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February 9, 2021

Sharon Clark, Commissioner
Department of Insurance
Commonwealth of Kentucky
500 Mero Street
Frankfort, KY 40601

VIA Email: dj.wasson@ky.gov

Re: Revised Proposal to Amend 806 KAR 12:120, Suitability in Annuity Transactions

Dear Commissioner Clark,

On behalf of our members, the Insured Retirement Institute (IRI)[1] regrets to inform you that we must withdraw our support for the Department of Insurance's proposal to amend 806 KAR 12:120, Suitability in Annuity Transactions based on significant concerns regarding the revised version of the proposal recently submitted to the Kentucky General Assembly's Administrative Regulation Review Subcommittee as part of the February 2021 package of amendments.

When IRI and our members reviewed and commented on the original version of the proposal in November 2020, it was largely consistent with the enhanced Suitability in Annuity Transactions Model Regulation approved by the National Association of Insurance Commissioners (NAIC) in early 2020. The NAIC model has already been adopted without substantive deviations in seven states (including five so far this year). Consistent with the feedback we provided to the other states, the changes we recommended in our prior comment letter to the Department were intended to eliminate problematic distinctions between the proposal and the NAIC model. We appreciate that the Department did incorporate some of our recommended changes in the revised proposal. Unfortunately, the Department's decision to remove the term "best interest"

[1] The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

in response to comments submitted by other interested parties is inconsistent with the NAIC model and incompatible with the goal of consistent regulation across the states.

While the operative provisions of the revised proposal remain generally aligned with the NAIC model, the removal of the term “best interest” to describe the applicable standard of conduct is highly problematic. The decision to use this term was intensely debated during the NAIC’s thorough, inclusive, and transparent process over the past several years. IRI and many other industry trade groups affirmatively supported the use of the term “best interest” to ensure alignment and consistency of interpretation with the U.S. Securities and Exchange Commission’s Regulation Best Interest (Reg BI) and across the states. Meanwhile, the same arguments that are being made now to encourage the Department to remove the term “best interest” were presented to the NAIC as part of this process, carefully considered and discussed, and ultimately rejected. For the following reasons, we urge the Department to reach the same conclusion:

1. Regardless of the Department’s intentions, the omission of the term “best interest” will create a significant risk that Kentucky, and the states collectively, will be perceived as having adopted a weaker standard than their federal counterparts. This could lead federal policymakers to use their existing jurisdiction (or worse, seek to expand their jurisdiction) to ensure that insurance consumers receive the same levels of protection as investors and retirement savers will receive under federal rules.

2. Removing the term “best interest” will send a confusing message to producers about the Department’s intentions and expectations, especially for the many producers who also operate in other states, many of which will explicitly include the term “best interest” in their regulations. As these producers are trained to meet the best interest standard under other states’ rules, they may naturally interpret the Department’s exclusion of that term as a signal that they will be held to a lower standard when working with Kentucky residents.

3. If the Department proceeds with the revised proposal, without the term “best interest,” Kentucky-specific versions of producer training courses would likely be developed to track the specific terminology and requirements of the final Kentucky regulation. This could, unfortunately, jeopardize the ability of producers who complete Kentucky-specific courses from relying on the NAIC model’s reciprocity provision. In other words, if Kentucky producers are not trained to meet a “best interest” standard, other states may be unwilling or unable to recognize Kentucky-approved training as being “substantially similar” to the training required under their own regulations for purposes of reciprocity. This would create an added burden for producers, as they would be

required to complete multiple courses in order to work with clients across state lines, but would provide no greater level of consumer protection.

In sum, to avoid any potential misalignment or inconsistency in interpretation of the NAIC model, or any potential federal incursion into state regulation of insurance, we strongly urge the Department to revise the proposal to restore the term "best interest" where and how that term is used throughout the model.

If the Department makes this change, IRI and our members would be pleased to resume our support for the proposal. Thank you in advance for your consideration of these comments. Please feel free to contact either of us if you have questions about the views expressed in this letter.

Sincerely,

Jason Berkowitz
Chief Legal & Regulatory Affairs Officer

Liz Pujolas
State Affairs Director