



February 9, 2011

Submitted Electronically – Re: Hearing on Definition of “Fiduciary”

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210
e-ORI@dol.gov

Ladies and Gentlemen:

Please accept our request to testify at your hearing, scheduled to begin March 1, regarding the Department’s proposed rule (the Proposal)¹ redefining the term “fiduciary” with respect to the provision of investment advice under ERISA §3(21)(A)(ii). Our testimony, outlined below, will offer a valuable and likely very unique perspective to the Department regarding the Proposal’s regulatory impact analysis, including the presentation of data and additional data sources the Department should consider in making its estimates.

The Competitive Enterprise Institute (CEI) is a non-profit public policy organization dedicated to advancing the principles of limited government, free enterprise, and individual liberty. Founded in 1984, our mission is to promote both freedom and opportunity.

One of CEI’s ongoing initiatives is to evaluate whether the regulations promulgated by the Federal government properly take into account the burdens they place on private enterprise. As the Federal regulatory structure imposes significant costs on our economy, it is imperative that Federal agencies conduct their regulatory impact analyses in accordance with Executive Orders and Office of Management and Budget guidance designed to ensure thorough estimation of costs and benefits, as well as full consideration of the regulatory alternatives that minimize burdens and maximize regulatory efficiency.

We understand that the time for our testimony will be limited to 10 minutes, and that we may be part of a panel. We are happy to work with the Department to accommodate any scheduling or logistical issues.

¹ 75 Fed. Reg. 65263 (Oct. 22, 2010)

Our testimony would address the following issues:

- **Data Regarding the Impact on Small Entities**

As we believe the Department has underestimated the impact the Proposal would have on small entities, our testimony would present data and identify additional data sources the Department may use to more accurately estimate this impact. Given the prevalence of small service providers in the ERISA and IRA marketplace, the Department's comprehensive consideration of these small business issues is of vital importance to the regulatory impact analysis.

- **Disclosure of Enforcement Data Relied Upon in Rulemaking**

The Department relied on its experience in the national enforcement projects on ESOPs and Consultants/Advisers to develop the Proposal, but did not provide this enforcement information for public review and comment. Our testimony would explain why this information is essential for the regulated community to meaningfully evaluate and comment on the Proposal, and would suggest examples of how to present the necessary information without inappropriate disclosure related to innocent persons.

- **Regulatory Alternatives**

The Department considered only regulatory alternatives that would have expanded the scope of the Proposal in its regulatory impact analysis. Our testimony would explain why regulatory alternatives limiting the scope of the proposal should be considered, and would suggest narrower alternatives that also address the concerns articulated by the Department.

We appreciate your consideration of our request to testify, and we would be happy to address any of the other issues raised in our comment letter at the Department's convenience. If you have any questions or need additional information, please do not hesitate to contact me at (202) 331-1010 or via e-mail at vvernuccio@cei.org.

Sincerely,



F. Vincent Vernuccio, JD
Labor Policy Counsel
Competitive Enterprise Institute