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(Via Electronic Delivery e-ORI@dol.gov)

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Plan Fiduciary Class Exemption for Section 408(b)(2) Amendment
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

Ladies and Gentlemen:

Jackson Kelly PLLC (“Jackson Kelly”) respectfully submits these comments on the Proposed Class Exemption for Plan Fiduciaries When Plan Service Arrangements Fail To Comply With ERISA Section 408(b)(2). Although we are submitting these comments late, we request that EBSA nonetheless consider them. We have reviewed every comment letter that was posted on the EBSA web site ([http://www.dol.gov/ebsa/regs/cmt-408\(b\)\(2\)exemption.html](http://www.dol.gov/ebsa/regs/cmt-408(b)(2)exemption.html)) and have determined that these issues have not been directly addressed.

We request that EBSA clarify the intended effect of the exemption. More specifically, we have the following questions:

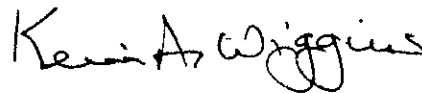
- Does EBSA intend that the conditions of the exemption would constitute a safe harbor pursuant to which, if the fiduciary were to satisfy the conditions of the exemption, it would be deemed to satisfy ERISA’s fiduciary standards with respect to the reasonableness of the compensation?
- Does EBSA intend that the conditions of the exemption would constitute a safe harbor pursuant to which, if the fiduciary were to satisfy the conditions of the exemption, then the fiduciary would be deemed not to fail to satisfy ERISA’s fiduciary standards by reason of its failure to obtain the disclosures required by the proposed regulations?
- If the fiduciary satisfies the condition of the exemption, could its failure to obtain the disclosures from the service provider be considered as a factor in determining

whether the fiduciary breached its ERISA fiduciary duties with respect to the reasonableness of the compensation?

- If the plan fiduciary satisfies the conditions of the exemption, would the party in interest (or disqualified person) remain subject to the I.R.C. § 4975 excise taxes?
- If the plan fiduciary satisfies the conditions of the exemption, would the party in interest (or disqualified person) potentially remain subject to requirement that the prohibited transaction be corrected? Should a condition of the exemption be that the fiduciary must cause the plan to take steps to correct the prohibited transaction if notified by the Department of Labor that it must do so?
- Does EBSA intend that a fiduciary cannot take advantage of the exemption if the service provider has no contractual obligation to provide the required disclosures?

Thank you for your attention to these matters.

Very truly yours,

A handwritten signature in black ink that reads "Kevin A. Wiggins". The signature is written in a cursive, slightly slanted style.

Kevin A. Wiggins

cc: Mike Foster