



**NATIONAL  
ASSOCIATION of  
REALTORS®**

Ron Phipps  
ABR, CRS, GRI, GREEN, e-PRO  
2011 President

Dale A. Stinton  
Chief Executive Officer

**GOVERNMENT AFFAIRS**  
Jerry Giovaniello, Senior Vice President  
Gary Weaver, Vice President  
Joe Ventrone, Vice President  
Jamie Gregory, Deputy Chief Lobbyist

500 New Jersey Ave., NW  
Washington, DC 20001-2020  
Ph. 202-383-1194 Fax 202-3837580  
www.REALTOR.org

January 20, 2011

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

Re: Definition of Fiduciary Proposed Rule, RIN 1210-AB32

Dear Sir or Madame:

I am writing on behalf of the 1.1 million members of the National Association of REALTORS® (NAR) to provide written comments on the U.S. Department of Labor’s (DOL) proposed RIN 1210-AB32, Definition of the term “Fiduciary”. NAR has concerns about the proposed rule’s expansion of the definition of the term “fiduciary” under the Employee Retirement Income Security Act (ERISA) to include real estate appraisers. NAR believes that fiduciary status should not extend to appraisers because appraisers do not provide investment advice.

The National Association of REALTORS® is America’s largest trade association, including NAR’s five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®. NAR has approximately 30,000 appraiser members from across the country and approximately 750 have earned our Residential Accredited Appraiser (RAA) and General Accredited Appraiser (GAA) designations.

In the proposed rule, DOL broadly defines the circumstances under which a person is considered a fiduciary by reason of giving investment advice to an employee benefit plan or a plan’s participants. A number of duties are imposed on a fiduciary through ERISA, “including a duty of undivided loyalty, a duty to act for the exclusive purposes of providing plan benefits and defraying reasonable expenses of administering the plan, and a stringent duty of care.”<sup>1</sup> The proposed rule states that appraisers may significantly impact plan investments and, without being a fiduciary, may operate with conflicts of interest to plan fiduciaries who expect impartiality.

Offering investment advice is different than providing objective opinions of value. Real estate appraisers act as objective, third party analysts who provide opinions of value. According to the Uniform Standards of Professional Appraisal Practice (USPAP), an appraiser is “expected to perform valuation services competently and in a manner that is independent, impartial, and objective.”<sup>2</sup> Further, under the USPAP Ethics Rule, an appraiser is prohibited from advocating the cause or interest of any party. It would be difficult for an appraiser to provide services to any benefit plan as a fiduciary under the proposed rule without violating USPAP standards. Any such violation could ultimately result in the appraiser losing their state-issued license or certification.

Thank you for your time and consideration of this matter. If you have any questions or concerns, or if we may be of service to you, please do not hesitate to contact NAR’s Senior Regulatory Policy Representative, Jerry Nagy, at 202.383.1233 or [jnagy@realtors.org](mailto:jnagy@realtors.org).

Sincerely,

Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO  
2011 President, National Association of REALTORS®



REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

<sup>1</sup> Definition of the Term “Fiduciary”. Department of Labor Proposed Rule RIN 1210-AB32. P. 65263

<sup>2</sup> Uniform Standards of Professional Appraisal Practice. 2008-2009 Edition. P.U-1