



February 25, 2016

The Honorable Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Executive Office of the President
725 17th Street, NW
Washington, D.C. 20503

RE: RIN 1210-AB32

Dear Mr. Shelanski:

The American Benefits Council (the "Council") would appreciate the opportunity to meet with the Office of Information and Regulatory Affairs ("OIRA") to discuss the final regulations to be issued by the Department of Labor ("DOL") revising the definition of a fiduciary for ERISA purposes. It is our hope that we can provide the large plan sponsor perspective for OIRA to consider as OIRA reviews the DOL regulations.

We are very appreciative of the goals of the DOL and of the tremendous amount of work that DOL has devoted to this project. But the scope of the project has given us concern regarding the potential effects on large plan sponsors and their participants and whether those effects have received the attention they need.

Set forth below is a summary of the key issues we raised in our three comment letters, which are attached. These are the issues that we would like to discuss with you.

- **401(k) plan investment assistance**
 - We are concerned employees could lose access to helpful guidance valuable to their financial wellbeing and important personalized assistance regarding the selection of investment options under 401(k) and similar plans.

- Employers could have greater fiduciary obligations with respect to any information provided by call centers or human resources employees. Without a workable safe harbor from fiduciary liability, employer commitment to the private retirement plan system could be undermined.
- **Investment education**
 - The regulations could very significantly restrict the ability of an employer to provide investment education to plan participants. As a result we are concerned that employees will be less informed and less engaged.
- **Rollovers and distributions**
 - We are concerned that terminating employees of large plan sponsors would be hurt by the loss of personalized assistance regarding their rollover and distribution decisions.
 - Employers could have greater fiduciary obligations with respect to information provided by call centers or human resources employees, triggering the same types of concerns noted above.
- **Routine plan asset valuations**
 - Many routine plan asset valuations performed constantly during a year (such as the valuation of insurance products) could become fiduciary acts, triggering higher costs, fiduciary liabilities, and in many cases difficulty in finding a service provider willing to perform such valuations.
- **Loss of general assistance from trusted advisors**
 - Today it is not uncommon at all for plan sponsor personnel to consult with trusted advisors in considering new plan investment ideas.
 - For example, plan sponsor employees involved in plan investment issues might consult with a trusted investment manager about investment and market trends that are not within the scope of the investment management agreement. Or the plan sponsor might consult with its actuary regarding the issues and opportunities involved in liability driven investing. Or the plan sponsor might simply ask a trusted advisor for names of potential advisors in a new area. All of these discussions would become fiduciary advice under the proposal.

- With the threat of fiduciary liability, these discussions would largely become unavailable, adversely affecting the plan sponsor.
- **Exemption for health and welfare plans**
 - DOL has indicated that entities that sell health and welfare insurance policies will not be covered by the new rule, nor will private exchange services. DOL has, however, indicated that there may be exceptions to this exemption for arrangements with an investment component. We believe the rule should not apply to health and welfare benefit plans where plan assets are not held in trust because otherwise it will adversely affect a whole separate area that was never the focus of this project.
- **Effective date**
 - To avoid significant disruption, the regulations should not be effective until at least 24 months after finalization.
 - Existing agreements should be grandfathered in order to avoid forcing all plan sponsors to renegotiate huge numbers of agreements.

We would appreciate the opportunity to meet with you to discuss the above issues at your convenience.

Sincerely,



Lynn D. Dudley
Senior Vice President,
Global Retirement and Compensation Policy

CC: Bridget Dooling
Margaret Malanoski
Ross Rutledge