

Statement of Kathleen McBride

Statement for the Record

“Modernizing Retirement Policy for Today’s Workforce”

Subcommittee Hearing on  
Health, Employment, Labor and Pensions

January 7, 2026

For more information, contact:  
Kathleen McBride  
FiduciaryPath  
Member, ERISA Advisory Council  
[kmcbride@fiduciarypath.com](mailto:kmcbride@fiduciarypath.com)

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Rep. Rick W. Allen  
Chair, Committee in Education & Workforce  
Members of the Committee  
U.S. House of Representatives  
2176 Rayburn House Office Building  
Washington DC 20515

Dear Chair Allen,

Regarding the Subcommittee Hearing on Health, Employment, Labor and Pensions hearing on January 7, 2026, "MODERNIZING RETIREMENT POLICY FOR TODAY'S WORKFORCE", I hereby submit a statement for the record, regarding lifetime income and ERISA 401(k) Plans. I speak here as a concerned citizen and not on behalf of any company, group, or entity.

Retirement income is a subject that was studied by the U.S. Department of Labor ERISA Advisory Council in 2024. I am a Member of the Council. Specifically, we studied Lifetime Income Solutions as a Qualified Default Investment Alternative. A link to our findings is attached.

The exclusive benefit rule under ERISA, the law that governs retirement plans, is clear: ERISA 404 requires that fiduciaries must act solely in the best interest of plan participants and their beneficiaries. ERISA 404 states that any expense paid from participant funds is a prohibited transaction unless covered by a prohibited transaction exemption. There is no such exemption for unnecessary expenditures from plan assets.

Excessive fees paid out of plan assets are prohibited under ERISA and trust law.

In terms of policy, current discussion of adding private equity, and other non-publicly traded, non-daily priced assets or debts to plans is problematic. Those assets are priced privately, meaning the value of the assets is predominantly calculated by the issuer, (not transparently on a public exchange) which is exceedingly opaque, and dangerous to plan participants and beneficiaries.

In other words, many of these instruments are not liquid, they can't be traded like stocks or bonds on public exchanges, where assets are priced and reported-many times a day, and where participants can liquidate at a publicly established price on any trading day.

How would participants in plans access their hard earned retirement savings should they need to take savings out of their plan? As with annuities, the penalties for withdrawing money from non-publicly traded assets could be as much as 20%. In addition, these private offerings also charge annual fees that are much, much higher than mutual funds, a typical plan investment. And, they are exceedingly opaque, it is nearly impossible to see what is held in them. That is an

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enormous penalty for plan participants. In addition, these non-publicly traded assets are priced privately, not on public exchanges.

### **Plan participants would be harmed if these illiquid assets are offered in 401(k) plans.**

I hope you will consider this as you hold hearings on whether it is prudent to include these opaque, non-publicly traded vehicles in Americans' hard-earned 401(k) savings plans. In fact, it is highly likely that these offerings will benefit the sellers, but not the 401(k) plan participants who buy them.

In the case of these non-publicly traded, high expense, illiquid investments, the harms and opacity and fees will far outweigh the benefits to plan participants – thereby violating ERISA.

Sincerely,

Kathleen McBride, CEFEX Analyst, AIFA  
kmcbride@fiduciarypath.com

DOL ERISA Advisory Council Report

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2024-qdia.pdf>

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