TESTIMONY OF

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of

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before the

**SUBCOMMITTEE ON HEALTH,
EMPLOYMENT, LABOR AND PENSIONS**

of the

**HOUSE EDUCATION AND THE
WORKFORCE COMMITTEE**

for the hearing entitled

**REDEFINING "FIDUCIARY":
ASSESSING THE IMPACT OF THE LABOR
DEPARTMENT'S PROPOSAL
ON WORKERS AND RETIREES**

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My name is Kent Mason. I am a partner in the law firm of Davis & Harman LLP and I have worked in the retirement plan area for almost 30 years. I am currently working with plan sponsors, plan sponsor trade associations, and a wide array of financial institutions on the concerns that have been raised with respect to the Department of Labor's proposed regulation modifying the definition of a fiduciary.

I want to thank you, Mr. Chairman and Ranking Member Andrews, for holding this hearing and for inviting me to testify. It is important that the critical issues raised by the proposed regulation be addressed in a robust public dialogue.

I am speaking today on my own behalf based on extensive discussions with plan sponsors, plan sponsor trade associations, and numerous financial institutions. I have been asked to focus my comments today primarily on the challenges that the proposed regulation creates for plan sponsors. That is an area that has received less attention, and I am very happy to address it.

But first I will discuss three fundamental questions: (1) should the definition of a fiduciary be reviewed, (2) if so, what process should be used to review that definition, and (3) if the proposed regulation is revised to address industry concerns, would harmful conflicted advice be permitted?

Should the Fiduciary Definition Be Reviewed?

The threshold question is whether the definition of a fiduciary should be reviewed and updated. The community that I work with understands the desire to update a regulation that was drafted 36 years ago when the retirement savings world was vastly different.

In addition, the community I work with agrees with certain basic objectives that the Department has set out to achieve. For example:

- Those who provide advice regarding investments should be required to stand behind their advice legally. I believe that that is generally the case already, but to the extent it is not, that should be made clear.
- A service provider who represents himself or herself to be a fiduciary should not be permitted to later contest that status if an investor makes a claim against the advisor. When a service provider purports to be a fiduciary acting exclusively for the benefit of a plan, participant or IRA owner, the service provider should not be able to retroactively disclaim that status.
- The law regarding fiduciary status needs to be clear so that all parties fully understand the nature of their relationship.
- It is critical to draw a distinction between selling and advising, so that the fiduciary rules do not preclude normal selling activities.

In short, I believe that there is a vast amount of middle ground where the Department and the industry can come together.

The Process.

<u>Background.</u> The definition of a "fiduciary" is a critical component of the protections provided by ERISA. The definition can also trigger enormous responsibility and potential liabilities. In this context, it is essential that the issue be addressed deliberately through a full public policy dialogue.

The Department has in recent years approached numerous topics in a very deliberate, inclusive manner by issuing a "Request for Information" ("RFI") prior to issuing a proposed regulation. This was not done here. That put the Department at an informational disadvantage as it set out to draft the proposed regulation.

This information disadvantage naturally was reflected in the proposed regulation:

- The Department did not perform any cost analysis with respect to the effect of the proposed regulation on IRAs.
- In the preamble to the proposed regulation, the Department repeatedly stated that it did not know the effect of the proposed regulation on the market.
    - "The Department's estimates of the effects of this proposed rule are subject to uncertainty . . . It is possible that this rule could have a large market impact."
    - "For example, the Department is uncertain regarding whether, and to what extent, service provider costs would increase . . . .The Department is also uncertain whether the service provider market will shrink because some service providers would view the increased costs and liability exposure associated with ERISA fiduciary status as outweighing the benefit of continuing to service the ERISA plan market."
    - "The Department . . . ***tentatively*** concludes that the proposed regulation's benefits would outweigh its costs." (emphasis added)
    - "The Department is unable to estimate the number of small service providers that would be affected by the proposal."
    - "The Department also is unable to estimate the increased business costs small entities would incur if they were determined to be fiduciaries under the proposal."
    - "It is possible that some small service providers may find that the increased costs associated with ERISA fiduciary status outweigh the benefit of continuing to service the ERISA plan market; however, the Department does not have sufficient information to determine the extent to which this will occur."
- The proposed regulation has raised grave concerns across the political spectrum, among Democrats and Republicans, among employer groups and the Consumer Federation of America. The concern is that the proposed regulation would have very adverse unintended consequences and result in a dramatic decrease in both the availability of critical investment information for low and middle-income employees and the efficient delivery of workforce retirement plans.
    - The existence of these unintended consequences run contrary to the Department's stated goal of ensuring that individuals have access to reliable advice, and result from the Department's information disadvantage; without the RFI process, the Department had to write the regulation in a data vacuum.

- A study in the IRA area stated that if the proposed regulation is finalized in its current form:
  - Approximately 360,000 fewer IRAs would be established every year.
  - Solely within the study example, over seven million IRAs would lose access to an investment professional. Since the study sample included 40% of the IRA market, this could mean that nationally approximately 18 million IRAs could lose such access.
  - Within the study sample, it was established that there could be a $96 billion reduction in IRA assets through 2030; if that number is extrapolated to the national market, the loss would be approximately $240 billion.
  - Costs for those who retain access to an investment professional would roughly double.
- The Department has informally stated on many occasions that in order to make the proposed regulation workable and avoid depriving investors of investment information, the class exemption rules needs to be modified. To date, no modifications have been proposed.
- The Department's regulations would force the restructuring of plan systems that have developed over 36 years based on the current definition of a fiduciary. To avoid widespread disruption, it is critical that any changes to this fundamental rule be done very carefully based on a full public policy dialogue. Without such a careful review, we are risking an enormous reduction in investment information and retirement savings. We could also trigger a very significant wave of job losses throughout the industry, including, for example, registered representatives who are not licensed to provide advice.

Recommended process. The point here is that the proposed regulation could well have vast and very serious unintended consequences. In that context, the next steps seem clear.

- The economic studies of the effect of the proposed regulation need to be completed.
- Those studies need to be the subject of public comment. It would be strikingly inappropriate not to give the public an opportunity to review the economic basis for the regulation.
- At the same time that the economic study is made available for public comment, the regulation itself should be reproposed. In the light of the concerns that have been raised on a bipartisan basis and the importance of the topic, there would not appear to be any reason not to repropose. Why not get this right through a robust public dialogue?
- At the same time as the regulation is reproposed, all associated new class exemptions needed to make the regulation work need to be proposed. The regulation and these new class exemptions have to work together. To finalize the regulation and then work on the class exemptions does not make sense. Moreover, if the regulation is finalized first, financial institutions will need to immediately begin work on restructuring their businesses to reduce services; they cannot wait based on the possibility that helpful class exemptions may someday be adopted.

If the proposed regulation is revised to address concerns, would harmful conflicted advice be permitted?

The regulation can easily be modified to address concerns without permitting harmful conflicted advice.

First, many of the concerns regarding the proposed regulation relate to the fact that almost any casual discussion regarding investments becomes fiduciary advice. For example, if an employee in a company's human resources department is asked whether a participant's investment choices resemble other employees' choices, any casual response—such as "I am not an expert, but they seem similar"—would be fiduciary advice. This result is clearly erroneous and should be corrected, and correcting this type of problem cannot be said to permit conflicted advice.

Second, the Department itself recognizes that there is a sharp difference between advising and selling, and that the elements of a sale may occur over a period of time, and are not just a moment in time event. If an entity (1) is selling products or services, (2) can benefit from which product or services is chosen, and (3) makes full disclosure regarding that potential benefit, such actions are selling, not advice. Clarification of that point through a reproposal process would be extremely helpful, without raising any possibility of conflicted advice.

Third, we can all benefit from the deep consideration given to the fiduciary issue by Congress in the context of the Dodd-Frank Act. In Dodd-Frank, Congress determined that the receipt of variable compensation based on the investment advice given is consistent with a fiduciary duty and does not give rise to a harmful conflict of interest, provided that the variable compensation is fully disclosed. The industry is supportive of the principles underlying the Dodd-Frank provision and would be pleased to see those principles applied to the proposed regulation.

In short, I believe that the modifications needed to the regulation will not give rise to harmful conflicts of interest.

Plan Sponsor Concerns.

Swaps.

Plan sponsors use swaps to manage the funding risks inherent in defined benefit plans. Without risk mitigation strategies, fluctuations in interest rates can cause pension liabilities to fluctuate wildly, leading to extremely volatile funding obligations. A company's funding obligations can easily move by hundreds of millions of dollars—or even billions of dollars—by reason of interest rate movements. This can jeopardize the company's stability as well as undermine the security of the participants' benefits.

There are three ways to address this volatility. First, a company can reserve enormous amounts of cash in order to be prepared for the volatility. In today's economic climate, that would result in massive layoffs and stalled economic recovery. Second, a company can use swaps, which were designed for exactly this purpose. Third, a company can use bonds to hedge the risk; bonds are far less effective and more expensive than swaps. The bond approach could,

for example, cost large companies from $100 million to $1 billion or more annually, when compared to swaps.

Unfortunately, the plans' ability to use swaps is threatened by the Department's fiduciary definition. There is a direct conflict between the Department's proposed fiduciary definition and the proposed business conduct standards issued by the Commodity Futures Trading Commission ("CFTC") pursuant to the Dodd-Frank Act. Briefly, the proposed business conduct standards require swaps dealers and major swap participants ("MSPs") to take three actions that would, under the Department's proposed fiduciary regulation, convert swap dealers and MSPs into ERISA fiduciaries with respect to plan counterparties: (1) the provision of information regarding the risks of the swap, (2) swap valuation, such as providing mandated daily marks, and (3) a review of the ability of the plan's advisor to advise the plan with respect to the swap. Even under the Department's current investment advice regulations, we believe that the third action could convert swap dealers and MSPs into ERISA fiduciaries. If the swap dealer is a plan fiduciary, a swap with the plan would be a prohibited transaction and thus illegal. In such a case, all ERISA fiduciaries participating in the transaction could have liability, and the dealer or MSP could be subject to an excise tax equal to 15% per year of the amount involved in the transaction. The penalties are so severe that absent regulatory clarity, no one would risk them.

The Department has written a letter to the CFTC that takes the position that the business conduct standards would not convert swap dealers and MSPs into fiduciaries under the proposed regulation, because of the "seller's exception" (also referred to as the counterparty exception) in the proposed Department regulation. Further, the Department confirms that the treatment of swaps dealers and MSPs as fiduciaries was not intended.

The letter's statement of the Department's intent is helpful, as is the letter's analysis of the regulation. Unfortunately, the letter is (1) non-binding, (2) only an informal analysis of two proposed regulations, and (3) in the view of the private sector lawyers I have talked to, inconsistent with the regulatory language. Accordingly, the Department's letter cannot be relied on by attorneys in analyzing the law or giving opinions with respect to this issue. Based on extensive discussions with the swap industry, ERISA plans, investment advisers, and swap dealers would generally be unable to obtain opinions from internal or external counsel that a swap dealer's compliance with the CFTC's business conduct standards would not expose such dealers and the plan fiduciaries to the risk of a prohibited transaction under ERISA. As noted above, because of the severe penalties involved, unless the regulation is modified so that this issue is clear, most swaps with plans will likely cease. Major plans will not take a chance that they are entering into prohibited transactions in the face of a regulation that is unclear at best and adverse at worst. Plans, their fiduciaries, and their counterparties are meticulous in their efforts to comply with the Department's prohibited transaction rules. They would likely conclude that it would be inadvisable, from both an ERISA and business perspective, to rely on a non-binding letter in the face of a regulation that is, as noted, at best unclear and at worst adverse.

Groups have met with the Department and have suggested that the DOL issue binding guidance that simply makes it clear that the two regulations are not in conflict. Briefly, the guidance would state that no action required by reason of the business conduct standards will make a swap dealer or major swap participant a fiduciary. The Department has, however,

expressed reluctance to do this. That has set off alarm bells throughout the swap industry. If the Department is not comfortable stating that there is not an irreconcilable conflict between the regulations, it is hard to imagine that the private sector can get comfortable with entering into swaps involving ERISA plans.

Very specifically, here is the language that was recommended be inserted in the preamble to the CFTC's final business conduct standards. This language can only be inserted with the Department's approval.

> The Department of Labor has informed the Commission that, in the case of a swap with a plan subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), no action of a swap dealer or major swap participant that is required by reason of these business conduct regulations will make such swap dealer or major swap participant a fiduciary under ERISA with respect to such plan, either under current law or under the final version of the Department of Labor's proposed regulations with respect to the definition of a fiduciary. The Department of Labor has further informed the Commission that the Department will, within 180 days of publication of the Commission's final business conduct regulations, state in regulations, rules, or similar guidance, effective as of the effective date of the Commission's final business conduct regulations, that no action of a swap dealer or major swap participant that is required by reason of these business conduct regulations will make such swap dealer or major swap participant a fiduciary under ERISA with respect to such plan.

If the business conduct standards are finalized without this or similar language, swaps with plans will generally cease. Such language is essential.

In short, in order to avoid the very negative consequences to pension plans of being unable to use swaps, on or before the finalization of the business conduct standards there needs to be legal clarity on the fundamental point that no action required by reason of the business conduct standards will make a swap dealer or an MSP a fiduciary <u>under current law or under the final version of the DOL's proposed regulations</u>.

<u>Effects on Small Businesses.</u>

As discussed more fully below, the effects of the proposed regulation would be very adverse with respect to the retirement security of employees of small businesses:

- Neither broker/dealers nor other financial institutions would be able to assist small businesses with respect to critical elements of plan maintenance. If such entities cannot help small businesses in this regard, plan formation would fall sharply.
- Investment education, which can give employees the knowledge needed for them to be comfortable participating in a plan, would largely dry up.

- Small business owners who consider starting a plan would face massive increases in potential liability and uncertainty and in the cost of services, which would make them far less likely to adopt a plan.

Plan maintenance/investment options. It is very well known that retirement plan coverage among small businesses is far lower than among all other organizations. The reasons are straightforward: cost, burdens, liability, and complexity. In this context, please consider the following scenario.

A financial institution approaches the owner of a 12-employee hardware store about setting up a 401(k) plan. The owner is willing to consider adopting a plan as long as the plan's formation is simple and inexpensive and does not create any material liability for him.

The financial institution discusses the plan terms and structure. Then, the subject of investment options is raised: when the plan is established, the owner will have to choose investment options to be made available to plan participants. The financial institution has, for example, 500 investment options, which the hardware store owner will need to narrow down to, for example, approximately 20 or 25, so as not to overwhelm the employees. Today, the financial institution could, for example, provide the owner with model portfolios chosen by similar employers and could explain the differences among the portfolios so that the owner can make an informed choice.

For a plan maintained by a small business owner, in particular, the investments will predominantly be mutual funds. The funds pay the financial institution various forms of "revenue sharing." The amount of revenue sharing will vary from fund to fund and is generally paid whether or not the fund is held in a retirement account. It is this system of revenue sharing that has made mutual funds an affordable investment form.

Under the proposed regulation, helping the owner choose the plan's investment options would make the financial institution a fiduciary. This would mean that such help would be a prohibited transaction if, as is the norm, some options benefit the financial institution more than others by reason of different levels of revenue sharing and/or the existence of both proprietary and non-proprietary funds. The help would be a prohibited transaction regardless of how small any additional benefit may be and regardless of the soundness of the help provided by the financial institution.

So the financial institution would have to tell the owner that he has two choices. First, the owner could review thousands of pages of information provided by the financial institution regarding the 500 investment options and make his own choice, subject to fiduciary liability. Or second, the owner could try to find a qualified third party to help make the selections, pay that third party for that service, and continue to pay the third party indefinitely to monitor the investment options.

This scenario would play out across the country if the Department's proposed regulation is adopted. The effect on small business retirement plan coverage would be very adverse.

Plan maintenance/brokers and dealers. Brokers and dealers play a major role in helping small businesses adopt plans. Often, a broker/dealer will have a relationship with a small business owner. The broker/dealer who handles the owner's non-retirement retail account may raise the possibility of the owner adopting a 401(k) plan. Like the financial institution situation described above, this is a very common means by which small business owners adopt plans.

Unfortunately, under the proposed regulation, the commission-based brokerage model becomes illegal due to the broker/dealer's receipt of, for example, fully disclosed revenue sharing. So the broker/dealer cannot be compensated for helping the owner with the formation and operation of a 401(k) plan. Logically, then, the broker/dealer will instead work with the owner on her non-retirement retail account, since that is the only account the broker/dealer is permitted to work with.

Investment education. It is common today for financial institutions to provide plan participants and plan sponsors with investment education. This can be very helpful in encouraging business owners to adopt plans and in encouraging employees to participate in those plans.

Under current law, it is generally agreed that information about asset allocation principles is "education" and does not trigger fiduciary status. So investment professionals can, without becoming fiduciaries, educate plan participants about different asset classes, and what mix of asset classes is most appropriate in different circumstances. The basis for the understanding regarding education is Department Interpretive Bulletin 96-1 ("96-1"). Reliance on this bulletin is widespread and the concepts behind it are generally well received. In small businesses especially, this type of education can be helpful in encouraging employees to participate in a plan. If such education triggered fiduciary status, the provision of the education would largely dry up, due largely to the prohibited transaction rules, but also due to liability concerns.

There is great concern that the proposed regulation would sharply decrease the provision of investment education. It is true that the proposed regulation expressly states that education under 96-1 does not give rise to fiduciary status. However, unlike present law, it appears that under the proposed regulation information about asset allocation would trigger fiduciary status but for the explicit exception for 96-1 education. This has caused the following concern. If education does not comply precisely with 96-1, education becomes fiduciary advice. But 96-1 is not a detailed set of rules; it is largely conceptual, which makes it hard to be certain of compliance.

In this context, many education providers have expressed grave doubts that they would continue providing investment education if the proposed regulation were finalized. This is not an unfounded concern by any means, since 96-1 itself notes that whether information is education or fiduciary advice is turns on the facts and circumstances of the particular situation. The proposed regulation states that information may be advice if it "may be considered" in connection with making plan investments. Since it can reasonably be expected that education about investment may be considered by the recipient in making investment decisions, providers

of needed education will likely restrict the information that they provide due to the chance that they might become fiduciaries for providing what they consider to be educational materials.

Distribution education. In the preamble to the proposed regulations, the Department raised the possibility of modifying the law to treat distribution counseling and education as investment advice. This issue has the potential to create significant uncertainty and dramatically reduce the provision of basic information regarding distribution issues. At a minimum, any change in the law should be implemented through the regulatory process with an opportunity to comment on proposed regulatory language.

Liability and uncertainty. Under the proposed regulation, almost any discussion of investments would give rise to fiduciary status. So small business owners would face very serious potential liabilities and uncertainties if they or their managers respond to any employee inquiries regarding plan investments. This type of exposure would be a very significant disincentive to plan formation and maintenance. Similarly, if service providers are converted into fiduciaries, the service providers will need to charge more to cover their increased potential liability. This will be another powerful disincentive to plan formation.

In short, the proposed regulation would dramatically reduce small business plan formation by precluding financial institutions from assisting small businesses in this regard. Investment education would largely dry up, making employees far less comfortable about participating in a plan. And small business owners would be discouraged from establishing a plan by the creation of far more potential liability and higher costs.

Additional Plan Sponsor Concerns.

Because the proposed regulation was written without the benefit of prior input, the list of concerns is extremely extensive. I will simply provide two additional examples of plan sponsor concerns.

Plan sponsor employees: who should be a fiduciary? By very significantly lowering the threshold for fiduciary status, the proposed regulation raises serious questions regarding which plan sponsor employees may be treated as fiduciaries. For example, it is, of course, common for a plan sponsor to form a committee of senior executives to oversee plan issues, including plan investment issues. It is certainly clear that such committee has fiduciary status. But plan sponsors have expressed concern about the status of other employees who perform the research and analysis necessary to present investment issues for the committee's review and resolution.

Such other employees may provide recommendations for the committee to consider. This is simply how companies work. Middle-level employees frame issues for senior employees to resolve; issues are best presented in the context of a recommendation based on the advantages and disadvantages of any decision, so that senior employees can quickly appreciate the relevant factors. Many employees may participate in the research and the preparation of the recommendations to the committee. If all of these employees were fiduciaries, the effects would be severely negative.

- The cost of fiduciary insurance would skyrocket, if such insurance would be available at all for such employees.
- It would certainly become more difficult to get employees to work on these projects in the face of potentially staggering liabilities and lawsuits.
- Creative work and recommendations would likely be stifled as middle-level employees propose conservative approaches with less downside (and correspondingly less upside).

The bottom line is that the employees preparing the reports for the plan committee are not the decision-makers. They are the researchers who prepare recommendations based on objective criteria for the committee members to evaluate and resolve. And the proposed regulation could potentially sweep in a huge number of employees, since the middle-managers formulate their recommendations based on the work of employees who in turn work for them.

The regulation needs to address the situation where a company or committee within a company serves as a fiduciary with respect to investment decisions or recommendations. In that case, the employees who help the company or committee make those decisions or recommendations should not be fiduciaries. Otherwise, we could have a real problem as potentially hundreds of employees without decision-making power become fiduciaries. This is not to suggest that employees of a fiduciary company cannot be a fiduciary. For example, an advisor company's employee may have the advisory relationship with a plan or participant and may become a fiduciary by reason of that relationship. But such cases are different. In these cases, employees involved are making direct investment recommendations that are not filtered through supervisors or entities that are fiduciaries.

"Management of securities or other property": the proposed regulations would transform contract reviews and other non-investment advice into investment advice. The proposed regulation would include within the definition of "investment advice" the following: "advice…or recommendations as to the management of securities or other property." The preamble states that:

> This would include, for instance, advice and recommendations as to the exercise of rights appurtenant to shares of stock (e.g., voting proxies), and as to selection of persons to manage plan investments.

The broad language of the proposed regulations raises many questions:

- A plan decides to change trustees, chooses a new trustee, and begins negotiating a trust agreement with the new trustee. The plan asks for advice with respect to the terms of the trust agreement from the plan sponsor's internal and external ERISA and contract attorneys, as well as the plan sponsor's compliance personnel, human resources department, and tax department. The trustee is involved in the "management" of plan assets, and the terms of the trust agreement affect that management. Does that mean that all of the above personnel advising the plan with respect to the trust agreement are fiduciaries? If it does, the cost of trust agreements and many other routine plan actions

will increase exponentially with the imposition of new duties and large potential liabilities. Also, many of the above persons may refuse to work on the project without a full indemnification from the plan sponsor. We do not believe that this type of cost increase and disruption was intended.

What about the persons working on the agreement for the new trustee? If such persons make any "recommendations" to the plan in the course of negotiations, they would become fiduciaries because the seller exemption, on its face, only appears to apply to sales of property and not services. Any such recommendations would thus trigger fiduciary status and corresponding prohibited transactions. Theoretically, this could chill all meaningful give-and-take during the negotiations, and many institutions may be unwilling to act as trustee. Again, we do not think that this was intended.

- A plan has decided to enter into a swap and must execute a swap agreement. The terms of the swap agreement will have a significant effect on the plan's rights with respect to the swap. The plan asks its internal and outside securities counsel to work on the swap agreement, and to consult with the plan's internal and outside ERISA counsel. The plan also asks its investment manager for input on the types of provisions that are important for plans to include (or exclude) in swap agreements. The plan accountant is also asked to review the agreement. Finally, the company's own compliance personnel, contract experts, and finance department also review the agreement.

  The terms of the swap agreement affect the "management" of the swap. So do all of the above personnel become fiduciaries under the proposed regulations? If the answer is yes, plans' cost of investments will skyrocket, as an enormous new set of individuals and companies that have little material role in plan investments become fiduciaries, with far greater potential liability and a higher standard to meet. In addition, as noted above, many persons would likely refuse to review the agreement absent a full indemnification by the plan sponsor.

- A plan negotiates a loan agreement in connection with an ESOP. Is everyone who works on the loan agreement a fiduciary? Could individuals working on the loan agreement for the lender become fiduciaries if they make any "recommendations" during negotiations?

To avoid the inappropriate results described above and many other similar results, the regulation should provide a precise and appropriately narrow definition of "management" in the regulation. Under the definition, "management" would include:

- The selection of persons to manage investments;
- Individualized advice as to the exercise of rights appurtenant to shares of stock; and
- Any exercise of discretion to alter the terms of a plan investment in a way that affects the rights of the plan, unless such exercise of discretion has been specifically reviewed and agreed to by a plan fiduciary. In the swap context, for example, swap terms can be modified without plan review and consent by, for example, swap data repositories. If any such changes are made, anyone making those changes is acting for the plan and should be

treated as a fiduciary. Moreover, such treatment is necessary in order to prevent harm to the plan.

This would target the actions identified by the Department in the preamble. But it would not have the inappropriately broad consequences illustrated above.

Summary.

The critical message is that the decision regarding this proposed regulation could have a dramatic effect on the retirement security of millions of Americans for years to come. To rush through this project without adequate study, without a full public policy dialogue, and without all exemptions needed to make the regulation work would be very harmful. Reproposal of the regulation is needed, as discussed above.