

TESTIMONY OF

EDWARD FERRIGNO,  
VICE PRESIDENT, PROFIT SHARING / 401(K) COUNCIL OF AMERICA

BEFORE THE ADVISORY COUNCIL ON EMPLOYEE WELFARE AND  
PENSION PLANS WORKING GROUP ON FIDUCIARY EDUCATION

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Thank you for this opportunity to meet with the working group to discuss opportunities to improve the education of plan fiduciaries. I will limit the scope of my comments to plans with less than 500 participants. For larger plans, PSCA feels that fiduciary education, or at least the awareness of the existence of a fiduciary responsibility and access to competent counsel and assistance, is generally not an issue. However, do not infer that compliance for these large plans is not a significant and costly burden. In fact, the emerging trend by the plaintiff's bar to target large retirement plans for fiduciary breach suits threatens the viability of these voluntary employer-sponsored programs.

PSCA commends the Council for undertaking this important project. Fiduciary education is a continuing concern for our association. Our two latest endeavors in this area are our plan fee worksheet that was the result of a cooperative effort with the Department of Labor, and our white paper on investment policy statements.

PSCA suggests that the Council not spend much time debating whether or not there is a need for fiduciary education. While many small plan sponsors are adequately aware of their fiduciary responsibilities, we can agree that many others, when asked, will likely respond, "What is a fiduciary?" Furthermore, when these sponsors are told what a being a fiduciary means, they are likely to respond, "My service provider does that." The good news is that they are usually right.

Given the shortfall in plan sponsor awareness of their fiduciary role, serious problems that impact participant's retirement security are extremely rare. In 1998, there were 710,000 plans with less than 500 participants that filed a form 5500. By any measure, significant fiduciary breaches occur in an exceedingly low percentage of these plans. How can this be? One answer is that service providers by and large work hard to keep plans operating within the law. Another important safeguard is the fact that business owners and senior management always have a major stake in the plan – they own the largest accounts. These participants can usually be counted to keep a very careful eye on all aspects of the plan, particularly the investment of assets.

Why then is fiduciary education so important? PSCA considers this issue to be an element of our efforts to continually improve the defined contribution system. Our goal is no harmful fiduciary breaches. We also think it is critical for plan sponsors to understand their role vis-à-vis their service provider. They cannot, and should not, delegate their responsibilities.

#### CURRENT STATE OF AFFAIRS

Third-party service providers provide the bulk small business retirement plans. As we just noted, these providers are presently playing a key role in ensuring that plans comply with ERISA. . The service provider is frequently the sole source of information about the fiduciary and compliance obligations attached to sponsoring a plan. These parties have no obligation to provide this information and there is a wide variance on the level of the information provided. However, most providers do an excellent job of informing and assisting employers with their responsibilities.

#### SCOPE

Plan sponsors should have a one-stop educational service that covers all government compliance responsibilities. The education program should be coordinated with a parallel effort by the Internal Revenue Service Employee Plans Division. Ideally, the efforts will be merged into one program covering both fiduciary and IRS qualification subjects. The Internal Revenue Service has an active study of small plan compliance issues underway. PSCA is one of many organizations and service providers who are actively involved in this effort.

#### APPROACH

It is essential that the education program does not result in any additional requirements for employers. For example, a certification or testing requirement for plan sponsors could have disastrous results on employers' willingness to sponsor a plan. Section 106 of HR 3762, the Pension Security Act of 2002, passed by the House of Representatives, mandates a study by the Secretary of Labor of the feasibility of requiring the engagement of "independent advisors" to assist plan sponsors. These advisors would probably be acting as independent fiduciaries, a costly endeavor that would be crippling to small business owners, or if paid with plan assets, to the accounts of participants. This is exactly the wrong approach to take in any educational effort. Emphasis should be placed on the resources available to help plan sponsors comply. Special attention should be provided to the voluntary and self-correction programs offered by Labor and Treasury.

#### DEVELOPING THE PROGRAM

The Department should partner with the private sector to take advantage of the numerous resources available there. As noted above, many service providers have excellent educational programs that can be accessed to assist the Department.

Associations representing plan sponsors and service providers, including PSCA, can be expected to fully cooperate in this endeavor as well.

#### DISSEMINATION

The weakest link in many educational programs is communicating with the intended audience. The Department and the Internal Revenue Service should be cognizant that, deserved or not, neither organization is generally viewed as a source of assistance by the small business community. This endeavor is an opportunity to change this perception. Serious consideration of including the Small Business Administration as a partner, particularly in disseminating the educational program, should occur. Associations, particularly those catering to broad-based small business concerns, should be enlisted to join retirement plan associations and service providers to publicize the educational program. The Department should also work with the IRS and the service provider community to identify new small plan sponsors and provide them with fiduciary education materials. This approach was raised as part of the ongoing IRS discussions on small plan compliance.

This is an important and very worthy undertaking by the Council and the Department. PSCA looks forward to taking an active role.