

February 9, 2011

Employee Benefits Security Administration
Attn: Fiduciary Definition Hearing
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

I am writing to request the opportunity to testify on behalf of the Pension Rights Center at the Fiduciary Definition Hearing to be held on March 1, and if necessary, on March 2, 2011. The Pension Rights Center submitted joint comments with the National Employment Lawyers Association on the proposed regulation defining the term "fiduciary."

I propose to cover the following topics in my testimony for Pension Rights Center on the "Definition of Fiduciary".

1. The current five-part test for determining whether advice on investments is "investment advice" improperly narrows the statutory term, and exempts from fiduciary status individuals whose actions have a direct impact on the retirement security of plan participants.
2. The retirement-plan and investment landscapes have undergone significant shifts since the Department adopted the regulations 35 years ago. The proposed regulations reflect the changed investment environment, the emergence of the self-directed defined contribution plan as the primary retirement savings vehicle for most plan participants, and developments in plan design and judicial interpretation of the statute.
3. The proposed regulations should clarify that individualized investment advice refers to advice to a plan or participant to purchase a particular investment, even if that advice is not individualized in the sense of having considered the particular needs of the participant.
4. The proposed limitation on fiduciary status in Section 2510-3-21(c)(2)(i), which provides that a person shall not be considered to be a fiduciary investment adviser if such person can demonstrate "that the recipient of the advice knows or, under the circumstances, should have known, that the person is... not undertaking to provide impartial investment advice" should not apply to advice given to individuals.
5. Advice to participants concerning plan distributions is investment advice.

If you have any questions about this request, please contact Rebecca Davis, Legislative Counsel at the Pension Rights Center rdavis@pensionrights.org or me at nps32@drexel.edu.

Sincerely,



Norman Stein
Senior Policy Consultant

Board of Directors

Nancy J. Altman • John H. Biggs • Daniel I. Halperin • Regina T. Jefferson
Olana B. Lacy • Ian D. Lanoff • Marion H. Mudd • Alicia H. Munnell • John C. Rother