



Read GovTalk online at [www.naifa.org/govtalk](http://www.naifa.org/govtalk)

July 1, 2008

Vol. 1, No. 12

- **SEC Issues Proposed Rule to Classify Most Indexed Annuities as Securities, Plans to Move on 12b-1 Fees This Summer**
- **Tax Issues Unresolved as Congress Heads Home for July 4 Recess**
- **NAIFA Asks Its Members to Ramp Up Grassroots Efforts During the Upcoming Congressional Recess**
- **FTC Finalizes Commercial Email Regulations**
- **Louisiana Becomes the Latest State to Join the Interstate Compact**
- **IFAPAC Contributor Matching Program Inspires Similar Ventures**
- **NAIFA-AHIA Asks Its Members to Oppose H.R. 6331 Medicare Advantage Cuts**
- **NAIFA's July GovPod Explains NAIFA's Recommended Conditional Support for an OFC**
- **NAIFA Encourages Members to Join IRR Email Forum**
- **Life Insurance Awareness Month Resources Now Available**
- **Meet Your NAIFA Government Relations Staff: Ron Panneton**
- **Did You Know?**

---

## **SEC Issues Proposed Rule to Classify Most Indexed Annuities as Securities, Plans to Move on 12b-1 Fees This Summer**

Acting in response to concerns about allegedly abusive sales practices used in selling indexed annuities to seniors, the SEC on June 25 issued a new proposed rule (SEC Release No. 33-8933) that would classify indexed annuities as securities under certain circumstances. The proposal would accomplish this by revising several of the definitions in Section 3 of the Securities Act of 1933. Specifically, certain indexed annuities would no longer be defined as "annuity contracts" that fit within the insurance products exemption from coverage under the Act if the amounts payable under the contract are likely to exceed the amounts guaranteed under the contract. Comments are due to the SEC by September 10, 2008.

The release of this proposal came as no surprise; the SEC has been examining this issue for several years, and earlier this summer SEC Chairman Christopher Cox stated that in the near future "we'll consider a proposed rule to deal with the longstanding investor protection issue of equity indexed annuities, and when they should be treated as securities". Also, in 2005 FINRA (then the NASD) issued its Notice to Members 05-50, which strongly advised its member broker-dealers to supervise and run all indexed annuities transactions through the broker-

dealer, despite the fact that neither the SEC nor the Congress had declared these products to be securities.

In response to the SEC announcement, NAIFA issued the following statement: "The relationship between insurance products and the securities laws is an issue of ongoing interest to NAIFA and its membership. The SEC initiative announced at the June 25 SEC Open Meeting will be carefully reviewed by NAIFA's Policy Formation Subcommittee and Board of Trustees. At the appropriate time NAIFA will decide whether to take a position on and submit comments to the SEC with respect to the initiative." NAIFA is in the process of reviewing the lengthy (almost 100 pages) proposed rule and will begin the process of considering a position and possible response when the Policy Formation Subcommittee meets to discuss this issue in July.

On another matter of concern to NAIFA and its members, Chairman Cox also reiterated in a recent speech in Washington, D.C. that "The Commission will also formally consider amendments to overhaul or abolish 12b-1 fees, which have befuddled mutual fund investors for so long." NAIFA has been on top of the 12b-1 issue since it first surfaced at the SEC almost a year ago, and we have filed extensive comments with the SEC defending the use and payment of these fees as being the most efficient way to provide expert investment advice to mid-level investors. We will continue to monitor developments on this issue and respond in an appropriate manner if and when the SEC issues a formal proposal.

**NAIFA Staff Contact:** Gary Sanders, Senior Counsel for Law and Government Relations, 703-770-8192.

## **Tax Issues Unresolved as Congress Heads Home for July 4 Recess**

The U.S. House and Senate have recessed for the July Fourth Home District Work Period. Members of both bodies will return to the Capitol the week of July 14. Upon their return, the lawmakers will resume work on renewing or extending a package of tax provisions that have expired, in addition to adjusting the Alternative Minimum Tax. "Pay as you go" budget rules make it imperative that NAIFA pay close attention to developments in both arenas. So far neither bill contains insurance "pay fors."

Trying to piece together and pass both the "extenders" tax package and a "patch" for the Alternative Minimum Tax has proven very difficult. Congressional leaders had penciled in completion of both by the July 4 recess. But, the "pay as you go" budget rules reestablished by Congress in January 2007 have proven difficult to enforce—leading to fractious debate. Adding heightened election year political hype to normal partisan passions has made for slow going. But, political and economic realities make it almost inevitable that Congress will ultimately pass both. The only question is when.

### **Tax Extenders (HR 6049)**

The House passed its version of an extenders package in May but it is still pending in the Senate. H.R. 6049 contains three dozen provisions that are very important to many businesses and individuals such as the credit that businesses get for research and development costs.

H.R. 6049 contains two provisions of interest to NAIFA members. First, is a re-instatement of the authority to make a direct, tax-free gift from an IRA to a charity. This tax law expired December 31, 2007. The bill also contains a reinstatement of the \$100/day penalty tax on

employers who provide health insurance plans for their employees that violate federal mental health parity rules.

H.R. 6049 is controversial for two reasons. First, the costs of extending the tax incentive package are offset by new or increased taxes applied elsewhere. Second, is the selection of the offsets chosen. One offset would prohibit preferential tax treatment for nonqualified deferred compensation (NQDC) arrangements for certain hedge fund (and other investment) managers whose NQDC accounts are in offshore "tax haven" countries. A second offset would delay for nine years an international tax law rule scheduled to go into effect next year that allows allocation of worldwide investment income. The House extenders bill does not contain the "patch" for the individual alternative minimum tax.

### **Alternative Minimum Tax (H.R. 6275)**

The House passed a fully offset AMT patch bill June 26, while the issue remains pending in the Senate. The bill would shield approximately 25 million middle-income taxpayers from being hit by the AMT. But in preventing the tax hit from taking place, the bill would "cost" the federal government \$62 billion in lost tax revenue in 2008. The "pay as you go" budget rules require that \$62 billion loss to be made up elsewhere.

The primary "elsewhere" in the House bill is a provision that re-characterizes earnings, called "carried interest," of certain investment fund managers. Under current law, these earnings are treated as a return on capital and therefore taxed at the 15% capital gains tax rate. Under the carried interest proposal in the House bill, those earnings would be treated as ordinary income and thus taxed at ordinary income tax rates—likely the top rate.

The Senate has not yet acted on either the extenders package or the AMT bill. Senate watchers think it is likely that the Senate will ultimately combine extenders and the AMT patch into one big bill. The big question in the Senate is whether any of the revenue lost from the AMT patch or extenders package will be offset. Most Senate watchers are betting that the Senate will not offset the AMT portion of the bill. Negotiations are currently ongoing as to whether any of the extenders will be offset.

If the Senate stays on its present course, a major collision will occur between the House and Senate over one of the signature policy changes made by Congress in 2007—the "pay as you go" budget rules. Caught in the middle will be 25 million taxpayers who do not yet realize the extent of the tax increase that awaits them if the AMT is not patched. Business groups, on the other hand, fully appreciate what's at stake in the extenders package and are weighing in heavily.

For NAIFA, the main task is to remain on guard against any attempt to use insurance tax provisions as a "pay-for" for another federal program.

**NAIFA Staff Contact:** Michael Kerley, Senior Vice President – Federal Government Relations, at 703-770-8155.

## **NAIFA Asks Its Members to Ramp Up Grassroots Efforts During the Upcoming Congressional Recess**

As NAIFA has been reporting, the life insurance industry is facing potentially the biggest threat to the tax treatment of our products in our nation's history. The threat is looming as Congress seeks to consider ways to overhaul the tax code as many popular tax cuts are set to expire in 2010. As the industry collectively prepares for what some tax experts have deemed "the fight of our lives" it is important that we strengthen our grassroots efforts across the country. To learn more about the impending tax reform battle, listen to NAIFA's May GovPod on this topic.

The best way for constituents to influence legislation is by having meetings in home districts with their respective Members of Congress. The legislators on Capitol Hill depend on well-informed constituents for information and guidance on many issues. For this reason, NAIFA is asking you to schedule and attend a district meeting with your Member of Congress during the July Fourth recess. This recess starts Monday, June 30, and runs until Sunday, July 6.

Scheduling a district meeting with your Member of Congress is an easy and straightforward process. Simply use NAIFA's Legislative Action Center, CapWiz, found at [www.capwiz.com/naifa](http://www.capwiz.com/naifa). Once you find your Congressional Representative, click the "Staff Members" link below his or her picture. Next contact the Member's office and ask to be put in touch with the scheduler. This person will then assist you with the remainder of the process. If the scheduler would like a summary of NAIFA Issues to be discussed please contact Ryan Baird at 703-770-8154 or by email at [rmbaird@naifa.org](mailto:rmbaird@naifa.org).

After the meeting has been held, please send a brief summary of the topics discussed, the names of all who attended the meeting, and the overall tone of the discussion to Ryan at the email address above. If NAIFA's professional lobbyists need to follow up with the legislator indicate so in your summary.

Regular district meetings are an integral part of the legislative process. You, as knowledgeable constituents, hold the power to inform and influence Members of Congress. Please lend NAIFA your power by scheduling and attending these important meetings.

**NAIFA Staff Contact:** Ryan Baird, Political Involvement Administrator, at 703-770-8154.

## **FTC Finalizes Commercial Email Regulations**

The Federal Trade Commission recently issued final regulations relating to the use of commercial email under the 2003 CAN-SPAM law. The rules go into effect on July 7, 2008, and clarify the law that has been in place since 2004. The rules cover the law's applicability, the use of post office box addresses to identify email senders, the prohibition against imposing conditions for opt-out requests, and the identification of senders for multi-party messages. The rules also give guidance about use of "forward to a friend" features and the time-limit to comply with opt-out requests.

The regulations finalize implementation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the CAN-SPAM Act). The CAN-SPAM Act generally applies to email that is primarily intended to advertise or promote a commercial product or service. Such commercial email messages must:

- contain a clear and conspicuous identification that the message is an advertisement or solicitation (and must not contain false or misleading header, subject or "from" lines);
- provide the recipient with the opportunity to opt-out from future commercial messages;
- and

- include a valid postal address for the sender.

Commercial email is generally not subject to the CAN-SPAM Act (except for the prohibition against false or misleading transmission information) if it constitutes a “transactional or relationship” message whose primary purpose is to communicate about goods or services the recipient is entitled to receive pursuant to a transaction the recipient previously agreed to with the sender. Notably, the final rules respond favorably to NAIFA’s comments by clarifying that “an email from an insurance agent to a customer can qualify as transactional or relationship in nature notwithstanding the fact that the customer paid the premium to the insurer, not its agent.”

The final regulations address the following four areas:

First, the rules specify that the CAN-SPAM Act can apply to any person or entity that sends commercial email.

Second, the rules explain that where an email message promotes the products or services of multiple parties, one such party may be designated as the sender of the message, to whom opt-out requests may be directed and whose postal address must be given, if that party (i) initiates the message; (ii) is identified as the sole sender on the message’s “from” line; and (iii) complies with the law’s other email requirements.

Third, the rules clarify that the requirement that commercial email contain a valid physical postal address is satisfied if a valid, registered post office box or private mailbox is used, as an alternative to a street address.

Fourth, the rules confirm that senders of promotional email may not charge a fee or impose any other obligations on a message recipient as a condition for processing an opt-out request.

In addition, the rules explain that marketers who use “forward to a friend” systems – which permit email recipients to forward commercial messages to others – are not subject to the CAN-SPAM law requirements with regard to the forwarded messages, provided the marketers do not induce the forwarding of such messages by offering something of value in exchange for the forwarding.

Finally, the rules follow NAIFA’s request that the time period for email senders to comply with opt-out requests remain 10 business days and not be reduced.

**NAIFA Staff Contact:** Michael Gerber, Vice President & General Counsel, at 703-770-8190.

*Please note: this article is not a legal opinion and does not constitute or provide legal advice.)*

## **Louisiana Becomes the Latest State to Join the Interstate Compact**

### ***33 States Now Members of the Interstate Compact***

Louisiana became the 33rd state to enter into the Interstate Insurance Product Regulation Compact on June 21 when Governor Bobby Jindal signed Louisiana House Bill 369 into law. According to the Interstate Insurance Product Regulation Commission (IIPRC), with Louisiana’s entrance into the compact, the IIPRC now represents 54 percent of nationwide insurance premium volume for the covered products.

The Interstate Compact aims to improve the speed-to-market conditions for life insurance, annuity, disability income and long-term care products through the use of one regulatory body to review new insurance products. The ability to obtain approval from a single source for the sale of insurance products in multiple states gives insurers a more efficient and uniform product approval process than the multistate product review system. Faster product review benefits consumers and NAIFA members by making new protection products available sooner.

NAIFA-Louisiana President David Romero, ChFC, RFC, CRC praised the adoption of the Compact. "NAIFA Louisiana has long advocated for adoption of the Interstate Compact and we are excited that Governor Jindal has signed the bill into law" said Romero. "Since the Interstate Compact Commission began receiving product filings last year, the average review period for new life insurance and related products is less than 40 days. With the adoption of the Compact in Louisiana, our clients will now benefit from access to innovative new products to serve their needs."

NAIFA has been a strong supporter of the Interstate Compact since helping the National Association of Insurance Commissioners (NAIC) draft the model Compact law in 2002. This support continues today as NAIFA, and its health insurance conference AHIA, are the only groups representing the agent community on the Compact Commission's Industry Advisory Committee. NAIFA state associations across the country have also been critical proponents of Compact legislation as it's introduced in state houses across the country. The Compact became operational in 2006 and began accepting its first product filings in 2007. Several other states are also considering Compact legislation this year.

To learn more about NAIFA's positions on all regulatory reform efforts, please visit the Insurance Regulatory Reform and Modernization section of NAIFA's website at [www.naifa.org/advocacy/irr](http://www.naifa.org/advocacy/irr).

**NAIFA Staff Contact:** Michael Gerber, Vice President & General Counsel at 703-770-8190.

## **IFAPAC Contributor Matching Program Inspires Similar Ventures**

The IFAPAC Contributor Matching Program (CMP) – started last fall by NAIFA CEO John Healy – has led several individuals, states, and organizations to create variations on this idea since the CMP's implementation.

First, here's an update on the original program.

NAIFA's Deputy CEO Dr. Susan Waters pledged \$2,500 to IFAPAC to be matched by states that raise IFAPAC funds from new contributors in small increments. (The overall goal of the CMP, of course, is not just to generate additional funds, but to encourage additional funds from the 77% of NAIFA members who are not currently contributing.) The Waters Match has been in effect since mid-February. To date, four states have met the criteria and each state has been credited with \$500. Those states are: Alabama, Delaware, Florida and Nebraska.

Soon after the Waters Match was announced, NAIFA-Oregon Executive Director Bob Buxman caught the fever and started a contributor matching program exclusively for Oregon members. Bob has agreed to put up an additional \$1,000 if 25 new monthly bank draft Century Club

contributors enroll before the end of August. To date, five NAIFA-Oregon members have taken Bob up on his offer.

NAIFA Trustee Terry Headley has also been making extemporaneous matches across the country during his state visits. NAIFA-Montana, NAIFA-Oregon and NAIFA-Washington have all been beneficiaries of an impromptu Headley Match.

Additionally, the Young Advisor Team (YAT) just launched a Contributor Matching Program exclusively for *new* YAT contributors. NAIFA Trustee Jules Gaudreau will match YAT contributions totaling up to \$2,500 – but only if they are made through IFAPAC’s online contribution system – that are received between June 2 and August 31.

Don’t miss the opportunity to participate in these programs!

To learn more about IFAPAC, please visit the IFAPAC section of the NAIFA Advocacy webpage at [www.naifa.org/ifapac](http://www.naifa.org/ifapac).

**NAIFA Staff Contact:** Magenta Ishak, Director of Political Affairs, at 703-770-8152.

## **NAIFA-AHIA Asks Its Members to Oppose H.R. 6331 Medicare Advantage Cuts**

The physician payment system needs to be fixed, but not at the expense of the millions of seniors who rely on the quality coverage they receive from Medicare Advantage plans. Please see [www.naifa.org/govalert](http://www.naifa.org/govalert) for the latest updates on this issue.

## **NAIFA’s July GovPod Explains NAIFA’s Recommended Conditional Support for an OFC**

On April 11, 2008 the NAIFA Board of Trustees recommended to NAIFA’s National Council, for its consideration and approval, to adopt a dual track approach to insurance regulatory reform. The first track is to continue NAIFA’s extensive efforts to improve to the state based regulatory system. The second track is to conditionally support the concept of an optional federal charter for insurance. In late May, the Board announced the specific conditions under which it is recommending its support for an OFC. These conditions were reached as the result of several months of careful consideration on the part of NAIFA’s Policy Formation Subcommittee (PFS), during which time, members of the Subcommittee heard from NAIFA’s members, industry representatives, and federal and state legislators and regulators.

In an effort to further inform NAIFA’s members about this decision, this month’s GovPod features NAIFA President Jeffrey J. Taggart, CLU, ChFC, LUTCF, and Policy Formation Subcommittee Chair Elaine J. Fremling, CLU, discussing NAIFA’s recommended conditional support for an OFC, the process by which these conditions were reached, and why the Board and PFS believe the NAIFA National Council should vote in September to support a dual-track approach to insurance regulatory reform.

There are several ways to listen to a NAIFA GovPod – available at [www.naifa.org/govpod](http://www.naifa.org/govpod):

Listen through your computer by simply clicking on the play icon.

Save the file to your computer and listen to it later using Windows Media Player or iTunes. Right click on the "Download the audio file" link and select "Save File As" to save it to your computer. Download the file to a portable media player such as an iPod.

If you need assistance accessing NAIFA podcasts, please see the podcast Frequently Asked Question (FAQ) page at [www.naifa.org/podcastfaq](http://www.naifa.org/podcastfaq) or contact NAIFA's help desk at [helpdesk@naifa.org](mailto:helpdesk@naifa.org).

For more information on NAIFA's efforts to improve insurance regulation, please visit [www.naifa.org/advocacy/irr](http://www.naifa.org/advocacy/irr).

**NAIFA Staff Contact:** Jill Edwards, Director of Federal Relations at 703-770-8158.

## **NAIFA Encourages Members to Join IRR Email Forum**

In connection with the launch of the new insurance regulatory reform webpage—Moving Insurance Into the 21st Century—NAIFA has also created an Insurance Regulatory Reform (IRR) Email forum to provide members with the opportunity to ask questions and discuss the issues surrounding regulatory reform. In particular, the IRR Email forum can be used to initiate dialogue about the optional federal charter (OFC), an issue about which many NAIFA members have questions and comments.

NAIFA encourages all of its members who are interested in learning more about insurance regulatory reform, and who would like to participate in discussions about IRR to join this forum today. Simply visit the website today, follow the easy instructions, and begin participating!

Please also take some time to view the entire new and improved IRR webpage at [www.naifa.org/advocacy/irr](http://www.naifa.org/advocacy/irr).

## **Life Insurance Awareness Month Resources Now Available**

September is Life Insurance Awareness Month and resources are now available on the NAIFA website at [www.naifa.org/liam](http://www.naifa.org/liam).

If your state or local government signs a 2008 Life Insurance Awareness Month proclamation, please let NAIFA know by sending email to [liam@naifa.org](mailto:liam@naifa.org).

Life Insurance Awareness Month, also known as LIAM, is an educational campaign designed to get consumers to take stock of their life insurance needs and protect their loved ones through proper life insurance planning.

## **Meet Your NAIFA Government Relations Staff: Ron Panneton**

This week's featured member of the NAIFA Government Relations staff is Senior Counsel Ron Panneton. Contact Ron on the following issues:

- NAIFA Committee Appointment Process/Member Candidates
- Trustee/Secretary Candidates/Rules/Convention

- NAIFA Lobbying Disclosure Reports and PAC Contribution Reports
- Model State & Local Bylaw Questions
- Member Association Disciplinary Issues
- Life Insurance Replacement
- Commission Disclosure
- Viatical/Life Settlements
- Life Insurance Disclosure
- Annuity Suitability
- Annuity Disclosure
- NAIC Military Sales Model Regulation (state)
- Best Practices Organizations (such as Insurance Marketplace Standards Association, IMSA)
- Errors & Omissions Coverage

Ron can be reached at (703) 770-8187.

## **Did You Know?**

You do not need an iPod to play a GovPod? Simply click the play button on your computer screen.