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ICI Seeks Improvements Toward a Workable Fiduciary Standard Rule

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Washington, DC, July 21, 2015—The current fiduciary standard rule proposal from the Department of Labor would severely and negatively affect retirement savers' access to the guidance, products, and services they need to meet their retirement goals, the Investment Company Institute (ICI) said today. In a set of four comment letters filed with the Department, ICI details strong concerns about the current proposal and offers several detailed suggestions for improving the rule to make it workable.

Three of ICI's comment letters focus on the Department's proposed rule defining the term "fiduciary"; the proposed exemptions in connection with that definition; and the flawed Regulatory Impact Analysis that the Department uses to justify its proposals. The fourth letter, from ICI President and CEO Paul Schott Stevens, summarizes the Institute's concerns and calls upon the Department to return to a principles-based approach to defining and implementing a fiduciary standard.

"ICI supports the underlying principle that financial advisers should act in their clients' best interests, and wants to be a constructive partner toward developing a workable fiduciary standard rule," says ICI President and CEO Paul Schott Stevens. "We believe that the rule as proposed will limit investors' access to needed financial information and could ultimately raise the costs they bear while saving and investing for retirement. We hope that the Department of Labor will incorporate our recommendations and refine its proposal so that any final rules will serve to protect retirement savers, not harm them."

Stevens calls upon Labor Secretary Thomas E. Perez to return to the principles-based approach that Perez advocated in recent Congressional testimony for developing rules toward a fiduciary standard. Unfortunately, Stevens says, the Department has strayed far from that approach, resulting in inflexible, convoluted, and highly prescriptive rules.

Specifically, ICI recommends that the Department recognize that fiduciary status should apply only to a genuine relationship of trust and confidence between an investor and a financial services provider. ICI

explains that the Department's proposed rules do not adhere to that standard and will limit or eliminate common financial interactions, such as those provided through call centers, walk-in centers, and websites. Among other things, ICI recommends that the Department return to prior, common-sense guidance drawing a clear distinction between the provision of mere information and education, and advice covered under the Employee Retirement Income Securities Act (ERISA).

ICI also says that if the Department retains its so-called "Best Interest Contract" exemption, it must simplify it greatly. In a letter focused entirely on this issue, ICI asks the Department to strip the proposed exemption of excessive conditions that render it unworkable. As a starting point, ICI says the Department should eliminate entirely the proposed contractual warranties required within the contracts, explaining that the warranties provide no meaningful investor protections and would serve only to expose firms to significant new litigation risk.

Stevens' letter also outlines strong concerns about the Department's speculation surrounding a "high-quality, low-fee" exemption. Because the Department has not proposed such an exemption, described how it would work, or specified which investments would—or would not—qualify, Stevens explains that ICI is puzzled by the Department's questions about a "streamlined" exemption in this area. He further notes that ICI has "grave concerns about the feasibility and wisdom of such an exemption," concluding that "the Department clearly has not provided the public with sufficient information about this aspect of its proposal to comment in any meaningful way."

Finally, ICI continues to point out fundamental flaws in the Department's Regulatory Impact Analysis supporting its rule proposal, saying that the Department has failed not only to support its assertion that there is a "substantial failure of the market for retirement advice," but has failed repeatedly to consider facts that contradict its conclusions. Furthermore, ICI believes that the Department does not "properly consider how the proposal could limit retirement savers' access to guidance, products, and services, or how such limits could affect savers—particularly lower- and middle-income savers with smaller account balances."

Stevens' letter strongly urges the Department to revisit its analysis to ensure that it meets at least the minimum expected of regulatory agencies. Further work in this area, he says, "should lead the Department to the conclusion that a different, more targeted, and principles-based approach to fiduciary rulemaking will best serve the interest of retirement savers."

Please visit ICI's DOL Fiduciary Duty Rule Resource Center for additional information on this issue.

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