Public Policy Developments Impacting IRI Members

2024 YEAR IN REVIEW

Insured Retirement Institute

Public Policy Developments Impacting IRI Members
2024 Year in Review

This report provides an overview of key legislative and regulatory developments of significance to the insured retirement industry, including proposed and final laws and regulations issued by federal and state policymakers in 2024, 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 item covered in this report should be directed to the IRI Staff Contact specified for the applicable item.

Jason Berkowitz, *Chief Legal & Regulatory Affairs Officer*, jberkowitz@irionline.org
Paul Richman, *Chief Government and Political Affairs Officer*, prichman@irionline.org
John Jennings, *Director, Government and Political Affairs*, jjennings@irionline.org
Emily Micale, *Director, Federal Regulatory Affairs*, emicale@irionline.org
Rebecca Plowman, *Director, Compliance and Implementation*, rplowman@irionline.org
Sarah Wood, *Director, State Policy & Regulatory Affairs*, swood@irionline.org

Status Key

- Final regulation
- Proposal/draft
- Judicial action

Abbreviation Key

DOL	U.S. Department of Labor
FinCEN	Financial Crimes Enforcement Network
FINRA	Financial Industry Regulatory Authority
NAIC	National Association of Insurance Commissioners
NASAA	North American Securities Administrators Association
NY DFS	New York Department of Financial Services
IRS	Internal Revenue Service
The Compact	Interstate Insurance Product Regulation Commission
SEC	U.S. Securities and Exchange Commission
Treasury	U.S. Department of the Treasury

Table of Contents

Impact of 2024 Election

The 2024 Election will have a significant impact on the federal legislative and regulatory environment affecting the insured retirement industry. With Republicans in control of the White House, the Senate, and the House of Representatives for at least two years, Congress and federal agencies are expected to pursue an aggressive deregulatory agenda, reform the tax code, and levy new tariffs and trade sanctions.

The following is a brief outline of policies and priorities IRI anticipates pursuing with Congress and the Trump Administration:

Congress

- Advocate for the preservation of the current tax deferred treatment of retirement savings, which encourages individuals to save during their working years; and
- Advance legislation proposed in IRI's 2025 Federal Retirement Security Blueprint that will expand opportunities to save for retirement; facilitate the greater use of lifetime income solutions; foster innovation, modernization, education for retirement savers, and boost participation in the private sector retirement system and protections for consumers.

The Administration and Federal Agencies

- Pursue efforts to revise or eliminate a wide range of existing rules adopted by the Biden Administration over the past four years, such as (a) the DOL's fiduciary rule, (b) the DOL's amendments to the prohibited transaction exemption (PTE) for qualified professional asset managers (QPAMs), (c) the DOL's amended procedures for PTE applications; and (d) the SEC's rules pertaining to environmental, social, & governance (ESG) investing and climate-related risks;
- Discontinue many pending rulemaking initiatives that were not finalized prior to Inauguration Day, such as (a) the SEC's proposal pertaining to conflicts of interest associated with the use of AI, and (b) the SEC's proposed amendments to the custody rules applicable to registered investment advisers (RIAs); and
- Scale back and redirect enforcement efforts to focus more on violations involving harm to consumers and less on violations based primarily on compliance failures.

Judicial Developments Impacting Federal Rulemaking

U.S. Supreme Court: *Loper Bright Enterprises v. Raimondo*

In June 2024, the Supreme Court overturned the 40-year-old Chevron deference doctrine. Since 1984, the *Chevron* doctrine required federal courts to grant significant deference to federal agencies' interpretations of the statutes they are charged with implementing. This decision will likely have important and far-reaching implications across the entire federal government on a wide range of public policy issues.

For IRI and its members, this decision is expected to positively impact numerous pending lawsuits challenging rules adopted by federal regulators (including the DOL fiduciary rule and the SEC's ESG investing and climate-related risk rules), as the courts will no longer be required to go through the extensive legal analysis required by *Chevron* to assess whether rules should be vacated. Instead, as Chief Justice John Roberts wrote in the *Loper Bright* decision, the courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."

U.S. Supreme Court: *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*

In July 2024, the Supreme Court ruled that the timeframe within which federal regulations may be challenged (formally referred to as the statute of limitations) does not begin running with respect to any particular party until that party has actually been harmed by the regulation. This ruling, in conjunction with the *Loper Bright* decision, could expose a wide-range of long-standing regulations to potential judicial review.

Standards of Conduct for Financial Professionals

DOL: Retirement Security Rule

Status:
- Amended Definition of Fiduciary Investment Advice — Final but Currently Stayed (Text)
- Amended PTE 84-24 — Final but Currently Stayed (Text)
- Amended PTE 2020-02 — Final but Currently Stayed (Text)
- Amended PTEs 75-1, 77-4, 80-83, 83-1, and 86-128 — Final but Currently Stayed (Text)

IRI Staff Contacts: Jason Berkowitz and Rebecca Plowman

On April 23, 2024, the DOL adopted the final version of the Fiduciary Rule with an effective date of September 23, 2024, and a one-year phase-in period during which investment advice fiduciaries relying on the amended versions of PTE 2020-02 or PTE 84-24 would have only been required to comply with the Impartial Conduct Standards and the fiduciary acknowledgment requirements. IRI's executive summaries of each component of the final rule package can be accessed at the links provided below.

In May 2024, IRI and four other industry organizations filed a lawsuit against the DOL in the Northern District of Texas to challenge the final rule package on the grounds that it (a) exceeds the DOL's statutory authority, (b) is the product of a rushed, outcome-oriented process, (c) is arbitrary and capricious in multiple respects, and (d) violates our members' First Amendment right to communicate truthful information to consumers about annuities and other retirement products. Based on these arguments, the plaintiffs asked the court to vacate the final rule package in its entirety and to stay the effective date of the final rule package until the litigation is resolved. A companion case was filed by another industry organization in the Eastern District of Texas.

In July 2024, the judge in IRI's case issued a stay of the effective date for the entire rule package, finding that the plaintiffs are "virtually certain" to prevail on the merits. The DOL appealed the stay order to the Fifth Circuit, and the parties are currently in the midst of the briefing process. IRI and our co-plaintiffs are cautiously optimistic that the stay will be upheld and that the court will vacate the entire rule package.

- IRI DOL Fiduciary Rule Resource Center
- IRI Executive Summaries:
  - Retirement Security Rule: Definition of an Investment Advice Fiduciary
  - Amendment to PTE 2020-02
  - Amendment to PTE 84-24
  - Amendments to PTEs 75-1, 77-4, 80-83, 83-1, and 86-128
- IRI Litigation Tracker

NAIC: Suitability in Annuity Transactions Model Regulation

Status: ● Final *(adopted February 13, 2020)* (Text)
State Adoption in Progress

IRI Staff Contacts: Sarah Wood and Rebecca Plowman

Significant progress was made in 2024, bringing the total number of states that have adopted the 2020 revisions to this NAIC model regulation to 48 (as of December 2024). IRI worked diligently to avoid any substantive deviations from the revised model, and those efforts were very successful this year. Notably, we successfully advocated for changes to the original version of California Senate Bill 263, with the final legislation closely aligning with the revised model.

IRI also worked closely with state insurance departments throughout the year to ensure consistent nationwide implementation of the revised model, including the model forms. In Oregon, for example, the original forms proposal deviated substantially from the forms included in the revised model but, as a result of IRI's advocacy efforts, the final versions of the forms are substantially similar to those included in the revised model.

In July 2021, the NAIC issued a set of Frequently Asked Questions regarding the revised model. In September 2024, the NAIC Annuity Suitability Working Group released draft regulatory guidance for state Departments of Insurance to use when reviewing an insurer's compliance with the revised model. The draft guidance is focused on insurer obligations under the safe harbor provision of the revised model. In November, IRI submitted written comments and provided oral testimony regarding the draft guidance on behalf of a coalition of ten trade groups.

Looking ahead, New Jersey is expected to adopt its proposal in the coming months, while the District of Columbia is still in the pre-proposal stage. In addition, IRI will continue to advocate for adoption of Florida-specific forms that closely align with the forms included in the revised model. IRI will also continue to lead the industry efforts regarding the NAIC's draft regulatory guidance on the safe harbor.

The most up-to-date information on state adoption of the revised model can be located on IRI's State Standard of Conduct resources page.

- Joint Trades Comment Letter on Draft Guidance (November 8, 2024)

NASAA: Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule

Status: ◆ Revised Proposal (Text)

IRI Staff Contact: Sarah Wood

In 2023, NASAA issued proposed amendments to the NASAA Dishonest or Unethical Business Practices of Broker-Dealers and Agents Model Rule that was purportedly intended to (1) incorporate the SEC's Regulation Best Interest (Reg BI) into the model rule, (2) define and clarify — through a menu of eight optional provisions — various obligations or components of this conduct standard for purposes of state interpretation and enforcement; and (3) prohibit misleading uses of the title "advisor" or "adviser." Concurrent with the issuance of this proposal, NASAA released a report on Phase II(B) of its National Examination Initiative, which focused on compliance with Reg BI.

IRI submitted written comments arguing that the proposal was unnecessary, confusing, and inconsistent with existing strong federal and state consumer protection regulations. IRI also objected to the proposal's menu of provisions for states to pick and choose from, which would lead to a patchwork of varying regulations and less state-by-state uniformity. In addition, IRI led a coalition of industry groups in an effort to persuade NASAA and its members to either withdraw the proposal or move forward with a more streamlined version that simply incorporates Reg BI into state law.

In November 2024, NASAA released a revised proposal, which generally addresses industry requests to align with Reg BI, including the elimination of the menu of optional provisions. In December 2024, IRI submitted comments on the updated proposal.

- IRI Comment Letter — Revised Proposal (December 19, 2024)
- IRI Comment Letter — Original Proposal (December 3, 2023)

Artificial Intelligence, Cybersecurity & Privacy

Treasury: Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector

Status: ● Comment Period Closed (Text)

IRI Staff Contact: Emily Micale

In June 2024, Treasury issued a request for information on the use of artificial intelligence (AI) by financial institutions. IRI submitted a comment letter emphasizing the importance of alignment with existing regulatory frameworks, including the AI Principles adopted by the Organisation for Economic Co-operation and Development (OECD).

Specifically, IRI recommended that any definition of AI in legislative or regulatory proposals align with the OECD's definition. Additionally, new AI laws or regulations should adhere to the OECD's AI Principles, which address critical areas such as privacy, fairness, transparency, security, and accountability. Policymakers were urged to follow these principles and adopt an outcomes-based, technology-neutral approach to any potential AI regulation.

In December 2024, Treasury released its Report on the Uses, Opportunities, and Risk of Artificial Intelligence in Financial Services, which reflects many of IRI's key concerns and recommendations, including the importance of consistent terminology and uniform compliance standards. The Report specifically recommends continued international and domestic collaboration, further analysis of regulatory gaps, and enhanced information sharing. It also recommends that financial institutions prioritize compliance with existing laws and periodically reassess their AI use cases.

> IRI Comment Letter (August 12, 2024)

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

Status: ● Final *(adopted December 4, 2023)* (Text)
State Adoption in Progress

IRI Staff Contact: Rebecca Plowman

In 2023, the NAIC adopted this model bulletin, which outlines the regulators' expectations of insurers using artificial intelligence systems (AIS) and encourages insurers to implement and maintain a written program based on the insurer's assessments of the risks posed by its use of AIS. As of December 2024, the model bulletin has been adopted by 20 states,[1] though some states did so with state-specific deviations. For example, Connecticut requires insurers to complete an annual Artificial Intelligence Certification that attests to compliance with the Bulletin.

Two states, New York and Colorado, took action that was not based on the NAIC Model Bulletin. Instead, as described below, these states adopted their own unique regulatory frameworks for the use of AI by insurers.

Colorado Division of Insurance: Algorithm and Predictive Analytics Testing and Governance Regulations

Status: ◆ Testing Regulation for Life Insurers – Released for Informal Comment (Text)
● Governance Regulation for Life Insurers — Final *(Effective as of November 14, 2023)* (Text)

IRI Staff Contact: Sarah Wood

In October 2023, the Colorado Division of Insurance released (1) a draft Algorithm and Predictive Model Quantitative Testing Regulation for informal comment, which at this time is still undergoing the stakeholder review and comment process, and (2) the Algorithm and Predictive Analytics Governance Regulation, which was effective in November 2023. These regulations apply to life insurance and not to annuities, but the Division has signaled its intent to use these rules as a starting point for future rulemaking in the annuity space.

[1]Bell Analytics, *Adoption of NAIC Model Bulletin: Tracking adoption of the NAIC's Model Bulletin on AI Use*

NY DFS: Use of Artificial Intelligence Systems and External Consumer Data and Information Sources in Insurance Underwriting and Pricing

Status: ● Final *(Issued July 11, 2024)* (Text)

IRI Staff Contact: Rebecca Plowman

In July 2024, the NY DFS issued Circular Letter No. 7, which outlines its expectations regarding insurers' development, use, and management of AIS, external consumer data and information sources (ECDIS), and other predictive models in underwriting and pricing insurance policies and annuity contracts. The circular letter sets forth expectations related to fairness principles, governance and risk management, and transparency.

NY DFS: Cybersecurity Requirements for Financial Services Companies

Status: ● Final *(Effective as of November 1, 2023)* (Text)

IRI Staff Contact: Rebecca Plowman

In November 2023, the NY DFS finalized 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 involving affiliates and third-party service providers.

The amendments generally took effect on November 1, 2023. However, different transition periods applied to certain provisions. The following requirements took effect as of November 1, 2024:

For Class A and Standard Companies:

- Cyber Security Governance (Section 500.4)
- Encryption of Nonpublic Information (Section 500.15)
- Incident Response and Business Continuity Management (Section 500.16)

For Small Businesses With Partial Exemptions:

- Multi-Factor Authentication (Section 500.12(a))
- Cybersecurity Training (Section 500.14(a)(3))

The NY DFS has a Cybersecurity Resource Center available on its website to provide the industry with additional information, including a set of FAQS and information related to the Cybersecurity Risks Arising from Artificial Intelligence and Strategies to Combat Related Risks.

NAIC: Privacy of Consumer Financial and Health Information Model Regulation

Status: ◆ Proposal (Text)

IRI Staff Contact: Sarah Wood

In August 2024, the NAIC Privacy Protections Working Group released draft amendments to this model regulation. Comments from stakeholders are being solicited on a section-by-section basis, and IRI has been working closely with members and other industry groups to provide feedback on the draft.

- IRI Comment Letter on Article III, Sections 6-8 (November 25, 2024)
- IRI Comment Letter on Article II, Section 5 (September 17, 2024)

ESG Investing and Climate-Related Risks

DOL: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

Status: ● Final *(Effective as of January 30, 2023)* (Text)

IRI Staff Contact: Rebecca Plowman

In January 2023, the DOL issued this rule, which authorizes retirement plan fiduciaries to consider ESG factors when selecting investment options for their plans as long as such options are selected in compliance with the duties of prudence and loyalty imposed under the Employee Retirement Income Security Act (ERISA). Most notably, the rule clarifies that a fiduciary's duty of prudence must be based on factors relevant to a risk/return analysis, which may include the economic effects of ESG considerations on the particular investment or investment course of action.

This rule was challenged in — and upheld by — a Texas federal district court in 2023. The district court ruling was appealed to the Fifth Circuit Court of Appeals in October 2023, but the Fifth Circuit remanded the case back to the district court for reevaluation after the Supreme Court overturned the Chevron doctrine[2] in mid-2024.

SEC: Enhancement and Standardization of Climate-Related Disclosures for Investors

Status: ■ Final but Currently Stayed (Text)

IRI Staff Contact: Rebecca Plowman

In March 2024, the SEC adopted this rule, which requires registrants to disclose certain climate-related information in registration statements and annual reports. Notably, the final version omitted Scope 3 reporting requirements, which were a controversial aspect of the original proposal. The rule was scheduled to take effect as of May 28, 2024, with compliance dates to be determined based on the registrant's filer status and the disclosure content.

Litigation: Upon adoption, numerous lawsuits challenging the validity of the rule were filed in six federal appellate courts. The petitions were consolidated for review in the Eighth Circuit, and the SEC voluntarily issued a Stay Order halting implementation pending the completion of judicial review by the Court of Appeals for the Eighth Circuit. The Stay Order applies only to this rule and not to any other SEC rules or guidance. As such, the SEC's 2010 climate disclosure guidance remains in effect.

> SEC Order Issuing Stay (April 4, 2024)

Missouri Secretary of State: Fraudulent Practices

Status: ◆ BD Rule — Proposal (Text)
◆ IA Rule — Proposal (Text)

IRI Staff Contact: Sarah Wood

In December 2024, the Missouri Secretary of State proposed amendments to its Fraudulent Practices of Broker-Dealers and Agents rule (the BD Rule) and its Fraudulent Practices of Investment Advisers and Investment Adviser Representatives rule (the IA Rule). The proposed amendments would make it a fraudulent practice to effect "any transactions with an investment objective that the customer has not authorized at or prior to the time such transactions is effected." IRI submitted a comment letter in opposition to the proposal, arguing that it raises the same federal preemption concerns as the prior rulemaking, and is unnecessary, duplicative, and confusing.

The proposal was issued in the wake of an August 2024 decision by a federal district court in a case brought by the Securities Industry and Financial Markets Association (SIFMA), in which the court held that rules adopted by Missouri in 2023 to curtail ESG investing were "preempted by the National Securities Markets Improvements Act (NSMIA)] and [ERISA],…unconstitutional under the First and Fourteenth Amendments of the United States Constitution, and…impermissibly vague under the Fourteenth Amendment of the United States Constitution." IRI and the Financial Services Institute (FSI) submitted a joint amicus brief in this case in support of SIFMA.

> IRI Comment Letter (December 23, 2024)

> IRI and FSI Amicus Brief (June 25, 2024)

[2] *Loper Bright Enterprises v. Raimondo*

Wyoming Secretary of State: Securities Agent and Investment Adviser Regulations

Status: Final *(Effective as of February 24, 2024)* (Text — Chapter 2: Definitions; Chapter 5: Securities Agent Regulations; Chapter 10: Investment Adviser Regulations)

IRI Staff Contact: Rebecca Plowman

In February 2024, the Wyoming Secretary of State adopted new rules that 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. The rule was effective immediately upon adoption and, in May, Wyoming issued guidance related to the required ESG disclosures.

Unlike the original proposal, specific language need not be used in making such disclosures and consumers need not provide written consent in response to the initial notice or on an ongoing basis.

IRI submitted a comment letter in opposition to the proposal, arguing that the proposal is unnecessary and burdensome, will lead to investor confusion, and may be preempted by federal law.

Registered Indexed Linked Annuities / Indexed Linked Variable Annuities

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

Status: Final *(Effective as of September 23, 2024)* (Text) (Fact Sheet) (Press Release)

IRI Staff Contacts: Rebecca Plowman and Emily Micale

In July 2024, as required by the Registration for Index-Linked Annuities Act (which was enacted by Congress in late 2022), the SEC adopted rule and form amendments that require offerings of registered index-linked annuities (RILAs) and registered market value adjustment annuities (registered MVAs) to be registered on Form N-4 (the registration form for most variable annuities) and to adapt that form to accommodate RILAs. Most notably, the amendments:

- Provide investors with tailored disclosures and critical information about these products;
- Modernize and enhance non-variable annuities' registration, filing, and disclosure framework;
- Update the form for all offerings, including variable annuities, and making technical amendments to other insurance product registration forms; and
- Allow insurers to prepare their financial statements for RILA registration statements in accordance with statutory accounting principles if they would not otherwise have to prepare GAAP financial statements.

As of May 1, 2026, all RILAs and registered MVAs will have to be registered on amended Form N-4. Also, in September 2024, IRI participated in a meeting with SEC staff to discuss several interpretive and implementation issues arising from the recently adopted RILA rules, and a summary of the discussion was provided to IRI members.

The Compact: Standards for Individual Deferred Index Linked Variable Annuity Contracts

Status: Final *(Effective as of August 12, 2024)* (Text)

IRI Staff Contacts: Sarah Wood and Rebecca Plowman

In April 2024, the Compact adopted uniform standards for registered index-linked annuities (referred to by the NAIC and the Compact as index-linked variable annuities, or ILVAs). Companies can now file their ILVA products with the Compact rather than complete a 50-state filing. However, Oregon has currently opted out of the ILVA uniform standard and companies will need to continue to file directly with the state for approval.

Additionally, upon adoption, IRI was made aware of comments provided by the Compact during the filing process related to the interpretation and application of the free-look provision. Essentially, the Compact expected the free-look provision to be administered to more closely align with the free-look process of fixed annuity products, rather than variable annuity products, for which ILVA products similarly operate. In September, IRI and several other industry groups submitted a letter to the Compact and met with the Compact and key regulators to express the industry's concerns about this approach. The Compact has designated this as a medium/high priority for 2025, but IRI believes the Compact is unlikely to revise the product standards to address the industry's concerns. At the direction of the membership, IRI is not currently planning to conduct any proactive advocacy on this topic.

> Joint Trades Letter (July 23, 2024)

Implementation of Retirement Reform Legislation

DOL: Automatic Portability Transaction Regulations

Status: Proposal (Text)

IRI Staff Contact: Emily Micale

In January 2024, the DOL issued a proposal that would implement SECURE 2.0 Section 120, which provides for a statutory exemption to allow the accrued funds from a small retirement plan ($7,000 or less) to be transferred to a "Safe Harbor IRA" until the funds can be transferred to the employee's new employer-based plan. These automatic portability transactions help workers keep track of their retirement savings accounts and reduce cash-outs when they change jobs. A fee associated with the transfer transaction is based on the facts and circumstances of each case. Still, it is generally limited to reimbursement for direct expenses incurred in the execution of the auto-portability transaction. The proposal aligns with the eleven requirements that must be satisfied for the automatic portability transaction to qualify for the statutory exemption.

> IRI Comment Letter (March 29, 2024)

DOL: Reporting and Disclosure Requirements

Status: Comment Period Closed, Awaiting Further Action (Text)

IRI Staff Contact: Emily Micale

In January 2024, as a part of a joint agency effort, the DOL, Treasury, and Pension Benefit Guaranty Corporation issued a request for information 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. IRI submitted a comment letter highlighting that we support a "clean slate" approach to achieve the most effective method of consolidation and streamlining of notices and disclosures required under ERISA and the Code, and electronic means as the default mechanism for delivering such notices and disclosures.

> IRI Comment Letter (May 22, 2024)

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

Status: ◆ 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.

In October 2024, the IRS issued guidance (Notice 2024-73) regarding the application of nondiscrimination rules for 403(b) plans concerning long-term, part-time employees. It clarifies how these rules apply to permitted exclusions, such as part-time and student employees.

The notice also states that Treasury and the IRS intend to issue additional guidance on Section 125 of SECURE 2.0, including proposed regulations related to the provisions outlined in the notice. Furthermore, it announces that the final regulations for 401(k) plans addressing long-term, part-time employees will take effect no earlier than plan years beginning on or after January 1, 2026.

IRS: Required Minimum Distributions

1. Income Tax Regulations and Excise Tax Regulations under Code Sections 401(a)(9), 402(c), 403(b), 408, 457, and 4974

Status: ● Final *(Effective as of September 17, 2024)* (Text)

IRI Staff Contact: Rebecca Plowman

In July 2024, the IRS issued a final rule implementing provisions of the SECURE Act of 2019 and SECURE 2.0, providing guidance on required minimum distributions (RMDs) from defined contribution plans and annuities under Section 401(a)(9) of the Code. The rule addresses the timing and manner of RMDs in various scenarios, such as inherited accounts, and includes definitions clarifying beneficiary qualifications.

RMD rules generally mandate withdrawals from tax-advantaged retirement accounts — including 401(k)s, 403(b)s, IRAs, and eligible 457(b) plans — once the account holder reaches a specified age or passes away. The rules specify the required beginning date for distributions and the timeframe within which the entire account balance must be distributed.

The final rule also affirms the IRS's controversial interpretation of the 10-year rule for post-death distributions, first introduced in the 2022 proposed rule. This rule eliminates the "stretch IRA" strategy by capping the post-death distribution period at 10 years for most designated beneficiaries, with exceptions for certain eligible beneficiaries, such as surviving spouses and minor children.

Effective Date and Transition Relief: The new 10-year rule was enacted to apply to deaths occurring after 2019. Due to the controversy and numerous requests for transitional relief, the IRS issued three notices to provide penalty relief for any RMDs that should have been made under the new 10-year rule in the calendar years 2021 through 2024 (*see* IRS Notices 2022-53, 2023-54, and 2024-35). According to this relief, an inherited account holder who failed to take an annual RMD during those years, as per the 2022 proposed regulations, would not incur an excise tax under Section 4974 for the failure.

2. Income Tax Regulations under Code Section 401(a)(9)

Status: ◆ Proposal (Text)

IRI Staff Contact: Emily Micale

Concurrent with the issuance of the final rule described above, the IRS also released a proposed rule addressing various provisions of SECURE 2.0. The proposal covers key sections, including:

- Section 107: Determination of Applicable Age for Employees Born in 1959
- Section 202: Divorce After Purchase of Qualifying Longevity Annuity Contracts
- Section 204: Rules for Aggregation Options in Annuity Contract Purchases Using a Portion of an Employee's Individual Account
- Section 302(b): Corrective Distributions Impacting Reduction or Waiver of the Section 4974 Excise Tax
- Section 325: Distributions from Designated Roth Accounts
- Section 327: Spousal Election Requirements

The proposed amendments are set to align with the applicability dates of the corresponding provisions in the 2024 final regulations, applying to calendar years beginning on or after January 1, 2025.

3. Guidance for 2024

Status: ● *Issued April 16, 2024* (Text)

IRI Staff Contact: Emily Micale

In April 2024, the IRS issued Notice 2024-35 providing guidance related to certain RMDs for 2024, including (a) guidance for defined contribution plans that did not make a specified RMD and (b) guidance for certain taxpayers who did not take a specified RMD.

DOL / IRS: Pension-Linked Emergency Savings Accounts

Status: ● DOL FAQs — *Issued January 17, 2024* (Text)
● IRS Guidance — *Issued January 12, 2024* (Text)

IRI Staff Contacts: Emily Micale and Rebecca Plowman

In January 2024, the DOL and IRS issued guidance regarding Pension-Linked Emergency Savings Accounts (PLESAs), which were authorized under Section 127 of SECURE 2.0. These accounts, linked to defined contribution plans and treated as designated Roth accounts, enable employers to automatically enroll employees, facilitate payroll-deducted contributions, and match contributions to the associated retirement plans. Employers can set contribution limits of up to $2,500, providing a flexible, short-term savings option for participants, who can withdraw funds without penalties.

The DOL FAQs provide guidance regarding the regulatory limits and procedures for PLESAs, while the IRS guidance (Notice 2024-22) provides detailed guidelines for plan providers and employers to prevent potential abuse of PLESAs by participants who might seek to manipulate contributions and distributions to maximize matching contributions while maintaining minimal balances. The IRS specifies that a "reasonable anti-abuse procedure" should strike a balance between enabling participants to use PLESAs as intended and protecting plan sponsors from manipulation of matching contribution rules.

IRS: Disaster Relief

Status: ● *Issued May 3, 2024* (Text)

IRI Staff Contact: Emily Micale

In May 2024, the IRS issued FAQs related to Section 331, which provides special rules for the use of retirement funds in connection with qualified federally declared disasters. Prior to SECURE 2.0, disaster relief was issued on a case-by-case basis, but under this section of SECURE 2.0, general relief is now available for all federally declared disasters. The FAQs address general questions and more specific topics, such as taxation and reporting of distributions, repayment of distributions taken for the purpose of purchasing or constructing a principal residence in a qualified disaster area, and loans from certain qualified plans.

IRS: 2025 Amounts Relating to Retirement Plans and IRAs, as Adjusted for Changes in Cost-of-Living

Status: *Issued November 1, 2024* (Text)

IRI Staff Contact: Rebecca Plowman

In November 2024, the IRS issued Notice 2024-80 providing the adjusted contribution limits for retirement plans and IRAs starting January 1, 2025:

- The annual employee deferral limit for 401(k)s and other workplace plans increased from $23,000 to $23,500.
- The annual catch-up contribution limit for those age 50 and over stayed at $7,500; however, those age 60 to 63 are eligible for a higher catch-up contribution limit of $11,250.
- The annual contribution limit for IRAs stayed at $7,000, and the IRA catch-up contribution for those age 50 and over remained the same at $1,000.

Other Regulatory Developments

NY DFS: Unfair and Unlawful Discrimination in the Sale of Life Insurance and Annuities in the Individual Market and Certain Group Markets

Status: Final *(Issued July 17, 2023)* (Text) (Filing Guidance)

IRI Staff Contact: Rebecca Plowman

In July 2023, the NY DFS issued Circular Letter No. 6 to address 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. The NY DFS believes such sales practices result in unfair and unlawful discrimination among similarly situated individuals, as customers who would not have access to, and are generally unaware of, different versions of the product would effectively be discriminated against. The circular letter makes clear that insurers may only create separate classes and sell different versions of a product to those classes if the insurer can demonstrate a distinction that is based on equitable, non-discriminatory and sound actuarial principles.

The circular letter was effective immediately for newly filed products, and the NY DFS plans to include existing product lines in market conduct exams or targeted exams starting in 2025.

Throughout 2024, IRI worked closely with members and other industry groups to assess the impact of the circular letter on carriers' existing product offerings in New York and to develop best practices for compliance with its requirements. The Department provided verbal guidance indicating that all products of the same type should be presented on one application, and that distributors and producers should have some knowledge of versions offered by other distributors to ensure that the recommended product is in the client's best interest. IRI and others sought additional guidance from the Department to address implementation challenges, but the Department was not persuaded that such guidance was necessary. In lieu of further advocacy, IRI conducted a survey of carriers and distributors regarding their plans for implementation and compliance with the circular letter.

- IRI Overview of NY CL 6 (2023)
- IRI NY CL 6 (2023) Survey Results (July 2024)
- IRI NY CL 6 (2023) Additional Member Questions (August 2024)

SEC: Distributor Variations of Registered Insurance Products

Status: ◆ Pending

IRI Staff Contacts: Rebecca Plowman and Jason Berkowitz

In September 2024, IRI participated in a meeting with SEC staff to discuss several interpretive and implementation issues arising from the recently adopted RILA rules. Among other things, IRI expressed significant concern about recent efforts by SEC staff to require insurers to disclose all intermediary-specific variations in prospectuses for registered insurance products.

Essentially, this would require insurers to identify where certain product features or benefits are not being offered or otherwise limited through a specific distributor, and then disclosing that information in the prospectus. For example, a broker-dealer may feel that a specific benefit rider, underlying fund, or index-linked option is not suitable for their customers; therefore, the financial representatives never discuss or recommend that specific product option.

During the meeting with the SEC staff, IRI explained that prospectuses for registered insurance products include disclosure of the product's benefits and features regardless of whether a distributor and its financial representatives choose to discuss or recommend them to their customers. In many cases, these "variations" are merely the result of a specific distributor's suitability determinations, and insurers will not always be aware of such decisions. The staff was unsympathetic and stated that insurers would need to take steps to remedy this (e.g., making changes to selling agreements), and ensure that all material variations are disclosed in the prospectus.

In 2025, IRI will continue to work with members and other industry organizations to advocate for the SEC staff to adopt a more reasonable and workable stance on this issue.

SEC: Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs

Status: ● Final *(Effective as of November 17, 2025)* (Text) (Press Release) (Fact Sheet)

IRI Staff Contacts: Emily Micale and Rebecca Plowman

In August 2024, the SEC adopted rule changes that will require open-end mutual funds to report information about their portfolio holdings on Form N-PORT on a monthly basis within 30 days after the end of each month. These reports are currently required to be filed with the SEC within 60 days after the end of each quarter. The final rule changes were also accompanied by guidance regarding funds' liquidity risk management program requirements. The rule changes will become effective on November 17, 2025. Funds generally will be required to comply with the amendments for reports filed on or after that date, except that fund groups with net assets of less than $1 billion will have until May 18, 2026, to comply.

These changes were originally included in a proposal issued by the SEC in November 2022 that would have addressed the agency's liquidity concerns by mandating the use of "swing pricing" and a daily hard close of 4 PM ET for trade orders for all open-end funds. IRI and many others expressed strong opposition to the swing pricing and hard close aspects of the proposal, which would have negatively impacted investors with holdings in annuities and retirement plans, especially those located outside the Eastern time zone. The final rule does not include the swing pricing and hard close provisions.

DOL: Amendment to Prohibited Transaction Class Exemption 84-14 for Transactions Determined by Independent Qualified Professional Asset Managers

Status: Final *(Effective as of June 17, 2024)* (Text) (Fact Sheet)

IRI Staff Contact: Rebecca Plowman

In April 2024, the DOL amended PTE 84-14, a longstanding PTE that permits asset managers of employee benefit plans and individual retirement accounts to engage in transactions involving plan and IRA assets if they meet certain specified conditions. Most notably, the exemption was amended to:

- Clarify that the ineligibility provision may be triggered by convictions of foreign crimes that are substantially equivalent to those enumerated in the exemption, excluding convictions in countries included on the Department of Commerce's list of foreign adversaries;
- Provide that a QPAM will become ineligible for relief under the exemption if the QPAM or any affiliate (a) enters into domestic non-prosecution or deferred prosecution agreements (NPA or DPA), or (b) is found in a court's final judgment or court approved settlement to have participated in conduct that intentionally violated the exemption's conditions or provided misleading information in connection with the exemption's conditions;
- Establish a one-year transition period that focuses on mitigating potential costs and disruption to plans and IRA owners when a QPAM becomes ineligible due to a conviction or participates in other serious misconduct;
- Update the asset management and equity thresholds in the QPAM definition;
- Clarify the requisite independence and control a QPAM must have regarding investment decisions and transactions; and
- Add a standard recordkeeping requirement.

DOL: Employee or Independent Contractor Classification Under the Fair Labor Standards Act

Status: Final *(Effective as of March 11, 2024)* (Text)

IRI Staff Contact: Rebecca Plowman

In January 2024, the DOL released a final rule establishing a six-factor test to determine whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA). The final rule rescinds and replaces a regulation issued in January 2021. The previous rule created a three-factor ABC test under which a worker would be treated as an independent contractor only if all three factors were satisfied. By contrast, the new rule takes a totality-of-the-circumstances approach, meaning the factors do not have a predetermined weight and are all considered in light of the economic reality of the activity. This reflects a return to the approach taken in judicial precedent and DOL interpretative guidance prior to the 2021 rule.

Treasury / FinCEN: Anti-Money Laundering / Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers

Status: Final *(Effective as of January 1, 2026)* (Text)

IRI Staff Contact: Rebecca Plowman

In September 2024, FinCEN adopted a rule requiring RIAs and Exempt Reporting Advisers (ERAs) to implement anti-money laundering (AML) and countering the financing of terrorism (CFT) programs under the Bank Secrecy Act (BSA). The rule classifies RIAs and ERAs as "financial institutions," establishes minimum AML/CFT program standards, and mandates certain RIAs to file suspicious activity reports.

IRI submitted comments in response to the original proposal urging FinCEN to explicitly exempt managed accounts of employer-based retirement plans as it did for mutual funds, but FinCEN declined to exclude these plans from the final rule.

FINRA: Remote Pilot Program and Residential Supervisory Locations

Status: 🟢 Supplemental Material 3110.18 — Final *(Effective as of July 1, 2024)* (Text)
🟢 Supplemental Material 3110.19 — Final *(Effective as of June 1, 2024)* (Text)

IRI Staff Contact: Rebecca Plowman

In January 2024, FINRA published Regulatory Notice 24-02, which announced the effective dates for two newly adopted supplemental materials under FINRA Rule 3110 (Supervision).

- Supplemental Material 3110.18 (Remote Inspections Pilot Program) established a voluntary, three-year remote inspections pilot program (Pilot Program) to allow eligible member firms to fulfill their Rule 3110(c)(1) inspection obligation of qualified branch offices, including OSJs and non-branch locations remotely, without an on-site visit, subject to specified terms. Participation in the Pilot Program requires eligible firms to affirmatively "opt-in" and/or "opt-out" via notice to FINRA, subject to specified "open enrollment periods" and "opt-out notification periods". The initial enrollment period is closed, however, firms can still opt-in during subsequent open enrollment periods outlined in the Notice.
- Supplemental Material 3110.19 (Residential Supervisory Location) will treat a private residence at which an associated person engages in specified supervisory activities, subject to certain safeguards and limitations, as a non-branch location, or otherwise known as, a residential supervisory locations (RSL). Among other requirements, these non-branch locations will be subject to regular periodic inspections, instead of annual inspections that are currently required for an office of supervisory jurisdiction (OSJ) and a firm must conduct and document a risk assessment, and provide a list of RSLs to FINRA on a periodic basis. This rule becomes effective on June 1, 2024, with the first list of RSLs due to FINRA on October 15, 2024.

Pending Federal Legislation

Retirement Fairness for Charities and Educational Institutions Act

Status: 🔶 Pending Reintroduction in 2025 (Text — previous session of Congress)

IRI Staff Contacts: Paul Richman and John Jennings

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. This could significantly expand the investment options for these plans, potentially leading to higher returns for participants. Currently, exemptions under securities laws do not apply to 403(b) plans and prevent using CITs and unregistered insurance company separate accounts. These exemptions do allow 401(k), 457(b), the Thrift Savings Plan (TSP), and other plan types to utilize these products. This bill 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.

The House bill was introduced in 2024 by Representatives Frank Lucas (R-OK), Bill Foster (D-IL), Andy Barr (R-KY), and Josh Gottheimer (D-NJ), and passed the House with strong bipartisan support as an amendment to a capital markets bill, the *Expanding Access to Capital Act* of 2023 (H.R. 2799) on March 8, 2024. However, neither bill was enacted into law.

The Senate bill was introduced in 2024 by Senators Katie Britt (R-AL), Raphael Warnock (D-GA), Bill Cassidy (R-LA), and Gary Peters (D-MI). The bill was also included as a section in the *Empowering Main Street in America Act* (S.5139), a capital formation bill sponsored by Senate Banking Committee Ranking Member Tim Scott (R-SC).

This bill has yet to be introduced in the current session of Congress.

- IRI Letter of Support (House) (May 3, 2023)
- IRI Press Release (March 8, 2024)
- IRI Letter of Support (Britt, Warnock) (August 5, 2024)
- IRI Letter of Support (Scott) (October 10, 2024)

Improving Disclosure for Investors Act

Status: ◆ Pending Reintroduction in 2025 (Text — previous session of Congress)

IRI Staff Contacts: Paul Richman and John Jennings

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. The bill also provides investors with a choice to opt out if they prefer paper delivery. The SEC would have up to 180 days after the date of enactment to propose the rule and no more than a year to finalize the rule.

The *Improving Disclosure for Investors Act* (H.R.1807) was introduced in 2024 by Representatives Bill Huizenga (R-MI), Jake Auchincloss (D-MA), Bryan Steil (R-WI), and Wiley Nickel (D-NC).It passed the House with bipartisan support as an amendment to the Expanding Access to Capital (H.R.2799) on March 8, 2024. However, neither bill was enacted into law.

The Senate bill was introduced in 2024 by Senators Thom Tillis (R-NC) and John Hickenlooper (D-CO).

This bill has yet to be introduced in the current session of Congress.

> IRI Press Release

Lifetime Income for Employees Act

Status: ◆ Pending Reintroduction in 2025 (Text — previous session of Congress)

IRI Staff Contacts: Paul Richman and John Jennings

The *Lifetime Income for Employees Act* would amend ERISA's 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 specifies that up to 50 percent of investments can be allocated into a qualifying annuity . The bill also requires savers who default to a QDIA with an annuity to be notified of their participation within 30 days of their initial investment. The bill also will allow 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 and higher returning annuities to their default options.

This bill has been introduced in the House in 2023 (118th Congress), 2022 (117th Congress) and 2020 (116th Congress) by Representatives Donald Norcross (D-NJ) and Rep. Tim Walberg (R-MI).

This bill has yet to be introduced in the current session of Congress.

> IRI Letter of Support (June 12, 2023)

General Accounts Products Clarification Act

Status: ◆ Pending Reintroduction in 2025 (Text — previous session of Congress)

IRI Staff Contacts: Paul Richman and John Jennings

The *General Accounts Products Clarification Act* would amend ERISA to clarify that the offering and sale of general account products does not expose the insurer or its general account to fiduciary or ERISA plan asset status when they receive contributions from employee benefit plans. A general account policy is an insurance policy or contract to the extent that the policy or contract allocates amounts to the insurer's general account, including any surplus in a separate account but excluding any other portion of a separate account. Issuers of these policies have been targeted by class action lawsuits seeking to hold them liable as fiduciaries under ERISA and federal courts have issued conflicting decisions creating legal uncertainty and continued risk of potential of future litigation. Attaching ERISA fiduciary status to the issuers of general account products is unnecessary to protect retirement savers as plan sponsors and other plan fiduciaries are already subject to fiduciary duties under ERISA when deciding whether to offer these products to their plan participants. The bill would remove the legal uncertainty surrounding these policies and will ensure that retirement savers can continue to use these valuable products to achieve their retirement goals.

IRI supports the *General Accounts Products Clarification Act*, and it was included in IRI's 2024 Federal Retirement Security Blueprint.

This bill (H.R.9515 was introduced in the House in 2022 (117th Congress) by Representative Joe Morelle (D-NY).

This bill has yet to be introduced in the current session of Congress.

Automatic IRA Act

Status: ◆ Pending Reintroduction in 2025 (Text — previous session of Congress)

IRI Staff Contacts: Paul Richman and John Jennings

The Automatic IRA Act would generally require employers to maintain an automatic retirement savings plan, into which employees would be automatically enrolled but have an option to opt-out. If enacted, this bill could significantly increase retirement savings rates, particularly among workers who do not currently have access to an employer-sponsored retirement plan. Additionally, the bill would require that a distribution option be offered to participants with account balances of $200,000 or more to receive up to 50 percent of their vested balance in the form of a protected, guaranteed lifetime income product to help alleviate anxiety many workers have about outliving their savings throughout their retirement years. The bill would also expand opportunities to save for workers who participate in the gig economy by directing the Secretary of the Treasury by regulation or other guidance to make available automatic IRAs to individuals who provide services that do not constitute employment.

This bill was introduced in the House in 2017 (115th Congress), 2021 (117th Congress) and 2024 (118th Congress) by Representative Richard Neal (D-MA).

This bill has yet to be introduced in the current session of Congress.

- IRI Letter of Support (February 3, 2024)
- IRI Press Release (February 7, 2024)

Insured Retirement Institute

1100 Vermont Avenue, NW 10th Floor
Washington, DC 20005

IRIonline.org 202-469-3000
@IRIonline @iri_3