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NAIFA Votes to Conditionally Support the Concept of an Optional Federal Charter

In a historic decision at its 2008 Convention and Career Conference, the National Association of Insurance and Financial Advisors' (NAIFA) National Council nearly unanimously voted to support the concept of an Optional Federal Charter (OFC) for insurance, provided it meets several conditions. Those conditions include true agent choice, enhanced consumer protections, the preservation of state regulation and the establishment of a single federal entity with expertise in insurance matters. NAIFA will endorse legislation that meets these conditions of support.

NAIFA-California Weighs-in on Attack on Life Insurance Tax Treatment

A bill was introduced in the California Assembly (No. 31) on September 5, 2008 that would remove the exclusion in the Corporate Income Tax Law for amounts received by a corporation under life insurance policies paid by reason of the insured's death.

NAIFA-California immediately went to work to discover why this bill was introduced and what prospects it had for success. NAIFA is pleased to report that NAIFA-California reported on September 16 that this proposal is not part of a package of budget compromises reached over last weekend by California legislative leaders to resolve California's budget. As a result, the corporate life insurance bill will not be considered this year.

There is, however, a belief that the proposal will very likely be considered in the next legislative session which starts in January 2009. Therefore, NAIFA-California and NAIFA must be prepared for a fight next year. And, given the copy-cat nature of state legislatures, it will be imperative that the entire NAIFA federation be on guard

Why This Matters:

In addition to preparing for tax battles in state legislatures starting next January, solutions proposed to ease California's budget condition could easily leach over to Congress. Congress is facing its own budget crisis, and will be looking at every current tax incentive, including insurance, as a source of new revenue.

Background:

On September 5, California Assemblyman Charles Calderon introduced AB 31, a bill that would tax life insurance death benefits payable to corporations, and the inside buildup in life insurance policies owned by corporations. The bill is a response to a "fiscal emergency" in California, and if enacted would be effective immediately as a "tax levy."

AB 31 would amend California's corporate income tax law, sections 24302 and 24305. It applies to corporate rather than individual taxpayers. It would repeal two exclusions from taxable income; cash value accumulations, and death benefits. It would affect corporations that own life insurance and/or are paid death benefits from a life insurance, endowment, or annuity contract.

AB 31 would repeal "the exclusion from gross income in computing tax liability for any amounts received under life insurance, endowments, or annuity contracts, either during the term or at maturity or upon surrender of the contract equal to the total amount of premiums paid thereon, other than amounts paid by reason of the insured's death." It would also repeal a separate "exclusion from gross income for any amounts received under life insurance policies and contracts paid by reason of the insured's death."

AB 31 was introduced as a way to address "the fiscal emergency declared by the Governor by proclamation issued on January 10, 2008...and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature."

Next Steps:

At the moment, tax writers on Capitol Hill are reacting cautiously to what is widely viewed as a fairly radical proposal in California. NAIFA and a broad coalition of life insurance allies are preparing for what looks like a "perfect storm"-- the environment on the tax/budget front in Congress that will begin to shape up after the November 4 elections. The strong effort of NAIFA-California in convincing legislative leaders to drop AB 31 from the budget package in California may help insulate NAIFA members from a similar attack at the Federal level next year. Members of Congress are ever watchful for signs of weakness in lobbying organizations such as the NAIFA federation.

NAIFA Staff Contact: [Gary Sanders](#), Senior Counsel – Government Relations, at 703-770-8192 or; [Michael Kerley](#), Senior Vice President – Federal Government Relations, at 703-770-8155.

NAIFA Files Comments with SEC on Proposed Rule 151A

On September 10, NAIFA filed extensive written comments with the SEC opposing SEC proposed Rule 151A. The SEC proposal, which would result in most indexed annuities (and possibly other annuity and insurance products) being classified as “securities,” has generated a significant amount of heated debate over this issue.

If the proposed rule is adopted, the SEC and FINRA would have authority over indexed annuity sales, and someone who wishes to market/sell indexed annuities would need a series 6 or 7 securities license and be required to have IA sales supervised by a broker/dealer. An insurance producer license, by itself, would no longer be sufficient.

While NAIFA strongly believes that people who engage in unscrupulous or misleading sales practices should be aggressively prosecuted and subject to appropriate and meaningful sanctions, in NAIFA's view indexed annuities do not meet the existing test for determining whether a product is a security. An insurance product that does not meet this test should be regulated by state insurance departments and should not be under the jurisdiction of the SEC or FINRA. This is an important principle which must be preserved in order to protect the appropriate regulation of all insurance products.

An additional concern that NAIFA has is that the application of proposed Rule 151A would not be limited to indexed annuities, and that other annuity and insurance products that fit the rule's criteria could be brought within the scope of the rule. In fact, the SEC had specifically asked for public comment on whether the proposal should apply to life insurance and/or health insurance.

In its comments, NAIFA noted its commitment to working with state insurance departments towards the goal of having every state adopt and vigorously enforce the NAIC's model regulations on annuity suitability and disclosure. In addition, we pointed out that existing state insurance laws and regulations addressing unfair trade practices and advertising are powerful additional weapons to use against inappropriate marketing practices. Finally, NAIFA also recommended to the SEC that a state regulatory body be designated to develop standards for indexed annuity product design that would be implemented by state insurance regulators and used to prevent inappropriate indexed annuity products from reaching the marketplace.

NAIFA's comment letter to the SEC can be reviewed [here](#).

NAIFA Staff Contact: [Gary Sanders](#), Senior Counsel for Government Relations, 703-770-8192.

U.S. Congress Holds Series of Health Care Reform Hearings

While Congressional action on health reform is unlikely this year, information gathering continues to be a Congressional focal point. The Senate Finance Committee scheduled

three health care hearings this month and the House Energy and Commerce Health Subcommittee also plans to explore health care reform options.

The three Finance Committee hearings are part of the committee's ongoing focus on health reform. Throughout 2008, the committee's chairman, Senator Max Baucus (D-MT) has convened hearings, roundtables, and events to prepare for congressional action on health reform next year.

The first of the three September hearings was held on September 9. Titled "*Improving Health Care Quality*," the hearing examined the importance of measuring and improving the quality of care provided to patients in all settings. Witnesses also testified about quality improvement initiatives in the private sector.

The next hearing, "*Delivery System Reform*," is scheduled for September 16. Topics to be addressed at that hearing include creating a patient-centered model of care, understanding the importance of primary care, and developing new approaches to shore up the role of primary care in the health system. The third hearing, "*Insurance Market Reform*" will convene on September 23 and explore ways to improve access to health insurance through pooling arrangements, or through the creation of health insurance exchanges or "connectors." The concept of "connectors" envisions connecting individuals, small businesses and those eligible for premium subsidies to available health insurance plans.

On September 18, the House Energy and Commerce Committee's Health Subcommittee, chaired by Representative Frank Pallone (D-NJ), will hold a hearing on "*America's Need for Health Reform*".

Comprehensive examination of health care reform is expected to continue to be a top priority during the next session of Congress. Health reform is a priority for both political parties and is likely to be the first major legislative initiative of 2009 if Democrats win the White House.

NAIFA/AHIA Staff Contact: [Diane Boyle](#), Executive Vice President, Association of Health Insurance Advisors, 703-770-8252.

NAIFA Submits Comments on Producer Licensing Handbook

On September 5, NAIFA and ACLI offered comments to the NAIC in connection with the regulators' drafting of a State Insurance Producer Licensing Handbook. NAIFA has been a long-time proponent of the creation of such a handbook.

The purpose of the Handbook is to give guidance to state insurance departments as to how to administer a producer licensing program, foster uniformity among the states with respect to administration of their licensing programs and interpretation of their licensing laws, and provide 'best practices' for state licensing programs. The Handbook will also help insurance agents, brokers and carriers to better understand state licensure requirements and navigate the sometimes confusing maze of state rules. The Handbook is based on the NAIC's Producer

Licensing Model Act, the Uniform Resident Licensing Standards and other guidelines that have been adopted by the regulators.

A new version of the Handbook, incorporating many of the suggestions made by NAIFA and ACLI, was released this week and will be discussed at the NAIC's Fall National Meeting in next week in Washington. We anticipate adoption of the Handbook by the NAIC by the end of the year.

NAIFA Staff Contact: [William Anderson](#), Senior Vice President – Government Relations, at 703-770-8193.

CMS Issues New Medicare Marketing Rules

On September 15, the Centers for Medicare & Medicaid Services (CMS) issued new rules governing insurance companies, agents and brokers regarding the marketing of Medicare prescription drug plans and Medicare Advantage plans. The two regulations include prohibitions on telemarketing and other unsolicited sales contacts. The new rules also prohibit financial incentives that could encourage agents and brokers to maximize commissions by inappropriately moving, or churning, beneficiaries from one plan to another each year. Plans must be in compliance with these provisions when they begin their marketing activities on October 1.

AHIA and NAIFA believe marketing activities should be regulated in a way that allows beneficiaries to use the professional services of licensed advisors while protecting the beneficiaries from unscrupulous sales practices. We applaud CMS's efforts to address Medicare marketing concerns and generally support the rules.

In previously filed comments, AHIA urged CMS to remember it is unrealistic to expect our senior citizens to navigate their way through the complexity of health insurance coverage (in and out of Medicare) without the guidance and expertise of a licensed professional health insurance advisor.

The final rule implementing MIPPA marketing requirements may be viewed [here](#).

The Interim Final Rule dealing with agent commissions and other MIPPA provisions may be viewed [here](#).

(Comments are due at 5:00 p.m. Eastern time on November 15, 2008.)

Guidance for MA plans under Part C and PDPs under Part D plans may be viewed [here](#).

Fact Sheets with more information on each rule may be viewed [here](#).

NAIFA/AHIA Staff Contact: [Diane Boyle](#), Executive Vice President, Association of Health Insurance Advisors, 703-770-8252.

Meet You NAIFA Government Relations Staff: Ryan Baird

This issue's highlighted member of the Government Relations Staff is Ryan Baird, APIC Administrator. Ryan can be contacted regarding the following issues:

- Liaison to APIC Subcommittee
- Enrolls NAIFA Members in Legislative Contact Program
- Delivers APIC Training Assistance
- Facilitates Legislative Appointments in Congressional Districts
- Delivers Legislative Action Center (CapWiz) Assistance
- Fields APIC Supply Requests
- Maintains APIC Website Pages
- Manages APIC Awards
- Manages APIC Supply Inventory Control and Ordering

[Ryan](#) can be reached at 703-770-8154.

Did You Know?

Did you know that the interstate compact commission approved its 100th life insurance product last month, only a year after launching its operations as a single point-of-filing for its 33 member states?