

February 10, 2011

By email delivery

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Definition of Fiduciary Proposed Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Ladies and Gentlemen:

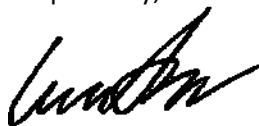
I am pleased to submit this comment letter on the Department's proposed regulation (the "Proposed Rule") regarding the term "fiduciary" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

I am a Vice Chairman of an Investment Properties Team at a full service commercial real estate company who handles a significant volume of sales transactions. In this capacity, I frequently act as a real estate advisor to benefit plans that hold interests in real estate. Under the Proposed Rule, I would be considered an ERISA fiduciary to the benefit plans I service. This is problematic for the commercial real estate industry in that as an ERISA fiduciary to the benefit plan I represent in a sales transaction, if a leasing broker from my firm represents a tenant on a lease transaction in a building I am selling on behalf of said plan, we would both be in violation of ERISA's rule that prohibits a fiduciary from acting on both sides of a transaction. This significantly limits my ability to represent the benefit plan's best economic interest in leasing up the building for a higher sale value. It also precludes a tenant representative leasing broker from my same firm from providing their client what may well be the best deal in the market.

Imposing the rules of an ERISA fiduciary on real estate brokers ultimately has a negative impact on the benefit plans such rules were designed to protect. For example, (1) If a benefit plan hires a brokerage team, the benefit plan would be unable to bid on or buy any property represented in the sale or managed by that brokerage firm; (2) Once a benefit plan selects a leasing agent or a sales agent for property they own or hold an interest in, any tenant looking for space but also represented by that brokerage firm would be unable to lease in the building, potentially rendering the building "undesirable" in the marketplace and diminishing value; (3) If a benefit plan retains a brokerage firm to sell a building or property in which it has an interest, it would not be able to entertain any bidder represented by that brokerage firm. I do not believe this is the intent of the Department's Proposed Rule. This added level of regulation in the area of real estate brokers would not necessarily be any more protective of benefit plans. To the contrary, it would have an adverse impact on benefit plans and their participants by hindering their ability to obtain the best economic outcome relative to other market participants.

Thank you for taking the time to consider my comment.

Respectfully,



William Shanahan