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December 29, 2023

VIA ELECTRONIC SUBMISSION

Office of Regulations and Interpretations
Employee Benefit Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

**Re: RIN 1210-AC02 Retirement Security Rule: Definition of an Investment Advice
Fiduciary; and Related Exemptions**

Dear Assistant Secretary Gomez:

We write to you today regarding the Department of Labor's (DOL) Proposed Retirement Security Rule and significant amendments to several Prohibited Transaction Exemptions ("Proposed Rule"). We urge the DOL to withdraw the Proposed Rule as it is unnecessary and burdensome to many of the consumers it seeks to protect. Additionally, it undermines the well-established and continually reaffirmed framework of the state-based system of insurance regulation, which has been effectively protecting consumers and promoting solvency in the market since Congress passed the McCarran-Ferguson Act in 1945.

The National Council of Insurance Legislators (NCOIL) is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act over 70 years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.



WEBSITE: www.ncoil.org



Sound Public Policy In 50 States For 50-Plus Years

NCOIL strongly supports the States' rights to regulate their own insurance markets and products, including retirement related financial products. In fact, Congress has affirmed the primary role of State legislators and regulators over the business of insurance through various legislative acts, including the McCarran-Ferguson Act and most recently the Dodd-Frank Act. Under this state-based legislative and regulatory structure governing the manufacture, distribution, and sale of retirement related financial products, tens of millions of Americans have been able to receive sound assistance, products, and services from financial professionals who have consistently served the best interest of customers.

The States have already proven that they are well suited to address the DOL's concerns. For example, to date, 40 states have adopted updates to the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation that requires all recommendations made by agents and insurers to be in the best interest of the consumer. Promulgation of the Proposed Rule would therefore needlessly threaten the proven state-based legislative and regulatory structure by imposing a vague and burdensome fiduciary standard on non-fiduciary sales relationships, thereby upending the retirement savings marketplace.

Furthermore, the Proposed Rule represents a growing trend on the part of regulators in Washington to take a second bite at the apple to pursue expanding federal jurisdiction in areas where they were unsuccessful almost a decade ago. Indeed, in 2018, the United States Court of Appeals for the Fifth Circuit vacated a similar fiduciary rule promulgated by the DOL in 2016. The current Proposed Rule from the DOL blatantly ignores the Fifth Circuit's ruling and represents an affront to the entire policymaking process.

As the body vested with primary authority for insurance legislation and enabling regulation, we stand ready to work with you to address any concerns the DOL may have. If the DOL continues to have concerns they can engage NCOIL and its members to build upon the existing state-based legislative and regulatory framework to address these concerns, not engage in pre-emptive rulemaking. Accordingly, we at NCOIL urge the DOL to withdraw the Proposed Rule. Doing so would recognize and preserve the state's jurisdiction over insurance as set forth by the McCarran Ferguson Act over 70 years ago. We note, finally, that in that Act, Congress reserved for itself the right to pass laws expressly relating to insurance; it did not give any government department the authority to do so via Rule. As such, the Proposed Rule is ultra vires.

Very truly yours,



Tom Considine
CEO
NCOIL



Will Melofchik
General Counsel
NCOIL