

ICI VIEWPOINTS

FEBRUARY 4, 2011

ICI Urges Caution on DOL Fiduciary Duty Proposal

By Mary Podesta

When is a person a fiduciary by virtue of providing investment advice to a retirement plan or its participants? That's the question we addressed in a letter filed yesterday with the Department of Labor (DOL), which issued a [proposal](#) last October to revise its interpretation of the definition of "fiduciary" under the Employee Retirement Income Security Act (ERISA).

Our letter urges DOL to proceed carefully in revising the current ERISA rule, adopted in 1975. That rule draws an important legal boundary between commonplace financial market interactions, on the one hand, and actual advisory relationships on the other. Advisory relationships arise when plan fiduciaries or participants engage providers to act on their behalf in evaluating or making investment decisions.

We urged caution in part because, in the words of our letter, there is "ample evidence Congress did not intend ERISA to disrupt the functioning of the securities markets, prevent employee benefit plans from accessing investments, or turn the 'ordinary functions of consultants and advisers' into fiduciary functions."

Also, we believe the current rule allows parties to offer plans and individuals investments they need and want—and to provide financial and investment information to plans and IRA investors.

While addressing a number of specific provisions of the proposal, our letter suggests that any revision to the rule should reflect the following principles:

- Persons who deal with plans and IRA investors must know whether or not they are fiduciaries.
- Simply selling an investment product cannot be a fiduciary act.
- Fiduciary status should not apply where a reasonable person would not believe a position of trust and confidence exists.
- Plan fiduciaries may receive some general assistance from recordkeepers engaged to administer plan accounts that help fiduciaries make prudent decisions about the plan's investment options.
- The DOL should consider carefully the implications of the proposal for Americans saving for retirement in IRAs.

As our letter notes, "The current rules have worked well for 35 years. The Department's goal should be to assure that they also work well for the next 35 years."

- Read [ICI's letter](#).
- Learn more about ICI's [work on retirement policy](#).
- Visit ICI's [comment letter archive](#).