October 10, 2017

The Honorable Jeb Hensarling
Chairman
U.S. House Financial Services Committee
2221 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
U.S. House Financial Services Committee
4340 Thomas P. O'Neill Jr. Federal Office Building
Washington, DC 20024

Re: H.R. 3857, the PASS Act, and H.R. 3758, the Senior Safe Act.

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the National Association of Insurance Commissioners (NAIC),[1] we write to express our opposition to H.R. 3857, the "Protecting Advice for Small Savers (PASS) Act" and our support for H.R. 3758, the "Senior Safe Act."

The "PASS" Act (H.R. 3857)

The NAIC opposes the PASS Act as currently drafted. The PASS Act would unnecessarily preempt state insurance laws that are designed to protect insurance consumers. Congress has repeatedly affirmed the primacy of state insurance regulation, including in Section 989J of the Dodd-Frank Act with respect to the regulation of fixed indexed annuities. We therefore urge that the committee amend the PASS Act to remove these preemptive provisions as we continue to coordinate with the Securities and Exchange Commission (SEC) and the Department of Labor (DOL) to review and make any appropriate changes relating to the standard of care for the sales of products that we respectively regulate.

For nearly 150 years, state insurance regulators have sought to protect, educate and empower consumers as they make important decisions to provide for their retirement security. The states have not only acted to implement a robust set of consumer protection and education standards for annuity and insurance transactions, but have extensive enforcement authority to examine companies, and revoke producer and company licenses to operate, among other powers. Such authority allows state regulators to identify market issues and take the appropriate regulatory action swiftly and effectively when warranted. States also have specific laws and regulations that companies, agents, and brokers selling annuities must comply with in order to ensure the suitability of the annuity for the consumer. Much of this framework is based on NAIC model regulations that were developed in close coordination with the Financial Industry Regulatory Authority (FINRA).

[1] Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

EXECUTIVE OFFICE • 444 North Capitol Street NW, Suite 700 • Washington, DC 20001-1509 p | 202 471 3990 f | 816 460 7493
CENTRAL OFFICE • 1100 Walnut Street, Suite 1500 • Kansas City, MO 64106-2197 p | 816 842 3600 f | 816 783 8175
CAPITAL MARKETS & INVESTMENT ANALYSIS OFFICE • One New York Plaza, Suite 4210 • New York, NY 10004 p | 212 398 9000 f | 212 382 4207

Notwithstanding the existing rules, we acknowledge that there is broad consensus among widely disparate groups for an updated and consistent standard for providing personalized investment advice to retail investors. Accordingly, we have been working to update our suitability standards for life insurance and annuities. State insurance regulators, the SEC, and the DOL each have an important role in the administration and enforcement of standards for retirement plans and products within their jurisdiction, and we are committed to coordinating with the SEC and the DOL to seek to harmonize our approaches.

However, it is important to recognize that neither the DOL nor the SEC nor FINRA have nearly the same scope of authorities over the entities we regulate and their conduct. Not only do we take issue with the legislation's preemption of state insurance law, but it is also inappropriate for any of those agencies to be given carte blanche authority to implement a preemptive statutory standard that state insurance regulators are then required to implement, and try to fit within of our own, broader regulatory regime. We respectfully ask that the committee remove the provisions that preempt state insurance law contained within the PASS Act as they are unnecessary and undermine our regulation that has protected insurance consumers for nearly 150 years.

<u>Senior Safe Act (H.R. 3758)</u>

The NAIC supports the Senior Safe Act and appreciates the leadership of Representatives Sinema and Poliquin to increase identification and reporting of suspected senior financial exploitation. Older adults in our country lose an estimated $2.9 billion annually from financial exploitation, and these losses can result in a diminished quality of life for those who fall victim to such exploitation. State insurance regulators share your commitment to protecting seniors from financial exploitation. State and federal officials entrusted with the responsibility of protecting consumers must remain vigilant in their oversight. That is why a key component of the NAIC's Retirement Security Initiative is ensuring consumers have clarity and transparency into the insurance products they are being offered, that the products are suitable for their needs, and that bad actors do not undermine efforts to address lifetime income and retirement security challenges.

Thank you for your consideration of our views, and we look forward to continuing to work with you on these important issues.

Sincerely,

Julie Mix McPeak

Theodore K. Nickel
NAIC President
Commissioner
Wisconsin Office of the
Commissioner of Insurance

Julie Mix McPeak
NAIC President-Elect
Commissioner
Tennessee Department of
Commerce & Insurance

Eric A. Cioppa
NAIC Vice President
Superintendent
Maine Bureau of Insurance

Raymond G. Farmer
NAIC Secretary-Treasurer
Director
South Carolina Department of Insurance

Michael F. Consedine
Chief Executive Officer
National Association of Insurance
Commissioners