



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 on behalf of the National Employment Lawyers Association (NELA) to request the opportunity to testify at the Fiduciary Definition Hearing to be held on March 1, and if necessary, on March 2, 2011. NELA previously submitted joint comments with the Pension Rights Center on the proposed regulations defining the term "fiduciary." Testimony would be presented by Marc I. Machiz on NELA's behalf.

The following is an outline of NELA's proposed testimony:

1. The existing regulations and interpretations are an impediment to effective private enforcement.
2. The proposed regulations properly treat valuations of employer stock as investment advice.
3. The regulations should not require an agreement to provide individualized advice to plan fiduciaries—only that the advice should be individualized. The meaning of "individualized" should be clarified in the proposed regulations.
4. It is important that the proposed regulations make clear that they apply to advice to plan fiduciaries, including fiduciaries of pooled vehicles, advice with regard to selection of managers, and advice paid for by third parties, e.g. through commissions. The preamble to the final regulation should make it clear that these positions are existing interpretations of the current regulations.

If you have any questions about this request, please contact me by phone at (415) 296-7629 or email at rhamburg@nelahq.org or Marc Machiz by phone at (202) 408-4600 or email at MMachiz@cohenmilstein.com.

Thank you for your consideration.

Sincerely,

Rebecca M. Hamburg
Program Director