NAGDCA

National Association of Government Defined Contribution Administrators, Inc.

January 3, 2011

Mary Shapiro, Chairman
Securities and Exchange Commission
100 F St., NE Room 10700
Washington, DC 20549

Dear Chairman Shapiro,

On behalf of the National Association of Government Defined Contribution Administrators (NAGDCA), I urge the Securities and Exchange Commission (SEC) to determine that benefit responsive investment wrap contracts (wrap contracts) issued with respect to stable value funds offered through Section 457 eligible deferred compensation plans, 401(k) and 403(b) plans are not within the definition of a swap under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act).

As you are aware, the Act directed the SEC and the Commodities Futures Trading Commission (CFTC) to jointly determine whether wrap contracts fall within the definition of a swap. The NAGDCA members who administer deferred compensation plans for public employees are concerned that a determination that wrap contracts are not exempt from the definition of a swap will have detrimental impacts on stable value investment options offered through defined contribution retirement savings plans, such as 401(k), 403(b) and 457 plans.

Wrap contracts are issued by a third party, generally a bank or insurance company. Currently there are only a limited number of banks and insurance companies that write wrap contracts. The current market conditions have led wrap providers to increase fees and impose stricter investment guidelines on the securities that stable value investment managers may invest. Imposing additional requirements on wrap contract providers could cause some of the existing providers to exit the market which could lead to further cost increases and investment restrictions.

NAGDCA believes that higher costs and stricter investment guidelines will result in a commensurate lower return to 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.

A wrap contract provides limited protection against interest rate volatility, 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. The crediting rate stability that a wrap contract provides is an essential factor that makes stable value funds such a widely used investment option. 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. Additional regulation would have detrimental without providing commensurate protections.

The Stable Value Investment Association (SVIA) issued a letter on November 11, 2009 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.

We thank you in advance for consideration of this request and would appreciate an opportunity to meet with you, at your convenience, to discuss this issue further. In the meantime, you can always contact Susan J. White, NAGDCA Legislative Representative at 703-683-2573 should you need additional information or clarification.

Sincerely,

Gay Lynn Bath

Gay Lynn Bath
President

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.