Institute for Portfolio Alternatives

February 10, 2026

Daniel Aronowitz
Assistant Secretary
Employee Benefits Security Administration
200 Constitution Ave NW, Suite S-2524
Washington, D.C. 20210

Re: Anderson v. Intel Corp., No. 25-498 – Request for Amicus

Assistant Secretary Aronowitz:

I am writing on behalf of the Institute for Portfolio Alternatives ("IPA") to ask the Department of Labor (the "Department") to submit an amicus brief in support of the respondents in Anderson v. Intel Corp., currently pending before the Supreme Court. The case will resolve an important question regarding how the Employee Retirement Security Act of 1974's ("ERISA") fiduciary framework applies to modern defined contribution plan investment design and related litigation claims.

Anderson v. Intel Corp. and the "Meaningful Benchmark" Standard

At issue in Anderson v. Intel Corp., No. 25-498, is whether a plaintiff asserting fiduciary imprudence based on an investment's relative underperformance must identify a "meaningful benchmark" for comparison. The case arises from a challenge to the selection and retention of certain target-date funds in Intel's defined contribution plan that included allocations to hedge funds and private equity.

The Intel plaintiffs challenge those allocations by comparing the funds to equity-heavy retail funds and broad indices that pursue different objectives, risk profiles, and investment strategies than the challenged funds. The Ninth Circuit rejected that approach, explaining that ERISA does not treat any asset class as imprudent per se and that relative performance claims must be evaluated against meaningfully similar comparators.

If the Supreme Court finds that such benchmark mismatches are sufficient to state a claim, lower courts may be invited to second-guess fiduciary decision-making based on outcomes rather than process. This approach could increase litigation exposure for plan fiduciaries, discourage ERISA's portfolio-level approach to diversification, and ultimately narrow the range of investment options available to participants.

Clear guidance from the Department would assist courts in evaluating fiduciary imprudence claims premised on relative underperformance. **We encourage the Department to submit an amicus brief in Intel articulating its view that the meaningful benchmark standard is implicit in ERISA's prudence framework.** Under that standard, claims based on relative underperformance must identify comparators that were reasonably available at the time of the investment.

Those comparators must also share key attributes with the challenged investment. ERISA evaluates the prudence of an investment based on its role in the portfolio as a whole, rather than in isolation. For that reason, no asset class is per se imprudent, and relative performance claims require a meaningful benchmark.

ERISA permits fiduciaries to consider portfolio-diversifying asset classes based on their role in the overall investment strategy. Relevant attributes include a similar mix of asset classes, similar expected risk-adjusted rates of return on a net-of-fees basis, or support a comparable amount of lifetime income at a comparable cost. Without a meaningful benchmark, courts cannot assess whether alleged differences in performance reflect fiduciary imprudence or merely different investment objectives.

Policy Considerations

The Department's engagement in this case would align with broader policy priorities shared by the Administration and the Department. The President has emphasized that regulatory and litigation pressures have stifled innovation in retirement plan investment design and has called for greater clarity in how ERISA's fiduciary standards apply to diversified investment strategies, including asset allocation funds that incorporate alternative investments.

Participation in Intel would build on steps the Department has taken in this arena, including proposed rulemaking and the rescission of the 2021 supplemental statement, which many fiduciaries understood as discouraging consideration of alternative assets in 401(k) plan investment lineups.

Clarifying the applicable standard would reduce litigation-driven uncertainty that can chill innovation in plan design by deterring plan sponsors from considering portfolio-diversifying options, even where those options are selected through a prudent fiduciary process and may lead to improved participant outcomes. **An amicus filing in Intel would reinforce the Department's commitment to a neutral, process-focused approach to fiduciary oversight.**

Conclusion

Anderson v. Intel Corp. presents a question with significant consequences for how fiduciaries design, monitor, and defend defined contribution plan investment lineups.

How the Court articulates the threshold for plausibly alleging imprudence based on relative performance will shape future litigation outcomes and the environment in which fiduciaries make investment decisions. By clarifying that outcome-based allegations must be anchored to a meaningful benchmark, the Department can provide important context regarding ERISA's prudence standard and promote consistency in ERISA jurisprudence.

For these reasons, we encourage the Department to participate as amicus curiae in Intel. We appreciate the Department's continued engagement on issues affecting retirement security and would welcome the opportunity to discuss these matters further if helpful.

Sincerely,

Anya Coverman
President & CEO