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National Conference of Insurance Legislators (NCOIL)

Resolution in Opposition to the United States Department of Labor (DOL) Fiduciary Rule

Adopted by the Life Insurance & Financial Planning Committee on July 14, 2016

Sponsored by Sen. Jason Rapert (AR)

WHEREAS, the DOL has recently promulgated its final “Fiduciary Rule” (Rule), published at 81 Fed. Reg. 20946 on April 8, 2016; and

WHEREAS, the Rule redefines the circumstances under which providing “investment advice” could give rise to “fiduciary” status under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code); and

WHEREAS, NCOIL strongly supports the States’ rights to regulate their own insurance markets and products, including retirement related financial products; and

WHEREAS, Congress has affirmed the primary role of State regulators over the business of insurance through various legislative acts, including the McCarran-Ferguson Act and most recently the Dodd-Frank Act; and

WHEREAS, the state-based regulatory structure governing the manufacture, distribution, and sale of retirement related financial products is effective and proven; and

WHEREAS, state insurance regulation has in place on-going substantive procedures, processes and protocols to license, regulate and supervise insurance agents of retirement related financial products; and

WHEREAS, under the proven State-based legislative and regulatory structure, tens of millions of Americans have been able to receive sound retirement assistance, products and services from financial professionals who have consistently served the best interests of customers; and

WHEREAS, the Rule promulgated by the DOL would 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; and

WHEREAS, the Rule will prevent consumer access to crucial retirement education and services, ultimately harming the very people it seeks to aid; and

WHEREAS, NCOIL believes in protecting the interests of consumers against excessive government regulation that will only hurt average working Americans trying to save for retirement; and

WHEREAS, Congress has opposed the Rule by passing a Joint Resolution of Disapproval (H.J. Res. 88); and

NOW, THEREFORE, BE IT RESOLVED, that NCOIL urges the DOL to repeal its Rule; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that NCOIL urges state legislators and other interested stakeholders to join in opposition to the Rule;

AND, BE IT FINALLY RESOLVED, that a copy of this resolution will be distributed to the DOL, state legislative leadership, committee chairs and members, state regulators, and other interested parties.