NATIONAL ALLIANCE OF LIFE COMPANIES
An Association of Life and Health Insurance Companies

August 6, 2025

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Re: Proposed New Rules: N. J. A. C. 12:11 ABC Test Independent Contractor

Mr. Fish:

This letter is submitted on behalf of the National Alliance of Life Companies (NALC), to address the New Jersey Department of Labor and Workforce Development's proposed new NJAC 12:11 (the "proposed rule", or "proposal"), which would apply the statutory "ABC test" to the question of independent contractor status in New Jersey. We appreciate the opportunity to provide our comments.

The proposed ABC test offered by the Department is fatally flawed with respect to the life insurance industry. The proposal does not address, distinguish, or incorporate New Jersey's long history of statutory and regulatory exemptions for independent insurance agents from the scope of the ABC test. This radical change would, without cause, have a devastating impact on the millions of New Jersey residents who rely upon independent insurance agents for financial protection for themselves and their families. It would also cause significant economic harm and loss of income for the thousands of New Jersey residents who currently work as independent insurance agents.

The NALC believes strongly that the proposed rule is not in the best interest of New Jersey or its residents. We believe that New Jersey benefits from public policies that encourage the development of small business. This proposal would accomplish the exact opposite result. If the department believes that it has the authorization to modify the proposed regulation to take into account prior exemptions and relevant case law, it should immediately do so. If the proposed rule cannot be corrected as written, it should be withdrawn.

About the NALC

The NALC is a national trade association whose members include smaller, mid-sized and specialty life and health insurers. The NALC was formed in 1992 to address concerns that existing trade associations were not representing the interests of smaller companies and their policyholders.

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Unlike larger life insurers, NALC member companies serve regional markets and specific demographics, such as working class families, rural communities, and small business owners. In addition to small business owners, a significant number of NALC members' policyholders include blue-collar workers, service industry workers, and clerical staff. Because these occupations don't typically offer employer-sponsored life insurance, NALC member companies play a vital role providing affordable individual life insurance policies and other financial services products to these under-served markets.

The Proposed Rule Would Eliminate Independent Contractor Status for Life Insurance Agents - Causing Unnecessary Disruption, Financial and Economic Harm to New Jersey Families.

For many decades, New Jersey and other states have acknowledged a safe harbor for independent insurance agents when applying the ABC test to determine employer status. Upon adoption, the Department's proposed rule would instantly eliminate the independent contractor agents used by NALC companies and many insurance carriers that – for over a century - have been serving New Jersey families. That outcome would not only have a devastating impact on those agents and their families, but would also irreparably harm working class and other New Jersey citizens who depend upon independent insurance agents to provide easy access to financial services products.

While NALC member companies and many other life insurance carriers operating in New Jersey use various models to market and sell their products, the independent contractor model has been by far the primary form of distribution in the insurance industry for almost 100 years. These agents include entrepreneur: small business owners that employ people in their local community, in addition to thousands of self-employed individuals.

Why is this the case? Life insurance distribution models have developed over a number of decades in direct response to consumer demands, buying behaviors, and the high costs associated with completing a single successful sale. The independent contractor model continues to be an innovative, cost effective way for insurance carriers to offer their products to people needing financial protection for their families. Agents benefit from the flexibility of being able to run their own business and having the option to sell products for more than one carrier. The indepedent contractor model also makes it possible for many agents to sell insurance on less than a full-time basis. This arrangement benefits agents looking to supplement income from full-time employment, as well as individuals whose life circumstances do not enable them to take on full-time employment. The proposed rule would eliminate all of these benefits.

The Proposal Would Cause Significant Economic Harm and Unnecessary Disruption

The proposed rule states that it would have a "positive economic impact," and "no impact on either the generation or loss of jobs." With respect to the insurance industry, the NALC can state with certainty that these statements are not accurate. Eliminating independent contractor status for

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independent life insurance agents in New Jersey would result in the loss of thousands of jobs currently held by the estimated 10,000 – 20,000 individual insurance licensees in New Jersey.[1] For carriers utilizing the independent contractor model, transitioning agents to employee status *will not be an option* because doing so would be cost prohibitive. Those carriers will be forced to find alternative distribution channels, or simply exit New Jersey. We expect that most will choose the latter.

While the negative consequences on agents' losing a source of income is obvious, New Jersey policyholders will also be adversely impacted. Agents continue to provide service to policyholders often long after the sale has been completed. As a result of the proposed rule, many New Jersey policyholders and their families will be left stranded without the assistance of the agent who sold the policy. This would include the absence of an agent to assist the family to file a claim upon the policyholder's death.

There Has Been No Showing That Independent Contractor Agents Are Being Harmed

There is no evidence that life insurance agents working as independent contractors in New Jersey are suffering harm. In fact, the opposite is true – the independent agent model is a proven success thst has created economic opportunity and a livelihood for thousands of New Jersey residents. Further, as explained more fully below, the proposed rule does not address or even acknowledge the unique and vital role that independent contractor life insurance agents play in the lives of New Jersey residents. Nor does the proposal address the only judicial decision squarely on point (see discussion of the Walfish decision below). These are glaring omissions in a proposed regulation that would fundamentally alter the business of life insurance in New Jersey to the detriment of millions of New Jersey residents.

Independent Contractor Agents Would Likely Fail the Proposed ABC Test

1. The Prong A Test

The proposal would reverse without cause a century of practice in New Jersey that has served residents well. Prong A of the ABC test (12:11-1.3(f)) specifically provides that a factor in the test for control includes "any control or direction that the putative employer has exercised, or has reserved the right to exercise, in order to be in compliance with a law or rule …"

[1] The NALC is aware of numerous research papers, studies, and data that we expect to be submitted by other groups and organizations demonstrating the severe economic and other negative impact of the proposed rule on New Jersey residents and small businesses. We commend those studies to the department and urge that they be given significant weight. It is difficult to overstate the significant harm and disruption that the proposed rule would cause the state's economy and its residents.

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When applied to the business of insurance, this principle is particularly inappropriate, meaning that *a safe harbor is essential*. The insurance industry is highly regulated. Insurance carriers are required by law in New Jersey (and in every other state) to ensure that their agents and producers comply with a wide variety of statutes, regulations, and other directives of the state.

Those compliance mandates include licensure and appointment of the insurance agent by the insurance carrier, continuing education, product–specific training, financial and record keeping, review and approval of marketing materials, ethical sales practices, and data protection and privacy. Agents and producers are also subject to various federal requirements, including securities laws, OFAC, anti-money laundering and federal privacy laws. These legal requirements are universally required regardless of whether an insurance producer is an employee or an independent contractor, so they should not be characterized as "control" by the insurance carrier and used as an indicator of employee status. A safe harbor is needed to ensure that these regulatory requirements are not able to be used to determine that insurance agents are employees under "control" for purposes of the ABC test.

This specific principle was applied in a 2019 federal case applying New Jersey law: Walfish v. Northwestern Mutual Life Insurance Company, 2019 WL 1987013, Civ. No. 2:16-cv-4981 (WJM) (D.N.J. 2019). Walfish involved a claim by a former agent of Northwestern Mutual Life Insurance Company (NML) who claimed after his contract was terminated that he had been misclassified as an independent contractor and was entitled to wage protections under the NJWPL. Plaintiff's claims of "control" included NML's imposing "requirements regarding the maintenance of records and adherence to compliance guidance …."

The Walfish court applied the ABC test set forth in Hargrove v. Sleepy's, LLC, 220 N.J. 289, 295 (2015). With respect to the control aspect of the ABC test in the context of the insurance industry, the Walfish decision noted that "Courts have found that requirements to comply with applicable laws, regulatory frameworks, or professionalism rules alone are insufficient to meet this "control prong." Id. at *6 (citing Ruggiero v. Am. United Life Ins. Co., 137 F. Supp. 3d 104, 108 (D. Mass. 2015); Chamberlain v. Securian Fin. Grp., Inc., 180 F. Supp. 3d 381, 393 (W.D.N.C. 2016)). The Walfish court held that it was "unwilling to find that, by promulgating certain rules to ensure regulatory compliance, Northwestern exercised control and direction sufficient to fail the Part A of the ABC test." Id. at *7. The court explained, "[w]ere that so, any business operating in a regulated industry would necessarily no longer be able hire workers under an independent contractor relationship unless it was willing to risk regulatory non-compliance." Id.

The proposed rule is directly contrary to the court's holding in Walfish. The proposed rule does not address, distinguish, or incorporate New Jersey's long history of statutory and regulatory exemptions for insurance producers from the scope of the ABC test. While the proposal states that the Department's interpretation of the ABC test "relies heavily" on the Carpet Remnant Warehouse, Inc. and East Bay Drywall cases, failure to acknowledge and apply the longstanding principles outlined in Walfish to insurance agents engaged as independent contractors is a glaring error that should be corrected by creating an exception from the control part of the ABC test for insurance agents acting as independent contractors.

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2. The Prong B Test

An examination of repromulgated Part B demonstrates that the proposed rule has changed from previous iterations and varies from interpretative case, statutory and regulatory law. Specifically, defining the companies' usual course of business so broadly as to include any activities that generate revenue or develop, produce, sale, market, or provide goods or services is a significant departure from prior decisions in New Jersey interpreting this language.

The Walfish decision also recognized that the services of an insurer in designing, developing, and supporting insurance and financial products are distinct from the services of an insurance agent in prospecting for clients and selling suitable insurance and financial products. The proposal contradicts Walfish and effectively prevents independent contractor insurance agents from selling the products of the insurance companies that generate the revenue. This result would eliminate the use of the long-standing independent contractor business model used by insurers and agents in New Jersey for almost 100 years.

Further, interpreting the definition of a company's "place of business" to include any location where the worker performs services would also represent an unwarranted and significant change from existing law. Insurance agents typically meet with clients at their homes, places of businesses or at neutral locations at the client's request. These are hallmarks of independent contractor status. These agents are not required to use company offices and the external locations where they perform the services have long been recognized as outside the company's place of business. This aspect of the proposed rule is not appropriately applied to insurance agents in the absence of any evidence of harm.

3. The Prong C Test

The Department's interpretation of the requirement of the existence of an independent trade, business or profession is also highly problematic when applied to an insurance agent. Insurance agents – by statute in New Jersey - are not allowed to operate without compliance oversight. New Jersey law requires an insurance agent to obtain and maintain a license before they can sell an insurance product in the state. Further, insurance agents must also be appointed by an insurance company before they can sell that company's products. Similar to application of these compliance requirements in the context of the Prong A test, interpreting them to indicate employee status with respect to the definition of an independent trade business or profession twists the prior application of the test to the insurance industry. The Department's failure to address or incorporate prior exemptions, and case law into its reinterpretation of the ABC test, effectively prevents use of the independent contractor model in New Jersey for the insurance industry.

Although other businesses may be able to modify or shift their model, the insurance industry and specifically members of this organization cannot do so. Agents earn very small commissions from

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the sale of individual policies and companies are unable to predict which agents will sell, what they will sell, and when. NALC members and other insurers operating in New Jersey will not be able to afford the significant costs they would be forced to incur if their agents were reclassified as employees. Those companies will be forced to significantly curtail their sales activities in the state, or simply abandon New Jersey altogether. That means lost jobs for insurance agents and irreparable harm for working class New Jersey families.

Conclusion

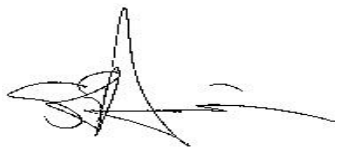
The proposed ABC test offered by the Department is fatally flawed with respect to the life insurance industry. It does not take into account prior exemptions or relevant case law. The proposed re-interpretation of the ABC test would eliminate the independent contractor model for insurance agents in New Jersey without cause.

If the Department believes it has the authorization to modify the proposed regulation to take into account prior exemptions, and relevant case law, it should immediately do so.

If the proposed rule cannot be corrected as written, it should be withdrawn.

Thank you for you're the opportunity to provide our comments.

Respectfully,



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