U.S. House of Representatives
House Committee on Financial Services
Capital Markets Subcommittee
"Examining the DOL Fiduciary Rule:
Implications for Retirement Savings and Access"
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Oral Testimony of the
Insured Retirement Institute

Presented by
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Good morning, Chairwoman Wagner, Ranking Member Sherman (Chairman McHenry, Ranking Member Waters), and members of the Capital Markets Subcommittee.

My name is Jason Berkowitz, Chief Legal and Regulatory Affairs Officer for the Insured Retirement Institute. IRI is the only trade association that represents the entire supply chain of the insured retirement industry, including insurers, distributors, asset managers, solution providers, and others.

Before I begin, I want to thank the Chairwoman and many other members of the subcommittee for your longstanding commitment and dedication to ensuring that individual investors are protected by standards that serve their best interest without depriving them of access to valuable financial products and services.

And thank you for the opportunity to appear before you today. I am eager to share our views about the DOL's so-called retirement security proposal.

Retirement savers face many risks as they strive for financial security in their golden years, not the least of which is the risk of running out of money.

Protected lifetime income products help them manage those risks, and professional guidance helps them acquire and use those products appropriately.

Congress recognized this when it enacted the SECURE Act and SECURE 2.0, bipartisan laws designed to enhance our nation's private sector retirement system by expanding access to these valuable products and services.

Contrast this with the DOL's proposal, which is functionally equivalent to the 2016 rule and, like that rule, will harm millions of low- and middle-income retirement savers – especially those in communities most impacted by the wealth gap – by depriving them of access to the products and services they need to achieve a secure and dignified retirement.

Retirement savers should be able to select their preferred source of professional guidance to help them prepare for retirement, and to choose retirement savings strategies and products that best fit their individual needs. The DOL's proposal would impair their ability to do so.

To be clear, we believe all financial professionals should be required to act in their clients' best interest when providing such guidance, as they are required to do under the SEC's Regulation Best Interest standard and substantially similar rules that have been adopted by 41 states and counting.

IRI supported those important measures, which provide regulators with the tools they need to protect retirement savers and appropriately address the conduct of bad actors.
With these rules in place and being actively enforced, the DOL's proposal is a solution in search of a problem.

Most financial professionals are good, hard-working people who want to do right for their clients.

If bad actors are exploiting regulatory gaps to harm retirement savers, regulators should seek to address those gaps through precise and targeted rulemaking.

While the DOL has hypothesized and speculated that retirement savers could be hurt, it has produced no evidence in its proposed rule that regulatory gaps are actually being exploited to harm retirement savers.

Without such evidence, a targeted approach is impossible, so the DOL has instead proposed to completely upend the existing regulatory framework.

But why? As stated in the proposal, the DOL believes it, "as opposed to other regulators, remains uniquely positioned to" effectively protect retirement savers. And since ERISA only allows the DOL to regulate the conduct of fiduciaries, it must shoehorn more financial professionals into fiduciary status even where that standard does not apply.

The proposal would cause nearly any interaction with a retirement saver to trigger ERISA fiduciary status. And under ERISA, fiduciaries must act "solely in the interest of [plan] participants and beneficiaries…for the exclusive purpose of…providing benefits to participants and their beneficiaries…"

This goes far beyond a "best interest" standard and, as a federal appeals court recognized when it rejected the DOL's 2016 rule, should apply only when there is a special relationship of trust and confidence.

The DOL has tried to circumvent that court decision by asserting that such a relationship exists whenever a financial professional makes a recommendation to a retirement saver. We disagree.

A special relationship of trust and confidence cannot spring into existence spontaneously but rather must be intentionally cultivated over time.

Pretending otherwise will only serve to deepen the nation's retirement crisis and further exacerbate retirement insecurity among America's workers and retirees.

Instead, the DOL should recognize the limitations on its jurisdiction and let other regulators, like the SEC and state insurance departments, do their jobs as Congress intended.

The proposal is not fixable. It is not needed. And that is why IRI urges its withdrawal.

Thank you again for the opportunity today, and I look forward to answering any questions you may have.