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Comment On: EBSA-2010-0050-0204
Definition of the Term Fiduciary; Conflict of Interest Rule- Retirement Investment Advice

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General Comment

I implore the committee to ensure that the proposed rule under the Employee Retirement Income Security Act (ERISA) that, upon adoption, would protect beneficiaries of pension plans and individual retirement accounts by more broadly defining the circumstances under which a person is considered to be a ``fiduciary" by reason of giving investment advice to an employee benefit plan or a plan's participants.

This is a long overdue change to the federal regulations that concern this important subject. The law has not been updated since 1975. In the last thirty five years we have seen the conversion from Defined Benefit Plans (pensions) to self financed Benefit Plans (401K). Unfortunately the regulations have not kept pace with the current investment Market place.

A fiduciary is defined as someone who has a legal duty of loyalty and faithfulness towards another. However this is not occurring and millions of future retirement beneficiaries are in danger from mismanagement. As recently as 2009, the Government Accountability Office (GAO) found that many opportunities exist in the 401(k) marketplace for plans to hire service providers that have business arrangements that could give rise to conflicts of interest.

My family has suffered needlessly as a result of employers hiring fiduciaries that they have conflicting relationships with. We pay the money for maintaining the retirement plan, get very few choices as to how to invest, and are given zero opportunity for input into which brokerage house we go to, because there is zero oversight as to how the fiduciary looks out for OUR interests.

The GAO noted that plans often hire consultants and other advisers to provide advice regarding investment options and products that should be offered under the plan and to monitor the performance of the selected investments. In some cases, consultants receive compensation from the investment companies whose products they recommend to the plan, which could lead them to steer the plans toward products for which they receive additional compensation. These arrangements can be harmful to plan beneficiaries. Due to the increased complexity of investment opportunities available to defined benefit plans, plan sponsors often seek investment advice from a broad range of service providers. Some of these service providers have business arrangements that can give rise to conflicts of interest. For example, in a May 2005 study, the Securities and Exchange Commission (SEC) staff found that 13 of the 24 pension consultants examined or their affiliates had undisclosed conflicts of interest, because they provided products and services to pension plan advisory clients, money managers, and mutual funds on an ongoing basis without adequately disclosing these conflicts. The SEC staff also found that the majority of examined pension consultants had business relationships with broker-dealers that raised a number of concerns about potential harm to pension plans.

This proposal will ensure that all receive advice based on reliable information. This will ensure that all plan participants interests are protected in regard their future retirement benefits. Without this important regulation the Bernie Madoffs' of the investment world will continue to take advantage from poor financial oversight, and the middle class will continue to turn over their hard earned money to the 1% increasing income disparities and worsening our economic plight.