

## In Supplemental Comments, ICI Urges DOL to Improve Its Proposed Fiduciary Standard Rule

# In Supplemental Comments, ICI Urges DOL to Improve Its Proposed Fiduciary Standard Rule

**Washington, DC, September 28, 2015**—The Investment Company Institute (ICI) reiterated its serious concerns about the Department of Labor’s proposed fiduciary rule proposal in two supplemental comment letters filed recently with the agency. ICI urged DOL to pursue the Institute’s suggestions toward a more workable rule—improvements to the proposed definition, exceptions, and exemptions that would continue to permit retirement savers to access guidance, products, and services that help them meet their retirement goals.

The letters responded to questions raised at the Department’s hearing on the proposal in early August, and elaborated on concerns about the rule proposal that ICI expressed previously, in [four comment letters](#) to the Department on July 21 and in the Institute’s August testimony on the [proposal](#) and the [Regulatory Impact Analysis](#).

- In the [first supplemental letter](#), ICI emphasizes that the Department has not appropriately drawn the line between fiduciary advice and non-fiduciary marketing, sales, and educational activities in the proposed fiduciary standard. As a result, small plans and individual retirement account (IRA) owners will be excluded from access to the education, marketing, and sales related information that they need to make informed investment choices. ICI offers additional constructive recommendations for improving the proposed definition and its corresponding exceptions to establish clear and unambiguous thresholds for determining when fiduciary advice is being provided, and to allow service providers to continue to provide meaningful investment information to retirement savers and plan sponsors without inadvertently triggering fiduciary status.
- ICI also responds to questions raised during the testimony about the proposal’s so-called “Best Interest Contract” exemption and elaborates on ways to make this exemption more functional if it is retained. Finally, ICI reiterates its call for DOL to “grandfather” brokers’ recommendations on preexisting commissionable investments, such as mutual funds that pay 12b-1 fees to broker-

dealers, to avoid unnecessarily disturbing millions of existing brokerage relationships. Requiring those relationships to convert immediately to fee-based advisory programs would force investors to pay again for advice that they previously received. In this regard, ICI recommends a viable approach to transitioning from a preexisting commissionable account to a fee-based account.

- The [second supplemental letter](#) elaborates on ICI's [concerns](#) with the Department's flawed Regulatory Impact Analysis. Using its own analysis of current market data, ICI estimates the Department's rule proposal would cause \$109 billion in harm to investors. ICI's letter explains why the asset-weighted average for categories of mutual funds used in its calculations, rather than the simple average, appropriately measures the overall experience of investors using broker-sold funds. In this letter, ICI also describes how it adjusted fund returns for risk in the Institute's prior analysis. Finally, the second supplemental letter details why the current proposed fiduciary definition would preclude access to fee-based advice for a large share of households that own IRAs, because those households lack the assets needed to meet fee-based advisers' typical \$100,000 minimum balances, even when taking account of their taxable investments.

Please visit [ICI's DOL Fiduciary Duty Rule Resource Center](#) for additional information on this issue.

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete.

Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.