Public Policy Developments Impacting IRI Members

2023 YEAR IN REVIEW

Insured Retirement Institute

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2023 Year In Review

Throughout the year, IRI engages with federal and state policymakers on laws and regulations that will impact the insured retirement industry. This publication provides an overview of key regulatory proposals, final rules and regulations, and other important developments during 2023 to help IRI members (1) identify and prepare for compliance and operational changes that may be needed as new laws and regulations become effective and considered for purposes of audits and examinations, and (2) keep track of, strategically prepare for, and prioritize resources that may be needed to implement and operationalize pending proposals that may become final and effective in the coming year.

Questions about any of the information provided can be directed to the identified IRI Staff Contact at their email address, which is provided below:

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✓ Indicates a final regulation

✓ Indicates a proposed regulation or draft

Standard of Conduct Rules

DOL Retirement Security Rule (Fiduciary Rule)

✓ **Status: Proposal (Definition of Fiduciary, PTE 84-24, PTE 2020-02, Other PTEs)**

» **IRI Staff Contact: Jason Berkowitz**

In October, the DOL issued this proposal, which would impose fiduciary status on almost any type of interaction with a retirement saver and would require fiduciaries to comply with problematic and unworkable conditions to receive compensation for their services. IRI submitted extensive written comments in opposition to the proposal in early January 2024, and testified at the DOL's hearing in mid-December 2023 and at a Congressional hearing in mid-January 2024. The DOL received more than 19,000 comment letters on the proposal and is required to review and consider all of them. A final rule – which will likely be nearly identical to the proposal – could be issued as soon as late March or early April. Assuming the DOL does not change the 60-day implementation timeline contemplated in the proposal, the final rule would then go into effect in late May or early June. Links to IRI's testimony, comment letter, and other information can be accessed on IRI's DOL Fiduciary Rule resources page.

» IRI Comment Letter (January 2, 2024)

SEC Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers

✓ **Status: Proposal (Press Release, Proposal Text, Fact Sheet)**

» **IRI Staff Contact: Emily Micale**

In July, the SEC issued this proposed rule, which was characterized as an effort to address conflicts of interest associated with the use of predictive data analytics and similar technologies. However, the proposal would actually apply to nearly all types of technology that could be used in connection with nearly any type of interaction with an investor, including non-recommendations. Additionally, the proposal requires identified conflicts of interest to be eliminated or neutralized and states that disclosure would be insufficient to address such conflicts. In effect, the proposal would layer additional requirements on top of the existing standards of conduct currently imposed by Regulation Best Interest (Reg BI) and the fiduciary responsibilities under the Advisers Act. IRI signed on to several joint trades letters and submitted its own comment letter calling for withdrawal of the proposal.

» IRI Comment Letter (October 10, 2023)

North American Securities Administrators Association (NASAA) Standard of Conduct Model Rule

✓ **Status: Proposal (Proposal Text)**

» **IRI Staff Contact: Sarah Wood**

In September, NASAA issued its proposed best interest rule along with a report on their latest study on Reg BI compliance. The proposed revisions (1) acknowledge and incorporate by reference the new federal conduct standard applicable to broker-dealer and agents pursuant to Reg BI; (2) define and clarify various obligations or components of this new conduct standard for purposes of state interpretation and enforcement; and (3) prohibit misleading uses of the title "advisor" or "adviser." The proposed revisions would allow states to adopt some or all of its subparts, thereby decreasing uniformity. The revisions also substantially exceed the requirements of Reg BI. IRI submitted comments, arguing that the proposal is

unnecessary, confusing, and conflicts with existing strong federal and state consumer protection regulation, and urged NASAA to withdraw the proposal.

» **IRI Comment Letter** (December 3, 2023)

NAIC Suitability in Annuity Transactions Model Regulation #275

✓ **Status: Final, State Adoption in Progress (Text)**

» **IRI Staff Contacts: Sarah Wood and Rebecca Plowman**

2020 NAIC Revisions Adopted: February 2020

Significant progress has been made throughout the year bringing the current total number of states that adopted the NAIC Suitability in Annuity Transactions Model Regulation (NAIC Model) to 42 (as of January 2024) with several others in the pipeline. In California, Senate Bill 263 was introduced early 2023, and the initial version of the bill deviated extensively from the NAIC Model. IRI and other industry trades successfully advocated for significant improvements, and the bill is now more fully aligned with the NAIC Model. In September, the Assembly Appropriations Committee made SB 263 a 'two-year bill,' meaning it would be held until the legislature reconvenes for the second year of the current session in 2024. In January 2024, the bill was heard and passed through the Assembly Appropriations Committee. IRI will continue to coordinate with the coalition to ensure that the bill continues to move forward without any unfavorable changes to the current version.

States with effective dates in 2024 include: FL, KS, OR, TN, UT, VT & WA. The most up-to-date information on state adoption can be located on IRI's State Standard of Conduct resources page.

Throughout the year, IRI also engaged with the NAIC Market Conduct Examination Guidelines Working Group on the updates to align the Guidelines with the 2020 best interest updates to the NAIC Model. In November 2023, the Working Group adopted the updates to the Guidelines.

Massachusetts Fiduciary Rule

✓ **Status: Final (Text)**

» **IRI Staff Contact: Rebecca Plowman**

Effective Date: September 1, 2020

Massachusetts' fiduciary rule applies to all broker-dealers and their agents when conducting and providing securities-related advice and recommendations to current and prospective customers. In 2020, shortly after the rule became effective, the Secretary of the Commonwealth of Massachusetts filed a complaint against Robinhood Financial, LLC (Robinhood) for violations of their fiduciary duty under the new rule. After several appeals, in 2023 the Massachusetts Supreme Judiciary Court, the highest court in the state, issued its decision on the case, upholding the validity of the state's fiduciary rule. In January 2024, the Secretary of the Commonwealth of Massachusetts issued a consent order in which Robinhood paid a $7.5 million fine and further agreed not to seek an appeal.

There is some question as to the application of the rule to annuity transactions, specifically variable annuities, because there is inconsistency as to whether variable annuities are considered securities at the state level. The definition of security under the Massachusetts Uniform Security Act, Chapter 110A Section 401(k), includes a carve out stating that a security "…does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically

for life or some other specified period." However, it is unclear how this definition has been interpreted and applied. Secretary William Galvin, who oversees the state securities division, typically takes a very broad view of his jurisdiction and would likely consider variable annuities within the scope of this rule. IRI created an overview of the events surrounding the Robinhood case and a summary of the application of the fiduciary rule to variable annuities.

Artificial Intelligence, Cybersecurity & Privacy

NAIC Model Bulletin on the Use of Algorithms, Predictive Models and Artificial Intelligence Systems by Insurers

✓ **Status: Final (Text)**

» **IRI Staff Contact: Sarah Wood**

In December, the NAIC adopted a Model Bulletin on the Use of Algorithms, Predictive Models, and Artificial Intelligence Systems (AIS) by Insurers. This Model Bulletin outlines the regulators' expectations of insurers using AIS and encourages insurers to implement and maintain a written program based on the insurer's assessments of the risks posted by its use of AIS. IRI will monitor for states that move forward with adopting the Model Bulletin.

NAIC New Privacy Protection Model Law

✓ **Status: Proposal (Second Exposure Draft, Cover Page for Second Draft)**

» **IRI Staff Contact: Sarah Wood**

In early 2023, the NAIC Privacy Protections Working Group released an initial draft of a privacy model act. There was a high volume of industry feedback/comments submitted, including by IRI, and in May and June, the Working Group held multiple calls and a two-day, in-person meeting to discuss and hear feedback on the draft. In July, the Working Group released a second draft, which addressed some of the concerns, but numerous issues remain. IRI submitted another comment letter in response to this draft. At this time, the Working Group has "paused" its 2023 Workplan; however, the drafting regulators have indicated that they are reviewing the comments received and plan to respond to such comments. IRI will monitor for any subsequent draft, which is expected to be released in early 2024, and will continue to coordinate with the other trades on strategy and approach.

» **IRI Comment Letter** (April 3, 2023)

» **IRI Comment Letter** (July 28, 2023)

Colorado Algorithm and Predictive Analytics Governance and Testing Regulations

✓ **Status: Governance Regulation – Final (Text)**

✓ **Status: Testing Regulation – Released for Informal Comment (Text)**

» **IRI Staff Contact: Sarah Wood**

Effective Date: Governance Regulation - November 14, 2023

In September, the Colorado Division of Insurance adopted Regulation 10-1-1, which establishes the governance and risk management requirements for life insurers that use external consumer data and information sources (ECDIS), as well as algorithms and predictive models that use ECDIS. The Division has also released a draft Algorithm and Predictive Model Quantitative Testing Regulation for informal comment. While these regulations do not explicitly apply to annuities, the Division intends to use the rules for life insurance as a starting point for future rules applicable in the annuity space.

New York Cybersecurity Amendments (Second Amendment to 23 NYCRR 500)

✓ **Status: Final (Text)**

» **IRI Staff Contact: Sarah Wood**

Effective Date: November 1, 2023

On November 1, the New York Department of Financial Services finalized its amendments to its cybersecurity requirements for financial services companies. The amendments impose prescriptive requirements on companies relating to additional obligations imposed on the board and CISO, annual independent audit requirements, and specific reporting requirements for cyber events, including those that occur with affiliates and third-party service providers. While the amendments become effective November 1, 2023, there are different transitional periods for certain provisions.

Environmental, Social, and Governance (ESG) Investing and Climate-Related Risks

DOL Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights Status (ESG Rule)

✓ **Status: Final (Text)**

» **IRI Staff Contact: Rebecca Plowman**

Effective Date: January 30, 2023

The DOL's final ESG Rule clarifies that plan fiduciaries may consider ESG factors when selecting retirement investments and exercising shareholder rights. The final rule permits retirement plan sponsors, may, but are not required, to consider ESG factors as long as investment options are selected in compliance with the *Employee Retirement Income Security Act's (ERISA)* fundamental principles of prudence and loyalty. Most notably, the final rule includes clarification that a fiduciary's duty of prudence must be based on factors relevant to a risk and return analysis and that such factors *may include* the economic effects of ESG considerations on the particular investment or investment course of action.

SEC Investment Companies Names (Names Rule)

✓ **Status: Final (Text)**

» **IRI Staff Contact: Rebecca Plowman**

Effective Date: December 11, 2023

The Names Rule prohibits funds from using names that could potentially mislead investors about their core investments and risks. Under this amendment to that rule, funds are required to invest at least 80 percent of their assets in accordance with the investment focus suggested by their names, to prevent what the SEC characterized as "greenwashing." The final rule also imposes enhanced disclosure and reporting requirements related to terms used in fund names as well as new recordkeeping requirements. For compliance purposes, fund groups with net assets of $1 billion or more will have 24 months to comply with the amendments, and fund groups with net assets of less than $1 billion will have 30 months to comply. Additionally, the rule requires a fund review its portfolio assets' treatment under the 80 percent investment policy at least quarterly.

SEC Enhancement and Standardization of Climate-Related Disclosures for Investors

✓ **Status: Proposal (Proposal Text)**

» **IRI Staff Contact: Emily Micale**

This proposed rule would require a registered company to include certain climate-related information in its registration statements and periodic reports, including climate-related risks and their actual or likely material impacts on the business, strategy, and outlook; governance of climate-related risks and relevant risk management processes; greenhouse gas emissions; certain climate-related financial statement metrics and related disclosures in a note to its audited financial statements; and information about climate-related targets and goals, and transition plan. IRI submitted comments to the SEC in June 2022 in support of a carve-out from the scope of the proposal for registered insurance contracts, safe harbor protections, phased-in and delayed compliance dates, materiality standards, and a principles-based approach to climate-related financial risks.

» IRI Comment Letter (June 17, 2022)

SEC Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social and Governance Investment Practices

✓ **Status: Proposal (Proposal Text)**

» **IRI Staff Contact: Emily Micale**

The proposed rule would require registered investment companies, business development companies, registered investment advisers, and certain unregistered advisers to provide additional specific disclosures regarding ESG strategies in fund prospectuses, annual reports, and adviser brochures; the implementation of a layered disclosure approach for ESG funds to allow investors to compare ESG funds; and generally, require certain environmentally-focused funds to disclose the greenhouse gas emissions associated with their portfolio investments. IRI submitted comments to the SEC in August 2022 regarding the scope and overly prescriptive nature of the proposal's enhanced disclosure requirements.

» IRI Comment Letter (August 16, 2022)

Wyoming ESG Rule

✓ **Status: Proposal (Proposal Text)**

» **IRI Staff Contact: Sarah Wood**

Wyoming proposed an ESG rule that would require broker-dealers, securities agents, and investment advisers to disclose any incorporation of a "social objective" into 1) discretionary investment decisions 2) recommendations or solicitations to buy or sell securities or commodities, or 3) advice or a recommendation to a customer regarding the selection of a third-party manager or subadvisor to manage the investments in the customer's account. This proposal is similar to the disclosure rule recently adopted in Missouri, but it does have some differences, such as what constitutes "social criteria" and the addition of scenario 3) above. IRI submitted a comment letter in opposition to the proposal, arguing that the proposal is unnecessary, burdensome, and will lead to investor confusion, and may be preempted by federal law.

» **IRI Comment Letter** (September 28, 2023)

Missouri ESG Rule

✓ **Status: Final (Text)**

» **IRI Staff Contact: Rebecca Plowman**

Effective Date: July 30, 2023

Missouri finalized their ESG rule which makes it dishonest or unethical business practice for broker-dealers, investment advisers, and their agents and reps to fail to disclose that social or non-financial objectives were incorporated into discretionary investment decisions and recommendations to buy or sell securities. Notice and consent is required either at the establishment of the relationship or prior to affecting the initial discretionary investment or the recommendation. The disclosure has to be provided on an annual basis and consented to in writing no less than every three years. Following finalization of the rule, SIFMA moved forward with a lawsuit against Missouri. IRI will be closely monitoring this litigation.

Registered Indexed Linked Annuities (RILAs) / Indexed Linked Variable Annuities (ILVAs)

Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities

✓ **Status: Proposal (Proposal Text)**

» **IRI Staff Contact: Emily Micale**

The RILA Act was enacted into law at the end of 2022 under Division AA of the *Consolidated Appropriations Act, 2023*. In accordance with the RILA Act, the SEC issued a proposed rule and related form amendments to provide a tailored registration form for RILAs. Principally, the SEC proposed to amend the form currently used by most variable annuity separate accounts, Form N–4, including filing rules and other related amendments, to require issuers to register RILA offerings on that form. The proposal would substantially improve the effectiveness of the disclosures provided by RILA issuers to prospective purchasers in conveying essential information to help them better understand RILAs and their risks and benefits. In addition to requiring insurers to register RILAs on Form N-4, the proposal allows RILA issuers to use financial statements based on statutory accounting principles in their filings. The SEC considered and rejected changes that

would allow issuers to distribute RILA advertising and sales literature without a statutory prospectus and considered whether to allow registration of other innovative annuities on Form N-4. The SEC is required to finalize the new RILA registration form by mid-2024 under the RILA Act. If it misses that deadline, issuers will be permitted to register RILAs on the current version of Form N-4.

» IRI Comment Letter (November 28, 2023)

Interstate Insurance Product Regulation Commission (the Compact) Core Standards for Individual Deferred Index Linked Variable Annuity Contracts

✓ **Status: Proposal (Proposal Text)**

» **IRI Staff Contact: Sarah Wood**

The Compact has been developing a draft of product standards for registered index-linked annuities (referred to by the NAIC and the Compact as index-linked variable annuities, or ILVAs). IRI provided comments to the Compact's drafting group throughout the process. As of January 2024, most of the items IRI commented on were addressed, including the removal of a problematic amendment that would have required a product comparison of an ILVA strategy with a non-variable indexed annuity and a variable annuity. It is expected that the standard will be approved and finalized in Spring 2024.

» IRI Comment Letter (December 7, 2023)

NAIC Nonforfeiture Requirements for Index-Linked Variable Annuity Products (Actuarial Guideline 54)

✓ **Status: Final (Text)**

» **IRI Staff Contact: Sarah Wood or Rebecca Plowman**

Effective Date: Applies to all contracts issued on or after July 1, 2023

The purpose of this guideline is to specify the conditions under which an ILVA is consistent with the definition of a variable annuity and exempt from the NAIC Model Standard Nonforfeiture Law, and to specify nonforfeiture requirements consistent with variable annuities. The guideline also sets forth principles and requirements for determining values, including death benefit, withdrawal amount, annuitization amount, or surrender values.

Implementation of Retirement Reform Legislation

SECURE 2.0 Act of 2022 (SECURE 2.0)

✓ **Status: Final (Text) (Congressional Summary)**

» **IRI Staff Contact: Rebecca Plowman or Emily Micale**

Effective Dates: Varies by Provision

SECURE 2.0 was enacted into law at the end of 2022 under Division T of the *Consolidated Appropriations Act, 2023*. SECURE 2.0 is a comprehensive package of retirement security legislation that includes 92 provisions meant to help our nation's workers and retirees achieve economic equity, strengthen their financial security, and protect their income to sustain them throughout their retirement years. Several provisions of SECURE 2.0 were effective immediately upon enactment while other provisions have varying effective dates

through 2033, including multiple directives to government agencies. IRI's SECURE 2.0 Implementation Working Group and SECURE 2.0 resources page are the main sources of information and support for IRI members.

» **IRI Letter to Request for Guidance and Relief Regarding SECURE 2.0 Act** (July 13, 2023)

DOL Request for Information (RFI) on SECURE 2.0 Reporting and Disclosure

✓ **Status: Comment Period Closed (RFI Text)**

» **IRI Staff Contact: Rebecca Plowman**

The Employee Benefits Security Administration of the U.S. Department of Labor issued this RFI to gather feedback on a number of provisions of SECURE 2.0 that impact the reporting and disclosure framework under *ERISA*. IRI provided comments in response to the DOL's request, which emphasized that notices and disclosures required under *ERISA* can and should be presented clearly and concisely to ensure consumers read and understand. Additionally, IRI strongly encouraged the Department to establish electronic delivery of documents and disclosures as the default mechanism to the greatest extent allowed by law. SECURE 2.0 included a provision that directs the Department to revise its e-delivery rules to require at least one paper statement to be delivered every year unless certain conditions are met. IRI urged the Department to only make necessary changes in response to that directive to minimize the adverse impact and consumer confusion.

» **IRI Response to DOL Request for Information - SECURE 2.0 Reporting and Disclosure** (October 10, 2023)

DOL RFI SECURE 2.0 Section 319 - Effectiveness of Reporting and Disclosure Requirements

✓ **Status: DOL RFI/Pre-rule (RFI Text) - Comments Due April 22**

» **IRI Staff Contact: Emily Micale**

As a part of a joint agency effort, the DOL, Treasury, and Pension Benefit Guaranty Corporation (PBGC) issued an RFI soliciting stakeholder input to review the effectiveness of existing reporting and disclosure requirements for retirement plans, as required by Section 319 of SECURE 2.0. *ERISA* and the Internal Revenue Code (the Code) currently require information about retirement plan benefits and features that must be disclosed to the agencies and provided to plan participants and beneficiaries. Section 319 seeks to streamline and consolidate the required disclosures to make them more effective for plan participants and beneficiaries to understand their rights and benefits. The RFI includes 24 questions on various topics relevant to effective reporting and disclosure. Some of the topics include:

- Number and frequency of disclosures received by workers.
- Information disclosed and its effectiveness, accessibility and understandability, including to non-English speakers.
- How plans obtain and update contact information for workers.
- Plans' experiences completing and filing reports and obtaining assistance from the agencies.

IRI's *ERISA* Disclosures Working Group will lead IRI's development of responsive comments to the RFI, with input from IRI's SECURE 2.0 Implementation Working Group.

IRS Proposed Rule: Long-Term, Part-Time Employee Rules for Cash or Deferred Arrangements Under Section 401(k)

✓ **Status: Proposal (Proposal Text)**

» **IRI Staff Contact: Emily Micale**

In November 2023, the IRS released a proposed rule regarding eligibility requirements for long-term, part-time employees for cash or deferred arrangements (CODAs) under Section 401(k) of the Code. The SECURE Act of 2019 (SECURE 1.0) generally requires that employees at least age 21 who work 500 hours in three consecutive 12-month periods cannot be excluded from eligibility to make employee deferrals based on a more stringent service condition in a plan that includes a CODA. Sections 125 and 401 of SECURE 2.0 generally ***expand*** upon the rules outlined in SECURE 1.0. Upon enactment, SECURE 2.0 included a provision shortening the ***three*** consecutive 12-month eligibility periods for long-term part-time employees to ***two*** consecutive 12-month periods for plan years starting after December 31, 2024. Additionally, SECURE 2.0 extended the application of the long-term, part-time rules to *ERISA*-covered 403(b) plans.

IRS Notices and Guidance Related to SECURE 2.0 Implementation

» **IRI Staff Contacts: Emily Micale and Rebecca Plowman**

1. IRS Statement on SECURE 2.0 for Guidance on RMDs
   In March 2023, the IRS issued guidance on the changes to the required minimum distribution (RMD) under the SECURE 2.0 Act of 2022.
2. IRS Notice 2023-23: **Relief for Reporting Required Minimum Distributions for IRAs for 2023**
   The IRS issued guidance to provide adequate time for financial institutions to update their systems to comply with the changes made to the RMD reporting requirements statements under the SECURE 2.0 Act. Specifically, the issuance of an RMD statement to an IRA owner who will attain age 72 in 2023 would not be treated as a violation of the RMD reporting requirement as long as the IRA owner was notified no later than April 28, 2023, that no RMD is required for 2023.
3. IRS Notice 2023-54: **Transition Relief and Guidance Relating to Certain Required Minimum Distributions**
   This Notice provides extra time for IRA owners turning 72 (in 2023) who were mistakenly instructed to take RMDs this year to return the money to their accounts without a tax penalty. The Notice extends the 60-day rollover deadline for those IRA owners to September 30, 2023. The Notice also addresses several items related to inherited IRA beneficiaries subject to the 10-year rule and their required minimum distributions.
4. IRS Notice 2023-62: **Guidance on Section 603 of the SECURE 2.0 Act with Respect to Catch-Up Contributions**
   In this Notice, the IRS provides guidance related to the implementation of Section 603 of SECURE 2.0 and addresses concerns related to the erroneous statutory language that accidentally eliminated catch-up contributions after tax year 2023. The IRS confirms that plans can continue to accept catch-up contributions from participants even after December 31, 2023, and that they have not been eliminated. Additionally, the IRS is providing a two-year transition period regarding the implementation of Section 60, and full compliance will be required starting after December 31, 2025. This transition period is meant to help facilitate orderly compliance and implementation of Roth catch-up contributions for individuals with income over $145,000.

5. IRS Notice 2024-02: **Miscellaneous Changes Under the SECURE 2.0 Act of 2022**
   On December 20, the IRS released Notice 2024-2 to address several sections of SECURE 2.0. While characterized as a "grab bag" of guidance and clarification based on the wide-ranging topics related to the implementation of SECURE 2.0, the Notice provides essential information on some of IRI's key priorities. With high-level commentary accompanied by a question-and-answer format, the Notice covers (a) Section 101, detailing the operation and exclusions for expansion of automatic enrollment in retirement plans; (b) Section 501, regarding provisions relating to plan amendments; (c) Section 601, permitting SIMPLE IRA plans or simplified employee pension arrangements to designate a Roth IRA as the IRA to which contributions are made; and (d) Section 604, clarifying the optional treatment of employer matching or non-elective contributions as "Roth contributions." Several other provisions of SECURE 2.0 are addressed in the Notice and have been shared with IRI's SECURE 2.0 Implementation Working Group.

Other State Items

New York Department of Financial Services Circular Letter No. 6 (2023)

✓ **Final (Text) (Filing Guidance)**

» **IRI Staff Contact: Rebecca Plowman**

Effective Date: July 17, 2023

This circular letter addresses a common practice where an insurer creates different versions of a particular product for different distributors, resulting in similarly situated consumers receiving similar policies or contracts, but with different conditions, benefits, fees, or premiums. These practices are often described as "offering different or proprietary products" or "offering different versions or share classes of the same product". The New York Department of Financial Services believes that these sales practices result in unfair and unlawful discrimination among similarly situated individuals. Consumers who would not have access to, and are generally unaware of, different versions of the product would effectively be discriminated against. Insurers will need to demonstrate there are distinctions between the classes of consumers that are based on equitable, non-discriminatory and sound actuarial principles.

» IRI Overview of NY DFS Circular Letter No. 6 (2023)

NAIC E-Commerce Working Group Activity

» **IRI Staff Contact: Sarah Wood**

The NAIC E-Commerce Working Group drafted a framework that memorializes the insights gained through a survey sent to insurers and industry stakeholders. The framework was exposed for comments twice in 2023, and IRI submitted comment letters at each time. While IRI believes the framework provides a helpful summary of the survey results and comments received, more direction is needed in order to provide meaningful, uniform guidance to the states. IRI will continue its engagement with the Working Group and IRI members to assist with this effort.

» IRI Comment Letter (March 29, 2022)

» IRI Comment Letter (October 6, 2023)

Other Federal Items

Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting (Swing Pricing and Hard Close Proposal)

✓ **Proposal (Press Release) (Proposal Text) (Fact Sheet)**

» **IRI Staff Contact: Emily Micale**

In November 2022, the SEC issued this proposal that would require all open-ended funds, except money market funds and exchange-traded funds, to hold at least 10% of their investments in highly liquid assets and would make swing pricing and a daily hard close (4 PM EST) for trade orders mandatory. IRI submitted comments urging the SEC to withdraw the proposal and reconsider the rulemaking due to the practical and operational impossibilities for implementation and compliance related to the hard close requirement. IRI also signed on to two joint trades comment letters and met with the SEC Investor Advocate to express concerns related to the proposal, and continues to engage in joint trade discussions and advocacy efforts on the Hill.

» **IRI Comment Letter** (February 14, 2023)

» **Joint Trades Letter** (December 20, 2022)

» **Joint Trades Letter** (January 9, 2022)

DOL Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications

✓ **Status: Final (Text) (DOL Press Release)**

» **IRI Staff Contact: Emily Micale**

Effective Date 75 Days from Publication in the Federal Register-April 8, 2024

The DOL issued a final rule that would revise the procedures for granting individual prohibited transaction exemptions (PTEs). Specifically, among other things, the final amendments would: The Exemption Procedure Regulation promotes the department's prompt and efficient consideration of all prohibited transaction exemption applications by, among other things: (1) clarify the types of information and documentation required for a complete application; (2) revise the definitions of a qualified independent fiduciary and qualified independent appraiser in order to ensure their independence; (3) clarify the content of specific reports and documents applicants must submit in order to ensure that the department receives sufficient information to make the requisite findings under *ERISA* Section 408(a) to issue an exemption; (4) update various timing requirements to ensure clarity in the application review process; (5) specify items that are included in the administrative record for an application and when the administrative record is available for public inspection; and (6) expand opportunities for applicants to submit information to the department electronically.

DOL Proposed Amendment to Prohibited Transaction Class Exemption 84–14 (the "QPAM Exemption")

✓ **Status: Final Rule Under Review at OMB (text currently not available)**

» **IRI Staff Contact: Emily Micale**

The QPAM Exemption (also known as PTE 84-14), permits an investment fund holding assets of plans and IRAs that is managed by a "qualified professional asset manager" (QPAM) to engage in transactions with "parties in interest" or "disqualified persons" to a plan or an IRA, subject to protective conditions. The proposed amendment would modify the exemption, incorporating a provision under which a QPAM may

become ineligible to rely on the QPAM Exemption for a period of 10 years if the QPAM, various affiliates, or five percent or more owners of the QPAM are convicted of certain crimes, including convictions in foreign jurisdictions. The proposed amendment also: (1) revise the requirements of a QPAM's authority over investment decisions, (2) significantly raise the asset management and equity thresholds in the QPAM definition, and (3) add a new recordkeeping provision. The amendment would affect the entire retirement supply chain upon a QPAM's disqualification, QPAM themselves, and counterparties engaging in transactions covered under the QPAM Exemption. IRI submitted comments in opposition to the proposal in October 2022, arguing that the proposal would (1) severely limit the types of transactions covered by the QPAM exemption; (2) increase legal risk associated with serving as a QPAM; and (3) unnecessarily reduce levels of confidence by plans in the uninterrupted provision of investment management services by subjecting all QPAMs to new and unwarranted risks of disqualification.

» **IRI Comment Letter** (October 11, 2022)

SEC Safeguarding Advisory Client Assets

✓ **Status: Proposal (Proposal Text)**

» **IRI Staff Contact: Emily Micale**

The proposed amendments would significantly expand the scope of the current custody rule beyond client funds and securities to include any client assets of which an Investment Adviser has custody. "Assets" would mean "funds, securities, or other positions held in a client's account" and would include all other assets that Investment Advisers custody for their clients. The proposed amendments would also explicitly include an Investment Adviser's discretionary authority to trade client assets within the definition of custody. IRI submitted comments to the SEC in May 2023 calling for the proposal to be modified to exclude annuities from its scope because no investor assets are actually in the custody of either the RIA or the insurance company in this context. IRI's letter also explained that the proposal's expanded definitions of "custody" and "assets" create conflicts with state insurance laws governing annuities, which could impede retirement savers' access to protected lifetime income products for clients of registered investment advisers.

» **IRI Comment Letter** (May 8, 2023)

Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements

✓ **Status: Final (Text) (Fact Sheet)**

» **IRI Staff Contact: Rebecca Plowman**

Effective Date: January 24, 2023

The SEC adopted amendments to the requirements for annual and semi-annual shareholder reports provided by mutual funds and exchange-traded funds to highlight key information for investors, resulting in what the SEC calls "Tailored Shareholder Reports" (TSRs). The SEC also adopted amendments to exclude open-end funds from the scope of rule 30e-3, which generally permits certain registered investment companies to satisfy shareholder report transmission requirements by making these reports and other materials available online and providing a notice of the reports' online availability, instead of directly providing the reports to shareholders. Finally, the final rule included a prohibition against binding or bundling of TSRs, and this prohibition was not presented in the proposed rule. IRI recently received notice from SEC Division of Investment Management Senior Staff of the issuance of FAQs for compliance and implementation of the TSR final rule, which includes a permissive allowance for the binding or bundling of an investor's TSRs (FAQ #6).

Compliance Dates: The SEC provided an 18-month transition period after the effective date of the final rule amendments to allow open-end funds adequate time to adjust their shareholder reports and comply with the rule 30e-3 changes. The SEC also provided an 18-month transition period after the effective date to comply with the final rule amendments to the advertising rules. The final rule amendments that address representations of fees and expenses that could be materially misleading apply on the effective date.

Pending Federal Legislation

Retirement Fairness for Charities and Educational Institutions Act

✓ **Status: Passed out of Committee (Text)**

» **IRI Staff Contact: Paul Richman or John Jennings**

Introduced by Rep. Frank Lucas (R-OK), Rep. Bill Foster (D-IL), Rep. Andy Barr (R-KY), and Rep. Josh Gottheimer (D-NJ), the *Retirement Fairness for Charities and Educational Institutions Act* would authorize the use of collective investment trusts (CITs) and unregistered insurance company separate accounts within 403(b) retirement savings plans. Currently, exemptions under securities laws do not apply to 403(b) plans and prevent the use of CITs and unregistered insurance company separate accounts. These exemptions do allow 401(k), 457(b), the Thrift Savings Plan, and other plan types to utilize these products. *The Retirement Fairness for Charities and Educational Institutions Act* makes the necessary amendments to the *Investment Company Act of 1940*, the *Securities Act of 1933*, and the *Securities Exchange Act of 1934* to authorize the use of CITs and unregistered insurance company separate accounts within 403(b) plans.

» IRI Letter of Support (May 3, 2023)

Improving Disclosure for Investors Act

✓ **Status: Passed out of Committee (Text)**

» **IRI Staff Contact: Paul Richman or John Jennings**

Introduced by Rep. Bill Huizenga (R-MI), Rep. Jake Auchincloss (D-MA), Rep. Bryan Steil (R-WI), and Rep. Wiley Nickel (D-NC), the *Improving Disclosure for Investors Act* directs the SEC to promulgate a rule that would allow registered investment companies to satisfy their regulatory obligations through e-delivery of documents to investors as the default method. Investors will also be provided with the opportunity to opt-out if they prefer paper delivery. The SEC would have not later than 180 days after the date of enactment to propose the rule and no more than a year to finalize the rule.

Lifetime Income for Employees Act

✓ **Status: Reintroduced (Text)**

» **IRI Staff Contact: Paul Richman or John Jennings**

Introduced by Rep. Donald Norcross (D-NJ) and Rep. Tim Walberg (R-MI), the *Lifetime Income for Employees Act* would amend current safe harbor regulations covering qualified default investment alternatives (QDIAs) to allow a QDIA to include a limited investment in less liquid annuities that provide lifetime income. The bill stipulates that not more than 50 percent of investments can be allocated into a qualifying annuity component. The bill also requires savers who are defaulted into a QDIA with an annuity component to be notified of their participation within 30 days of their initial investment. The bill also provides the option

for participants to reallocate their investment penalty-free within 180 days. Also, the bill would not cause plan sponsors to change their current QDIA but provide the option of adding less liquid, higher returning annuities to their default options.

» **IRI Letter of Support** (June 12, 2023)

General Accounts Products Clarification Act

✓ **Status: Pending Introduction (Text – previous session of Congress)**

» **IRI Staff Contact: Paul Richman or John Jennings**

The General Accounts Products Clarification Act would amend the *ERISA* to clarify that the offering and sale of general account products do not expose the insurer or its general account to fiduciary or *ERISA* plan asset status. Current legal uncertainty and the risk of being subject to *ERISA* fiduciary liability and prohibited transaction rules inhibits insurers from offering these valuable products. *The General Accounts Products Clarification Act* was introduced by Rep. Joe Morelle (D-NY) in 2022 but has not yet been reintroduced in the current session of Congress.

Automatic IRA Act

✓ **Status: Pending Introduction**

» **IRI Staff Contact: Paul Richman or John Jennings**

The Automatic IRA Act would generally require employers to maintain an automatic retirement savings plan, into which employees would be automatically enrolled with the ability to opt-out. Additionally, the bill would require that participants with account balances of $200,000 or more be given the choice to receive up to 50 percent of their vested balance in the form of a protected, guaranteed lifetime income product. The bill was previously introduced by Rep. Richard Neal (D-MA) in 2021 but has not yet been reintroduced in the current session of Congress.