

February 3, 2011

VIA EMAIL (E-ORI@DOL.GOV) THEN U.S. MAIL

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

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Re: Definition of Fiduciary Proposed Rule

Dear Sir or Madam:

I have the following comment on the proposed rule related to the definition of fiduciary:

Proposed DOL Reg. § 2510.3-21(c)(5) provides that a person who is a fiduciary by reason of rendering investment advice for a fee shall not be deemed to be a fiduciary regarding any assets of the plan with respect to which such person does not have any discretionary authority, discretionary control or discretionary responsibility and does not exercise any authority or control.

Quite often, an individual will recommend an investment option to a plan committee which will then vote whether to accept such recommendation. The recommending individual has no vote. In light of the above, it appears that the recommending individual can take the position that he or she has not acted as a fiduciary because it is the committee that has ultimate authority, control and responsibility. Is this the case?

Thank you for your consideration of the above.

Very Truly Yours,



Michael F. Tomasek

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