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**From:** Jeffrey Liautaud [mailto:loquate@sbcglobal.net]  
**Sent:** Thursday, April 01, 2010 9:33 AM  
**To:** EBSA, E-ORI - EBSA  
**Subject:** EBSA Proposed regulations - comment

Dear EBSA,

EBSA Proposed regulations - Why so much confusion?

Human nature focuses on problems, instead of building on what is already working well. EBSA proposed regulations focus on exemptions to fiduciary liability to improve investment advice, instead of focusing on what is already working well, namely investment advisors who take on ERISA 3(38) fiduciary liability.

It is highly unlikely that any given business owner/named fiduciary has appointed, and that an investment advisor was willing to accept, as I would, to act as a 3(38) Erisa investment advisor fiduciary thereby more certainly removing a layer of investment advice fiduciary risk to the business owner/named fiduciary. The fiduciary liability is a personal liability. This means if something goes wrong, the business owner/named fiduciary is personally liable. Someone should tell the business owner/named fiduciary for their own good.

An idea of extreme value for EBSA to drive investment advice may be adding language to Form 5500 annual 401k plan report: Our plan does, or does not, have a 3(38) fiduciary investment advisor who has full discretion for investment selection and monitoring, and if so whose name is \_\_\_\_\_.

At one time Mr. Liautaud was a Registered Representative receiving commissions from insurance companies. At another time he was a Registered Representative working for a wire house broker dealer. At yet another time he was dually registered as a Registered Representative and as a Registered Investment Advisor. Today he is solely a Registered Investment Advisor and Fiduciary. He signs his name that way on correspondence thus letting the world know he is both a Registered Investment Advisor and a Fiduciary. This is a migratory path followed by many advisors.

The cost of becoming a fiduciary is still too expensive and the liability too great for insurance companies, wire house broker dealers and some Registered Investment Advisors who are not 3(38) fiduciaries. But the best, and least recognized, value is still an Erisa 3(38) fiduciary.

According to the Center for Due Diligence on 1/12/2010 "A select group of skilled retirement plan advisors will acknowledge Erisa fiduciary status in writing and accept liability for discretionary investment control."

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