ACLI
Financial Security for Life

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P.O. Box 110, 13th Floor
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Re: Proposed New Rules: N.J.A.C. 12:11 – ABC Test; Independent Contractors

Dear Mr. Fish:

The American Council of Life Insurers (ACLI) offers these comments in response to the Department of Labor and Workforce Development's proposed new N.J.A.C. 12:11 (the "Proposal"), which would introduce a new interpretation of the "ABC Test" used to assess independent contractor status under various New Jersey statutes. Most concerning to ACLI is the fact that the Proposal, if enacted as drafted, would effectively eliminate the independent contractor businesses of thousands of licensed insurance producers in New Jersey and cause significant harm to insurance small businesses and consumers. ACLI maintains that allowing insurance producers and independent financial advisors to operate as independent contractors is clearly supported by current New Jersey statutes and regulations, and by existing case law. For the reasons detailed below, ACLI urges the Department to withdraw the Proposal in its entirety. If the Department determines to move forward with the Proposal in some form, we urge the Department to exclude licensed insurance and financial services professionals from its scope or to modify it to align with existing law and the unique intricacies of the insurance and financial services industries.

At the outset of this comment, it is important to stress that among the many industries impacted by this wide-sweeping proposal, the insurance industry is unique. Highly skilled and highly compensated workers in this profession regularly and overwhelmingly choose to work as independent contractors. Across the country, over three-quarters of a million agents work as independent contractors. Fifty-eight thousand agents work as independent contractors in the State of New Jersey.[1] Surveys by their own organizations show these licensed professionals want their current status and vehemently oppose efforts to reclassify them as employees. Many have built small businesses on the independent contractor model, which allows them to choose when, where and how they work, whom they employ, and the clients they serve. It also provides them with significant financial and tax benefits that they do not wish to lose. If the Proposal is adopted, these small businesses would be upended as owners would have no choice but to relocate out of New Jersey or establish new work arrangements that they have already rejected by choosing to be independent.

Consumers, too, will pay a steep price. Research on this topic is clear. The presence of independent contractors in the insurance distribution model expands access to and choice of insurance and other products, particularly to low- and moderate-income households. Losing the independent contractor model will result in decreased access and choice for consumers and economic harm to New Jersey citizens.

[1] 58,008 licensed producers in New Jersey per National Insurance Producer Registry, licensee count reports July 2025.

As detailed below, ACLI believes the Proposal would reach the wrong result for the vital categories of insurance producers and financial professionals. If anything, New Jersey should modernize its classification framework to reflect the reality of how insurance and other financial professionals run their businesses and how they are compensated for the sale of highly regulated products.

## I. **Executive Summary**

- Contrary to the assertions in its Summary, the Proposal transforms the state's current standard into the most restrictive in the nation. It cherry picks language from selected cases while ignoring cases and statutes that support independent contractor classification for insurance producers.
- The experiences of other states bear out the wisdom of retaining or even enhancing the long-standing independent status of insurance producers and financial professionals in New Jersey.
- Sound public policy overwhelmingly supports maintaining an independent contractor classification for most insurance producers. This comports with the wishes of insurance producers (a significant consideration) and it preserves the diverse business models that have served New Jersey families and small businesses well for more than a century. It also furthers the public interest of providing consumers broad access to a wide array of suitable insurance and financial products.
- The availability of life insurance products to New Jersey residents is more important than ever given the turbulent financial time in which we live. No less is this important for the future strength and sustainability of New Jersey state finances.
- The Proposal emphasizes that it is simply restating existing law—yet its interpretation of each prong of the ABC Test is contrary to existing precedent on key issues, including: (i) its statement that regularly required control shall be considered employer control; (ii) its re-writing of the scope of a company's "usual course of business", (iii) its effectively eliminating the "outside the company's places of business" portion of Prong B; and (iii) its dismissive view of key facts that have long-established the existence of an independent business under Prong C.
- The Proposal critically fails to acknowledge the *Walfish vs. Northwestern Mutual Life Insurance Company* decision (2019 WL 1987013 (D.N.J. May 6th, 2019)), which contains a detailed analysis of New Jersey's ABC Test as applied to licensed insurance producers, holding definitively that an insurance agent was an independent contractor as a matter of law under the ABC Test.
- There is no reference to the fact that numerous laws, including the New Jersey Unemployment Compensation Law (UCL) N.J.S.A 43:21-1 *et seq*., exempt licensed insurance producers from employment status.[2] Those exemptions recognize the uniqueness of the insurance industry and ACLI urges the DOL to follow the legislature's lead and the lead of numerous other states by excluding licensed insurance producers from the application of the Proposal.
- The Administrative Procedure Act (N.J.S.A. 52:14B01) provides that administrative agencies must conduct a cost-benefit analysis and assess the jobs impact to New Jersey's economy when adopting, readopting or amending any rule or regulation.[3] The Proposal fails to satisfy these statutory requirements.

Given the flawed bases provided for the Proposal and its deviation from existing law, expounded in detail below, the Proposal would likely not withstand judicial scrutiny. We respectfully urge that the Department withdraw the Proposal. If the Department determines to move forward with this rulemaking, we urge the Department to: (i) modify the Proposal to recognize that there is not a one-size fits all approach to the classification issue and that regulated industries like the insurance industry require a more nuanced analysis

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[2] It would cause significant confusion and disruption if it were possible for insurance producers to simultaneously be deemed contractors for purposes of the UCL and employees for purposes of wage and hour and other laws.

[3] New Jersey Division of Consumer Affairs, "Administrative Procedure Act N.J.S.A. 52:14B-4 and 52:14B-23," March 2022 https://www.njconsumeraffairs.gov/Documents/legal/Administrative-Procedure-Act.pdf

without rigid application of the proposed factors; or, (ii) at a minimum, acknowledge that insurance producers generally are exempt from the ABC analysis.

## II. **Discussion**

ACLI's comments address four key areas: (A) the history of the independent contractor model in the insurance industry and the Proposal's potential impact on the industry; (B) the application/interpretation of the relevant New Jersey statutes and similar laws in other states; (C) ACLI's specific concerns with the Proposal's interpretation of the three prongs of the ABC Test; and (D) the inadequacy of the Department's economic analysis. Underlying the entirety of ACLI's comments are the important public policy of providing consumers with access to a broad array of insurance products and services offered through diverse distribution models and our members' interest in supporting the hundreds of thousands independent insurance agents who wish to remain independent contractors.

### *A. The History of the Independent Contractor Model in the Insurance Industry and the Potential Impact of the Proposal*

ACLI has commented on past regulatory actions related to independent contractor classification issues at the federal and state levels because independently contracted licensed insurance agents are a vital component of the value proposition that life insurers deliver to the nation's economy.[4] Their contributions to the communities they serve have helped our members pay out nearly the same amount of benefits to individuals per day as Social Security and invest $6.9 trillion in the U.S. economy. Further, ACLI's over-250 member companies (which include the largest insurance companies in the country)[5] contribute significantly to the New Jersey economy and to communities throughout the state. For example, life insurers annually pay out $8.4 billion – $23.1 million every day – in life insurance and annuity benefits to New Jersey families. Life insurers invest $205 billion in New Jersey's economy.[6]

The public, our members' policy holders, and the other stakeholders we serve have long benefited from our industry's diverse distribution models, including sales made through independent contractors. For decades, most insurance companies in the United States have used independent contractor models that expand job opportunities, products, services and benefits to millions of Americans, while simultaneously providing important opportunities and benefits to the independent contractor insurance agents. Most licensed agents choose to sell and service insurance products as independent contractors while (as required by regulation) contractually affiliated with our insurance company members or their affiliated general agents.[7] Customers, policy holders, and the general public benefit significantly because independent contractors exist and thrive within our industry.

#### 1. *Nuances of the Insurance Industry Pertaining to the Independent Contractor Analysis*

Two unique aspects of the insurance industry help illustrate why the rigid one-size-fits-all approach articulated in the Proposal does not work. First, for consumer protection purposes, insurers are heavily regulated by federal securities and state insurance regulators. Each state sets its own company and agent licensing requirements, product filing rules, market conduct exams, and laws and regulations to ensure insurer solvency and protect consumers. Companies must meet risk-based capital standards, abide by investment guidelines, and submit to regular on-site financial and market conduct examinations. By statute or regulation, insurance professionals must be licensed by state insurance departments, appointed by the

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[4] Based on ACLI analysis of U.S. Department of Labor, Bureau of Labor Statistics. Current Employment Statistics survey, there are an estimated 811,000 independent agents that sell life products in the United States.

[5] A full list of ACLI's member companies is available at: https://www.acli.com/about-acli/membership/member-list.

[6] Building Financial Security in New Jersey, available at https://www.acli.com/for-communities/new-jersey.

[7] It is indisputable that both the licensed agents and the Companies with which they affiliate mutually intend an independent contractor relationship. There should be some deference to the contractual intent of the parties, which is not addressed in the Proposal.

insurance companies with which they affiliate and, if engaged in transactions involving securities, be a registered representative of a broker-dealer or investment adviser representative. To lessen the administrative burden of centralized or overlapping state compliance oversight, to streamline compliance obligations for insurance professionals, and to protect the public and agents, state insurance departments and securities regulators delegate compliance oversight to firms, requiring that firms maintain regulatory supervision policies and practices with regard to their affiliated insurance professionals, regardless of contractor or employee status. To satisfy their own and the agent's regulatory obligations, firms must implement and maintain regulatory supervision policies and practices as relates to independent contractor agents.

Notwithstanding that regulatory framework, insurance professionals maintain all of the hallmarks of independent businesspersons – they operate their own practices, they assume the risks and rewards of being a business owner, they often purchase and maintain their own offices, they purchase their own insurance, they hire their own staff (for whom they pay employment taxes and purchase workers' compensation insurance), they market their businesses, and they otherwise invest in their communities. Other than being subject to regulatorily mandated oversight of their insurance and financial services activities, these licensed producers are not subject to the day-to-day direction and control characteristic of an employer-employee relationship and they enjoy the opportunity for profit or loss based on their exercise of initiative and management of the investments they make in their own businesses.

Consistent with that, licensed insurance agents have, for nearly a century, been uniformly held to be independent contractors and not employees for purposes of federal (ERISA and EE01 reporting requirements) and state wage and benefit laws. This treatment comports with the fact that they operate as independent business owners and it significantly benefits agents and consumers. Many insurance agents choose to be independent contractors instead of employees because they want to build their own small businesses while serving their communities and because they want to be able to be appointed with multiple insurers to offer the broadest possible product selection to their clients. Public and private data show those making this choice are overwhelmingly satisfied with being independent.[8]

To solve for the fact that regulations require independent insurance professionals to associate with licensed firms and require firms to maintain regulatory supervision over independent agents, well-established case law and guidance issued by the U.S. Department of Labor and state agencies recognize that regulatorily-required supervision does not weigh in favor of employment status.[9] It is, at most, a neutral factor in the evaluation of the status of any financial professional in the insurance and financial services industries.[10] The Proposal ignores and directly contradicts that case law and guidance.

Second, insofar as the Proposal is designed to fix perceived exploitation of certain worker populations when it comes to benefit eligibility, that problem does not exist in the independent insurance professional context. Specifically, any concern about providing workers access to health and welfare and retirement plans is not a

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[8] See Contingent and Alternative Employment Arrangements Summary, U.S. Bureau of Labor Statistics (Nov. 8, 2024) (stating, "As in prior surveys, independent contractors overwhelmingly preferred their work arrangement (80.3%)); See also, NAIFA Experts Testify on the Importance of Independent Contractor Status at NCOIL, NAIFA (July 10, 2021) (stating, 95% of NAIFA members operating as independent contractors want to remain so).

[9] The U.S. DOL revised its proposed rule regarding independent contractor status, stating "Accordingly, the Department is revising the regulation to state that "actions taken by the potential employer for the sole purpose of complying with a specific, applicable Federal, State, Tribal, or local law or regulation are not indicative of control," after considering comments from ACLI and other industry organizations. *See* https://www.federalregister.gov/documents/2024/01/10/2024-00067/employee-or-independent-contractor-classification-under-the-fair-labor-standards-act. The potential implications of that interpretation were less critical at the federal level where control is just one of several, non-dispositive factors for assessing contractor status. Here, an adverse finding on Prong A of the ABC Test is fatal to contractor status.

[10] *See, e.g. NYDOL Guidelines for Determining Worker Status: Insurance Sales Industry,* https://dol.ny.gov/system/files/documents/2024/03/ia318.18.pdf (specifying that requiring insurance agent compliance with regulations is a "neutral" factor).

relevant concern in the insurance industry. Congress already addressed that issue in the Internal Revenue Code ("IRC") by creating a special status for independent contractor insurance agents that allows them to participate in benefit plans and reap tax benefits without having to forgo the freedom to operate their own businesses.

Where did this special status for insurance agents come from? For nearly a century, the IRC has directly allowed licensed insurance agents and independent licensed financial advisors to retain the freedom to choose to work as independent contractors under federal and state wage and benefit laws while receiving certain benefits typically reserved for employees. Known as "statutory agents", these qualifying agents enjoy independent contractor freedom and the ability to operate their own insurance practices while being able to: (i) participate in health and welfare and retirement plans typically reserved for employees, (ii) report business income and deduct business expenses on Schedule C (Profit or Loss from Business) of their tax returns, and (iii) have the firm with which they are contracted pay the Federal Insurance Contribution Act (FICA) taxes on their behalf. Relying on that special status afforded by Congress and the IRS to full-time independent contractor life insurance and annuity salespersons under I.R.C. § 3121(d)(3)(B), some firms primarily or solely use a statutory agent model to engage these independent agents.

That Congressionally created special status for independent contractor life insurance salespersons is available only if an agent meets the common law test for independent contractor status. *See IRS Technical Guidelines for Employment Tax Issues*, Section 4.23.5.7.4 ("By definition, a worker cannot be a statutory employee under IRC 3121(d)(3) if that worker is a common law employee."), at https://www.irs.gov/irm/part4/irm_04-023-005r#idm139861992316320. If firms that use the statutory agent model were required to reclassify agents as employees, their affiliated agents would lose their statutory agent status and all of the corresponding pension, health plan and tax benefits they currently enjoy.

In short, the protections that the Proposal is presumably intended to provide to workers are not needed or sought by independent agents and advisors, as they already have an option to enjoy many of the benefits of employees, while benefiting from IRC provisions only available to independent contractors.

2. *Potential Consumer Impact and Unintended Consequences of the Proposal*

It would be enormously economically disruptive to New Jersey local businesses and the preferred livelihoods of insurance professionals – not to mention the insurance industry and the customers it serves – if the Department's guidance were to undercut the independent contractor status of insurance producers.

The unintended negative consequences of the Proposal for New Jersey families and small businesses are myriad. New Jersey needs more, not fewer, qualified insurance and financial services professionals. In New Jersey, only 38 percent of the population has any life insurance coverage, ranking 36th of the 50 states.[11] Relatively little life insurance makes its way into the hands of New Jersey families and businesses without the assistance of a licensed producer. Fewer producers will inevitably lead to less insurance coverage benefiting New Jersey residents. If insurers can only operate in New Jersey via employment models, that will force entrepreneur agents to relocate or leave the industry and it may result in firms eliminating their New Jersey presence, as it is extremely unlikely (if the Proposal is adopted as written) that insurance companies will, or even can, convert all existing contractor agents to employees.

With New Jersey residents already underinsured, we respectfully submit that now is not the time to reduce the number of producers or further limit consumer access to insurance. In fact, the New Jersey Department of Banking and Insurance has taken steps in recent years to encourage growth in the number of qualified insurance agents. These steps include the introduction of online producer licensing examinations as well as the allowance for an applicant to take the exam in Spanish. In summary, while the downsides to the Proposal are many, the benefits for New Jersey residents and licensed professionals are none.

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[11] ACLI analysis of U.S. Census, Survey of Income and Program Participation.

3. *Impact on Older Independent Insurance Agents*

According to LLGlobal/LIMRA, the average age of an independent agent is 62, with 34 percent being age 65 or over.[12] If independent agents lose their contractor status, they could drop out of the labor force or retire early. In all cases, they are likely to experience a drop in total household income. Given their age distribution, the impact of reclassification will be severe.

An Urban Institute study found that older workers who lose their jobs take considerably longer than younger workers to find new work.[13] The study found that displaced men age 50 to 61 are 39 percent less likely to find new jobs than otherwise identical men age 25 to 34, while men age 62 or older are 51 percent less likely to find new jobs. Displaced women are 18 percent less likely to find a new job at age 50 to 61 than at age 25 to 34 (controlling for personal and job characteristics), and 50 percent less likely at age 62 or older.

Displaced older workers who do find jobs typically experience sharp wage declines. On average, displaced men between 50 and 61 who become reemployed experience a 20-percent wage cut. Those reemployed at age 62 or older experience an average 36 percent wage cut. By contrast, men's median wages fall only 4 percent at age 35 to 49 and 2 percent at age 25 to 34. Older displaced women who become reemployed also suffer sizeable wage losses, but not as dramatically as men.

Stripping insurance producers of independent contractor status will exact a cost on the individual in the form of diminished standard of living, and ultimately on government. The likelihood that former agents will collect Social Security benefits earlier than they otherwise would, and the likelihood that they will rely on Medicaid to pay for long-term care, will increase.

B. *Application/Interpretation of Relevant New Jersey Statutes & Case Law*

ACLI supports the Department's goal of fostering consistency in the independent contractor classification analysis and ensuring that interested persons have clarity to properly determine an individual's employment status. That said, the Proposal ignores that current law already provides such clarity for licensed insurance producers and independent licensed financial advisors. As relates to the insurance industry, the Proposal would have the opposite effect – injecting confusion, at best, and, at worst, turning the industry in New Jersey on its head.

With regard to existing precedent, we are concerned that the Department's discussion entirely omits the *Walfish v. Northwestern Mutual Life Insurance Company*, 2019 WL 1987013 (D.N.J. May 6th, 2019) decision – the most significant New Jersey case on this issue as relates to the insurance industry. The Court in *Walfish* squarely addressed the application of the ABC Test in the context of a licensed insurance professional, holding that he was properly classified as an independent contractor as a matter of law. The plaintiff, a licensed insurance agent, contracted with a Northwestern Mutual general agent and was subject to regulatory compliance oversight by Northwestern Mutual. Meanwhile, he held appointments with, and sold insurance products for, multiple insurance companies. The court specifically held that his regulatorily-required affiliation with Northwestern Mutual and the company's compliance oversight did not constitute employer-type control, that the insurance company was not in the insurance sales business because all sales were done by independent agents, that the agent performed services outside the company's places of business, and that the agent operated an independently established business. That is the existing law and, consistent with the Department's stated goal, the Proposal should follow it.[14]

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[12] LIMRA, "Casting Light on the Age of an Independent Agent", 2019.

[13] Johnson, Richard W.; Mommaerts, Corina, "Age Differences in Job Loss, Job Search, and Reemployment", Discussion Paper 11-01, January 2011.

[14] The *Walfish* decision comports with the Department's decisions holding that insurance agents are independent contractors under the ABC Test as a matter of law. *See e.g., In the Matter of Northwestern Mutual*, Dkt00002163 (N.J. DOL Feb. 10, 2014) (Northwestern Mutual-affiliated agent was an independent contractor under the ABC test).

Another issue raised in *Walfish* bears discussion. The defendant in that case pointed out that the ABC Test co-opted by the New Jersey Supreme Court for wage and hour purposes derives from the Unemployment Compensation Law, as expressly stated in *Hargrove v. Sleepy's, LLC*, 220 N.J. 289 (2015). The section of the UCL that spells out the ABC Test includes an exception stating that work performed by licensed insurance agents who are paid on a commission basis is excluded from the definition of employment under the UCL. Under the UCL, analysis of independent contractor status is a two-step process. The threshold question is expressed in the conjunctive: whether the relationship falls within the statutory definition of "employment" and does not fall within one of the statutory exclusions. If, and only if, the relationship is encompassed by the statutory definition of "employment" and it does not fall within one of the statutory exclusions, does the ABC test apply. *Carpet Remnant Warehouse, Inc. v. N.J. Dep't. of Labor*, 125 N.J. 567,582 (1991). When the New Jersey Supreme Court borrowed the UCL contractor standard, it necessarily meant to coopt the entire standard – including the statutory exception for insurance agents in section 19(i)(7)(J) of the UCL.

Exempting licensed insurance producers from employment status for all New Jersey statutory purposes advances the Department's goal of consistency. If that UCL exception does not extend to the classification of agents under the Wage Payment Law (WPL) the Wage and Hour Law (WHL) or Paid Sick Leave Act (PSLA), a single agent will be a contractor for unemployment purposes but may be simultaneously considered an employee for wage and leave purposes. Courts would also be saddled with the unenviable task of determining which of the potentially dozens of insurance companies whose products the agent sold could be considered his "employer" for one or more purposes. Is a commissioned agent an "employee" of none, some, or all, of those companies? Can a commissioned agent simultaneously be an "employee" of one insurance company and an independent contractor to another, either simply based on the volume of purchases his client's make of either's products or some other, amorphous peg on which he wishes to hang his hat? How can that status be determined before the end of any percentage, volume, or other measuring period, at which time a violation of the law would be claimed to have occurred already? These questions are all superfluous if licensed insurance producers are exempted across the board.

There is also no need to put the judicial machinery in motion to resolve those questions. Multiple court decisions, generally accepted canons of statutory construction, and public policy each favor adopting an interpretation consistent with the *Walfish* decision and exempting insurance producers from employment status under all New Jersey wage and leave laws. In stark contrast, no proper interest is served by forcing different classifications upon independent insurance agents/producers when construing the multiple closely related statutes: an "employee" under one should be an "employee" under the others, and an "independent contractor" under one likewise should be an "independent contractor" under the others.[15] By formulating an ABC interpretation incompatible with the *Walfish* decision and inconsistent with the exception in the UCL (which the Proposal currently is), the Department would be needlessly manufacturing a problem that "result[s] in confusion and [would require the] creat[ion] a body of law with no rational core." *Richardson v. Bd. of Trs*., 192 N.J. 189, 192 (2007).

New Jersey courts have repeatedly reinforced that predictability, conceptual consistency, and efficiency are the touchstone requirements for the rule of law and the legal and administrative systems of this state.[16] That same need for consistency and predictability animated *Hargrove*, 220 N.J. at 314 (applying "ABC" test to

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[15] In *Hargrove*, the Court adopted the position of the New Jersey Department of Labor and Workforce Development ("DOL") that consistency between the two statutes at issue is desirable and appropriate. The Court expressed deference to that position and approval of the predictability flowing from it. *Hargrove*, 220 NJ. at 314.

[16] *See, e.g*., *The Palisades At Fort Lee Condo. Ass'n v. 100 Old Palisade, LLC*, 230 NJ. 427, 449 (2017) (adopting view of statute of limitations accrual that advanced "consistency and predictability"); *Gormley v. Wood-El*, 218 N.J. 72, 123 (2014) (LaVecchia, J., dissenting) (the need for "rule of law ... that promotes desirable public policy and predictability in application"); *Pfizer, Inc. v. Emps. Ins*., 154 NJ. 187, 203 (1998) (noting importance of predictability of result to choice-of-law determinations in insurance context); *Montells v. Haynes*, 133 N.J. 282, 291 (1993) ("Uniformity of application and predictability of results promote the prompt and efficient resolution of LAD claims."); *Crema v. N.J. Dep't of Env't Prot*., 94 NJ. 286, 301 (1983) (praising DEP's policy of exercising discretion to promulgate regulations to assure predictability as "salutary").

WPL because it "operates to provide more predictability") and supports an interpretation that excludes commissioned insurance producers from the definition of "employment" for all purposes. This uniformity would provide ACLI's member companies and the licensed insurance agents/producers with whom/which they contract much needed certainty that their contractual preferences will be honored by the courts. The Proposal, if adopted as proposed, would foster inconsistency and would result in New Jersey becoming an outlier in a negative way.

### C. *ACLI's Specific Concerns with the Proposal's Three Prongs*

1. *The Department's Prong A Interpretation Deviates from Existing Case Law and Ignores the Regulatory Environment in Which Insurance Companies Are Forced to Operate*

ACLI is very concerned with the formulation of the "control" analysis in the Proposal, which contradicts decades of precedent in this State and across the country. We agree with the general concept that the degree of control exercised by a putative employer may be a relevant factor. However, the Proposal's interpretation that merely satisfying a company's regulatory obligations may be indicative of employer-type control ignores the practical realities of the insurance industry and the overwhelming weight of the applicable case law. Such an interpretation would disturb the careful balance that courts and legislatures have fashioned in confirming the importance and viability of independent contractor models while ensuring regulatory compliance to protect the public.

As noted above, state insurance departments, the Financial Industry Regulatory Authority (FINRA), and the U.S. Securities and Exchange Commission (SEC) have long required insurers and their broker-dealer affiliates to maintain certain "supervisory" policies and practices and perform regulatory compliance oversight over their affiliated agents.[17] FINRA requires, expects, and regularly examines, whether companies develop and maintain adequate regulatory "supervision" programs, and imposes fines and other consequences where such "supervision" is lacking. *See* FINRA Rule 3110 (requiring each member to establish and implement written supervisory procedures applicable to its affiliated representatives, including policies and procedures for reviewing advertisements, written correspondence and internal communications, and compliance with FINRA rules and securities laws).

But this "supervision" is not management of day-to-day activities as occurs in an employment setting. It has nothing to do with whether or when an individual chooses to work. It has nothing to do with the individuals or entities an agent chooses to engage as possible customers. It has nothing to do with how the agent structures his or her practice or business. Instead, in the insurance industry, "supervision" relates to setting guardrails to ensure compliance with externally created and imposed government regulation of sales practices. To protect agents from meritless customer complaints and regulatory audits, and to ensure that companies comply with the law, regulators require insurance companies to maintain these programs. This regulatory oversight has long been the standard for licensed insurance agents, yet agents continue to run their own insurance businesses as independent contractors. *See e.g., Murray v. Principal Fin. Grp., Inc*., 613 F.3d 943, 944-45 (9th Cir. 2010) ("We, along with virtually every other Circuit to consider similar issues, have held that insurance agents are independent contractors and not employees for purposes of various federal employment statutes [including the ADEA].").[18]

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[17] These laws and regulations are developed by numerous regulators that are charged with protecting consumers of financial products and services. *See, e.g.*, FINRA, About FINRA, www.finra.org/about (last visited December 7, 2022) ("[T]o protect investors and ensure the market's integrity, FINRA is a government- authorized not-for-profit organization that oversees U.S. broker-dealers"); FINRA Rule 3110; NASD Rule 3010 (requiring mandatory supervision and review of transactions and correspondence); FINRA Rule 3270 (requiring disclosure of registered representative outside business activities to member firm and firm evaluation of propose activity to determine if it constitutes an outside securities activity); FINRA Rule 2210 (setting requirements for communications with the public).

[18] *See also Wortham v. Am. Fam. Ins. Grp*., 385 F.3d 1139, 1140-41 (8th Cir. 2004); *Barnhart v. N.Y. Life Ins*., 141 F.3d 1310 (9th Cir. 1998); *Deal v. State Farm Cty. Mut. Ins*., 5 F.3d 117 (5th Cir. 1993); *Weary v. Cochran & Northwestern Mut. Life Ins*., 377 F.3d 522 (6th Cir. 2004) ("this Court has repeatedly held that insurance agents are independent

Issuing guidance suggesting that, regardless of the context or industry, a company's compliance with externally imposed legal obligations to "supervise" certain persons constitutes employer-type control would place insurers in the unenviable position of undermining their independent contractor business models or violating their legal and regulatory obligations.

Legislatures and administrative agencies have also consistently recognized that insurance companies may operate within the regulatory environment they have been dealt – including by maintaining detailed "supervision" policies applicable to agents to protect the public and the insurer – while operating under an independent contractor business model. They recognize that maintaining such compliance policies for affiliated insurance agents is not evidence of employment status.

For example, at the federal level, Congress added language to the IRC via the 1997 Taxpayer Relief Act to clarify that "**supervision for compliance with securities laws cannot be interpreted as control for the purpose of an employment relationship**." See Conference Report to Accompany H.R. 2014, Taxpayer Relief Act of 1997, Rpt, 105-220 at 457, 105th Congress (July 30, 1997). In doing so, Congress acknowledged the unique nature of insurance and financial services industries – where firms depend upon independent contractor business models while regulators simultaneously force them to exercise regulatory supervision of the agents with which they contract.

Courts around the country have made similar observations. As the District of New Jersey reasoned in *Walfish*, if promulgating rules to ensure regulatory compliance were sufficient to constitute an exercise of control, "**any business operating in a regulated industry would necessarily no longer be able to hire workers under an independent contractor relationship unless it was willing to risk regulatory non-compliance**." *Walfish*, 2019 WL 1987013 (D.N.J. May 6, 2019); *see also Chamberlain v. Securian Fin. Grp., Inc*., 180 F.Supp.3d 381 (W.D.N.C. 2016) (imposing regulatory and professionalism requirements over insurance agent is not control over how they render services); *Santangelo*, 2014 WL 3896323, at *9 (company does not exercise employer-type control merely by imposing rules to comply with statutory and regulatory requirements), aff'd, 785 F.3d 65 (1st Cir. 2015); *Taylor*, 2013 WL 435907, at *6 & n. 27 (compliance with FINRA and SEC restrictions did not suggest control over financial advisors).

The obligations imposed on insurers and broker-dealers by FINRA and state insurance regulators should not be considered a "degree of control" that points to a finding of employee status. That would be contrary to public policy and to the dozens of cases finding regulatory oversight is not indicative of employee status. If the Department adopts an interpretation that complying with legal obligations, including those created and imposed entirely by regulatory agencies, may be indicative of employer-type control, that would mean that insurers place their independent contractor business models and the independent status enjoyed by their agents potentially at risk simply by satisfying their regulatorily-mandated obligations. Such a dramatic, unwarranted shift in the FLSA landscape would disincentivize firms from enacting measures that may better protect the public and make it so licensed financial professionals are less willing to accept supervision over their business activities for fear of risking their independent contractor status.

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contractors, rather than employees, in a variety of contexts."); *Moore v. Am. Fam. Mut. Ins.*, 936 F.2d 575 (7th Cir. 1991); *Hennighan v. Insphere Ins. Solutions, Inc*., 38 F. Supp. 3d 1083 (N.D. Cal. 2014); *Santangelo v. N.Y. Life Ins*., 2014 WL 3896323 (D. Mass. Aug. 7, 2014), aff'd on other grounds, 785 F.3d 65 (1st Cir. 2015); *Walfish v. Northwestern Mut. Life Ins. Co*., 2019 WL 1987013, *7-8 (D.N.J. May 6, 2019); *Anyan v. N.Y. Life Ins*., 192 F. Supp. 2d 228 (S.D.N.Y. 2002), aff'd 68 F. App'x 260 (2d Cir. 2003); *Ruggiero v. Am. United Life Ins*., 137 F.Supp.3d 104 (D. Mass. 2015); *Walker v. Bankers Life & Cas*., 2008 WL 2883614 (N.D. Ill. Jul. 28, 2008); *Desimone v. Allstate Ins*., 2000 WL 1811385 (N.D. Cal. Nov. 7, 2000); *Taylor v. Waddell & Reed Inc.*, 2013 WL 435907 (S.D. Cal. Feb. 1, 2013), appeal dismissed, No. 12-55339 (9th Cir. Apr. 11, 2013); *Mehtani v. N.Y. Life Ins*., 145 A.D.2d 90 (1st Dep't 1989), app. den., 74 N.Y.2d 835 (1989); *Lockett v. Allstate Ins*., 364 F. Supp. 2d 1368 (M.D. Ga. Apr. 8, 2005); *Rose v. Northwestern Mut. Ins.*, 220 F.Supp.3d 363 (E.D.N.Y. 2016); *Holden v. Northwestern Mut. Fin. Network*, 2009 WL 440937 (E.D. Wis. Feb. 23, 2009); *Sofranko v. Northwestern Mut. Life Ins*., 2008 WL 145509 (W.D. Pa. Jan. 14, 2008); *Nixon v. Northwestern Mut. Life Ins*., 58 F. Supp. 2d 1269 (D. Kan. 1999); *Northwestern Mut. Life Ins. v. Tone*, 4 A.2d 640 (Conn. 1939).

To further the dual goals of maintaining regulatory compliance, protecting the public and agents (who benefits from the regulations), and to provide guidance consistent with existing precedent, the Department should – consistent with the federal DOL and other states and New Jersey precedent, recognize that following legal and regulatory requirements is not indicative of employment status. This comports with the numerous cases finding that regulatory supervision of insurance agents is not employer-type control, as well as the cases cited in the Proposal, none of which involve workers in highly regulated industries.

2. *The Prong B Interpretation in the Proposal Re-Writes Existing Law and Effectively Eliminates the Alternate Method of Satisfying Prong B*

The Proposal materially changes the "usual course of business" analysis and effectively eliminates the "outside the company's places of business" factor, neither of which comports with existing law. On the first issue, the Proposal fails to account for the fact that regulations mandate that insurance agents affiliate their independent insurance practices with licensed insurers and broker-dealers. By law, no matter how established their businesses may be or how independent they are, agents cannot operate entirely on their own, unattached to a regulated insurer or broker-dealer. Because insurance agents are required to affiliate with licensed insurance companies that derive revenue from insurance premiums, the Proposal's new and unprecedented Prong B interpretation would effectively prevent having independent contractor insurance agents.

Expanding the definition of the company's "usual course of business" to include any activities that generate revenue or develop, produce, sell, market, or provide goods or services would also be a significant departure from prior New Jersey decisions. This includes the *Walfish* decision, which recognized that the services of an insurer (designing, developing and supporting insurance and financial products) are distinct from the services of an insurance agent (prospecting for clients and selling suitable insurance and financial products). The Proposal portends a different result. Regardless of all other facts, if an agent sells a product from which the company (with which he is legally required to affiliate) generates revenue, that would seemingly be determinative of Prong B. This will dismantle and preclude the use of the long-standing independent contractor business models used by insurers and agents in New Jersey for nearly 100 years. But the New Jersey Department of Banking and Insurance (DOBI) has not outlawed that model. To the contrary, its rules and regulations continue to expressly recognize that producers can be independent contractors.

The Proposal would also effectively eliminate the alternate method of satisfying Prong B that has been part of New Jersey jurisprudence for years – showing that the work was performed outside the company's places of business. Insurance agents typically meet with clients at clients' homes, places of business or at neutral locations at the client's request. They may also perform some administrative work at their own offices, over which companies are required to have some regulatory oversight. Those are hallmarks of independent contractor status. Companies do not compel insurance agents to perform work at customer homes or offices, neutral locations or elsewhere. Likewise, agents are not required to report to company offices and work from there. As a result, the external locations where agents choose to perform services have long been recognized as outside of the company's place of business. *See, e.g., Walfish,* 2019 WL 1987013 (D.N.J. May 6th, 2019). As drafted, the Proposal expands the interpretation of a company's "places of business" to effectively include any location where the worker performs services. This would also be a significant and unwelcome shift in the law.

There is no reason to depart from the existing law or to eliminate the outside of the company's places of business concept by creating a fiction that the place services are performed (by choice) is necessarily the company's place of business.

3. *The Prong C Interpretation Is Unduly Dismissive of Key Indicators of Independent Business Operation, Ignores That Laws May Not Permit Workers to Set Rates of Pay and Would Discourage Entrepreneurship*

ACLI similarly views the Department's Prong C discussion of factors to be considered when determining the existence of an independent business, trade or profession as highly problematic in the context of the insurance industry. Specifically, the Proposal identifies facts that have long been hallmarks of independence

– freedom to work for others, actually working for others, licensure, incorporation, separate insurance, etc. – as not being sufficient to satisfy Prong C. That is a wholesale re-writing of existing law.

Moreover, the focus on the "duration, strength, and viability of the individual's business" makes no sense in the insurance industry. For example, under the Proposal, if an agent just started her business and contracted with her first customer, the agent and the company with which she was appointed would be unable to show that the worker's business existed for a long duration or is strong and viable for the long term. By contrast, if a company contracted with that same agent two years later, after the worker developed a large client base and a defined infrastructure for her business, the company may be able to satisfy Prong C. Yet it is the same agent, the same type of engagement and the same services being rendered to customers. The fact that the worker has been in business longer or had success procuring other clients says nothing about whether the worker is actually engaged in an independently established business for Prong C purposes. Also, maintaining such a standard would discourage entrepreneurship as companies would be reluctant to engage contractors with fledgling businesses for fear of misclassification risk. That would harm, not help, workers in a state with already too few insurance agents.

Also relevant to the insurance industry, insurance agents have the discretion to develop their insurance practices as they see fit. Some may choose to focus on a single market and the sale of a single product and others may develop diverse practices serving multiple markets and selling a variety of products. The products they sell, and the revenue they generate from different companies, depends upon their clients' needs, not on any mandate imposed by any insurance company. It could be that at a particular point in time the term life insurance product of one insurance company is the best product for all of the clients that an agent serves. The fact that those client purchases will result in a disproportionate amount of the agent's remuneration coming from one company should not weigh in favor of employee status. A snapshot of historical sales is a misleading indicator of the agent's independent business.

Further, the Proposal considers whether the worker sets their own rate of pay. For good reason, insurance and financial services regulations do not allow agents to set their own commission rates or the premium rates for insurance products. Insurance regulations, including New York Insurance Law § 4228 (which applies extraterritorially in New Jersey), set strict limits on the commissions that insurers can pay to agents. Commission plans must be submitted to, and approved by, insurance regulators, and agents are, by law, unable to negotiate or change their commission structure. Understanding why this prohibition exists is critically important. Insurance agents sell financial commitments backed by the insurer, which the insurer must be able financially to honor and pay. To ensure this financial viability, prices for life insurance and financial products are determined by firms based on a wide array of actuarial and financial assumptions and projections and in accordance with regulatory considerations (reserving, loss ratios, etc.).[19] This ensures that funds exist to pay the claims of insureds and that all of the premiums that are paid are not simply turned over to the agents in the form of commissions. For that reason, neither insurers nor insurance agents have unlimited discretion to adjust prices however they see fit.[20]

Consistent with the requirement of financial solvency, insurance agents and advisors are not permitted to dictate the price of the products that they sell on behalf of firms, and they are legally prohibited from "rebating"

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[19] Insurance pricing is also subject to state anti-discrimination laws while numerous states directly regulate insurance rates for property & casualty products such as homeowners' and auto insurance.

[20] In the early 1900s, in a largely unregulated environment, a number of insurance companies unwisely sought to compete for agents and market share by paying exceedingly high commissions to agents. When one company was nearly bankrupted by these practices, a commission was convened to review the insurance industry and recommend how it could be regulated to protect the public from insurance company failures. Mayerson New York Allen Mayerson, A New Look at the New York Expense Limitation Law, 8 Transactions of Society of Actuaries 258-59 (1956). One result was the enactment of a New York Insurance Law (now N.Y. Ins. Law § 4228) which imposes substantial limits on the expenses insurance companies can incur in connection with the sale of life insurance products and annuities, both on an aggregate company-wide basis and with respect to the compensation of individual agents. *Id.* at 259. As a result, § 4228, which protects tens of millions of insurance policy holders, regulates all insurance companies "doing business in this [New York] state." Ins. Law N.Y. Ins. Law §§ 4228(a) and (h).

any commissions earned from those sales. That effectively bars them from getting involved in, or setting, prices. Given these central features for distributing insurance products and protecting the solvency of insurance companies, using an agent's capacity, or lack thereof, in setting prices would contravene public policy, applicable law (*see, e.g.*, NYS Ins. Law Section 4228) and the factors, history, and longstanding understanding of the independent contractor analysis in the insurance industry.[21] Accordingly, the Department should eliminate whether the worker can meaningfully negotiate the price or pay for the services from the list of potentially relevant facts, at least as applied in the insurance context.[22]

4. *Diminishing the Probative Weight of the Contract Terms Is Contrary to Law and Ignores That Industry Regulations May Not Permit Individuals to Set Their Own Contract Terms*

While we agree that the mere labeling of a worker as an independent contractor under the worker's agreement with the company cannot be dispositive of independent contractor status, the Proposal goes well beyond that general tenet – suggesting that the Department will be dismissive of the terms of the parties' agreement if the company is the primary drafter of the contract, the terms are not negotiable, the company reserves the right to modify any term of the agreement or the parties may choose to terminate the contract during its term. Such guidance is at odds with existing caselaw recognizing that the terms of the parties' agreement is significant evidence of the parties' intent to create a contractor or employee relationship and the degree of control at issue. It is also contrary to Prong A of the ABC Test, which focuses on whether the worker is "free from control or direction over the performance of work performed, both ***under the contract of service*** and in fact." On its face, the Prong A confirms that the contract terms matter and those terms should be afforded significant weight in the independent contractor analysis.[23]

What's more, requiring every company to individually negotiate contract terms with every contractor it engages, eliminating the ability to modify the terms of those contracts, and forcing contractors to serve as the primary drafters of the contractor agreements they sign would be impracticable and harmful to businesses and workers. Relevant to the insurance industry, certain contract terms are required by regulation and it is impracticable and unreasonable to impose upon an individual agent the obligation to draft compliant contracts that address, *inter alia*, the nuances of each company's approved commission plans and regulatory supervision programs. The mere fact that the company is the primary drafter or that it reserves the right to modify the contract terms should not decrease the probative weight of the contract terms.

### *D. The Department's Economic and Jobs Impact Analyses Is Inadequate and Flawed*

The Administrative Procedure Act (N.J.S.A. 52:14B-1) states that administrative agencies must conduct a cost-benefit analysis and assess the jobs impact to New Jersey's economy when adopting, readopting, or amending any rule or regulation.[24] The Proposal fails to satisfy these statutory requirements.

The Economic Impact section describes, but does not quantify, the expected impact of the Proposal on employers and workers. It stresses that post-rule, companies would no longer "run the risk of incurring unnecessary expenses related to assessments for unpaid contributions, unpaid wages, and penalties levied by the Department for violations of the law and rules." No analysis, data, or citations are provided, however, to establish that companies actually incur "unnecessary expenses related to assessments," and no theory or data are offered to demonstrate how more burdensome and imposing regulation will lower the risk of employer

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[21] Lest the Department think that N.Y. Ins. Law § 4228 applies only in New York, that is not the case. It applies in every state in which an insurance company operates if that insurance company also operates in New York without doing so through a separate, stand-alone entity.

[22] To the extent that the Proposal suggests control over pricing should also be considered as part of the control factor, ACLI has the same concerns.

[23] Indeed, when the IRS analyzes the status of statutory agent independent contractors in the insurance industry it is the intent of the parties, as expressed in their contract, that is dispositive. *See* IRS Technical Guidelines for Employment Tax Issues, Exh. 4.23.5-4 at https://www.irs.gov/irm/part4/irm_04-023-005r#idm139861992316320.

[24] *Supra,* note 2.

non-compliance. No other benefits, costs, or employer impact is discussed. Employer homogeneity is implicitly assumed, suggesting that insurers, ride-sharing services, law firms, and lawn service companies, all follow similar business models and would be equally (positively) impacted. Such an assumption greatly simplifies the analysis, but it also ignores the reality that different industries and sectors will be impacted in different ways, as will their workers and customers. Importantly, numerous negative unintended consequences will likely arise at the sector level and none are considered, analyzed or discussed. As just one example, the Proposal makes no mention of the likely departure of tens of thousands of jobs from the state if independent producers and insurance companies decide they cannot survive under an employee model. This needs to be addressed.

The Economic Impact analysis appears to conclude that there are no costs associated with the Proposal, only a positive impact on employers and workers, and that no other individuals will be impacted. In fact, the only mention of "cost" is in the section entitled Housing Affordability Impact Analysis, which concludes that there will be no impact on the cost of housing. All firms that reclassify any of their contractors as employees, or firms that are forced to change their business model, will incur at least some cost – compliance, administrative, operational, and/or efficiency. This will differ by sector, firm, and number of contractors the employer is forced to reclassify. The Proposal considers none of this.

The Proposal states that workers would benefit from proper classification as employees because they would have access to various benefits, and that there would be "no impact on either the generation or loss of jobs". But as explained above, some independent contractor agents already have access to these benefits. Moreover, like all employee compensation, employer-sponsored benefits impose a cost on employers. Because employers who reclassify will face higher costs, some may choose to reclassify only a fraction of their former contractors as employees. Former contractors who are not reclassified will be forced to pursue employment elsewhere, typically for a lower wage, or will drop out of the labor market.

The severe economic harm the Proposal presents is not theoretical; it actually occurred when a similar restrictive ABC test, commonly known as Assembly Bill 5 (AB5), was implemented in California.[25] Notably, licensed insurance agents and financial professionals were among the occupations the law originally exempted. However, the law *initially*[26] covered most occupations within the state's economy.

Economic experts at the Mercatus Center studied the employment outcomes that AB5's worker reclassification policy had on covered occupations. They found AB5 did not simply alter the composition of the workforce as intended by policymakers. Instead, AB5 resulted in a significant decline in self-employment and overall employment in California:

- Self-employment decreased post-AB5 by 10.5 percent on average for affected occupations.
- Overall employment decreased post-AB5 by 4.4 percent on average for affected occupations.
- AB5 did not necessarily lead to the hoped-for growth in traditional employment.[27]

These same economic experts subsequently published "the first causal analysis of state ABC test laws on labor market outcomes."[28] by examining nine states that utilize ABC tests, including New Jersey's current

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[25] California State Legislature, "Assembly Bill No. 5: Worker Status: Employees and Independent Contractors," September 2019, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5.

[26] The California Assembly passed legislation within the first year of enactment to further exempt other occupations initially covered. Today, over 100 occupations are statutorily exempted from the state's restrictive ABC test.

[27] Liya Palagashvili, Paola A. Suarez, Christopher M. Kaiser, and Vitor Melo, "Assessing the Impact of Worker Reclassification: Employment Outcomes Post–California AB5," January 2024, https://www.mercatus.org/media/170201. Summary of publication can be found here, https://www.mercatus.org/media/170216

[28] Liya Palagashvili and Revana Sharfuddin, "New Study: From Gig to Gone? ABC Tests and the Case of the Missing Workers," January 2025, https://liyapalagashvili.substack.com/p/new-study-from-gig-to-gone-abc-tests; *See also,*

law.[29] Importantly, none of these states' ABC tests are as restrictive as what the Proposal presents. Key findings from the study include:

- The introduction of an ABC test caused significant declines in traditional (W-2) employment, self-employment, and overall employment.
- The ABC test reduced traditional (W-2) employment by 4.73 percent.
- Self-employment fell by 6.43 percent.
- Overall employment fell by 4.79 percent.
- Occupations with higher shares of independent contractors experienced the largest reductions in employment.

The authors note, "These results suggest that contrary to the intended goal, ABC tests are not just altering the composition of workers and leading to more workers becoming traditional W-2 employees, but they are reducing employment for both W-2 employees and self-employed workers.[30]

Economic data from NERA illustrates the costs and jobs impact a more restrictive ABC test will have on New Jersey's financial and insurance services industry.[31] Specifically,

- Independent contractor-led businesses employ approximately 25 percent of employees in the financial and insurance services industry in New Jersey.
- Between 2015-2022, independent contractor small businesses with at least one employee created approximately 8,240 new jobs in New Jersey.
- Independent contractor-operated financial advisor firms and insurance agencies account for approximately 18.6 percent ($1.5 billion) of the annual output of the financial and insurance services industry in New Jersey.

NERA notes its estimates are conservative, in part, because its research fails to capture sole proprietor independent contractors in the insurance/financial services industries. NERA found, "limiting or prohibiting independent contracting would severely disrupt these businesses and eliminate many of these jobs."

The Proposal fails to provide even the most basic of analyses and ignores all of these directly applicable studies. There is no estimate of the number of independent contractors it even purports to cover. The U.S. Department of Labor estimates there are 22.1 million independent contractors nationwide, acknowledging this "could be an underestimate" based on the range of estimates available.[32] The U.S. Bureau of Labor Statistics found, "As in prior surveys, independent contractors overwhelmingly preferred their work arrangement (80.3%)", with only 8.3 percent preferring a traditional work arrangement.[33] Such consistently strong preferences among millions of independent contractors highly suggests that the Proposal's effect of mass reclassification would result in economic and political turmoil, and an exodus of jobs from the state, as evidenced elsewhere.

In this way, the Proposal will impose significant costs on New Jersey's workers, consumers, and economy. No other state has embraced the restrictive ABC Test interpretation that is so weighted towards a conclusion

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Liya Palagashvili and Revana Sharfuddin, "The Impact of ABC Tests on Labor Markets," July 2025, https://www.mercatus.org/research/policy-spotlights/impact-abc-tests-labor-markets.

[29] *Id.*

[30] *Id; See also,* Liya Palagashvili and Revana Sharfuddin, "The Labor Market Effects of Codifying the New Jersey ABC Test," August 4, 2025, (concluding on page 6, "The empirical evidence strongly suggests that codifying NJDOL's interpretation of New Jersey's ABC test would" cause similar outcomes.), https://www.mercatus.org/research/public-interest-comments/labor-market-effects-codifying-new-jersey-abc-test.

[31] *Supra,* note 2 (NERA Appendix).

[32] Employee or Independent Contractor Classification Under the Fair Labor Standards Act (RIN 1236-AA43) 89 Federal Register 1638 (January 10, 2024), https://www.federalregister.gov/d/2024-00067.

[33] *Supra*, note 5.

of employee classification for insurance producers as that contemplated by the Proposed Rules. The experiences of other states and the New Jersey legislature bear out the wisdom of retaining the long-standing independent status of insurance producers and financial professionals in New Jersey.

## III. **Conclusion**

Licensed insurance agents and independent licensed financial advisors are vital to ensuring that thousands of New Jersey residents have access to important financial protection benefits. These independent professionals are deeply rooted in their communities and are best positioned to understand consumers' needs. Issuing guidance that could potentially force them into an employment relationship drastically limits not only their chosen livelihoods, but the availability of diverse products from multiple companies that benefit clients. In real terms, the less private sector guarantees, benefits, and investments that the life insurance industry provides means more burdens on taxpayers and the State to fill the gap created by such legal uncertainty. Of more immediate relevancy, the Proposal is fundamentally flawed because it fails to include references to critical statutory and case law that is specifically applicable to insurance producers and fails to adequately assess the negative jobs impact on New Jersey's economy. These omissions compel withdrawal of the Proposal.

If the Department determines to move forward with this rulemaking, ACLI urges the Department to exempt licensed insurance producers, agencies and carriers from the Proposal. Modernization of this interpretation should no longer distinguish between compensation forms (commission, fee and other).

On behalf of the ACLI member companies, thank you for your consideration of these comments. We hope our suggested changes will be fully considered. Please feel free to contact either ACLI Vice President and Senior Associate General Counsel David Leifer (David.Leifer@acli.com, 202.624-2128) or ACLI State Regional Vice President Vincent Ryan (Vincent.Ryan@acli.com or 202.624-2452) with any questions regarding ACLI's comment letter.

Sincerely,

David Chavern
President & CEO