



Insured Retirement Institute
1101 New York Avenue, NW | Suite 825
Washington, DC 20005

t 202.469.3000
f 202.898.5786

February 9, 2011

www.IRIONline.org

Office of Regulations and Interpretations
Employment Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW, Room N-5655
Washington, D.C. 20210

Attn: Fiduciary Definition Hearing

Dear Sir or Madam:

I am writing to express our members' interest in testifying at the upcoming hearing that will consider issues relating to the proposed regulation defining an investment advice fiduciary under the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code of 1986 ("Code"). The Department's proposal applies to both employer-sponsored plans governed by ERISA and individual retirement arrangements ("IRAs"). We will designate one or more of our member representatives to testify that possesses the knowledge necessary to provide information and answer in-depth questions at the hearing.

The Insured Retirement Institute (IRI) is a non-profit association dedicated to the growth and better understanding of guaranteed lifetime income products that contribute to a secure retirement. IRI represents all segments of the annuity, insured retirement product and retirement planning industries with over 300 member organizations, including insurance companies representing over 85% of the market, distribution firms, including broker-dealers and banks, investment management firms, and industry service providers. IRI's mission is to promote consumer confidence in the value and viability of insured retirement strategies by: supporting and encouraging industry adherence to high ethical principles; promoting better understanding of the insured retirement value proposition; developing and promoting best practice standards to improve value delivery; and advocating before public policy makers on critical issues affecting insured retirement strategies.

While we support the principles underlying the Department's efforts, we are concerned that the proposed approach would result in investors having less access to a broad range of cost-effective investment products. In addition, the proposed regulations mark a radical departure from the historic approach to investment advice, especially with respect to IRAs. Finally, we are concerned

that these proposed regulations have not been coordinated with similar regulatory efforts by other federal agencies primarily responsible for the securities markets. We are concerned that this lack of coordination will result in less clarity to investors and will be confusing to financial professionals, none of whom would expect different standards to apply depending on whether retirement assets are held in a tax-deferred account like an IRA.

Overall we are concerned that the regulations as drafted would turn common broker-dealer and insurance agent activities from non-fiduciary to fiduciary, resulting in the unintended consequences of less choice, reduced access and increased costs for products and services needed by Americans who are 401(k) plan participants and IRA annuity/account owners:

1. Many investors will face increased costs which will translate into lower retirement savings:
 - The proposed regulations are likely to drive more investors to enter into a wrap program in order to receive advice. Wrap programs may be more expensive than commission-based accounts for many buy-and-hold investors; for these investors, a wrap program would actually be in conflict with existing suitability rules.
2. Investors will have less product choice:
 - The proposed regulations would make it unworkable to sell products on a commission basis. For example, annuities are beneficial to investors and policymakers are currently seeking to expand their use to provide participants with guaranteed retirement income. Since the majority of the advice and support provided to clients who purchase annuities happens before the purchase rather than on an ongoing basis, charging a separate ongoing advisory fee would often be inappropriate. Therefore, we believe that the Department's proposal will result in less consumer access to products that guarantee lifetime income. This result is especially problematic for IRA owners who do not have a plan fiduciary to assist them.
 - Fewer brokers will service small business retirement plans which will result in fewer small market plans being adopted. Fee-only planners do not find it economical to serve the small-business plan community.
 - For products that can be sold on a commission or advisory-fee basis, the economics of advisory-fee programs are such that they are generally unavailable to investors with small accounts (e.g., less than \$25,000).
3. Investors will be confused and receive less investment information:
 - Investors will likely receive less education from brokers and insurance agents who may curtail their offerings to clients out of concern for being deemed a fiduciary.

- Less education and advice could negatively impact Americans’ willingness to save in personal retirement savings, a key component of our three-pillar retirement savings model.
- Investors have assets in both qualified and non-qualified accounts. The proposed regulations will require these accounts to be treated very differently, i.e., investors will receive advice on their non-qualified accounts and will not be able to get advice on their qualified accounts. This difference in treatment will result in confusion and frustration for investors. Most Americans need a holistic financial plan, which will be difficult under these regulations.
- Investors with IRAs will be particularly impacted. At 26%, the largest share of all U.S. household investable assets are held in IRAs. Unlike plan participants, IRA owners don’t have access to education or help with investment choices; they need the help of professional advisors.
- Requiring broker-dealer advisors and insurance company agents to become fiduciaries will prevent them from also providing assistance to plan participants with respect to rollover decisions. IRA owners should be permitted to work with the financial professional of their choice, which in many cases may be the one associated with their retirement plan.

We would welcome the opportunity to testify at the hearing and we believe that our expertise and uniquely diverse membership would be beneficial to your efforts. Please feel free to contact me or John Little, Chief Operating Officer and Senior Vice President of Federal Affairs, at (202) 469-3003, if we can provide additional information or to further discuss these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Catherine J. Weatherford". The signature is fluid and cursive, with a large loop at the end.

Catherine J. Weatherford
President & CEO