
From: Paley, Alexander @ New York [mailto:Alexander.Paley@cbre.com]
Sent: Thursday, February 10, 2011 11:09 AM
To: EBSA, E-ORI - EBSA
Subject: Definition of Fiduciary Proposed Rule

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 commercial real estate broker who is employed by a full service commercial real estate company that offers a variety of services to our clients. I am concerned about the implications the Proposed Rule will have on my firm's business practices. First, as an investment sales broker, my team often acts as an investment advisor for benefit plans with interests in real estate. It is likely under the Proposed Rule that such advice will be treated as fiduciary advice. As such, we will be required to institute new methods of tracking the various and numerous relationships our firm has with benefit plans. This will present a significant operational challenge because tracking "plan assets" based on ERISA's "significant participant" or "25%" test is particularly difficult due to the indirect manner in which benefit plans often invest in real estate (i.e. forming Special Purpose Entities for holding the asset). Additionally, our firm frequently "cross sells" services to other business lines within our company, a practice which can often result in significant cost savings and other efficiencies. Under the Proposed Rule's "first service in", this practice would preclude a benefit plan from utilizing any other service within the company, even wholly independent lines of businesses who could offer the most economical option. I do not believe the intent of the Department is to preclude a benefit plan from open market opportunities and the ability to utilize the services of world class full service real estate firms.

Thank you for taking the time to consider my comment.

Respectfully,

Alexander Paley

Alexander Paley | Associate
Investment Properties

CB Richard Ellis | Capital Markets
200 Park Avenue, Suite 17 | New York, NY 10166
T 212 895 0942 | F 212 984 6660
Alexander.Paley@cbre.com