

616 Fifth Avenue, Suite 106
Belmar, NJ 07719
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine



PRESIDENT: Rep. Deborah Ferguson, AR
VICE PRESIDENT: Rep. Tom Oliverson, TX
TREASURER: Asw. Pamela Hunter, NY
SECRETARY: Sen. Paul Utke, MN

IMMEDIATE PAST PRESIDENTS:
Rep. Matt Lehman, IN
Sen. Travis Holdman, IN

National Council of Insurance Legislators (NCOIL)

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

**Sponsored by Rep. Carl Anderson (SC)*

**To be discussed during the Life Insurance & Financial Planning Committee meeting on July 21, 2023.*

WHEREAS, the DOL has recently indicated an intention in its regulatory agenda to undertake a rulemaking revising the professional responsibilities of financial professionals providing advice to plan participants (“Fiduciary Rule”); and

WHEREAS, any new rulemaking would likely redefine 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, in 2018 the United States Court of Appeals for the 5th Circuit vacated the Fiduciary Rule promulgated by DOL in 2016; and

WHEREAS, the United States Securities and Exchange Commission (SEC) has promulgated Regulation Best Interest to address conflicts of interest in the promotion and sale of similar products it regulates; 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 NAIC Best Interest Model Regulation addressing conflicts of interest in the promotion and sale of annuities has been adopted by 39 states; and

WHEREAS, the state-based regulatory structure governing the manufacture, distribution, and sale of retirement-related financial products as enhanced by the NAIC Best Interest Model Regulation is effective and proven; and

WHEREAS, NCOIL believes that consistent with this regulatory framework, financial professionals should always act in the best interests of their client and prospective clients; and

WHEREAS, state insurance regulation has in place ongoing 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, a potential return to the Rule promulgated by the DOL in 2016 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, recent DOL attempts to enhance its definition of fiduciary advice through sub-regulatory guidance reviving elements of the 2016 vacated rule have been overturned by two recent federal district court decisions, with a third decision pending; and

WHEREAS, rulemaking reviving the Rule promulgated by DOL in 2016 will prevent consumer access to crucial retirement education and services, ultimately harming the people it seeks to aid, as demonstrated in studies conducted on the effects of the 2016 Fiduciary Rule by LIMRA, Deloitte, Quantria for the Hispanic Leadership Fund, and a NAIFA survey; and

NOW, THEREFORE, BE IT RESOLVED, that NCOIL urges the DOL to refrain from further rulemaking that would revive all or parts of the 2016 Fiduciary Rule; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that NCOIL urges state legislators and other interested stakeholders to join in opposition to any further rulemaking by DOL reviving the 2016 Fiduciary 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.