



4245 North Fairfax Drive, Suite 750
Arlington, VA 22203
P 703.516.9300 F 703.516.9308
www.asppa.org

January 11, 2011

Ms. Phyllis C. Borzi
Assistant Secretary of Labor
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

**Re: Request to Testify at Hearing on Definition of the Term “Fiduciary”
Proposed Regulation 29 CFR Part 2510 [75 Fed. Reg. 65263]**

The American Society of Pension Professionals & Actuaries (ASPPA), the National Association of Independent Retirement Plan Advisors (NAIRPA) and the Council of Independent 401(k) Recordkeepers (CIKR) is writing to request the opportunity for Brian Graff, Executive Director/Chief Executive Officer at ASPPA to testify at the hearing on Proposed Regulation 29 CFR 2510.3-21(c), also known as the “Definition of the Term ‘Fiduciary’ Proposed Regulation” published in 75 Fed. Reg. 65263, scheduled to be held on March 2, 2010. ASPPA has prepared comments to be filed in response to the proposed changes to these rules. Our request to testify at the scheduled hearing is made in conjunction with these comments.

ASPPA is a national organization of more than 7,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, and attorneys. ASPPA is particularly focused on the issues faced by small- to medium-sized employers. ASPPA membership is diverse and united by a common dedication to the private retirement plan system.

NAIRPA is a national organization of firms which provide independent investment advice to retirement plans and participants. NAIRPA’s members are registered investment advisors whose fees for investment advisory services do not vary with the investment options selected by the plan or participants. In addition, NAIRPA members commit to disclosing expected fees in advance of an engagement, reporting fees annually thereafter, and agreeing to serve as a plan fiduciary with respect to all plans for which a member serves as a retirement plan advisor.

CIKR is a national organization of 401(k) plan service providers. CIKR members are unique in that they are primarily in the business of providing retirement plan services as compared to financial services companies who primarily are in the business of selling investments. The independent members of CIKR offer plan sponsors and participants a wide variety of investment options from various financial services companies without an inherent conflict of interest. By focusing their businesses on efficient retirement plan operations and innovative plan sponsor and participant services, CIKR members are a significant and important segment of the retirement

plan service provider marketplace. Collectively, the members of CIKR provide services to approximately 68,000 plans covering 2.8 million participants and holding in excess of \$120 billion in assets.

ASPPA, CIKR, and NAIRPA applaud the Department for updating the regulation defining the term “fiduciary” under ERISA section 3(21) to provide fiduciaries with the information they need to make informed decisions. Although we have some suggestions for improving the proposed regulation, we plan to primarily focus our comments at the hearing on our support of the approach taken by the Department. However, we would be happy to discuss any issue related to the proposed regulation. The following is a summary of the comments we would make during the hearing:

- 1. Support of Approach Taken By Department** **6 minutes**
 - a. Perception of Receipt of Investment Advice by Small Plans
 - b. Need for Clarity
 - c. Importance of Department Taking Action
 - d. Disclosure Requirements
- 2. Congress Has Already Addressed Participant Level Advice** **2 minutes**
- 3. Reason to Treat IRAs Differently** **2 minutes**

We appreciate the opportunity to provide testimony on this very important matter. Please contact Brian Graff, Executive Director/Chief Executive Officer at ASPPA, at (703) 516-9300, if you would like any further information or otherwise have any questions about the matters discussed herein.

Respectfully submitted,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO

/s/
Tommy Thomasson, Chair
Council of Independent 401(k) Recordkeepers

/s/
Judy A. Miller, MSPA
Chief of Actuarial Issues

/s/
Craig P. Hoffman, Esq., APM
General Counsel

/s/
Mark Dunbar, MSPA, Co-Chair
Gov’t Affairs Committee

/s/
Ilene H. Ferenczy, Esq., APM, Co-Chair
Gov’t Affairs Committee

/s/
James Paul, APM, Co-Chair
Gov’t Affairs Committee