

February 10, 2011

By email delivery

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

Ladies and Gentlemen:

I am pleased to submit this comment letter on the Department's proposed regulation (the "Proposed Rule") regarding the term "fiduciary" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

I am the Operations Manager for an Investment Properties Team at a full service commercial real estate company who handles a significant volume of sales transactions. As I understand the Proposed Rule, when a broker on my team, or anywhere else within my 20,000+ employee brokerage firm, represents a benefit plan, or even provides real estate advice to an affiliated Investment Adviser, such broker will be considered an ERISA fiduciary and be subject to ERISA regulations. This designation will require my entire firm to implement a method to track and monitor the various relationships that they may have to various benefit plans. This will present significant operational challenges because identifying/tracking entities that hold plan assets based on ERISA's "significant participant" or "25%" test is difficult discern because the majority of our benefit plan clients indirectly invest in real estate. Additionally, these relationships are not tracked for any other purpose, so such tracking system will have to be developed solely for this purpose. This will place an inequitable burden on large real estate firms and potentially increase costs for benefit plans as a result of the added burden on operational staff. I believe the intent of the Proposed Rule is to protect benefit plans conflicts of interests in having fiduciaries on both side of a deal, however, as drafted the Proposed Rule does not factor in the practices of a commercial real estate brokerage firm, and as a result could ultimately hurt a benefit plan's ability to retain the best services from world class real estate firms.

Thank you for taking the time to consider my comment.

Respectfully,

Melissa King