



August 30, 2010

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

Re: Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure; Interim Final Rule

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we are writing this letter in response to request for comments on the interim final rule on Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure issued by the Department of Labor (“Department”) on July 16, 2010.

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. The Chamber is particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

On February 11, 2008, the Chamber submitted comments jointly with The ERISA Industry Committee, the College and University Professional Association for Human Resources, the National Association of Manufacturers, the Profit Sharing / 401k Council of America, the Society for Human Resource Management on the proposed fee disclosure rule.

Introduction

We thank EBSA for your consideration of our comments on the proposed rule and the resulting improvements that are included in the interim final rule. Specifically, the interim final

rule does not include the requirement to disclose potential conflicts of interest and the provider's policies to address such conflicts. We had objected to this approach and recommended disclosure of financial relationships—the rule follows this approach. Nonetheless, there are still areas where we feel the final rule could be improved.

Comments

The Final Rule Should Require a Single Disclosure Document. We do not believe that the provision of disclosures “from separate documents from separate sources” will result in adequate disclosure to all responsible plan fiduciaries. Many responsible plan fiduciaries will likely have difficulty aggregating and analyzing information provided in this manner. We recommend that the service provider be required to collect any required disclosures and present them in a single document, to the extent the service provider is able to get the information. Beyond this, the service provider should have flexibility in formatting the disclosure. This process will likely be necessary to meet the requirement that the disclosure be presented in a manner that will enable the plan fiduciary to evaluate the reasonableness of any compensation or fees.

The requirement to provide disclosures in a manner that is understood by responsible plan fiduciaries requires satisfying a subjective criterion that cannot be determined without input from plan sponsors and service providers. We believe that the Department should collaborate with plan sponsors and service providers on a project to develop a template for such disclosure. We also believe that those who use the template should be deemed to be in compliance with the regulations.

The DOL Should Reconsider the Future Application of Fee Disclosure Rules to Welfare Plans. We commend the Department for acknowledging that the service and compensation arrangements for welfare plans are significantly different from those involving pension plans. Nonetheless, the Preamble states that the Department is reserving a section in the final rules for welfare plans. As mentioned in our comments on the proposed regulation, we do not believe such a rule is needed.

A 2004 ERISA Advisory Council (Council) study of welfare plan Form 5500 issues did not uncover any glaring deficiencies in the ability of plan sponsors to understand welfare plan costs, despite the very limited role that the Form 5500 plays in revealing welfare plan costs¹. The Council even raised the option of completely eliminating the Form 5500 requirements for welfare plans. It does not appear that a substantive record has been created demonstrating the need for such regulation in the health benefits marketplace. The majority of contracts and policies for welfare plan benefits or services are between a service provider and a plan sponsor, not a plan. So long as the plan sponsor does not pay fees from plan assets, Section 408(b)(2) does

¹ Final Report of the 2004 ERISA Advisory Council Working Group, Health and Welfare Form 5500 Requirements, November 10, 2004.

not apply. In order to facilitate an effective and efficient regulatory scheme, the Department should refrain from applying Section 2550.408b-2(c)(1) beyond pension plans.

Moreover, passage of the Patient Protection and Affordable Care Act has created a myriad of issues with which the sponsors of welfare plans are now contending. Attaching additional regulatory requirements will be unnecessarily burdensome.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Randy Johnson
Senior Vice President,
Labor, Immigration,
& Employee Benefits

A handwritten signature in black ink, appearing to read "Aliya Wong". The signature is cursive and clearly legible.

Aliya Wong
Executive Director, Retirement Policy
Labor, Immigration,
& Employee Benefits