
From: Stein, Norman [mailto:nps32@drexel.edu]
Sent: Wednesday, February 09, 2011 3:04 PM
To: EBSA, E-ORI - EBSA
Subject: Fiduciary Definition Hearing

Dear Sir or Madam:

Charles Yocum and Justin Tomevi, request that they be permitted to testify at the hearing concerning the proposed regulations defining the term "fiduciary." (We wish to share the 10-minute time period allotted to witnesses.) We are law students at the Earle Mack School of Law at Drexel University who are interested in employee benefits and are working on a research project on the meaning of fiduciary under ERISA.

An outline of the proposed topics that would be covered by our comments follows:

1. The definition of investment advice in the proposed regulations may result in some increased costs, but some existing costs should be reduced as fiduciary responsibility is spread among a broader group of investment advisers. Moreover, the potential benefits to plan participants of proposed regulation will exceed the regulations' cost.
2. Individual participants in 401(k) plans will often lack the sophistication to understand that a seller or purchaser of securities can have substantial conflicts of interest, even in the context of disclosure of such conflicts. Thus, the limitation in the proposed regulations that deals with purchasers and seller of securities should be revised so that it does not apply to advice given to participants, or at least clarified so that its application to advice given to participants is narrowed.
3. The valuation of non-publically traded securities is investment advice. Consultants who value such securities sometimes provide a shield for a plan fiduciary with dual loyalties, which can be problematic if the valuations are tilted in one direction or another. Moreover, valuation may sometimes blind themselves to their own conflicts of interest when valuing securities. (The situation may be different, however, when the plan hires an independent fiduciary to negotiate the purchase or sale of non-publically traded securities on behalf of a plan and the independent fiduciary hires a consulting firm to value the securities for use in setting a purchase or sales price.)
4. Bad advice on how a participant should take a distribution can harm participants in a variety of ways. The advice is a type of investment advice and should be treated as such. It may be important for the Department to use its enforcement powers in this area, because there may be limits on the effectiveness of remedies that a participant can obtain in a private civil action under ERISA.
5. The current regulations include many vague and subjective criteria for determining whether a person is a fiduciary because of the rendering of investment advice.

Sincerely,

Charles Yokum

Justin Tomevi

(A contact phone number for us is: 215-571-4717.)