



June 23, 2020

Via email to meredith.alexander@insurance.ohio.gov

Jillian Froment, Director
Ohio Department of Insurance
50 W. Town Street—Suite 300
Columbus, Ohio 43215

Re: Draft Proposed Amendments to Ohio Rule 3901-6-13

Dear Director Froment:

Per the request for comment contained in Assistant Director Alexander's June 10 email, this letter will provide the comments of the National Association of Insurance and Financial Advisors (NAIFA) and NAIFA-Ohio (hereafter collectively referred to as NAIFA) regarding the draft proposed amendments to Ohio Rule 3901-6-13 (the "Rule"), dealing with suitability in annuity transactions.

Founded in 1890 as The National Association of Life Underwriters, NAIFA is one of the nation's oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and

professional skills, and promote the ethical conduct of its members. NAIFA Ohio is NAIFA's Ohio state chapter affiliate and has 647 members who live and work in Ohio.

NAIFA commends the Ohio Department for its leadership role in developing the 'best interest' amendments to the National Association of Insurance Commissioner's "Suitability in Annuity Transactions Model Regulation (#275)". Among other provisions, the NAIC amendments require that producers and insurers act in the best interest of annuity purchasers and not put their own financial interests ahead of the consumers' interest. The amendments will raise the standard of care required of financial professionals while preserving consumers' access to valuable financial advice, services and products. NAIFA was an active participant in the development of the NAIC revisions and we support the NAIC amendments. The adoption by the states of these amendments is a top advocacy priority for NAIFA, and we applaud the Ohio Department for its efforts to move quickly to incorporate the amendments into Ohio Rule 3901-6-13.

While NAIFA supports the NAIC amendments and generally supports the draft proposed amendments to Ohio Rule 3901-6-13, we ask that you consider the following comments regarding the Rule and/or the draft amendments:

1. NAIFA Recommends the Deletion of or Revisions to the Existing Exemption for Certain Direct Response Solicitations.

Section 3901-6-13 (D) (1) of the Rule (section 4 (A) of the NAIC Model) provides an exemption from coverage under the Rule for "[d]irect response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule". This provision creates an "uneven playing field" between the activities of direct response entities versus producers, since it says that if a direct response solicitation includes a recommendation that is not based on information collected from the consumer (perhaps some type of broadly distributed annuity solicitation/recommendation based on zip code or other information?), than that situation, and the recommendation made, would be exempt from the requirements of the Rule. This exemption therefore appears to give direct response companies the ability, under certain circumstances, to make recommendations that would not be covered by the Rule.

We recognize that this provision is a part of the current Ohio rule and was also part of the NAIC model prior to the NAIC amendments. However, NAIFA fails to see any public policy rationale for this exemption that would allow direct response entities to make certain recommendations of annuities without being required to comply with this rule. Additionally, this provision directly conflicts with Section C of the Rule, which as amended, would state that “This rule shall apply to any sale or recommendation of an annuity.” NAIFA recommends either that this exemption i) be deleted from the Model or ii) be revised to read as follows: “(1) Sales or purchases of an annuity where no recommendation is made.”

2. Appendix A, Section Titled “How I’m Paid for My Work:”

NAIFA continues to strongly believe that while it may be technically correct, the inclusion of language in this section stating that commissions are paid by the insurer while fees are paid by the consumer will be confusing to consumers and give them the incorrect impression that under one of the scenarios the consumer plays no part in compensating the agent.

To avoid this from happening, NAIFA recommends that the first part of this section be revised to read as follows:

“It’s important for you to understand how I’m paid for my work. Depending on the particular annuity you purchase, I may be paid a commission or a fee. If you have questions about how I am paid, please ask me.


Depending on the particular annuity you buy, I will or may be paid cash compensation as follows:

__ Fees (such as a fixed amount, an hourly rate or a percentage of your payment)

__ Commission”

We appreciate your consideration of this letter and our comments; please email or call Gary Sanders at 703-770-8192 or gsanders@naifa.org you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Duane A. Borcharding".

Duane A. Borcharding, CLU, ChFC
President, NAIFA-Ohio

A handwritten signature in cursive script that reads "Gary Sanders".

Gary A. Sanders
Counsel and Vice President, Government Relations, NAIFA