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## SEC Agrees to Delay Implementation of 151A

The SEC has notified the US Court of Appeals that it will allow a full two years to implement Rule 151A once the rule is made “final”—which appears to mean after the SEC completes its analysis of the rule’s effect on competition and efficiency, as required by the Court.

In a brief filed with the Court, the SEC also indicated it would open a comment period in order to accept comments on the rule’s possible impact on competition and efficiency. In July, 2009, the Court sent the rule—which would classify most indexed annuities as securities—back to the SEC to conduct a more detailed analysis of the Rule’s possible effect on efficiency, competition and capital formation, as required by section 2 (b) of the Securities Act.

**NAIFA Staff Contact:** [Gary Sanders](#), Vice President – Securities & State Government Relations, at (703) 770-8192.

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## NAIFA-New York State, NAIFA & AALU Send Thousands of Messages to Insurance Department, Key Legislators to Stop New York Proposal

Earlier this month, the New York State Insurance Department Proposed Regulation 194, Producer Compensation Transparency, was published in the New York State Register. Interested parties have 45 days in which to file comments with the Department.

NAIFA-New York State, NAIFA & AALU filed a [joint comment letter](#) on December 4. The letter stated that the proposal would not solve any existing or anticipated problems in the life insurance marketplace. We also stated that implementation of the proposal would likely reduce the number of New York consumers with adequate financial protection for themselves, their families and/or their businesses.

Also, on December 2, NAIFA-New York State, NAIFA and AALU triggered a grassroots outreach to all NAIFA-New York members and AALU members to file already-prepared comments with the NYSID and key legislators expressing opposition to the measure. To date, over 7,300 messages have been generated to the Insurance Department and those key legislators with regard to this proposal.

All of the interested groups in New York which have voiced opposition to this proposal are also considering an Article 78 challenge which would challenge the Department's authority to promulgate such a regulation. After an evaluation of the likelihood of a successful Article 78 challenge, the various groups will decide whether to proceed on that front as well.

The above evaluation should be complete in January and we will report developments on this issue as needed.

**NAIFA Staff Contact:** [Ron Panneton](#), Senior Counsel – State Government Relations, at (703) 770-8187.

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## Health Reform Remains a Heavy Lift

The Senate health reform debate continues as senators await a score from the Congressional Budget Office (CBO) on an agreement negotiated by a group of 10 moderate and liberal Democrats as a compromise on the government plan option. Senate leaders announced the agreement on December 8th without details.

Details and legislative language will not be released until after CBO completes its score. However, here's what we know so far:

- The current government plan (from which States could opt out) provision would be replaced with a national insurance plan, underwritten by private insurers, and negotiated and administered by the Office of Personnel Management (OPM).
- Some people between the ages of 55 and 64 would be allowed to buy coverage through Medicare. Again, details are lacking—but those close to the negotiations believe the proposal will call for a separate pool within Medicare for these new younger beneficiaries. The proposal also likely includes separate premiums and separately negotiated provider rates.
- A trigger that would create a government-underwritten health insurance plan if certain affordability and accessibility benchmarks are not met by a certain date. Details on affordability, accessibility and deadlines are not yet known.
- Private insurance companies would be subject to a stricter cost ratio of 90 percent.

The Medicare “buy-in” invokes challenges even without the CBO score. Senator Joe Lieberman (I-CT) is fiercely opposed and some conservative Democrats (needed to reach 60 votes) have voiced concern.

The White House is encouraging Senate Majority Leader Harry Reid (D-NV) to negotiate with Lieberman, which would mean eliminating the proposed Medicare expansion which has kept progressives on board.

Some Democrats consider the Medicare buy-in option better than creating a new government-run insurance plan within the exchanges the bill would create.

Representative Anthony Weiner (D-NY) offers, "Expanding Medicare is an unvarnished, complete victory for people like me who support a single-payer system. Never mind the camel's nose—we got his head and neck in the tent." But before the House gets to weigh-in, the Senate must pass its version.

In addition to sorting out the Medicare buy-in, the Senate has to content with a report issued on December 10 by Richard Foster, the Chief Actuary of the Centers for Medicare & Medicaid Services (CMS). [The analysis](#) estimates that the Senate bill would increase national health expenditures, from 2010 through 2019, by a total of \$234 billion, or 0.7 percent, over the updated baseline projection that CMS released in June 2009. Additional findings:

- **Impact on Employer Coverage:** "For example, some smaller employers would be inclined to terminate their existing coverage, and companies with low average salaries might find it to their - and their employees' - advantage to end their plans, thereby allowing their workers to qualify for heavily subsidized coverage through the Exchanges."
- **Individual Mandate:** "The penalty amounts for not having insurance coverage were not sufficiently large to have a sizable impact on the coverage decision."
- **Community Living Assistance Services and Supports (CLASS) Program:** "Over the longer term, expenditures would exceed premium receipts, and there is a very serious risk that the program would become unsustainable as a result of adverse selection by participants."
- **New Health Care Taxes:** "We anticipate that such fees would generally be passed through to health consumers in the form of higher drug and device prices and higher insurance premiums..."

The Senate may be able to finish before Christmas, but the debate appears likely to spill into 2010.

**NAIFA Staff Contact:** [Diane Boyle](#), NAIFA's Health & Employee Benefits Lobbyist, at (703) 770-8252.



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## NAIC Holds Its Winter National Meeting in San Francisco

### *NAIFA Staff Attends to Represent Members' Interests*

The National Association of Insurance Commissioners (NAIC) held its Winter National Meeting in San Francisco, CA on December 5-8, 2009. Bill Anderson and Ron Panneton represented NAIFA at the meeting where the recurring themes were health care reform, financial services regulatory reform and an interesting session on social networking that focused on the opportunities and challenges to the insurance producer.

#### **Election of Officers:**

The NAIC elected its officers for 2010 as follows:

- President: West Virginia Insurance Commissioner Jane Cline
- President-Elect: Iowa Insurance Commissioner Susan Voss
- Vice President: Florida Insurance Commissioner Kevin McCarty
- Secretary-Treasurer: Oklahoma Insurance Commissioner Kim Holland

#### **Suitability in Annuity Transactions Model Regulation:**

The Life (A) Committee:

- Received the report of the Suitability in Annuity Sales Working Group,

- Decided to allow interested parties until December 14 to make additional, clarifying, comments on the proposed revisions adopted by the Annuity Sales Working Group,
- Scheduled a December 18 conference call of the A Committee to consider comments from interested parties and take a final vote on the proposal.

It is NAIFA's hope that the clarifications—which the ACLI intends to submit to the A Committee—will be approved so that enough interested parties can agree on the proposal to insure uniform adoption of the Model when the states consider it in coming years.

### **Annuity Disclosure Model Regulation:**

The Annuity Disclosure Working Group:

- Continued its discussion of draft revisions of annuity illustration guidelines being worked on by the American Academy of Actuaries and the ACLI.
- Reviewed latest draft buyer's guides and extended the timeline for comment on all three guides. NAIFA Government Relations staff members Gary Sanders and Ron Panneton have both spent countless hours on conference calls with a subgroup of the Working Group to try to make the guides simple and understandable for consumers.
- Agreed to ask to Life Insurance and Annuities (A) Committee for a one-year extension to complete its work revising the *Annuity Disclosure Model Regulation*, including annuity illustration guidelines and buyer's guides.

### **Regulatory Modernization Public Forum:**

A new meeting was scheduled at the last minute to have discussion and comments from interested parties concerning the discussion draft produced by a number of key individuals/regulators within the NAIC concerning a National Insurance Supervisory Committee (NISC). The NISC is a concept where Congress would authorize states to establish a compact in a number of areas to develop national standards which would be binding on the states.

During the Forum, regulators reviewed the objectives and purpose of the draft proposal and opened the floor to interested parties for comment.

Ron Panneton testified that the NISC development process to date needs to be amended to make sure that state

legislative stakeholders are included in the development of and the ultimate implementation of the proposal. Ron stated that, from the testimony of two state legislators at the Forum, it was clear that the NAIC needs to consider additional ways of including state legislative stakeholders in the process.

Ron did testify that NAIFA is certainly supportive of regulatory modernization, enhanced consumer protections and uniform standards in those areas where it is appropriate. The NAIC emphasized that the proposal is simply under consideration and based on feedback and comments from all interested parties the NAIC will decide whether to move forward with the initiative.

### **National Insurance Producer Registry (NIPR):**

The NIPR Board met during the meeting and elected its officers for 2010 as follows:

- President: Alaska Insurance Director Linda Hall
- Vice President: NAIFA Senior Vice President, State Government Relations Bill Anderson
- Secretary/Treasurer: Tennessee Insurance Commissioner Leslie Newman

The Board also approved a new Mission and Vision Statement for NIPR:

- Mission Statement – NIPR is a unique public-private partnership that supports the work of the states and the NAIC in making the producer licensing process more cost-effective, streamlined and uniform for the benefit of regulators, the insurance industry and the consumers they protect and serve.
- Vision Statement – NIPR provides one-stop shopping for all aspects of electronic producer licensing.

It is an outstanding success that NIPR can now process Non-Resident Licensing for all states except Washington and Massachusetts. Therefore, NAIFA members can apply for non-resident licenses almost everywhere utilizing NIPR's electronic licensing in real time.

### **Health Care Reform Public Hearing:**

The Health Insurance and Managed Care (B) Committee held a public forum to hear testimony on any implementation issues that state regulators should consider if federal health care reform is enacted. Three panels provided an overview and perspectives from the consumers and industry and it was clear that there are numerous elements in both the House

and Senate versions that will require the NAIC and the states to change model laws and enact legislation to carry out the intent of Congress.

The pending federal health insurance reform legislation continues to exclusively rely upon the state insurance laws for licensure and to ensure financial stability and solvency of insurance companies. The legislation also imposes new federal standards relating to marketing, unfair practices, and the accessibility, affordability, and content of health insurance products. This will affect many state laws now in place and will preempt others requiring states to address these changes. NAIFA will be working with the NAIC and the states as it becomes clear what needs to be done.

### **Producer Licensing:**

The Producer Licensing Coalition discussed plans for continued outreach efforts to the states to assist in achieving uniformity in producer licensing. The 2009-2010 Outreach Project will continue to draw on teams composed of Coalition commissioners, producer licensing regulators and industry representatives to revisit priority issues with each state as they did in 2008. NAIFA will participate in this effort as we did in 2008 and involve our state associations in any necessary legislative or regulatory changes that need to be made.

- The Producer Licensing Working Group:
  - Presented a report to the Producer Licensing Task Force discussing the work that it had done on developing a limited lines ancillary license that would cover lines where the insurance was ancillary to the activity, such as travel insurance. The Working Group could not agree on a final product and asked the Task Force for further guidance. The Task Force will be meeting by conference call early in 2010 to discuss this.
  - Discussed the status of the NAIC/NIPR Attachment Warehouse for Reporting of Actions and found that 49 states are participating. Only Washington and Massachusetts do not. This Warehouse allows producers to report any action taken against them in any state to the Warehouse and alleviates the need to report to each state in which the producer is licensed.
  - Discussed possible tasks for 2010:
    - Provide oversight and ongoing updates to the State Licensing Handbook
    - Establish guidelines for uniform producer licensing examination process
    - Serve as informal focus group with NAIC for the development and delivery of State Licensing Handbook training

- o Further discussion of limited lines issue

### **Military Sales Practices Model Regulation:**

The Military Sales Working Group reported:

- As of December 1, 2009, 50 states have adopted the Model Regulation which represents over 1,200,000 of CONUS (Continental United States) active duty military personnel.
- The Model seeks to address certain acts and practices which, until now, have not specifically been declared to be false, misleading, deceptive or unfair under state unfair trade practices statutes.
- NAIFA supports this Model and our state associations have also supported the adoption of this Model in all the states. These associations have done an excellent job supporting the adoption of this necessary measure in the states.

### **NAIC-IMSA Social Media Education Session:**

NAIC, together with the Insurance Marketplace Standards Association (IMSA), held a session on social media and the implications for producers, insurers and regulators. Focusing on Facebook, LinkedIn, Twitter and others, the session discussed the myriad opportunities these sites present for producers and then discussed the regulatory implications of their use in insurance marketing.

It was pointed out that most insurance companies have not developed policies for use of social media and many have prohibited their agents from using them. The session urged companies and regulators to educate themselves in this area because social media will be used more and more. The NAIC representatives stated that there will probably be increased emphasis on social media during 2010.

### **Interstate Insurance Product Regulation Commission:**

The IIPRC and its Management Committee held a joint meeting to discuss new initiatives and mark the end of a successful year during which the number of registered filers and filings received doubled last year's total. NAIFA serves on the industry advisory committee to the Commission and Bill Anderson attended the meeting for NAIFA.

**NAIFA Staff Contact:** [William Anderson](#), Senior Vice President – State Government Relation, at (703) 770-8193 or; [Ron Panneton](#), Senior Counsel – State Government Relations, at (703) 770-8187.

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## NAIFA Adopts Policy Opposing Securitization of Life Settlements

During its most recent conference call meeting, the NAIFA Board of Trustees accepted the recommendation of the Government Relations Committee and adopted a motion to establish a NAIFA policy position opposing the securitization of life settlements.

The practice of securitizing life settlements—essentially, bundling hundreds or thousands of settled policies and selling fractional portions of the bundled policies to downstream investors—was placed in the spotlight by a [September 6 New York Times article](#). Since then, there has been a Congressional hearing on the topic and the SEC has announced the formation of a task force to examine various aspects of the life settlement market.

During the course of their deliberations, the GR Committee and Board identified the following as some of the reasons for adopting a NAIFA policy opposing the securitization of life settlements:

1. Securitization will lead to an increase in STOLI transactions. STOLI is a transaction where seniors are induced to buy life insurance policies that they would not otherwise purchase solely for the purpose of selling the policy in the secondary market at a later date. STOLI poses significant risks for seniors and is not consistent with the legitimate uses of life insurance. NAIFA has been a vigorous opponent of STOLI since it first appeared on the scene. If securitization of life settlements becomes prevalent, STOLI transactions will increase since securitization will require a steady available stream of life policies to securitize.

2. Securitization will be risky for investors because many of the policies underlying the securitization transaction may later be rescinded or found to be invalid due to fraud or misrepresentation at the time of application.
3. Securitization continues the recent trend towards turning life insurance into simply another investment vehicle or commodity, a trend which does not conform to the traditional purposes behind life insurance and which places the tax-advantaged status of our products at risk.

It is important to note that, while NAIFA opposes the securitization of settlements, NAIFA does not oppose legitimate life settlements, and realizes that settlements may be a potentially positive consumer issue.

**NAIFA Staff Contact:** [Gary Sanders](#), Vice President – Securities & State Government Relations, at (703) 770-8192.

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## NAIFA Consultants Analyze House-Passed Financial Services Overhaul Legislation

As reported in the December 11 GovWatch, the House of Representatives, by a vote of 223 to 202, passed sweeping legislation, H.R. 4173, to overhaul the regulation of the financial services industry. As the GovWatch stated, NAIFA was actively involved with Members of Congress and their staff in the drafting, amending, and providing comment and testimony on the four sections of this bill that most impact financial professionals that focus their practice on life insurance, annuities, health insurance and employee benefits, multiline, and financial advising and investments

To view the December 11 GovWatch, [click here](#).

NAIFA's outside counsel and Steptoe & Johnson prepared a comprehensive analysis of the Wall Street Reform and Consumer Protection Act of 2009 and its impact on NAIFA members.

To read this complete review, [click here](#).

### **Next Steps:**

The process now moves to the Senate where Senate Banking Committee Chairman Chris Dodd (D-CT) has introduced his version of comprehensive reform legislation. The Banking Committee members and staff are currently working through the Dodd bill and are preparing for a substantive markup which could begin in late January 2010. NAIFA is working collaboratively with our industry partners at AALU and NAILBA to address our concerns with the Dodd bill and

have sent two letters to the Senate outlining our concerns.

Learn more about these efforts [here](#).

**NAIFA Staff Contact:** [Jill Edwards](#), Assistant Vice President – Federal Government Relations, at (703) 770-8158.

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## NAIC's A Committee Close to Concluding Work on Annuity Suitability

At the NAIC's Winter National Meeting held earlier this month, the Life Insurance and Annuities (A) Committee received the report of its Suitability of Annuity Sales Working Group which contained a proposed revised draft of the NAIC Suitability in Annuity Transactions Model Regulation. The Working Group had been considering changes to the Model since the middle of 2008. The charge of the Working Group was to consider changes to enhance insurer supervision and monitoring and producer training.

Throughout the process NAIFA and other interested organizations had expressed concerns about the need for any changes as well as some of the specific proposed revisions ultimately adopted by the Working Group.

As was anticipated and reported in our [December 3 GovTalk](#), the A Committee did, in fact, delay their final vote on the proposed revisions for two weeks until a final vote on December 18. "A" Committee Chair Tom Sullivan (CT) indicated that additional comments would be considered only if the comments suggest changes which clarify the wording in the proposal from the Working Group. Substantive changes would not be considered. The rationale for the delay of the A Committee vote is the hope that if certain clarifying changes can be made and accepted by the A Committee there would be a better chance of garnering more industry-wide support for the revised Model. With the current Working Group draft there is a lack of support from a majority of insurers who have been considering and commenting on the proposed revisions.

It has been the goal of all groups that have been working on this issue to have enough support from industry to insure a

uniform adoption of the Model when the states consider it in 2010 and beyond. We will provide an update on the final action of the A Committee following their December 18 conference call and whether NAIFA and other interested groups feel they will be able to support the revised Model going forward.

**NAIFA Staff Contact:** [Ron Panneton](#), Senior Counsel – State Government Relations, at (703) 770-8187.

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## The American College Holds Webinar to Discuss Legislative, Regulatory Environment in Washington

### ***NAIFA Assistant Vice President Jill Edwards Discusses Financial Services Regulation***

The American College held a webinar on December 11 entitled “Breaking News in Washington D.C.” to discuss current legislative and regulatory threats facing the financial services industry today. NAIFA Assistant Vice President of Federal Government Relations Jill Edwards served as a panelist on the webinar and discussed how NAIFA has addressed legislation that would establish a harmonized fiduciary standard of care for broker-dealers and investment advisers when either provides personalized investment advice about securities to prospects or clients. Jill also discussed various other provisions of interest to NAIFA members in the context of the regulatory reform bills making their way through the House and Senate.

To view archived footage of this webinar, please [click here](#).

**NAIFA Staff Contact:** [Jill Edwards](#), Assistant Vice President – Federal Government Relations, at (703) 770-8158.

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