From: Jeff Kostis [mailto:jeff@jkfinancialplanning.com]
Sent: Thursday, March 10, 2011 11:46 AM
To: EBSA, E-ORI - EBSA
Subject: Public Hearing on Definition of Fiduciary

Dear Sir / Madam,

I am writing in response to the proposed definition change to the word "Fiduciary" and how it will affect plan participants.

I am a Certified Financial Planner™ Professional and a CPA. My practice is focused on working with individual clients, the vast majority of whom are participants in 401(k) or 403(b) retirement plans. I am NOT an attorney, nor am I an ERISA specialist. My comments and views are based on what I see in my financial planning practice dealing with plan participants and what I saw when I worked in the private sector dealing with Human Resource or Benefits departments.

I find that plan participants assume that anyone connected to their retirement plan is working in their best and only interest. That party may be the plan sponsor, plan advisor, plan administrator or any other party to include the accountants that provide valuations on non-publically traded companies. Additionally, in my experience the plan sponsors (benefits managers, Human Resource VP's, Finance VP's, CFO's, etc.) do not have the background or training to properly select appropriate investment options for plan participants. Instead, they rely on the plan advisor to provide them with a short list of funds to select from and the assurance from the plan advisor that the fund choices provide appropriate diversification options. For these reasons, plan participants need to have 100% confidence that those in charge of their retirement plans are working in their best interest only.

From a financial planning perspective, the only viable option to save enough for retirement in a tax efficient manner is to use a retirement plan available through an employer. This is due primarily to the low contribution limits available in IRA accounts and income limitations that prohibit an employee from making tax deductible contributions to both an IRA and an employer sponsored retirement plan. If a plan participant chooses not to use the employer sponsored plan but go outside and use a commercially available annuity or make non-deductible IRA contributions, the person loses the upfront income deferral at their marginal tax bracket, leaving less money to save for their retirement.

Further, the number of employees covered by defined benefit pension plans continues to decline, meaning that individuals are more responsible than ever to make sure they are providing for their own retirement needs. Defined contribution plan participants have no input into plan design, selection of plan advisors, investment options available, selection of auditor or anything else that affects the plan. The plan participant must, therefore, be afforded all reasonable legal protections to ensure they are not being taken advantage of when using this critical employee benefit. The only effective way to do this is to have

ALL parties related to retirement plans subject to the high standards of a true Fiduciary and that those fiduciaries face strict penalties if they violate that trust.

The primary objection I have seen is that this requirement may raise the cost to the participants. If all parties are currently acting in the best interest of the participants, the only incremental costs would be providing better documentation and should be minimal. In the case of plans that offer investments in the employer, I argue that the retirement plan should require an annual, independent valuation of said entity. The cost of this should be paid by plan participants, no different than they way they pay the expenses related to the other investment options in their plan.

Thank you for your time and consideration of the above comments.

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