September 15, 2008

The Office of Regulation and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
Room N-5669
200 Constitution Avenue, NW
Washington, DC 20210

Attention: Participant Fee Disclosure Project

Dear Ladies and Gentlemen:

As requested in the July 23, 2008 *Federal Register*, the Stable Value Investment Association (SVIA) is providing comments on the Proposed Regulation that would require the disclosure of certain plan and investment-related information to participants and beneficiaries in participant-directed 401(k) plans.

We believe that both plan participants and plan sponsors should be provided with succinct, understandable information regarding their investment options and associated fees. The Association appreciates the Department's work on the Proposed Regulation and the Department's consideration of the various ways stable value funds are structured in considering reporting relevant information to plan participants who have a stable value fund investment option. SVIA is providing comments on an overview level and with respect to the stable value asset class more specifically. We welcome the opportunity to work with the Department on this issue.

The Proposed Regulation is of major importance to SVIA's 100-plus corporate members who represent every segment of the stable value investment community, including public and private retirement plan sponsors, insurance companies, banks, investment managers and consultants. As of December 31, 2007, SVIA members managed over $416 billion invested in stable value funds by more than 25 million defined contribution retirement investors covering 137,857 defined contribution plans

There are three primary ways a plan may invest in a stable value product.

- Traditional GIC or BIC. A plan may invest directly in a stable value product, such as a guaranteed investment contract sold by an insurance company or a bank investment contract sold by a bank. Under the terms of the contract, the insurance company or bank agrees to repay principal, and to credit the principal with an interest rate that is typically set for a predetermined period. The investing plan's assets include its interest in the contract, but not

the assets underlying the contract – the contract is backed by the assets of the insurance company (either its general account or, in some arrangements, a dedicated separate account – which provides greater protection in the event of the insurance company's insolvency) or the bank. The contract commits to pay out participant withdrawals at the book or contract value of the participant's interest in the contract, namely principal plus interest accrued to date. (The ability of the participants to make withdrawals at book value, referred to as being "fully benefit-responsive," is a key feature of stable value products.)

- Synthetic GICs. Another form of stable value product is a "synthetic" guaranteed investment contract, in which the plan owns a portfolio of fixed-income securities and enters into a "wrap" contract with an insurance company or bank (or an affiliate of an insurance company or bank). The wrap contract generally provides protection for the portfolio against loss of principal and accrued interest (subject to exceptions specified in the contract, such as early termination of the contract), so that participants are able to make withdrawals from the stable value investment at book or contract value even if the fair market value of the underlying portfolio is less than (or exceeds) the book or contract value. (Again, the ability of the participants to make withdrawals at book value, referred to as being "fully benefit-responsive," is a key feature of stable value products.)

  SVIA encourages the Department to clarify that to the extent a stable value fund includes traditional GIC or BIC structures (as outlined above), the Proposed Regulation's fee and expense reporting requirements (average annual returns, expense ratios, risks, and benchmarks) are satisfied by reporting *net investment returns--the investment return that participants receive*. Guaranteed separate account and general account as well as BIC stable value structures are supported by the assets of the insurance company, bank or other issuing entity. The issuer agrees to repay principal and to credit the principal with a set interest rate for a predetermined period *regardless of investment performance and associated costs incurred.* Moreover, in fulfilling these contractual obligations, the issuer bears the expenses of managing its general account or, in the case of a bank or other issuer, its proprietary account, as well as associated risks of default in the underlying investments, timing of deposits and withdrawals, and associated changes in interest rates. Over time, the issuer attempts to earn a spread or profit between the effective rates earned on the monies it invests and the amount it credits to participants. The spread is intended to cover expenses such as investment-related expenses, statutory solvency or other reserve or risk capital requirements, administrative expenses, risks assumed and a profit.

  Insurer general accounts (and any other issuer's proprietary accounts) support all of issuer's financial commitments and obligations. No portion of an insurer's general account (or another issuer's proprietary account) is attributable to a particular customer, plan sponsor or participant. Additionally, customers such as plan sponsors and participants do not have an individual ownership interest in an insurer's general account or any other issuer's proprietary account).

- Custom Stable Value Funds versus Commingled Funds. Plan sponsors can establish their own stable value investment option which invests in one or more general or separate account GICs, BICs or synthetic GICs. Plans can also invest in stable value through a commingled

fund, in the form of a bank collective investment fund or an insurance company pooled separate account, which serves as the plan's investment option. A commingled fund has the advantage of being able to diversify across multiple 401(k) plans and is currently the more common way for plans to invest in stable value. Typically, investors in commingled funds are limited to defined contribution plans (currently, for accounting reasons, the only permitted investors in these types of stable value products are defined contribution plans) and the assets of the entity are treated as plan assets subject to ERISA. The commingled fund in turn invests in one or more general or separate account GICs, BICs or synthetic GICs structures.

As described previously, wrap contracts are contracts entered into by a plan or stable value fund with an insurance company, a bank, or an affiliate of an insurance company or bank, to provide assurance that the crediting rate on a designated portion of the assets of the plan or fund will not fall below zero, thereby protecting the principal and accrued interest on those assets. The effect of the wrap contract is to permit the plan or fund to make payments in response to plan participant withdrawal requests at the book or contract value of their investments, even if the fair market value of the covered assets is lower. Wrap contracts are not expected to involve the provision of a service, and therefore should not be treated as contracts for services within the scope of the Proposed Regulation. Further, to be consistent with other relevant reporting requirements, which include the Department's Form 5500 and the Financial Accounting Standard Board's financial reporting requirements for stable value funds, the Proposed Regulation should recognize that wrap contracts are plan assets and treat wrap contracts as plan assets and not as an expense -- which would need to be included in the expense ratio.

The Proposed Regulation requires reporting of a relevant benchmark for a 401(k) investment option. However, benchmarks are not relevant for some stable value structures, such as insurance company general account and guaranteed separate account stable value structures. SVIA asks that the Department clarify that plan fiduciaries have the responsibility and discretion to determine whether a benchmark is appropriate based on the plan's stable value investment option's specific facts and circumstances and, if so, to choose the appropriate benchmark for their stable value investment option. This clarification will remove ambiguity between the Proposed Regulation and the Preamble. The clarification will also ensure that plan participants are given only a meaningful measure to evaluate their stable value fund's performance (and are not provided inappropriate benchmarks which could be confusing or misleading).

The Proposed Regulation also anticipates that a stable value investment option's Internet Web site will include supplement information on the assets comprising the investment's portfolio and, separately, the Proposed Regulation gives participants the right to request certain information, and in particular a statement of assets. While the Association believes that it is important for participants to have access to information, understanding the number of participants investing in commingled funds and other stable value funds and the burden that would could be created by numerous requests, SVIA requests that the Department consider limiting such information requests to general categories or types of investments or to when such statements of assets are routinely prepared (e.g., annual or quarterly statements). In addition, the Proposed Regulation requires certain information to be provided or made available upon request which may not be applicable to certain stable value funds. For example, the Proposed Regulation anticipates a

stable value investment option will have an Internet Web site address that provides supplemental information, including the name of the investment's issuer or provider, which may not be relevant for a custom stable value fund established by the plan sponsor, and to provide, upon request, the unit value of the investment option, yet some stable value investment options are not unitized, such as custom stable value funds and guaranteed stable value options.

In recognition of the magnitude of the scope of the Proposed Regulation and the need to provide consistent, comparable disclosures, SVIA encourages the Department to extend the effective date to a minimum of twelve months after the date of publication of the final regulation. SVIA further requests that the Department adopt a phase-in period of up to three years for existing service contracts, requiring them to be revised to comply with the final regulation only upon the earlier of renewal, material modification or the end of the three-year period, in order to encourage an orderly transition to this new standard. The vast number of contractual arrangements that may be covered by the regulation would not make it feasible to provide the required disclosures and revise all existing contracts by the Proposed Regulation's effective date of January 1, 2009.

SVIA thanks the Department for consideration of these comments. The Association is happy to answer any questions and to work with the Department on this important regulation.

Sincerely,

Gina Mitchell
President, Stable Value Investment Association