



**NATIONAL ASSOCIATION OF  
INSURANCE AND FINANCIAL ADVISORS**

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November 12, 2009

The Honorable Paul Hodes  
United States House of Representatives  
1317 Longworth House Office Building  
Washington, DC 20515

Re: Your Amendment to the Investor Protection Act of 2009—Title VII, Senior Investment Protection

Dear Congressman Hodes:

On behalf of the National Association of Insurance and Financial Advisors (NAIFA), the nations' largest member association for insurance agents and advisors, and NAIFA New Hampshire, the New Hampshire state affiliate of NAIFA (hereafter, collectively referred to as "NAIFA"), we would like to thank you for the opportunity to submit to you our comments concerning the amendment you introduced on October 27, 2009 to the Investor Protection Act of 2009. The amendment, which would add Title VII - Senior Investor Protection to the IPA, addresses concerns that have been raised regarding the use of certain designations by insurance agents and would establish a program of grants to the states to assist them in their efforts to reduce misleading and fraudulent marketing practices towards seniors.

NAIFA members across the country, including the 1200 members and associates of NAIFA New Hampshire, share your concerns that some senior citizens could be misled and harmed by the use of certain designations and certifications by insurance agents and advisors that imply the existence of a level of expertise in senior affairs and financial matters that may not exist. NAIFA is concerned that misleading sales practices and marketing schemes could compromise the public's trust in all insurance agents who work hard to assist 75 million American families to secure their financial futures through the purchase of life insurance, annuities, long-term care, and disability income insurance.

NAIFA's national office has been actively engaged in this issue from the start. We have worked closely with the Senate Aging Committee staff on this issue and have previously provided extensive written comments to Senator Kohl on his Senior Protection Act legislation. NAIFA also assumed a leadership role in urging the National Association of Insurance Commissioners to become actively engaged in this issue and to develop a model regulation based on the North American Securities Administrators Association Model Rule on the Use of Senior-Specific Certifications

and Professional Designations, and we worked closely with both NASAA and the NAIC on the development of both organizations' model regulations.

The NAIFA federation and our members applaud your efforts to address deceptive practices that impact our nation's seniors and we support the goals of your amendment to the IPA. However, we do have certain outstanding concerns regarding your amendment, and we are writing today to urge you to support the following recommended changes:

**1. Section 702, Definitions:** The definition of "misleading designation" in Section 702(1) (A) is overly broad. It appears to say that using a designation that indicates or implies that someone has special certification or training in advising seniors is misleading, *regardless* of whether the person does in fact have such special certification or training. NAIFA's objection to this language is that it is not accurate—someone can use a designation that *implies* special training in advising seniors *and* actually have such special training in advising or servicing seniors. We do not believe that the use of the word "purported" in the definition nor the subsequent language in Section 702(1) (B) satisfactorily resolves or addresses our concerns. To address our concerns, NAIFA recommends that Section 702(1) (A) be revised to read as follows:

"(A) means the use of a certification, professional designation, or other credential, that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors *when in fact the salesperson does not possess such special certification or training in advising or servicing seniors.*" (Italics added)

Alternatively, this section could be revised to read as follows:

"(A) means the use of a certification, professional designation, or other credential, that indicates or implies *in such a manner as to mislead a senior consumer* that a salesperson or adviser has special certification or training in advising or servicing seniors when in fact the salesperson does not possess such special certification or training in advising or servicing seniors." (Italics added)

**2. Section 703(a) (1) (A), Grants to States:** Since the amendment addresses senior investment protection, this subsection should be revised to read as follows: "(A) To investigate and prosecute misleading and fraudulent marketing practices directed at seniors."

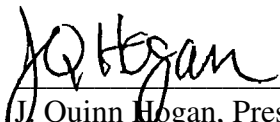
**3. Section 703 (c) (5), Suitability and Supervision Rules for Annuity Products:** This section requires states to adopt rules addressing supervision and suitability in connection with the sale of annuity products in order to qualify for the grant program. However, this section specifies that the standard for measuring whether states qualify for grants shall be whether the state rules are "at least as protective of the interests of the consumer" as are various FINRA rules currently in effect. Our concern is that this section applies to the sale of all annuities, including fixed and indexed annuities, which are nonregistered insurance products which are regulated by state insurance laws and regulations and not FINRA. NAIFA believes it is inappropriate for the federal government to require or incentivize the states to adopt the standards of federal securities laws for the sale of state-regulated insurance products in order to qualify for a grant.


To remedy this, NAIFA recommends that this section be amended to require states to adopt the NAIC Suitability in Annuity Transactions Model Regulation (Model) rather than applicable FINRA rules in order for a state to be eligible for the grant. The Model, which provides a comprehensive regulatory structure for annuity sales and suitability, or a substantially similar regulation, has been adopted in 46 states, and NAIFA is committed to the adoption of the Model in the remaining states. The Model, in conjunction with NAIC model laws and regulations addressing annuity disclosure (adopted in 28 states), senior designations (adopted in 11 states), and producer licensing (adopted in some form in every state)—all of which were adopted only after extensive debate among regulatory experts, insurers, consumer groups and agents--provides a full and thorough range of protections for seniors and other consumers.

Thank you for the opportunity to provide NAIFA's feedback on your amendment to the IPA. We request that you strengthen the substance of your amendment prior to the adoption of the IPA in the House. We ask for the opportunity to address these important issues prior to final passage of the IPA.

If you have questions or concerns, please do not hesitate to contact Gary Sanders ([gsanders@naifa.org](mailto:gsanders@naifa.org)) at 703-770-8192 or Jill Edwards ([jilledwards@naifa.org](mailto:jilledwards@naifa.org)) at 703-770-8158.

Sincerely,

  
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