



PENSION
consultants inc.

October 6, 2008

Submitted Electronically by E-mail to e-ORI@dol.gov

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

Re: Investment Advice Class Exemption

Dear Sir or Madam:

Pension Consultants, Inc. is an innovative pioneer in objectively managing and evaluating all facets of employer-sponsored retirement plans. Most importantly, we are an independent advocate for our clients. We have a strong interest in assisting participants in obtaining the information they need to make informed and reasonable decisions about the investment of their retirement savings. We appreciate the opportunity to comment on the Department of Labor's (DOL) proposed class exemption that permits advisors to provide individualized advice to a participant after giving that participant advice generated by a computer model.

Our firm recognizes the importance of providing investment advice to participants and beneficiaries and supports the DOL's efforts to give participants greater access to advice and be better equipped to manage their retirement plans. We reviewed the proposed class exemption and respectfully submit our comments.

We agree with the DOL's determination that there are computer model investment advice programs that may be utilized by an IRA to provide investment advice to the account beneficiary which meets the requirements described in section 601(b)(3)(B) of the Pension Protection Act of 2006 (PPA) (U.S. Department of Labor Report to Congress, August 21, 2008). We commend the DOL for recognizing that all participants, including IRA beneficiaries, can benefit from investment advice programs established under the guidance of the PPA.

While the DOL's expectation of this class exemption is to make more investment advice programs available to participants, many advice programs are currently available to participants. We believe that even more fiduciary advice programs, structured under the current guidance of the PPA, will be made
complete. independent. essential.

available to participants in the future without expanding the statutory exemption. We acknowledge that the proposed class exemption would allow more investment advice to participants. However, we have concerns that the class exemption will be a detriment to participants by way of conflicts of interests of the fiduciary adviser (or any employee, agent, registered representative or affiliate thereof) in connection with the provision of the advice, the acquisition, holding, or sale of a security or other property pursuant to the investment advice, and the direct or indirect receipt of compensation by the fiduciary adviser or affiliate pursuant to the investment advice.

Our firm believes the current requirements in section 408(g)(3) of ERISA for an 'eligible investment advice arrangement' by use of a 'computer model' protect participants by ensuring the advice they receive is truly in their best interest. We disagree with the conditions outlined in paragraph (e) of Section III of the proposed class exemption, which will allow individualized non-model advice to be given to participants following advice generated by a computer model. Investment advice generated by a computer model is not the only 'eligible advice arrangement' in section 408(g) of ERISA that can be used to provide investment advice to participants. The PPA currently allows for individualized non-model advice to be given to participants under section 408(g)(2)(A)(i) of ERISA. We believe the requirements for this 'level fee' investment advice arrangement provide the participant protection from conflicts of interest of the adviser providing the advice. Whereas, the proposed class exemption will remove those very safe guards by allowing advisers to recommend investment options that generate, for the adviser, greater income than other options of the same asset class. We acknowledge the intent of paragraph (e)(4) of section III which requires a prudent explanation 'not later than 30 days' following the advice, if it generates greater income for the adviser. However, we have grave concerns with the implementation of that 'prudent explanation'. Such disclosures while long on intent are almost always short on practical usefulness.

We also believe that the requirements for a 'level fee' 'eligible investment advice arrangement' sufficiently ensure that the advice given to participants is truly in their best interest. We strongly oppose the fee-leveling requirement under paragraph (f) of section III which applies only to the individual who provides the investment advice. We disagree with the DOL's belief that limiting this requirement at the individual level, rather than the fiduciary adviser entity level, can be applied 'without compromising the availability of informed, unbiased, and objective investment advice for participants and beneficiaries'. On the contrary, we believe this proposed class exemption will pollute the market place of investment advice programs for participants.

Lastly, there is a reason not every investment adviser can provide fiduciary advice to participants under the PPA. Not every adviser can eliminate or distance themselves far enough from their conflicts of interests. There are however, many advisers available to participants, both 'computer model' and 'level fee', that can provide unbiased and objective investment advice. We believe that the proposed class exemption would diminish the protections of participants established in section 408(g) of ERISA. Therefore, we feel the proposed exemption should not be granted.

Our firm appreciates the opportunity to provide information on this important issue and we would be happy to provide additional input or clarification. You may contact us during regular business hours at (417) 889-4918.

Sincerely,

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