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December 13, 2002

Mr. Doug Brocker  
North Carolina State Bar  
Post Office Box 25908  
Raleigh, North Carolina 27611-5908

Dear Mr. Brocker,

I would like to express some concerns of the American Bankers Association regarding a North Carolina State Bar cease and desist order applying to the utilization of volume submitter/master & prototype plans and consulting services in the qualified retirement area. The American Bankers Association is the largest banking trade association in the country bringing together all elements of the banking community, including community, regional, money center banks and holding companies, as well as savings associations, trust companies and savings banks. Many of these institutions provide trust or custody services, including employee benefit plans covered by ERISA, to institutional clients.

This cease and desist order, which states that it is the unauthorized practice of law for a non-attorney to have “advised, counseled, or recommended to an entity that it adopt and implement a specific type of employee pension, deferred compensation, profit-sharing, or other retirement plan” and “aided in the preparation of the documents necessary to establish the plan,” would have potential far-reaching implications to the entire qualified plan community.

Qualified pension plans are one of the cornerstones of financial security. The government creates tax benefits for qualified retirement plans to encourage employers to provide retirement plans for their employees. The creation of more qualified plans reduces the reliance on public assistance and the pressure on the social security system.

The federal government recognizes this balancing act. A 2002 Joint Committee on Taxation noted the balancing of many competing policy objectives in amending pension laws. The report states, “For example, concerns regarding retirement income security may lead to the enactment of provisions giving employees greater rights under pension plans; however, if the new provisions are too severe, plan sponsors may modify plans or reduce benefits, thereby reducing retirement security.”<sup>1</sup>

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<sup>1</sup> Present Law and Background Relating to Employer-Sponsored Defined Benefit Plans, Joint Committee on Taxation, U.S. Congress, JCX-71-02, 2002.

Any additional burdens on employers to create plans would lead to fewer qualified plans. The action being contemplated by the North Carolina State Bar authorized practice committee will lead to the creation of fewer qualified plans, because it would be an additional burden and cost on employers contemplating the creation of a new retirement plan. This interpretation would create additional barriers to small business employers trying to set up or amend a retirement plan. The federal government has worked hard to create a qualified plan system that would expand the number of covered employees in retirement plans. Prohibiting a non-attorney from providing consulting services for the creation or amendment of a plan would roll back the progress that has been made so far to increase plan coverage.

The federal government has worked hard to create a qualified plan system that would expand the number of covered employees in retirement plans. Although federal law creates certain tax incentives to encourage the creation of qualified plans, the burden still lies on the employer to establish and administer the plans. To allay some of this burden, the Internal Revenue Service (IRS) approved the use of master/prototype and volume submitter plans (modified most recently in Rev. Proc. 2000-20, further modified by 2000-27, 26 CFR 601.201). The sponsoring organization obtains IRS approval as to the basic form of the plan before the employer adopts the plan.<sup>2</sup>

### **Description of Master and Prototype Plans**

We understand the North Carolina State Bar wants to ensure that the public is protected; however, the IRS approval process involves qualified plan experts and attorneys reviewing these plan documents to protect the public.

Master & Prototype plans are a form of a qualified retirement program that is sponsored by certain permitted entities, and adopted by individual employers. The sponsoring organization prepares a plan that must then receive IRS approval as to the basic form of the plan before the employer adopts the plan. The sponsoring organization must continually update those document for changes in the law.

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<sup>2</sup> All plan documents include an adoption agreement and a basic plan document, both of which receive IRS approval. The adoption agreement is the portion of the plan that contains all of the options that an adopting employer selects. The basic plan document includes all the required provisions.

Master & Prototype plans<sup>3</sup> are covered under Revenue Procedure 2000-20. Under Rev. Proc. 2000-20, an M&P plan must be maintained by a sponsoring organization, which is one that provides services to qualified plans, such as a financial institution, a law firm, a CPA firm, a third party administration firm, or an actuarial firm. Further, it must comply with IRC Sec. 401(a) and ERISA, and must contain certain provisions and follow a certain qualification procedure. Rev. Proc. 2000-20; Rev. Proc. 91-44; Rev. Proc 2002-10. These various IRS Revenue Procedures set out the stringent rules that must be followed.<sup>4</sup> In exchange, the employer may rely on the sponsoring organization's IRS determination letter. Rev. Proc. 2002-20, Sec. 6.01

If an employer amends an approved master/prototype plan, subject to certain exceptions (i.e. to comply with IRC Sec. 415 and 416), the employer is considered to have an individually designed plan and must seek its own determination letter from the IRS.

When a consultant, or other benefits expert, shows a master or prototype plan to a potential client, the client is advised to seek their own counsel to review the final document.

### **Conclusion**

In conclusion, the public is fully protected in the preparation and amendment of qualified plan documents by the IRS, and its determination letter process. This process ensures that plans that are put in place adhere to current federal laws and their protections.

Further, master and prototype plans increase access to qualified plans for smaller employers by creating a more cost effective alternative to providing retirement benefits for their employees. There is potential great harm to widely accepted practices regarding the qualified plan process if the North Carolina State Bar brushes such a broad stroke against work on retirement plans.

If you have any questions, please give me a call at 202-663-5479.

Sincerely,

Lisa J. Bleier

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<sup>3</sup> Under a Master Plan the sponsoring organization uses a single funding source for all adopting employers; while a prototype plan uses a separate funding source for each adopting employer.

<sup>4</sup> Rev. Proc. 2000-20, Sec. 9.06