form 5500-SF. Although Form 5500 or Form 5500-SF for the 2008 plan year will generally not be due until July 31, 2009 (plus any extensions of time to file), new systems and procedures needed to capture the required data must be in place by January 1, 2008 (that is, the first day of the 2008 plan year) for optimal tracking and reporting. Although retroactive data collection and reporting can be performed, it is often at much greater effort and expense than collecting data contemporaneously and may not be as accurate.

We anticipate that this letter and other public comments to the Department will result in additional consideration by the Department of its proposals, and the Department may issue final reporting requirements which are different from the proposed requirements. As the Department is aware, recordkeepers are also currently very busy trying to meet the Pension Protection Act's statutorily imposed deadlines, with a limited pool of resources. The combination of these two factors will require sufficient advance notice (at least one (1) year after the final guidance is issued) for service providers to implement the final guidance, once it has been issued by the Department. We therefore strongly encourage the Department to consider postponing the effective date changes until the later of the 2009 plan year or the plan year that is at least one calendar year following the issuance of final guidance by the Department.

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We appreciate the opportunity to provide the Department with our comments on the proposed revisions to Form 5500 and the proposed new Form 5500-SF. We would be pleased to provide further information on any of the comments or suggestions contained herein. Please feel free to contact the undersigned at (617) 563-7135 or weiyen.jonas@fmr.com with any questions you may have related to the content of this letter.

Sincerely,

Weiyen M. Jonas
Vice President & Associate General Counsel