

January 19, 2011

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

Dear Secretary Borzi:

We would like to thank the Department for its announcement of a public hearing on the proposed fiduciary definition regulations, for extending the period during which comments will be accepted before the hearing, and for making clear during the Department's "Live Chat" that submissions will continue to be accepted as long as the hearing record is open. We believe that these actions reflect government appreciation of the need for a comprehensive review of a proposal that could have such a significant impact on retirement plan and IRA services. With respect to the hearing, we would ask you to treat submissions for the record of the hearing as part of the regulatory record, so that the record can reflect the anticipated robust dialogue.

We all look forward to participating in the public policy dialogue on this critical issue that will have such a profound effect on plans, IRAs and retirement savings—by submitting comments, by testifying at the hearing, by submitting subsequent statements for the record of the hearing, and/or by providing further input as this process moves forward. In our view, an extended public policy dialogue is essential because the proposed regulations need to be considered in the context of other ongoing regulatory projects that are closely related. As discussed below, the interactions with those other regulatory projects require a dialogue to ensure coordination, so that plan sponsors, advisors and other service providers are not subject to inconsistent rules. In addition, the Department's proposed regulations address a range of critical issues that merit a full public policy discussion between the government and the private sector.

As you know, for plan sponsors, the use of swaps is critical to managing the investment and liability risks inherent in funding defined benefit plans. In that regard, on December 22, the CFTC published proposed rules on business conduct standards for swaps. The SEC is also expected to issue proposed business conduct rules. There is very significant interaction between the CFTC's proposed business conduct rules and the SEC's expected rules, on the one hand, and the Department's proposed rules on the other hand. In fact, many of those interactions could lead to unintended consequences that make swaps unavailable to plans, with corresponding adverse effects on funding volatility, an inability to effect certain absolute return and other strategies, and constraints on plans from effectuating investment transitions and other necessary asset allocation changes in the most economic and efficient manner. A full public policy dialogue on the

interaction of the proposed regulation on the definition of fiduciary under ERISA and the Dodd-Frank business conduct rules is critical.

In addition, Congress directed the SEC to complete a study by January 21 (section 913 of the Dodd-Frank Act), on the standard of care under the securities laws for broker-dealers and investment advisers with respect to retail customers. In particular, the SEC study focuses on the effects of extending the fiduciary standard of care applicable to investment advisers under the Investment Advisers Act of 1940 (the “Advisers Act”) to broker-dealers, including the critical investment assistance that broker-dealers provide to plans, plan participants, and IRA owners. The Dodd-Frank Act authorizes regulatory changes if required by the results of the study and these regulatory changes may well encompass and possibly conflict with the same issues being addressed by the Department. Those regulations may make certain exceptions to fiduciary status in the Department’s proposed rule unavailable to broker-dealers, severely curtailing services to plans and IRAs. We believe that there is great potential for market disruption unless the two standards are evaluated together and coordinated in a manner consistent with both ERISA and the Dodd-Frank Act. Accordingly, we look forward to working with the Department and the SEC to coordinate any rulemaking regarding the fiduciary standard under each law.

In short, we believe that plan participants, plan sponsors, and the DOL will all benefit from a full public policy dialogue on the wide range of important issues raised by the proposed regulations and their interactions with the other ongoing regulatory projects. We look forward to contributing to this important dialogue over the coming months.

American Bankers Association  
American Benefits Council  
American Council of Life Insurers  
Committee of Annuity Insurers  
Committee on Investment of Employee Benefit Assets  
The ERISA Industry Committee  
Financial Services Roundtable  
Insured Retirement Institute  
Investment Company Institute  
National Association of Insurance and Financial Advisors  
The Savings Coalition of America  
Securities Industry and Financial Markets Association  
U.S. Chamber of Commerce