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February 5, 2008

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

Re: Comments to Proposed Regulations Under ERISA Section 408(b)(2)

To Whom it May Concern:

The purpose of this letter is to comment on the Department of Labor's ("DOL") proposed regulations under ERISA Section 408(b)(2) regarding service provider fee disclosures.

While we commend the DOL's efforts to enhance the overall transparency of fees in the employee benefit plan environment, there is one important aspect of fee disclosure that is not addressed by the proposed regulations. Specifically, the proposed regulations fail to impose a duty on the part of third-party administrators ("TPAs") or other service providers to disclose commissions, finders fees or other compensation paid to independent agents. We see this come up frequently in the context of group health plans. The fact that an independent agent may receive more or less compensation for placing a plan with one service provider versus another creates a conflict of interest that plan fiduciaries need to be made aware of and take into consideration when selecting a service provider. But, in many instances, plan fiduciaries are not provided with an accurate picture of the compensation paid to independent agents. In our experience, this lack of transparency is particularly problematic for self-funded group health plans, where the disparity in agent commissions paid by different TPAs can be significant.

Another consequence of this lack of transparency is that, where Schedule C to Form 5500 is required, plan administrators often lack the information necessary for them to complete Schedule C. Schedule C requires plan administrators to disclose all service providers who receive "directly or indirectly, \$5,000 or more in compensation for all services rendered to the plan." The Instructions to Schedule C specifically note that "indirect compensation" includes

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“payment of ‘finders fees’ or other fees and commissions by a service provider to an independent agent or employee for a transaction or service involving the plan.” This seems to contemplate that service providers disclose agent compensation to plan administrators.

The problem, however, is that most service providers, including TPAs, currently have no legal obligation to disclose agent commissions to plan fiduciaries. While ERISA Section 103(2) specifically obligates insurance companies to provide plan administrators with “all of the information necessary” to complete Form 5500, there is no similar requirement for TPAs or other service providers. Therefore, it is often impossible for plan administrators to accurately complete Schedule C. While we understand that Schedule C is generally not required for self-funded health plans relying on Technical Release 92-01, we believe nonetheless that requiring TPAs of these and other plans to disclose agent commissions is consistent with the spirit of the proposed regulations and the DOL’s overall efforts to increase fee transparency.

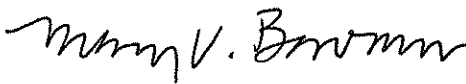
The problem could be resolved by amending the proposed regulations under ERISA Section 408(b)(2). Section 2550.408b-2(c)(iii) of the proposed regulations requires that, in order to qualify for the prohibited transaction exemption under Section 408(b)(2), a service provider must disclose the compensation or fees to be received by the service provider. We recommend that this provision be expanded to also require the service provider to disclose the compensation or fees paid by the service provider to an independent agent for a transaction or service involving the plan.

This minor change to the proposed regulations would help plan fiduciaries make more informed decisions in selecting service providers by understanding agents’ conflict of interest in recommending TPAs and other service providers to plan fiduciaries. It will also require service providers to provide plan administrators with the information required to accurately complete Schedule C, where Schedule C is required. Finally, as indicated above, this change is consistent with the overall spirit of the proposed regulations.

Thank you for your consideration of our comments. If you have any questions, please feel free to contact us.

Sincerely,

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By 
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