July 20, 2015

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted to: e-ORI@dol.gov

Re: Proposed Investment Advice Regulation

Ladies and Gentlemen:

Fiduciary Counselors Inc. ("Fiduciary Counselors") welcomes the opportunity to comment on the Department of Labor's (the "Department") proposed regulation relating to the definition of a fiduciary under 29 CFR 2510.3-21. The proposed regulation defines who is a fiduciary of an employee benefit plan as a result of giving investment advice to a plan or its participants or beneficiaries. The proposal describes additional circumstances under which the advice relationship would be subject to ERISA's fiduciary responsibility provisions.

Fiduciary Counselors is an independent company whose primary focus is providing independent fiduciary services. We do not provide portfolio management or brokerage services and, consequently, are not presented with any potential conflicts of interest when providing our independent fiduciary services.

Fiduciary Counselors is an investment adviser registered with the Securities and Exchange Commission ("SEC") under the Investment Advisers Act of 1940. Prior to its incorporation in 1999, Fiduciary Counselors operated as a business unit within Actuarial Sciences Associates.

As the proposed rule is currently drafted, an investment advice fiduciary is defined in section 2510.3-21(a), which lists the categories of advice which would constitute "investment advice." Section 2510.3-21(b) contains a number of specific carve-outs from the scope of the general definition. Specifically, section 2510.3-21(b)(5) contains a carve-out for persons providing appraisals, fairness opinions or statements of value. Under that section, there are specific carve-outs for ESOPs, investment funds holding the assets of more than one unaffiliated plan, and valuations for purposes of compliance with federal and state reporting or disclosure provisions.

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Fiduciary Counselors has significant concerns about the Department's decision to include appraisals provided in connection with a specific transaction involving the acquisition, disposition, or exchange of securities or other property by a plan or IRA under the definition of investment advice. Although the proposal contains a carve-out for appraisals and fairness opinions provided to ESOPs, investment funds and to plans and IRAs solely for purposes of compliance with various reporting and disclosure schemes, Fiduciary Counselors believes that the scope of the carve-out should be expanded to include other situations where the potential for conflicts of interest or self-dealing is remote, such as persons providing appraisals and fairness opinions to an independent fiduciary. Absent such an additional carve-out, we believe plans will be significantly harmed as discussed below.

As an independent fiduciary ("IF"), Fiduciary Counselors routinely engages appraisers and valuation firms to provide appraisals and fairness opinions to assist us in our engagements on behalf of our client plans. We seek out independent firms that we believe provide the most expertise in the associated subject matter. We have the sole fiduciary responsibility to engage such firms and the engagement letter is typically between the valuation firm and Fiduciary Counselors, as IF to the plan. The valuation firm provides its analysis and report directly to us. We analyze the materials provided, review key assumptions, and hold discussions with the firm to fully understand their analysis and conclusions. We incorporate their materials along with other data, analysis, and information we obtain in order to determine the appropriate value for the asset, as part of our fiduciary responsibilities. We never simply accept a valuation report at face value.

For example, we may be engaged by a client desiring to contribute employer-owned real property to its defined benefit plan as part of a prohibited transaction exemption ("PTE") or pursuant to the statutory exemption under section 408(e) of ERSIA. Fiduciary Counselors would engage the services of a reputable real estate appraisal firm to determine the fair market value of the property. We would review and analyze the appraiser's report, speak with the firm to probe its assumptions, etc.

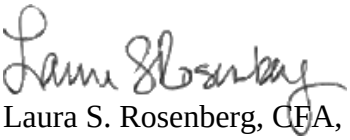
As currently drafted in the proposed regulation, the real estate appraiser in our example would be considered a fiduciary. We have been informally advised by such service providers that, if their valuation services to plans resulted in fiduciary status under ERISA, they may no longer offer their services to IFs or would otherwise significantly increase their fees to reflect the increased risk of being a fiduciary. As a result, we are especially concerned that we would no longer be able to utilize the services of some of the best and most experienced appraisal and valuation firms, which would result in potential harm to the plan. Alternatively, the costs associated with securing an administrative exemption or complying with a statutory exemption may increase significantly, thereby potentially depriving plans of otherwise beneficial transactions.

Accordingly, we strongly recommend that the Department expand the carve-outs in section 2510.3-21(b)(5) to exclude appraisal and valuation firms selected by IFs in connection with its fiduciary responsibilities to the plan. The IF is ultimately responsible under ERISA for its actions taken on behalf of the plan, including the valuation of the property involved in the transaction.

This will ensure that IFs are able to provide plans and plan participants and beneficiaries with the best possible services at the lowest prices.

Please contact me at (202) 558-5135 if you would like to discuss further.

Sincerely,



Laura S. Rosenberg, CFA, CIRA, CDBV
Senior Vice President

cc: Ivan Strasfeld, Senior Advisor