



Independent Insurance Agents

Brokers of America, Inc.



February 11, 2008

Office of Regulations and Interpretations
Employee Benefits Security Administration
United States Department of Labor
200 Constitution Avenue, NW, Room N-5655
Washington, DC 20210

Attn.: 408(b)(2) Amendment

Dear Sir or Madam:

In response to the proposed regulation referenced above, the Independent Insurance Agents and Brokers of America (IIABA) submits the following comments. IIABA is the largest association of insurance agents and brokers in the United States, and a significant number of our members provide insurance services to employee benefit plans and thus fall within the scope of the proposal. We appreciate having the opportunity to comment on these important issues and thank you in advance for your consideration of our concerns and suggestions.

The Proposed Regulation's Application to the Insurance Industry

IIABA commends the Department's efforts to assist plan sponsors and fiduciaries with the difficult task of selecting service providers by supplying them with useful information about the compensation a service provider will receive and any conflicts of interest that might adversely affect the provider's performance. These objectives and your efforts to enhance transparency are admirable. It is clear that the proposal is primarily directed at and designed to address the legitimate concerns that exist regarding the manner in which 401(k) and other retirement plan service providers disclose their compensation to plan sponsors and fiduciaries. The proposal's application to service providers who provide insurance services, however, is unnecessary and certainly premature, and its reliance on a one-size-fits-all disclosure paradigm does not adequately consider the manner in which the insurance industry is distinct and different from other financial services sectors. Consider the following:

- Today, insurance agents and brokers commonly provide disclosures about the fees that will be charged to plans, the standard commissions that may be received from insurers, and the provider's potential eligibility for incentive compensation from insurers. The marketplace is already ensuring that plan sponsors possess helpful and useful information, and there is nothing in the proposal and accompanying discussion that suggests that plans are unable or hindered in their efforts to obtain the information they need to choose insurance service providers.

- In its analysis of the need for regulatory action and discussion of regulatory alternatives, the Department focuses on the marketplace problems that exist in the pension plan and 401(k) arenas and does not discuss why the proposal's unprecedented disclosure mandates are necessary for providers of insurance services. There is no basis or justification for imposing such a broad administrative burden on an industry that is already heavily regulated, especially when the ramifications for failing to adhere to the strict letter of the regulation would be severe.
- The Department has failed to adequately consider the effects this proposal would have on the insurance industry in general and on independent insurance agents and brokers in particular. In its analysis of the impact on affected entities, the Department focuses almost exclusively on pension plans and acknowledges that it did not consider the impact on insurance companies. There was no reference to or discussion of the effects on independent insurance agents and brokers (who have the ability to write policies with several or many different insurers), and the burdens and costs imposed on this community by this regulation would be significant. The Department appears to assume that service providers affected by this proposal are large and sophisticated enterprises equipped to handle these new compliance challenges, but most independent agents and brokers are small and medium-sized businesses that lack the in-house resources of their counterparts in other industries.
- The level of disclosure provided by insurance service providers to plans already exceeds that provided in other sectors. The Department has already declared that *all* compensation received by insurance providers be disclosed on the plan's Form 5500, Schedule A, a position affirmed nearly three years ago in Advisory Opinion 2005-02A. The guidance states that the disclosure obligation applies to incentive and bonus compensation, including contingent commissions, trips, etc. This guidance – combined with other recent revisions to the Form 5500 – ensure that plans are receiving the most detailed information available concerning the compensation of insurance agents and brokers. While this annually provided information is retrospective in nature, it provides plan sponsors and fiduciaries with ongoing and highly detailed information about how insurance producers are compensated.
- There has been no showing that this proposal would reduce insurance costs, and there is reason to believe that establishing a broad new requirement with such severe ramifications for noncompliance may actually increase costs. One example of how this well-intentioned proposal is likely to increase costs is in the use of self-funded health insurance plans, which are plans where the organization hires a third-party administrator (TPA) and purchases medical stop-loss insurance and other related services. In such cases, agents and brokers often assist by procuring insurance quotes for stop-loss insurance, helping with TPA selection, reviewing managed care networks, arranging for the printing of plan booklets and identification cards, identifying independent claim auditors, and providing other related services. Commission and related compensation is already disclosed in detailed form on the Form 5500, but the expansive disclosure requirements proposed would increase the costs of preparing such proposals and offering these services to clients. The increased compliance burden and exposure created by this

proposal would likely result in fewer agents and brokers serving the needs of small and medium-sized employers. In addition, insurance service providers can be expected to increasingly recommend fully-insured insurance programs – because the disclosure obligations are easier to satisfy and the exposure is reduced – and this will result in greater costs for small and medium-sized plan sponsors and employees who might have otherwise taken advantage of a self-funding approach.

For these reasons and in light of the clear focus on pension and 401(k) plans, IIABA believes it is inappropriate to include insurance services providers within the scope of this proposed regulation.

Compensation Disclosure / Disclosure of Incentive Compensation from Insurers

Paragraph (c)(1)(iii)(A) imposes unprecedented compensation disclosure mandates on service providers, and these disclosures must be made during the provider selection process and before any fees are actually paid. Fees (which are paid to the agent or broker by the plan) and standard commissions (paid by the insurer) are the predominant sources of an agent or broker's compensation and are known in advance, and the disclosure of both forms of compensation is already commonplace today. Many agents and brokers also disclose, if applicable, that they may be eligible for various forms of incentive compensation, including contingent commissions and other awards or bonuses, from insurers.

While the proposal recognizes that it is impossible for an agent or broker to know in advance whether he/she will be eligible for incentive compensation, paragraph (c)(1)(iii)(A)(2) would still require the disclosure of the “formula” or formal algorithm used to make the determination. Contingency commission and incentive compensation agreements in the insurance sector are based on a variety of performance criteria and are determined by the agent or broker's entire book of business, not a particular insured, and the formulas developed by insurance companies to determine eligibility and outlined in insurance producer contracts can be incredibly complex. The stated goal of this proposal is to provide “comprehensive and useful information” to plans, and mandating the disclosure of such intricate and unfamiliar contractual provisions to a plan sponsor or fiduciary is highly unlikely to increase awareness and understanding.

The need for this level of specificity proposed is further reduced by several other considerations. First, incentive compensation paid by insurers (assuming that such an agreement is in place and the agent or broker is eligible) is a very small portion of the insurance producer's total compensation, and, perhaps more importantly, the payment of such compensation imposes no additional cost on the plan itself. Second, as noted earlier, recently adopted revisions and interpretations of the annual Form 5500 process ensure that the plan is aware of any compensation received by the agent or broker.

The Department should eliminate the requirement that insurance agents and brokers provide formal formulas when they are unable to disclose the precise amount of an element of their compensation at the outset of a transaction. Instead, IIABA urges the Department to allow insurance service providers to satisfy the disclosure obligations of (c)(1)(iii)(A), (D), (E), and (F) in such instances by disclosing in more generic terms that (1) the provider may be eligible to

receive various forms of incentive compensation (e.g. contingent commissions, other bonus and awards, etc.) from the insurer and (2) eligibility for and the amount of any such compensation is based on criteria established by the insurer (e.g. the volume, growth, and profitability of the entire book of business placed with a particular insurer). This form of disclosure alerts the plan to the possible payment of incentive compensation, describes in understandable terms the factors that will lead to the determination, and facilitates the discussion and negotiation of these issues with the service provider in a meaningful way. In essence, this approach is more meaningful to the plan sponsor or fiduciary and more consistent with the spirit and objectives of the proposal.

Compliance Challenges and the Effective Date

In its discussion of the costs of compliance for service providers, the Department assumes that only service providers “with complex fee arrangements and conflicts of interest” will likely conduct a formal review process to achieve compliance with the new regulation. It is further assumed that many providers are already making adequate disclosures and that only the largest of providers (those receiving over \$1 million in compensation) would likely need to revise their current practices. The Department, however, underestimates the compliance challenges facing the insurance industry and especially those of independent insurance agents and brokers. IIABA’s members represent and have access to many different insurance companies, and achieving compliance with this proposed regulation will be a more significant challenge for them as a result.

Finally, the 90-day timeframe proposed does not provide the independent agent and broker community with the time needed to learn about these new requirements and to make the changes in forms and business practices necessary to achieve compliance. IIABA urges the Department to establish an effective date 180 days after final publication.

Thank you very much for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Rusbuldt". The signature is fluid and cursive, with the first name "Bob" being more prominent than the last name "Rusbuldt".

Robert Rusbuldt
President & CEO