U.S. Department of Labor
Employee Benefits Security Administration
Retirement Security Rulemaking Hearing
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Testimony of the
Insured Retirement Institute

Presented by
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Good afternoon.

My name is Wayne Chopus, and I'm the President and CEO of the Insured Retirement Institute. We are the trade association representing the entire supply chain of the insured retirement industry, including insurers, distributors, asset managers, solution providers, and others.

My colleague, Jason Berkowitz, and I will share our members' initial views on the so-called "Retirement Security" rule. The name itself is certainly ironic given that it will increase retirement "insecurity" that too many workers and retirees now feel.

IRI was dismayed by the Labor Department's rejection of a reasonable request for additional time to comment...especially given the complexity of this proposal and the comment period occurring during a time that includes federal, religious, and cultural holidays.

But most discouraging were the President's remarks announcing the rule.

Rather than explain why the rule is necessary, the President completely mischaracterized the entire insured retirement industry and our products to justify a misguided rule imposing unnecessary and redundant regulatory burdens on investment advice.

Worse, the President disparaged our industry and its workers by inventing a link to his efforts to fight "junk fees." But there is no mention of that term in the 495 pages of the new regulation he announced.

Our industry champions workers and retirees....and has long sought bipartisan policies to strengthen financial security.

We advocate for expanding retirement saving opportunities and facilitating protected lifetime income solutions to secure a dignified retirement for workers, retirees, and their families.

And we do so proudly.

Financial professionals – dedicated, caring women and men – work daily in communities nationwide to provide tailored financial strategies and products that serve their clients' best interests.

Millions of workers and their families have chosen to purchase annuities to protect their retirement assets and provide a stream of guaranteed lifetime income... similar to the defined benefit pension plans available to many union and government workers.

These individuals, whose median household income is $76,000, rely on our industry's innovative products to meet their accumulation, income, and asset protection needs.

The proposed rule is completely contrary to the President's inclusive economic principles and will harm the very consumers he and the DOL have said they wish to help. This rule will deepen the nation's retirement crisis by limiting access to sound financial advice.

A similar regulation in 2016 by the Obama-Biden Administration caused 10.2 million retirement account holders who collectively held $900 billion in savings to lose access to their financial professionals.

A study for the Hispanic Leadership Fund found that reinstating that rule would increase the wealth gap for Black and Latino workers and retirees by 20 percent when looking at accumulated individual retirement account savings alone. Thankfully, a federal court vacated that rule in 2018.

Less than a year ago, IRI and many others testifying at today's hearing successfully advocated for the bipartisan Secure 2.0 Act, a critically important retirement security law signed by this President.

This new law – and its predecessor, the Secure Act of 2019 – expanded access to workplace retirement plans and facilitated the very lifetime income products the President denigrated when he announced this rule.

By reducing or eliminating access to critical financial advice and lifetime income products, the rule will threaten the retirement goals of many lower and middle-income workers and raise their risk of outliving retirement savings. This is the opposite of what the Secure Act and Secure 2.0 were meant to achieve.

The President and the Department of Labor showed a fundamental misunderstanding of how the insurance industry and annuity products work for the benefit of consumers.

The best outcome for America's workers and retirees seeking to build a secure and dignified retirement is the immediate withdrawal of this rule.

Thank you for your time today. I will now turn it over to Jason Berkowitz.

Thanks Wayne, and good afternoon, everyone. My name is Jason Berkowitz, and I am IRI's Chief Legal & Regulatory Affairs Officer. In the spirit of the eight nights of Hanukkah, I'm going to cover eight of our members' most significant concerns.

First, this proposal is nearly identical to the now-vacated 2016 rule, which, as Wayne mentioned, caused significant consumer harm. The regulatory impact analysis unfortunately neglected to consider this fact. This proposal will almost certainly have the same result, if not worse, with a disproportionate impact on lower- and middle-income savers and underserved communities.

Second, the proposal is a solution in search of a problem. The evolution of the regulatory framework in recent years makes this entirely unnecessary. Reg BI, the NAIC's best interest model, which is now in place in 40 states, and PTE 2020-02 collectively hold all financial professionals to a best interest standard.

Reg BI and the NAIC model were developed by regulators with the expertise needed to craft rules that make sense for the industries to which they apply, and there is no evidence that these rules are not working to protect retirement savers.

Third, the proposal flies in the face of the Fifth Circuit's vacatur of the 2016 rule. The Court clearly stated that fiduciary status should exist only where there is a special relationship of trust and confidence, which is extremely rare in the context of sales activity, even when accompanied by incidental advice. This proposal, which would bring nearly all sales activity under the fiduciary umbrella, explicitly and inappropriately rejects this dichotomy between advice and sales.

Fourth, by treating rollover recommendations as fiduciary advice under Title I of ERISA, the proposal would expose a vastly expanded universe of fiduciaries to the risk of private rights of action. This appears to be a back-door effort to circumvent the Fifth Circuit's ruling that the Department cannot directly create a new private right of action – only Congress has that authority.

Fifth, the breadth of the proposal and the lack of applicable carve outs is highly problematic. For example, responses to RFPs from plan sponsors would likely trigger fiduciary status in all or most cases. As a result, plan sponsors will likely lose access to the extensive information they need to satisfy their fiduciary obligations when selecting service providers.

Sixth, the pursuit of a level playing field is inconsistent with Congress' intent in giving the Department authority to issue exemptions that are appropriate to different situations. We fundamentally disagree with the premise that the need for a "level playing field" outweighs the value of tailoring exemptive relief to the specific situations in which it is needed.

To illustrate why the desire for a "level playing field" is misguided and dangerous in this case, consider that PTE 2020-02 was designed for use in the retail space, but a wide range of institutional business practices would have to somehow be shoehorned into that framework. This would be like requiring airplanes to follow the same safety precautions as automobiles.

Similarly, the overall regulatory framework for some products is more robust than others. Mutual funds and annuities are heavily regulated by well-established agencies under strong and effective rules, while the rules for cryptocurrency are still under development. More vigorous rules may be appropriate in some cases, but there is no need to impose extensive new burdens on well-regulated products.

Seventh, while we appreciate the preservation of PTE 84-24, the proposal needlessly limits who can use the revised exemption and the types of compensation and types of products for which it could be used. And it imposes such overly burdensome and unworkable conditions that, in practice, very few independent producers would actually use it.

And eighth, the draconian disqualification provisions in both 84-24 and 2020-02 could force entire enterprises out of the retirement business for ten years due to convictions of affiliates in foreign countries, even for convictions that are unrelated to the provision of investment advice to American retirement savers. This is particularly troubling when thinking about the many foreign nations whose criminal justice systems do not provide the same due process protections we enjoy in this country.

For these reasons and so many others, IRI urges the Department to withdraw this dangerous and misguided proposal and redirect its resources to efforts that will actually benefit retirement savers, including robust enforcement of existing rules and rulemaking to implement the many positive reforms in Secure and Secure 2.0.

We would be happy to answer any questions you may have.