Written Testimony of

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On Behalf of the Iowa Insurance Division

Before the United States House of Representatives

Committee on Education & the Workforce, Subcommittee on Health, Employment, Labor, and Pensions

Regarding:

"Protecting American Savers and Retirees from DOL's Regulatory Overreach"

Thursday, February 15, 2024
10:15 a.m.
2175 Rayburn House Office Building

Chairman Good, Ranking Member DeSaulnier, and members of the Subcommittee, thank you for the invitation to testify today. My name is Doug Ommen, and I have had the pleasure of serving as Commissioner of the Iowa Insurance Division, the state's primary insurance and securities regulator, since 2017.

On behalf of my department, I appreciate the opportunity to speak with you today about the Department of Labor's (DOL) latest fiduciary proposal and its potential to undermine this country's robust state-based system of insurance regulation. If adopted, I fear the proposal would fundamentally limit state regulators' ability to effectively regulate the stability and solvency of their life insurance and annuity markets, to the detriment of consumers.

I would be remiss if I did not acknowledge, up front, that my fellow commissioners and I are not only concerned with the substance of the DOL's proposed rule and its potential impact on retirement savers, but also the DOL's lack of substantive coordination with its fellow regulators at the state level in developing the proposal. It was my expectation that DOL would seek to coordinate with its fellow regulators and understand existing authorities of the states in this space because of our overlapping impact on the same population of companies, industry participants, and consumers. That did not happen.

I am also disappointed in, and fundamentally disagree with, this administration's characterization of state consumer protections of annuity sales as "inadequate" and providing "misaligned incentives."[1] The rationale and justification for DOL's work should stand on its own as complementary to robust state efforts and should not mischaracterize differences in regulatory philosophy as an absence of regulatory competence or efficacy in this space.

I would like now to take a few minutes to briefly outline the most concerning aspects of the DOL's proposal, including its inaccurate claims about the NAIC's Best Interest Standard, and its likely implications for Iowa and the rest of the country. In addition to my written statement, I have also enclosed my department's comment letter to the DOL, dated January 2, 2024, which further details our concerns.

Background

State regulation has a strong, 150-year plus, track record of evolving to meet the challenges posed by dynamic markets. For nearly 80 years, the McCarran-Ferguson Act has specifically allocated the responsibility of regulating the business of insurance to the states. The Iowa Insurance Division is responsible for supervising all insurance business transacted in the state and has statutory authority over many activities related to the sale of securities and other

[1] https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/31/fact-sheet-president-biden-to-announce-new-actions-to-protect-retirement-security-by-cracking-down-on-junk-fees-in-retirement-investment-advice/

regulated products. The Iowa Insurance Division's central focus is to support a stable, competitive, and fair regulatory environment that offers consumers security, transparency, and - key to this conversation - choice.

Iowa plays a significant role in protecting consumers who purchase life insurance and annuities. We serve as the domiciliary state for approximately 40 life insurance companies, the 10 largest of which hold nearly $900 billion in assets. Through the National Association of Insurance Commissioners (NAIC), the Iowa Insurance Division, along with 55 other state and territorial insurance regulators, helps to establish national standards and best practices through the development of model laws and regulations as well as coordinate regulatory oversight to protect the interests of consumers, while ensuring a strong, viable insurance marketplace.

National Association of Insurance Commissioners' (NAIC) Best Interest Standard

In the seven years since the DOL last put forward a similar fiduciary rule proposal, the regulatory landscape for annuities has changed dramatically due, in large part, to the diligent work of state regulators and their legislative counterparts. While the DOL has shared jurisdiction with the states--with respect to insurance products sold through Employee Retirement Income Security Act of 1974 (ERISA) plans, such as annuities--states' regulatory responsibilities extend to the entire market for such products. This includes disclosure requirements, professional standards of conduct for agents, and supervisory controls. In short, state insurance regulations cover the sale of all annuity products, including those purchased within ERISA plans and those purchased outside such plans.

Key to that supervision is the NAIC's Best Interest Standard. In 2020, following extensive deliberations and input from state regulators, consumer representatives, and the insurance industry, the NAIC made significant revisions to its *Suitability in Annuity Transactions Model Regulation* (#275), adopting a best interest standard of care. The NAIC Best Interest Standard requires producers, when making annuity recommendations, to act in the best interest of the consumer, without placing the producer's or insurer's financial interest ahead of the consumer's interest.

To date, 42 states have implemented—and five states are actively pursuing adoption of—the NAIC's Best Interest Standard. To meet the new standard, states require that producers and insurers act with "reasonable diligence, care, and skill" in recommending an annuity. The recommended annuity must also appropriately address the specific consumer's "financial situation, insurance needs and financial objectives." These model revisions also include enhancements to supervision, to assist with compliance, and the development of additional guidance, to respond to common state implementation questions and promote consistency not just in text but in practice.

As a member of the NAIC's Annuity Suitability Working Group, I was significantly involved in every stage of this work leading up to the adoption of the Best Interest Standard and can attest that serious time and thought were given to determining the appropriate standard of care for annuity sales. From the outset, state regulators were united—and remain united—in the conviction that the interests of the consumer must always come before the financial interests of an insurer or producer. While we did consider a fiduciary approach, we worried that a fiduciary-only standard would restrict business models that many consumers rely on to gain cost-effective access to the financial security products they need. Like the SEC's decision with Regulation Best Interest (Reg. BI), we ultimately decided that a best interest standard would most appropriately serve the needs of consumers without stifling their access to financial advice or their choice of financial advisor.

Iowa is proud to be the first state that adopted the NAIC's enhanced consumer protections in 2020. Our experience with the Best Interest Standard over the past three years has shown that having varied service models facilitates consumer access by preserving consumer choice. Iowans can obtain professional financial advice either through fee arrangements or commission arrangements based on their needs and preferences. Consumers are best protected through smart, consistent, and sophisticated enforcement of standards, not by potentially limiting access to well-regulated retirement guidance and products such as annuities that are one of the only sources of lifetime income to ensure our aging retirees do not outlive their assets.

DOL's Characterization of the NAIC's Best Interest Standard

As part of the discussion of how best to effectuate consumer protection in this space, it is important to clarify any misconceptions the DOL may have about the NAIC's Best Interest Standard. The DOL makes several unsupported claims about the NAIC's Best Interest Standard in its proposal that I would like to address:

First, the DOL incorrectly asserts that the NAIC's Best Interest Standard does not put the consumer first. As discussed above, Section 6A of NAIC's updated annuity suitability model regulation requires a producer, when making annuity recommendations, to act in the best interest of the consumer, without placing the insurer's or producer's financial interest ahead of the consumer' s interest.

Second, the DOL claims that the NAIC's Best Interest Standard does not restrict compensation-related conflicts of interest. This is inaccurate. In fact, it expressly prohibits sales contests, sales quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited frame. While the model provides that cash and non-cash compensation are not conflicts *in of themselves*, it also makes clear that context matters and requires disclosure of cash and non-cash compensation and corrective action if a violation occurs.

Third, the DOL seems to suggest that the NAIC's Best Interest Standard permits producers to recommend products that are worse for the consumer because they are better for the producer's or insurer's bottom line. This characterization is patently false. which is clearly evident under Section 6A of the model.
Fourth and finally, the DOL claims that the NAIC's Best Interest Standard varies significantly from state to state. At present, 42 states have adopted the best interest amendments made to the NAIC *Suitability in Annuity Transactions Model Regulation* (#275), or those that are substantially similar. We are confident that the remaining states will follow by the end of 2024.

The Retirement Savings Gap

Amid these ongoing state regulatory efforts to enhance consumer protections, the elderly population in the U.S. has continued to grow at an unprecedented rate, while the working-age population has contracted. This has placed an increased strain on public assistance programs like Social Security and exacerbating the retirement savings gap. Further, defined-benefit pension plans have been largely replaced by defined-contribution plans in the workplace, which offer less certainty to retirement savers. And nearly half of all workers do not have access to an employer-sponsored retirement plan.

Given these challenges, the DOL should be encouraging, not potentially limiting, access to well-regulated retirement guidance and products such as annuities, which could help to bridge the retirement savings gap. Save for annuities, few retirement security products protect consumers from their own longevity risk and provide lifetime income.

The Role of Congress

I would be remiss if I did not also express my concerns that the DOL has overstepped its statutory authority in promulgating this proposed rule. The authority to impose a fiduciary standard ultimately rests with Congress, not the DOL, as is made clear in ERISA. Moreover, Congress has consistently reaffirmed the states' role as the primary regulators in this area.

Bipartisan Congressional efforts, such as the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, and the SECURE 2.0 Act in 2022, and multiple Administrations of both parties have consistently upheld the importance of lifetime income products. We view these federal efforts as complementary to our own and stand ready to assist lawmakers as they pursue policy initiatives to close the retirement gap.

Conclusion

The DOL's proposal is likely to have a material impact on the ability of Iowa and other state regulators to manage their life insurance and annuity marketplaces.

In adopting the NAIC Best Interest Standard, Iowa and 41 other jurisdictions (and counting) acted purposefully and after carefully considering what is best for consumers and the market based on our experience as insurance regulators. When state and territorial regulators, all

dedicated to protecting consumer access and choice, join the SEC in rejecting a fiduciary-only standard, the DOL should listen.

Thank you again for the opportunity to be here. I look forward to your questions.