



July 31, 2025

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

Re: Direct Final Rule – *Selection of Annuity Providers-Safe Harbor for Individual Account Plans* (RIN 1210-AC33)

To Whom It May Concern:

On behalf of the Insured Retirement Institute (IRI),¹ we appreciate the opportunity to provide comments regarding the Department of Labor's (the Department or DOL) direct final rule to remove 29 C.F.R. § 2550.404a-4 (the Regulation), which establishes a fiduciary safe harbor for the selection of annuity providers for benefit distributions from individual account retirement plans (the Direct Final Rule)².

IRI is the leading trade association for the retirement income industry, representing the full supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, and distributors. Our members are committed to delivering secure and sustainable retirement income to millions of American workers and retirees.

While we understand and appreciate the Department's efforts to streamline regulations as part of the Administration's broader regulatory reform agenda, we have significant concerns about the potential removal of the Regulation and respectfully urge the Department to withdraw the Direct Final Rule and retain the Regulation.

The longstanding safe harbor established in the Regulation continues to play an important and complementary role alongside the statutory safe harbor enacted under the SECURE Act. Its

¹ The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, diversity, equity, and inclusion, and the advancement of digital solutions within a collaborative industry community.

² 29 CFR Part 2550.

continued availability promotes clarity and confidence among plan fiduciaries evaluating annuity distribution options for retirement plans.

I. The Regulatory Safe Harbor Serves a Unique and Valuable Purpose

The Regulation's safe harbor was promulgated in response to a directive in the Pension Protection Act of 2006³ and has provided fiduciaries with a clear, comprehensive standard to guide the selection of annuity providers and contracts for plan distributions. In 2019, Congress enacted a new statutory safe harbor in Section 404(e) of ERISA,⁴ which streamlined certain requirements related to the financial capability of insurers. However, the existence of the statutory safe harbor does not diminish the continued utility of the safe harbor established by the Regulation.

The scope of the two safe harbors is meaningfully distinct. The statutory safe harbor addresses fiduciary duties related to the **selection of an insurer**, whereas the safe harbor in the Regulation encompasses both **provider and contract selection**. The Regulation states explicitly that it is intended to establish a safe harbor for fiduciary duties "in selecting an annuity provider **and** contract for benefit distributions from an individual account plan," offering broader coverage that supports fiduciary decision-making on a wider range of issues related to guaranteed income solutions. The Federal Register preambles to both the proposed and final Regulation also explain that the scope of the safe harbor includes the selection of both the provider and the contract.⁵

Maintaining both safe harbors affords fiduciaries flexibility to choose the compliance pathway best suited to their plan design, participant demographics, and product offerings.

II. Preserving Clarity and Confidence in Fiduciary Decision-Making

Retaining the Regulation's safe harbor will help ensure that fiduciaries have access to well-understood and time-tested guidance. Many plan sponsors and service providers have developed internal procedures, oversight processes, and fiduciary practices based on the safe harbor framework established by the Regulation. These standards continue to provide value by reinforcing prudent selection criteria, promoting consistent practices, and reducing ambiguity in the application of ERISA's fiduciary duties.

In light of the distinction in the scope of the two safe harbors, as described above, some fiduciaries may find greater comfort and confidence following their established fiduciary processes under the safe harbor provided by the Regulation when making lifetime income options available to their participants. As such, eliminating the Regulation's safe harbor could

³ Public Law 109-280.

⁴ 29 U.S. Code § 1104(e).

⁵ 73 FR 58447, 58447-58448 (10/07/2008); 72 FR 52021, 52022 (09/12/2007).

unintentionally lead to reluctance in offering lifetime income options, which would be contrary to the goals of the SECURE Act and SECURE 2.0 in promoting guaranteed retirement income.

III. Recommendation to Retain the Regulatory Safe Harbor

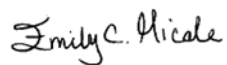
Given the meaningful distinctions between the two safe harbors and the important role that the Regulation continues to play in fiduciary guidance, we respectfully recommend that the Department retain the Regulation in the Code of Federal Regulations. Preserving this provision:

- Supports fiduciary clarity and legal certainty;
- Reinforces the use of prudent, well-defined criteria for annuity provider and contract selection;
- Complements the statutory safe harbor framework and provides flexibility for plan sponsors;
- Encourages the continued inclusion of lifetime income options in defined contribution plans.

IRI strongly supports efforts to ensure that regulatory standards are clear, consistent, and supportive of retirement income security. Retaining the Regulation's safe harbor would serve these goals and avoid unnecessary disruption to fiduciary practices that are currently working effectively.

Thank you for your consideration of these comments. IRI stands ready to engage further with the Department on this important issue. If you have questions about any of our comments or if we can be of any further assistance in connection with this Direct Final Rule, please feel free to contact the undersigned.

Respectfully submitted,



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