

January 2, 2024

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

To whom it may concern:

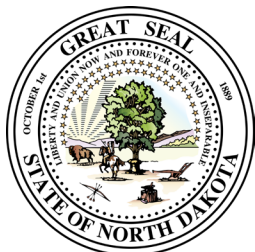
Thank you for the opportunity to offer comments on the proposed “Retirement Security Rule: Definition of an Investment Advice Fiduciary” and proposed amendments to the prohibited transaction exemptions by the Department of Labor (DOL).

As the elected chief insurance regulator for the state of North Dakota, I stand opposed to the proposal offered by the DOL. I recognize and completely agree with the analysis that has already been provided by the National Association of Insurance Commissioners (NAIC) and my regulatory peers in other states. I am providing this supplemental comment letter to expound upon the value of the NAIC model regulation process for both the insurance industry, specifically, and the public, in general.

As Commissioner Ommen indicates, the NAIC’s *Suitability in Annuity Transactions Model Regulation* (Model #275) was the culmination of two years of work and collaboration by the state-based insurance regulators, consumer representatives, and the industry, including open meetings and public comment periods. Following approval of the revisions to Model #275 in February 2020 by NAIC membership, which consists of the chief insurance regulators from the fifty states, Washington DC, and the five U.S. territories, NAIC members brought Model #275 back to their respective jurisdictions. As of December 21, 2023, Model #275 has been adopted by forty states, is pending in an additional six others, and one state has adopted its own Best Interest Rule.

In addition to the open process undertaken by the NAIC to amend Model #275, its adoption by states also included additional layers of openness and transparency in each respective state’s legislative or administrative rule adoption process. To reiterate, Model #275 has been adopted by forty states, is pending in an additional six others, and one state has adopted its own Best Interest Rule; this means that in addition to the NAIC process, forty-seven or more opportunities have, or still do, exist for industry, consumer groups, and the public to be involved in the process of making policy. It is expected that in 2024, the remaining nine jurisdictions that have not yet acted on Model #275 will also be undertaking their own open and transparent processes for adoption.

While I must acknowledge that the DOL is also undertaking an open process, abbreviated though it has been, as evidenced by the very act of submitting this comment letter, I will always argue that more openness and transparency in government is better than less. Forty-seven jurisdictions have already publicly addressed the Best Interest standard of care established in



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Jon Godfread, Commissioner

Model #275 in the past four years. In my opinion, to propose a standard that is vastly different from that adopted by the majority of states and developed in a less transparent and collaborative manner the DOL comes precariously close to acting in an undemocratic manner.

The strength of the state-based regulation of the insurance industry comes from the fact that the fifty-six members of the NAIC represent a broad spectrum of ideas. While members themselves may be partisan, the work of the NAIC must represent a consensus of ideas to be successful, thus insulating the organization from political whims. I would assert that the rapid adoption of the provisions in Model #275 illustrates the point that the NAIC adopts sound policy. The same cannot be said of the rulemaking process at the federal level, where major shifts in policy could be proposed at regular intervals with changes in administrations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JG Godfread', written in a cursive style.

Jon Godfread
North Dakota Insurance Commissioner