"Advancing Your Investments"

February 8, 2008

Via E-mail: e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Attention: 408(b)(2) Amendment

Dear Ladies and Gentlemen:

NEPC is pleased to submit the following comments pertaining to the Department's proposed 408(b)(2) Amendment that would require Plan service providers to disclose detailed information regarding fees in order to receive an exemption from prohibited transaction rules. The Proposal was published in the Federal Register on December 13, 2007 and requests that comments be received by February 11, 2008. NEPC is one of the largest independent investment consulting firms with over 250 retainer clients, responsible for over $250 billion in assets, including both defined benefit and defined contribution plans subject to ERISA, as well as foundations, endowments and other institutional investors.

As outlined in the Proposal, ERISA requires that fiduciaries act prudently when selecting service providers and that compensation paid for services is reasonable for the level of service provided. The Proposal further notes that the complex nature of

service delivery in today's marketplace makes it difficult for fiduciaries to understand the manner in which fees are charged and, moreover, that fiduciaries struggle to obtain the information they require to fulfill their duties. Appropriate disclosure of fees in defined contribution plans has been a major topic of conversation amongst plan sponsors for many years and recent well publicized lawsuits underscore the seriousness of the matter. NEPC applauds the Department's efforts to improve fee transparency via both its proposed fee disclosure Amendment and enhanced 5500 reporting. We respectfully submit that many service providers including mutual fund companies and defined contribution record keepers, among others, are often not forthcoming regarding the plan fees assessed to sponsors and participants.

There is one area in which we believe the Proposal could have an even more positive impact. We suggest that if the Department wishes to see a significantly greater level of transparency than exists today, it should require complete fee disclosure from "bundled" service providers. The current Proposal states that "bundled" providers would generally not be required to break down fees among the underlying service providers or sub contractors except for separate fees charged directly against a plan's investment. The Proposal would prove to be even more powerful with additional clarification in this area given the variety of ways in which investment dollars are distributed to compensate service providers.

Defined contribution service providers come in many shapes and sizes. As outlined in the Proposal, there are numerous services that are required to offer a defined contribution plan, including investment management, communication,

trust/custody and keeping of records, among others. In practice, some service providers are investment management firms that record keep retirement plans as a way to gather assets, while other firms focus their business solely on the book keeping aspect of the plan. Payment for services comes in the form of direct or indirect payments from sponsor, participant, or parties other than the Plan. Indirect forms of compensation typically include various forms of "revenue sharing" in the form of 12b-1 fees, shareholder service fees, and sub transfer agency fees. Importantly, fee payments that cover the cost of offering a plan are not limited to these traditional forms of indirect payments or specific charges levied against the sponsor or participants. Investment management firms, for example, that are also defined contribution record keepers, will make internal "administrative" transfers or "offsets" to their administrative division to cover the costs of record keeping when their own product offerings are available. If an investment manager receives an investment management fee and some portion of that fee is used to cover services other than investment management, a transfer or offset has occurred.

We believe that significant issues of transparency arise when services are "bundled" together by one or several entities. It is our view that "bundled" providers should be treated no differently than other service providers and should be required to disclose the allocation of compensation amongst internal businesses, affiliates and/or other parties. "Bundling" represents the combination of (and potential subsidation of) one service with another. The "bundle" hides the true nature of the underlying service provider relationship and thus undermines the level of transparency the Amendment is

attempting to address. If payments are credited from one party to another, the payments should be disclosed. If “bundled” providers are not required to disclose the allocation of payments received, the Amendment may have the unintended consequences of not only preventing full disclosure of conflicts of interests but it may also prevent sponsors from obtaining the most optimal level of services for their participants. It is NEPC’s belief that some of the most egregious examples of excessive fee relationships occur under “bundled” relationships.

Defined contribution plans are becoming the primary savings vehicle for most participants. As a result, the dollar amounts invested in DC plans are growing at a substantial rate. Greater asset levels suggest that more dollars are being generated via fund expense ratios to cover the costs of the “bundle” of services. Without disclosure of transfers occurring internally within a firm or from one party to another, the sponsor will not know if they should be requesting a lower fee or a higher level of service for specific pieces of the offering given the level of fees generated. Detailing the fees underneath the bundle could very well expose rising revenues and prompt the negotiation of lower cost investments or enhanced record keeping levels.

As sponsors have become increasingly uncomfortable with revenue sharing practices, many have considered the possibility of charging per head fees for plan administration. Traditional “bundling” practices make it difficult for sponsors to compare the cost of their current service offerings with alternative structures. The largest plans have traditionally had the ability to leverage the scale of their assets and offer cost effective solutions via non-mutual fund investments in conjunction with per head record

keeping fees. Such opportunities can present themselves to plans of small and medium size as well. Plan sponsors should have enough information available to them to fully understand available opportunities for their participants and to compare them in an apples to apples fashion.

The Proposal is not specific regarding the way in which fees must be disclosed to sponsors and it further suggests that service providers may be unable to provide specific fee levels in the form of monetary amounts at the time of contracting. Accordingly, the Proposal allows that service providers may disclose compensation levels via a formula, a percentage of assets, or a per capita charge. While it is true that service providers may only be able to estimate fees at the time of contracting, fees collected by service providers should be well documented over time. If the Department wishes to promote a significantly enhanced level of transparency, it may wish to consider adoption of a standardized template detailing all forms of fee arrangements and require that service provider provide sponsors with detailed plan revenue accounting over regular periods (i.e. capturing fees as received monthly or quarterly).

We believe that all plan expenses, including all forms “revenue sharing” and internal or external transfers should be disclosed to sponsors. This should be the case even if aggregate fund expenses that imbed such fees are already available. At the end of the day, regulations geared towards improving levels of fee transparency and disclosure of conflicts of interest should not grant service providers license to hide fees and in some cases, perhaps, to provide less information than they currently offer today.

NEPC appreciates the opportunity to make this submission. Please feel free to contact us if you have any questions.

Sincerely,

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