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To: EBSA, E-ORI - EBSA
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Subject: Definition of Fiduciary Proposed Rule

Anyone who makes any profits from working with an ERISA plan is a fiduciary. The fact that certain vendors especially insurance companies and commission salesmen are trying to avoid being labeled a fiduciary should be an obvious admission of guilt of trying to harm plan participants.

Many so-called consultants are not independent as defined by the proposed rules. Any consultant affiliated with a brokerage firm or insurance company should be disqualified. Also any Consultant who holds either a Series 6 or 7 brokerage license or a state insurance license has the ability to get compensation through a back door which should be a prohibited arrangement.

Insurance company products in 401(k)'s have tried to avoid any fiduciary duty. With general account and separate account stable value products Insurance companies take plan assets and put them on the balance sheet of an affiliate. Most in bundled 401k structures have unlimited control of the assets and can shift risk onto the backs of ERISA plans. The ERISA plan takes on some significant level of credit risk of the company and a significant amount of liquidity risk and gets nothing in return. The insurance companies typically can control the risk, return and fees.

> NAGDCA the trade group for Public DC plans in July 2010 put out a new brochure' that makes these observations on General Account stable value. *Due to the fact that the plan sponsor does not own the underlying investments, the portfolio holdings, performance, risk, and management fees are generally not disclosed. This limits the ability of plan sponsors to compare returns with other SVFs. It also makes it nearly impossible for plan sponsors to know the fees (which can be increased without disclosure) paid by participants in these funds – a critical component of a fiduciary's responsibility*. [i]

If you do not make the specific insurance holding company (that puts ERISA assets on a balance sheet) a fiduciary, you are in effect giving the insurance company an implicit government guarantee, creating an entity "too big to fail"

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[i] http://www.nagdca.org/documents/StableValueFunds.pdf