

GROOM LAW GROUP

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February 9, 2011

By Electronic Mail to e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Fiduciary Definition Hearing
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Written Request to be Heard and Outline of Proposed Testimony on the
Definition of Fiduciary Proposed Rule

Ladies and Gentlemen:

In response to the Notice of Public Hearing on the proposed rule defining when a person is a "fiduciary" by reason of giving investment advice to an employee benefit plan or to a plan's participants and beneficiaries published in the Federal Register on January 12, 2011, Groom Law Group submits this written request to testify at the public hearing to be held on March 1 and March 2, 2011. Stephen M. Saxon will present testimony on behalf of a group of financial institutions and administrative services providers on whose behalf we submitted a comment letter regarding the proposed regulation. Group Members are financial institutions and administrative services providers that offer a variety of products and services to employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and individual retirement accounts ("IRAs") that are not subject to ERISA but would be impacted by the proposal. The members of this group (the "Group") also sponsor ERISA-covered plans, including individual account, participant-directed plans.

As indicated in the Notice of Public Hearing, we expect the testimony to take 10 minutes, and we will be prepared to answer the Department's questions. We may remark upon any of the issues discussed in our comment letter, although, time permitting, we expect to specifically address the points below.

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Outline of Testimony

I. Scope of the Proposed Regulation (4 minutes)

- The Proposed Regulation should apply solely to ERISA-covered plans and not to "plans" as defined by the Internal Revenue Code.
- The Final Regulation should affirm the portion of Advisory Opinion 2005-23A, in which the Department took the position that a recommendation to a plan participant to take an otherwise permissible plan distribution does not constitute investment advice.
 - The Department should clarify the view expressed in Advisory Opinion 2005-23A, by taking reiterating that the test for fiduciary status is a functional one, and that a person's status as a fiduciary (or an affiliate of a fiduciary) is not a relevant factor in determining whether he or she is a fiduciary in connection with distribution counseling activities.
- The Department should eliminate the "status" of a person or his or her affiliate as a relevant factor in the analysis of fiduciary function, and instead should require on-going services and an explicit and mutual agreement, arrangement, or understanding between the parties in order for a person to be deemed an investment advice fiduciary.

II. Limitations on the Proposed Regulation (3 minutes)

- The Final Regulation should broaden the scope of the limitation available in connection with marketing or making available a universe or menu of securities from which a plan fiduciary may designate alternatives.
- The Final Regulation should clarify the types and frequency of disclosures that plan service providers must make in order to comply with the "limitations" provided under the Proposed Regulation.

III. Valuation Issues (3 minutes)

- To the extent that the Department is concerned about valuation, it should study the issue in light of the comments received in connection with the Proposed Regulation, and, if necessary, should engage in a separate rulemaking process specifically addressing valuation. In any event, the "limitation" contained in subsection (c)(2)(iii) of the Proposed Regulation should not operate to broaden the scope of fiduciary status with respect to valuation of plan assets.

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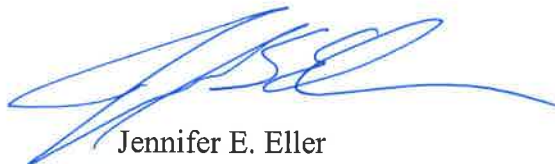
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We appreciate the opportunity to testify on this important proposal.

Best regards,



Stephen M. Saxon



Jennifer E. Eller