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By Electronic Mail to e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Fiduciary Definition Hearing
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Written Request to be Heard and Outline of Proposed Testimony on the Definition of Fiduciary Proposed Rule

Ladies and Gentlemen:

This written request to testify at the public hearing to be held on March 1 and March 2, 2011 is being submitted in response to the Notice of Public Hearing on the proposed rule defining when a person will be considered a "fiduciary" by reason of giving investment advice to a plan or to the plan's participants and beneficiaries, published in the Federal Register on January 12, 2011.

Jennifer E. Eller will present testimony on behalf of a coalition of firms engaged in the management of real estate assets and the business of valuing and appraising real estate (the "Real Estate Appraisal Coalition"). On an annual basis, Real Estate Appraisal Coalition members are responsible for providing valuation services with respect to over $500 billion in real estate assets belonging to thousands of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

As indicated in the Notice of Public Hearing, we expect the testimony to take 10 minutes, and we will be prepared to answer the Department's questions. We may remark upon any of the issues discussed in our comment letter, although if time permits we expect to specifically address the points below.

Outline of Testimony

I. Introduction (1 minute)

- Coalition members provide real estate appraisal and valuation services with respect to $500 billion in real estate related assets held by ERISA-covered retirement plans.

II. Imposing ERISA fiduciary standards on real estate appraisers is unnecessary, burdensome, and would not benefit ERISA plan participants and beneficiaries (5 minutes)

- The Uniform Standards of Professional Appraisal Practice ("USPAP") apply to appraisals and value opinions issued in connection with real estate investments of ERISA-covered plans.
    - Establishment and enforcement of USPAP standards are overseen by federal regulators.
    - The USPAP standards are comprehensive and protect plan investors from appraiser misconduct, including fee conflicts.
- USPAP standards are universally incorporated into the policies that federal and state financial institutions use in hiring and monitoring real estate appraisers. Imposing ERISA's fiduciary standards on real estate appraisers would force appraisers and financial institutions to operate under two sets of standards. This approach would be burdensome and would result in greater costs imposed on plans, without any corresponding benefit.

III. ERISA imposes fiduciary responsibility for reporting the fair value of plan assets on a plan's "administrator." To the extent the Department is concerned about valuation of real estate assets held by plans, the Department should consider issuing guidance to existing plan fiduciaries, rather than expanding the fiduciary definition. (2 minutes)

IV. If the Department determines that real estate appraisers may properly be considered investment advice fiduciaries in some circumstances, the Department should also craft a workable limitation so that a person acting in accordance with USPAP will not be deemed to be a fiduciary. (2 minutes)

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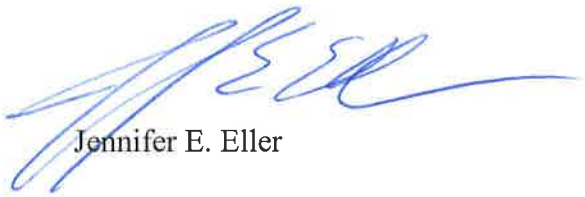
We appreciate the opportunity to testify on this important proposal.

Sincerely,



Jennifer E. Eller