U.S. Department of Labor

Assistant Secretary for
Employee Benefits Security Administration
Washington, D.C. 20210

SEP 24 2014

The Honorable George Miller
Senior Democratic Member
Committee on Education and Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Miller:

Thank you for your letter to U.S. Secretary of Labor Thomas E. Perez expressing concern about pension consultants advising plans to retain them not only as consultants, but also as plan asset managers for higher fees. You ask that we examine these practices and take appropriate action because of the consultant's conflict of interest in recommending themselves. Secretary Perez asked me, as the Assistant Secretary for the Employee Benefits Security Administration (EBSA), to respond on his behalf.

EBSA has long been aware of the potential for conflicts by pension consultants as a result of the position they have with plans and the advice and recommendations that they provide. We are committed to addressing the issues and conflicts of interest you describe and would like to point out some of the actions we have already taken and plan to take in the future to do so.

In 2005, we, in coordination with the Securities and Exchange Commission (SEC), released our fact sheet, "Selecting and Monitoring Pension Consultants – Tips for Plan Fiduciaries," (available at http://www.dol.gov/ebsa/pdf/fs053105.pdf) in response to a SEC report which questioned whether some pension consultants fully disclose the conflicts of interests that could affect the objectivity of their advice. Our fact sheet consisted of a series of questions that the Department and the SEC developed to help plan fiduciaries evaluate the objectivity of a pension consultant's recommendations.

The Department also increased service providers' disclosure of their conflicts of interest to employee benefit plans in its recent regulatory guidance on fee disclosure (29 CFR § 2550.408b-2(c)(1)). The regulation, which became effective in 2012, requires that plan service providers furnish detailed compensation information to the plan fiduciaries that hire them, including information on "indirect" compensation that service providers receive from affiliates and unrelated third parties. This information equips the plan fiduciary to assess the total amount of compensation the service providers receive and assess any potential conflicts of interest that may exist.

As you know, the Department administers the prohibited transaction and fiduciary responsibility provisions of ERISA. If, in the scenario you describe, a pension consultant were acting as a fiduciary when recommending itself, it could be in violation of ERISA. During the Department's investigation of a 401(k) plan, we routinely examine the relationship of the plan to its pension consultant to determine if the consultant's activities could be considered fiduciary in nature.

I appreciate your interest in this matter and thank you for your input on retirement issues affecting the benefits security so important to millions of America's workers and their families. If we can be of further assistance, please contact Michelle Rose in the Office of Congressional and Intergovernmental Affairs at (202) 693-4600.

Sincerely,

Phyllis C Borzi

Phyllis C. Borzi
Assistant Secretary