



National Association of Government Defined Contribution  
Administrators, Inc.

May 5, 2010

The Honorable Christopher Dodd, Chairman  
Senate Committee on Banking, Housing and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Dodd,

It has come to the attention of the National Association of Government Defined Contribution Administrators (NAGDCA) that the definition of swaps in the Restoring American Financial Stability Act of 2010 may have a serious and unintended detrimental impact on stable value investment options offered through Section 457 eligible deferred compensation plans. On behalf of public employee participants in Section 457 eligible deferred compensation plans and the NAGDCA membership, we request the following relief:

**That benefit responsive investment wrap contracts issued with respect to stable value funds offered through Section 457 eligible deferred compensation plans be excluded from the definition of a swap in the Restoring American Financial Stability Act of 2010.**

Section 457 eligible deferred compensation plans are the primary supplemental retirement savings plans for public employees. A recent NAGDCA survey attests that 90% of all Section 457 plans offer a stable value fund as an investment option. Also, more plan participants invest some or all of their supplemental retirement savings in the stable value option than any other single offering. These two facts emphasize how important stable value investment options are to Section 457 plans and their plan participants.

Stable value funds are an important core investment option because they provide a conservative investment vehicle with the primary purpose of preserving capital with a moderate and stable return on investment. Stable value funds depend on the availability of benefit responsive investment wrap contracts (“wrap contracts”) to maintain crediting rate stability and avoid market volatility. It is for these reasons that so many plan participants, particularly those near or in retirement, use stable value funds as a primary investment vehicle.

Wrap contracts are issued by a third party, generally a bank or insurance company, and provide limited protection against interest rate changes, a 0% crediting rate floor, and

protection against loss of principal resulting from employee initiated withdrawals when book value of the underlying securities exceeds the market value of those securities. Wrap contracts, therefore, are essential to stable value fund offerings. The protection they provide against crediting rate volatility have made stable value funds an important investment option in deferred compensation plans and for participants who invest their supplemental retirement income in those funds. Wrap contracts have existed for many years, are thoroughly negotiated between providers and plan sponsors, are public documents with regard to public plan sponsors, and were not a contributing factor to the recent economic crisis.

Failure to exclude wrap contracts from the definition of a swap in the Restoring American Financial Stability Act of 2010 will result in higher costs for the protection provided by wrap contracts and a commensurate lower return for investing plan participants. Any reduction of performance in a stable value fund is a loss to the plan participant who is attempting to save for their retirement and/or assure that their assets will at least be available throughout their retirement lifetime.

In addition, there are only a limited number of banks and insurance companies which currently write wrap contracts. This has led to rising costs and greater restrictions imposed by the wrap provider on the securities that stable value investment managers may invest. Imposing additional requirements on wrap contract providers may cause some of those providers to exit the market leading to further cost increases and investment restrictions.

On November 11, 2009, the Stable Value Investment Association (SVIA) submitted a letter more fully explaining stable value funds, wrap contracts, and justification to exempt wrap contracts from the definition of swaps with respect to stable value funds offered through “defined contribution plans” and “qualified tuition programs.” We concur with the analysis and statements of the SVIA with regards to this issue.

The SVIA proposed an amendment to the Derivative Markets Transparency and Accountability Act of 2009 that would exclude benefit responsive investment wrap contracts with respect to stable value funds in “defined contribution plans” and “qualified tuition programs” authorized by Section 529 of the Internal Revenue Code.

However, NAGDCA believes that the SVIA proposed amendment does not provide similar relief for eligible deferred compensation plans authorized by Section 457 of the Internal Revenue Code because these plans are not included in the definition of a defined contribution plan. NAGDCA, therefore, strongly requests that benefit responsive investment wrap contracts issued with respect to stable value funds offered through Section 457 eligible deferred compensation plans be excluded from the definition of a swap in the Restoring American Financial Stability Act of 2010.

We thank you in advance for consideration of this request. Please call Susan J. White, NAGDCA Legislative Representative at 703-683-2573 should you need additional information or clarification.

Sincerely,



Edward J. Lilly  
President



Alex Turner  
Chair, NAGDCA Legislative Committee

NAGDCA is the leading professional public employer sponsored organization of deferred compensation and defined contribution plan administrators. NAGDCA represents administrators for the 50 state and over 200 local governments. Altogether the public sector defined contribution retirement plan market consists of approximately 12 million state and local government employees and 5.6 million public school employees and administer approximately three trillion dollars in assets.