

ICI VIEWPOINTS

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For the Sake of Retirement Savers, ERISA Rules Defining “Fiduciary” Need Clarity

By Paul Schott Stevens

Fiduciary status entails one of the highest obligations known to the law. Essentially, a fiduciary is one who takes it upon himself or herself to act for or advise another, thus inviting the other’s confidence and trust.

Fiduciaries play a vital role under the laws governing retirement plans. Indeed, fiduciary status underpins the entire compliance structure of the Employee Retirement Income Security Act (ERISA). Under ERISA, those providing investment advice to plans or participants for a fee are among the persons who owe fiduciary duties.

The Department of Labor (DOL) is now grappling with revising the definition, in place since 1975, of investment advisory activities that make an adviser a fiduciary under ERISA. At a DOL hearing on Tuesday, I presented ICI’s views in this area.

Because the fiduciary standard is so important—and can trigger significant liabilities—the rules governing who is a fiduciary must provide clarity, I said at the hearing. The rules should not impede commonplace financial interactions. They must allow plans and retirement savers to obtain investments that meet their needs and gather a range of market input into their decision making process.

I invite you to read [my testimony](#) and our more detailed [February comment letter](#). Broadly, ICI urges that any revision to the DOL’s current rule should reflect the following principles:

- Persons who deal with plans or individual retirement account (IRA) investors must know whether or not they are fiduciaries.
- Fiduciary status should attach only to genuine advisory relationships where a position of trust and confidence exists.
- Simply selling an investment product cannot be a fiduciary act.
- The rule should not discourage the assistance that recordkeepers engaged to administer plan accounts provide to help fiduciaries prudently select and monitor plan menu investments.

As I told the DOL earlier this week, it is in the best interests of Americans saving for retirement that the final rule is clear and workable and that it, like its predecessor, lasts for another 35 years.

- Read Paul Schott Steven’s [testimony](#).
- Read ICI’s February comment [letter to the DOL](#).
- Learn more about ICI’s [work on retirement policy](#).

Paul Schott Stevens was President and CEO of ICI.