July 21, 2015

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

Dear Secretary Perez:

On behalf of the National Association of Insurance Commissioners (NAIC)[1] and its member state insurance regulators, we would like to thank you for the opportunity to comment on the Department of Labor (DOL)'s proposed rule regarding the definition of "fiduciary" as it relates to ERISA plans and IRAs.

The rule is comprehensive and complex, and would make significant changes to retirement plan fiduciary rules that have been in place for almost 40 years. We appreciate the dialogue with your staff since the rule was proposed to gain a better understanding of how the rule is intended to work and potential clarifications you are considering as the rulemaking process continues.

We recognize that oversight of the retirement plans marketplace is a shared regulatory responsibility, and has been so for decades. State insurance regulators, the DOL, SEC and FINRA each have an important role in the administration and enforcement of standards for retirement plans and products within their jurisdiction. From a consumer protection standpoint, it is important that the approaches we as regulators take within the regulatory framework are consistent and compatible as much as possible.

State insurance regulators share the DOL's commitment to protect, educate and empower consumers as they make important decisions to provide for their retirement security. The states have not only acted to implement a robust set of consumer protection and education standards for annuity and insurance transactions, but have extensive enforcement authority to examine companies, revoke producer and company licenses to operate, as well as collect and analyze industry data. Such authority allows state regulators to identify market issues and take the appropriate regulatory action swiftly and effectively when warranted. So much of protecting consumers comes down to effective enforcement. Although there will always be instances of improper conduct, the states have a strong record of protecting consumers, especially seniors, from inappropriate sales practices or unsuitable products.

In our discussions to date with DOL officials, we have greatly appreciated their insights on operationalizing a number of provisions of the rule, including the best interest standard, reasonable compensation requirements, sales of proprietary products, differences between educational activities and fiduciary responsibilities, and others. We also appreciate that DOL is open to suggestions on how to further clarify and provide certainty on a number of those areas to limit the potential for unintended consequences, confusion, or litigation.

While we understand and respect the DOL's role in regulating the ERISA plan marketplace, as the principal regulators of insurance companies and producers it is our duty to consider the implications of the proposed rule on the consumer protection standards we have developed and enforce, as well as its impact on the insurance marketplace. Accordingly, we will carefully evaluate the stakeholder input submitted during the comment period and look forward to further discussions.

Sincerely,

Monica Lindeen
NAIC President
Montana Commissioner of
Securities and Insurance

John M. Huff
NAIC President-Elect
Director of Missouri's Department of Insurance,
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Sharon P. Clark
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NAIC Secretary-Treasurer
Wisconsin Insurance Commissioner

The Honorable E. Benjamin Nelson
NAIC Chief Executive Officer
United States Senator (Ret.)