



NEPC, LLC

RICHARD M. CHARLTON
CHAIRMAN & CEO

June 4, 2010

Dear Conference Committee Member,

On May 20, the United States Senate passed the Restoring American Financial Stability Act (S. 3217), with significant financial reform provisions. Previously, the House of Representatives passed a bill on December 11, 2009, entitled the "Wall Street Reform and Consumer Protection Act of 2009" (H.R. 4173). These bills are expected to be reconciled in your conference committee this month.

NEPC commends the legislative efforts to protect financial stability, but is concerned that the bills would lead to adverse outcomes for both defined benefit and defined contribution plan participants. Our concerns center on the impact of proposed fiduciary requirements for swap dealers. The provisions in sections 731(h) and 764(h) of the Senate version of HR 4173 include a fiduciary duty for swap dealers participating as counterparties with investments in retirement plans. Unfortunately, a swap dealer cannot represent both sides of a transaction. We believe that instead of protecting participants, such a requirement would likely end the swap market for plans, ultimately impairing participant's interests.

Swap arrangements are used extensively by pension plan investments to reduce risk, and increasingly are used to hedge the interest rate risk associated with plan liabilities, better securing the funded status of defined benefit investment programs and the integrity of the "retirement promise." Within defined contribution plans, stable value funds rely on contracts that are defined as swaps. The proposed fiduciary language could lead to the demise of stable value funds, which are the predominant short-term vehicle in defined contribution plans. We would also suggest that even if the fiduciary language is amended, inclusion of stable value wrap contracts within the swap definition could increase fees for participants and hurt the viability of stable value offerings going forward.

It is NEPC's recommendation that the bills be reconciled such that swap dealers are not considered fiduciaries with respect to retirement plans. It is also our view that stable value wrap contracts should be excluded from the swap definition. If wrap contracts must be included, reserve and reporting requirements imposed by the SEC and CFTC should not be so onerous as to make stable value funds unviable.

While many in the investment management community have expressed concern over the proposed changes, we believe that the elimination of swaps within retirement programs would ultimately have an adverse impact on individual plan participants. Since swaps increase efficiency and reduce transaction costs, their removal would increase costs, which managers would pass on to participants. Thus, the changes run the risk of reducing retirement security without a corresponding benefit.

NEPC is an independent, full-service investment-consulting firm headquartered in Cambridge, Massachusetts. In total, NEPC advises over \$342 billion in total assets across more than 283 retainer relationships in the Corporate, Public, Taft-Hartley, Endowment and

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Foundation, and High Net Worth, markets. NEPC advises 107 defined contribution programs with over \$71 billion in assets collectively across most industries and market segments.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Michaelson', is written below the word 'Sincerely,'.