



Electronically Submitted to david.fish@dol.nj.gov

August 6, 2025

David Fish, Executive Director
Department of Labor and Workforce Development
P.O. Box 110, 13th Floor
Trenton, NJ 08625-0110

Re: Proposed New Rules: N.J.A.C 12:11, ABC Test; Independent Contractors

Dear Mr. Fish:

On behalf of our members, the Insured Retirement Institute (IRI)¹ writes in opposition to the proposed amendments to N.J.A.C 12.11 (the "Proposal"). Our members have strong concerns with the Proposal and its impact on the retirement income industry and the annuity marketplace. The Proposal would change the standard for "independent contractor" status, which would have a significant, negative impact for: (1) New Jersey consumers; (2) independent insurance producers and financial advisors; and (3) the retirement income and annuity industry as a whole in New Jersey. As such, we urge the Department to exempt securities and insurance financial professionals from this new proposed standard and any potential final rule.

Changing the standard for "independent contractor" status via changes to the regulations will create significant, unintended negative consequences on the retirement income industry and the annuity marketplace, and ultimately for consumers.

Financial services companies and insurers who offer solutions to help Americans save more for retirement, and create sustainable, lifetime income from their savings, are critical to helping Americans manage their needs and risks. The need for insured retirement products and solutions is arguably greater than ever as Americans are living longer, health care costs continue to increase, and fewer Americans are covered by traditional pension plans and the age to receive full Social Security benefits has increased. Annuities are one example of an important product

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.

that can help provide Americans with protection during their retirement by providing a guaranteed stream of income during retirement. Annuities can provide many benefits to consumers, and it is crucial that consumers have access to these products, so that they can achieve their financial goals and have a dignified retirement.

NERA Economic Consulting recently released an appendix² on the economic impact of limiting or prohibiting the use of independent contracting in the financial and insurance services industry in New Jersey (“New Jersey Appendix”). This appendix builds on research results from the 2022 NERA white paper “The Role of Independent Contractors in the Finance and Insurance Sectors”.³ The New Jersey Appendix outlines the following findings of note:

- Independent contractors own and operate approximately 2,323 financial and insurance services firms with at least one employee in New Jersey. These independent-contractor-led firms employ approximately 6,300 people or 25 percent of employees in the financial and insurance services industry in New Jersey. Limiting or prohibiting independent contracting would severely disrupt these businesses and eliminate many of these jobs.
- Between 2015 and 2022, independent contractor small businesses with at least one employee in the financial and insurance services industry created approximately 1,802 new establishments and 8,240 new jobs in New Jersey, all or most of which would not have existed if independent contracting were prohibited or made unavailable as a practical matter due to overly restrictive regulatory requirements.
- 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. Reducing the supply of these small businesses would harm consumers, including by reducing financial literacy and harming their ability to accumulate wealth and save for retirement, especially low- and moderate-income households who would no longer benefit from these services.

Many annuities are sold by independent insurance producers or through independent broker-dealers and their affiliated independent financial advisors. Those operating independently in our industry value independence, flexibility, and the opportunity to build a business and generate wealth. Allowing these financial services professionals to continue to be independent, and not employees of a particular company, also ensures that consumers have the greatest possible

² Appendix: *The Economic Impact of Independent Contractors in the Financial and Insurance Services Industry in New Jersey*, NERA Economic Consulting (July 2025)

(https://www.nera.com/content/dam/nera/publications/2025/New_Jersey_Appendix.pdf)

³ Jeffrey A. Eisenach, Robert Kulick, & Elizabeth Newlon, *The Role of Independent Contractors in the Finance and Insurance Sectors*, NERA Economic Consulting (November 2022) (available at <https://www.nera.com/experience/2022/the-role-of-independent-contractors-in-the-finance-andinsurance.html?lang=en>)

access to the broadest range of policy and product options. The ability of financial professionals to provide flexibility and choice for the families they serve is critical to financial security, especially in underserved or financially insecure communities. Potentially forcing individuals into an employment relationship will drastically limit their autonomy and impact the selection and availability of products they can provide their clients.

Some of the specific concerns with the prongs of the ABC test in the proposal are as follows:

- 1) The Prong A interpretation in the Proposal fails to account for regulatory-required supervision, which suggests that even the reservation of the right to control through the promulgation of compliance policies would be viewed as employer-type control. The rules also note that the inability of the worker to set prices or rates of pay (an impossibility in the insurance or securities sales context) suggests that the worker is subject to employer-type control.
- 2) In Prong B, the Proposal does not take into consideration the fact that regulations require agents and financial representatives to associate with insurers and broker dealers, and they very broadly define the company's usual course of business to include activities that it regularly engages in to generate revenue or develop, produce, sell, market or provide goods or services. That suggests a departure from prior decisions in New Jersey finding that insurance sales are not necessarily within the usual course of an insurer's business as a manufacturer of a product versus a sales organization. Additionally, the broad definition of what constitutes an employer's "usual course of business" would sweep in financial professionals and affect their ability to continue operating independently.
- 3) The Prong C analysis in the proposal focuses on the amount paid by the company to the worker as compared to amounts paid by other companies to the worker and whether the workers can set their own rate of pay. It also includes a list of facts that will not necessarily satisfy Prong C, including: (i) the worker having multiple employers, (ii) working full or part time for another entity; (iii) professional licensure; and (iv) proof of business registration. All of those examples previously/currently would help show independent contractor status for financial professionals selling the products of multiple companies.

Overall, a change in status for these individuals will upend the business model and limit access to products and choice of advisors specifically for New Jersey residents. Many financial professionals offer products from a variety of companies and treating them as independent contractors benefits consumers by enhancing the availability, accessibility, and affordability of annuities. When a financial professional can act as an independent contractor, they can present a consumer with a variety of options to ensure that they can make a recommendation that best meets a particular consumer's financial situation and needs.

If financial professionals are no longer consistently considered to be independent contractors and forced to become either an employee of an insurance company or broker-dealer, this will ultimately have a negative impact on those financial professionals' livelihoods, IRI member companies, and ultimately, a consumer's ability to choose. It's also important to note that, if there are concerns about workers' access to certain benefits that are typically unavailable to contractors, the Internal Revenue Code ("IRC") directly allows eligible financial professionals to retain independent contractor status while receiving certain benefits made available by some insurers to their agents. Known as "statutory employees", qualifying agents can participate in health and welfare and retirement plans typically reserved for employees, report income and deduct business expenses on a Schedule C and have the company with which they contract pay the Federal Insurance Contribution Act (FICA) taxes on their behalf, while retaining their independent contractor status. Relying on that special status afforded by Congress and the U.S. Internal Revenue Service (IRS) to full-time independent contractor financial professionals under I.R.C. § 3121(d)(3)(B), some firms primarily or solely use a statutory employee model to engage these independent agents to distribute their life and annuity products.

If this proposal moves forward as is, New Jersey will become an outlier, and New Jersey consumers may lose access to products and their choice of producer. Even California, when they enacted AB 5 in 2019, exempted persons or organizations licensed by the insurance department and securities broker-dealers, investment advisers, and their agents and representatives from the new "ABC" test⁴. The proposed rule's new interpretation of the ABC Test effectively makes New Jersey's test akin to the law in California, which had proven to be highly restrictive and detrimental to the flexibility and autonomy of independent contractors. In response, changes to the law were subsequently made to expressly carve out producers in the insurance and financial services industries from the California test, and those changes have been critical to the local economy there. Those same carveouts should be part of New Jersey's approach from the outset, and not just a later reaction to the inevitable negative consequences of a rule implemented without recognition of unique circumstances.

An exemption for insurance and securities financial professionals is appropriate to avoid disruption to the retirement income industry and the annuity marketplace in New Jersey.

If the Department decides to move forward with the Proposal, we urge you to include an exemption broad enough to ensure that the current independent contractor status of many in the financial services industry can remain intact, and we suggest that the following language be included in the rule:

An individual shall not be regarded as an employee for the purposes of this section if the individual is a broker-dealer or investment advisor, or their agent or representative,

⁴ Section 2750.3(b)(1) and (4) (https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5)

registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority, or licensed by the New Jersey Bureau of Securities under the “Uniform Securities Act” (C.49:3-47 et seq.), a producer or insurance agent licensed by the New Jersey Department of Banking and Insurance under the “Insurance Producer Licensing Act” (C.17:22A-26, et seq.), or if the individual satisfies the requirements to be exempt from being deemed to be in employment as set forth in R.S.43:21-19(i)(7)(J).

While we understand that the New Jersey Unemployment Compensation Act already has an existing exemption for licensed insurance producers and agents of broker-dealers in the sale of securities from the application from the definition of “employee” for unemployment purposes, it’s unclear if this previous exclusion would apply in a context of a new ABC test. To avoid ambiguity and ensure clarity on these important issues, we strongly urge the Department to include the exemption language above. Others in the industry may be asking for relief in a different form than an exemption, but ultimately the most important thing is that there is certainty that financial professionals will not lose their independence.

Overall, our primary concern is that this proposed regulation will result in fewer independent contracting opportunities within the financial services sector and will make licensed financial professionals worse off, while also harming New Jersey residents’ ability to access products and save for retirement. As such, we urge the Department to ensure any proposal and any final rule provides sufficient clarity and is carefully tailored to avoid hurting those who benefit from the opportunity of working as and with independent financial professionals.

Thank you for your consideration of these comments, and please do not hesitate to reach out with questions or if additional information is needed.

Sincerely,

Sarah E. Wood

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Insured Retirement Institute
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