UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON EDUCATION & WORKFORCE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, & PENSIONS

HEARING TITLE:

PENSION PREDATORS: STOPPING CLASS ACTION ABUSE AGAINST WORKERS' RETIREMENT

STATEMENT FOR THE RECORD:

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December 2, 2025

Chairman Walberg, Ranking Member Scott, Chairman Allen, Ranking Member DeSaulnier and members of the House Committee on Education and Workforce Subcommittee on Health, Employment, Labor and Pensions, we are Paul Richman, Chief Government & Political Affairs Officer, and Jason Berkowitz, Chief Legal & Regulatory Affairs Officer, at the Insured Retirement Institute (IRI).[1] We appreciate the opportunity to present IRI's perspectives on the importance of reforming litigation practices under the *Employee Retirement Income Security Act of 1974* (ERISA).[2] IRI commends you for holding this timely hearing.

Regulation Through Litigation Instead of Legislation

For 50 years, ERISA has aimed to protect the interests of participants and beneficiaries of employer-sponsored retirement plans. However, it has also fueled an aggressive plaintiffs' bar that focuses on profiting from frivolous lawsuits, often at the expense of retirement savers. This activity is partly due to the lack of clarity in ERISA encompassing the responsibilities and duties of employer plan sponsors and the providers of financial products offered within those plans.

Additionally, the broad, ambiguous, and permissive pleading standards for filing ERISA claims have led to the emergence of novel legal theories. These theories often result in lawsuits that pressure defendants to settle to avoid the expensive costs of prolonged litigation. When such cases move forward, they often create a body of conflicting rulings and inconsistent federal case law across jurisdictions.

The results are staggering: ERISA litigation has increased 53 percent since 2020. In 2025 alone, 136 ERISA class action cases were sought challenging fees, recordkeeping, and "hindsight opposition to investment performance."[3] In the more than 120 cases settled on alleged excessive fees since 2023, more than $665 million has been paid,[4] with at least one-third paid to lawyers, reducing the restitution to those allegedly harmed.[5]

Many of these lawsuits, rather than protect or advance the interests of retirement savers, fuel a lawsuit industry that finances additional frivolous litigation against employers sponsoring retirement plans and the providers of financial products offered to participants in those retirement plans. Despite employers', plan administrators', or retirement plan investment product providers' earnest efforts to comply with the law, they often become lawsuit targets as perceived "deep pockets" for potential settlements. The risks of protracted litigation and potentially adverse federal court judgments often compel these companies to settle, creating further uncertainty and additional payouts to lawyers.

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[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., including 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, and the advancement of digital solutions within a collaborative industry community. Our members support and advocate for common sense, bipartisan policies to help America's workers and retirees achieve their retirement goals by expanding access to professional financial guidance and lifetime income products within an appropriate and effective consumer protection framework.

[2] The Employee Retirement Income Security Act of 1974.

[3] "Issues To Watch in 2025's ERISA Litigation Landscape." Groom Law, January 2025.

[4] "The Evolution of Defined Contribution Plan Class Action Litigation in 2025." JDSUPRA. October 2025.

[5] "A Surprise Twist in EIRSA Class Action Trends in 2024." Chubb. 2024.

The real casualties of these frivolous lawsuits are individual retirement savers. The looming risk of litigation has caused retirement plan providers to restrict investment options and shy away from adopting innovative features that could greatly benefit participants. This cautious approach jeopardizes the financial futures of plan participants.[6] It is essential for Congress to address these legal risks head-on to safeguard the economic well-being of plan participants and empower them to build robust retirement accounts for their future.

Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA) Daniel Aronowitz aptly identified the problem in a blog post published prior to his Senate confirmation, stating that those sponsoring retirement plans need "consistency, not judicial roulette." He called the current state of play "regulation by litigation."[7]

ERISA's Lack of Clarity of the Fiduciary Status of General Account Products

One significant concern for IRI and our members arises from the ongoing legal uncertainty created by frivolous ERISA litigation regarding ERISA Sections 401(b)(1)[8] and 401(b)(2).[9] These sections, which were designed to reflect the fact that distinct regulatory regimes govern mutual funds and insurance company general account products, purport to define the extent to which these different types of products are subject to regulation under ERISA as plan assets when offered to retirement plan participants.

Mutual funds are regulated by the Investment Company Act of 1940,[10] while insurance company general account products are subject to state insurance laws.[11] This historical discrepancy in the statutory language regarding insurance company general account products,[12] as interpreted by the federal courts, has led to inequitable treatment of insurance company general account products compared to mutual funds.

As a result of this unwarranted treatment by the federal courts and the lack of clarity in the relevant ERISA sections, both insurance companies and plan sponsors face confusion when deciding whether to include general account products—such as stable value or principal preservation funds—in the investment offerings made available to participants in retirement plans. These products allow retirement savers to shield all or some of their account balances from the risks of loss. In addition to downside protections, these products also provide investors with income that accrues at a steady, predictable rate.

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[6] "Lawyers Setting the Menu: The Effects of Litigation Risk on Employer-Sponsored Retirement Plans." SSRN. 2023.
[7] "Trump EBSA Nominee Aronowitz Calls for Specialized ERISA Courts." 401k Specialist. March 2025.
[8] The Employee Retirement Income Security Act of 1974.
[9] *Ibid*.
[10] Investment Company Act of 1940.
[11] 15 U.S. Code § 1011.
[12] Many insurance companies offer products to employer-sponsored retirement savings plans backed by the insurers' general accounts, which, per state law, are required to maintain sufficient assets to meet the insurer's financial obligations. In the general account structure, the assets are invested in and owned by the insurance company's general account, which means that the entire general account of the insurance company, and effectively the ultimate claims paying ability of the insurer, supports the stable value guarantees. The assets in a general account are not attributable to any single policyholder or liability. ERISA generally excludes the assets supporting these guaranteed insurance accounts from the definition of plan assets and treats them as plan assets if they are guaranteed benefit policies. General account-backed products, such as stable value or principal preservation funds, play a crucial role in retirement planning. They provide a shield against the risk of loss and offer a steady, predictable income, making them an effective tool for generating a sustainable income during retirement.

Utilizing general account products can be an effective tool for those close to or in retirement to generate sustainable lifetime income. These funds are crucial for retirement planning, as they provide a safeguard against loss and offer a steady, predictable income, making them practical and effective tools for generating sustainable income during retirement.

However, plan sponsors and insurance companies may hesitate to offer or include these products due to liability and litigation risks stemming from the federal courts' conflicting and unclear interpretations of ERISA's provisions regarding their use. This uncertainty directly impacts the options available to retirement savers and the security of their retirement plans, ultimately affecting those who rely on employer-sponsored retirement benefits. Addressing these legal ambiguities is essential to safeguarding retirement security and ensuring savers' confidence in their plans.

Clarifying the ERISA Fiduciary Status of General Account Products in Retirement Plans

To tackle the escalating legal uncertainties and rectify the inequitable treatment that general account products have faced in federal courts, Congress should enact legislation that unequivocally clarifies that offering general account products does not subject life insurers or their general accounts to fiduciary or ERISA plan asset status. Such legislation should introduce clear, decisive measures to eliminate any ambiguity regarding ERISA Section 401(b)(1) and (2).

The legislation should amend these sections of ERISA to clearly state that the decision by a plan sponsor to offer an insurance company general account product to its plan participants does not:

i. Trigger ERISA fiduciary status for the insurance company, or
ii. Cause the assets held in the insurance company's general account to be treated as plan assets under ERISA.

To achieve this essential clarity, the Insured Retirement Institute (IRI) strongly urges the Subcommittee to examine the *General Accounts Product Clarifications Act* (H.R. 9515),[13] introduced in the 117th Congress.

IRI has expressed its consistent support for the enactment of this legislation, most recently in our 2025 Federal Retirement Security Blueprint.[14] The bill would provide a remedy to address the inequitable treatment and the pervasive lack of clarity currently afflicting this area of ERISA. It unequivocally affirms the non-ERISA status of insurers' general accounts, while ensuring robust protections for participants in employer-sponsored retirement plans that safeguard the participants' interests and provide them with the security they deserve.

The *General Accounts Product Clarifications Act* offers one path toward resolving the confusion stemming from the ambiguous interpretation these two ERISA sections have generated and,

[13] The General Accounts Product Clarification Act (H.R.9515-117th Congress), introduced by Representative Joseph Morelle (D-NY). A similar bill (H.R.7278) was introduced by Representative Ron Estes (R-KS) in the 115th Congress.
[14] "IRI Federal Retirement Security Blueprint," Insured Retirement Institute, March 2025.

which has only been exacerbated by years of frivolous litigation and conflicting federal court decisions.

If legislation such as this is enacted, it can empower employees participating in their employer-sponsored retirement savings plans to prepare for a financially secure future more confidently, while preserving their access to essential products that guarantee income that will sustain them throughout their lifetimes.

Conclusion

IRI appreciates the opportunity to present this statement for the record of the hearing. We stand ready to work with you to advance the *General Accounts Product Clarifications Act* or other potential legislative solutions that will ensure retirement savers have ongoing access to principal protection and stable value investments that provide and deliver consistent, guaranteed, reliable income throughout an individual's retirement years.

Furthermore, we commit to working with this subcommittee and Congress to explore legislative solutions aimed at curbing frivolous ERISA litigation that targets employers, plan administrators, and retirement plan investment product providers so that they can continue to be dedicated to empowering retirement plan participants to achieve a secure, dignified, and sustainable retirement.