

The Center for Economic Justice

1701 A South Second Street
Austin, TX 78704
(512) 912-1327 phone
www.cej-online.org

September 18, 2008

To Members of the NAIC

Re: Upcoming Vote: Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities Model Regulation

Dear Commissioners,

At the upcoming NAIC meeting, you will voting on a model regulation to prohibit the use of misleading and deceptive designations and certifications in the sale of life insurance and annuities. **We ask you to vote for the model with one change -- to have the model regulation cover insurers as well insurance producers.**

This model law is a response to sales abuses in which certain sellers of life insurance and annuities used sham certifications or designations ("Certified Senior Adviser") to suggest to consumers that the seller had some special training or qualification -- when in fact the certification or designation was a sham.

The securities regulators (NASAA) issued a rule several months back to address this problem for securities dealers and the NAIC under the leadership of Commissioners Dilweg and Dinallo have been crafting an insurance model law / regulation to address problems for insurance producers.

The Life (A) Committee sought consistency with the NASAA rule while reflecting insurance-specific issues. Through several discussions and iterations, the NASAA model was improved -- most notably to protect all consumers from sales using sham designations as opposed to just protection for seniors. The original draft prohibited the use of sham designations in the sale of products to seniors, but the A Committee realized that all consumers deserved the protection from misleading and fraudulent designations.

The Center for Economic Justice asks you to adopt the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities Model Regulation **with one change -- to have the model regulation cover insurers as well as insurance producers.**

Insurers were included in all but the most recent versions of the model regulation and were deleted at the end. The removal of insurers from coverage by the regulation is inappropriate and unnecessary.

It is inappropriate because insurers should not be permitted to use misleading certifications or designations to sell insurance or annuities. For example, suppose an insurance company using direct marketing or the internet to target baby boomers with

retirement products claimed that it was endorsed or accredited by the Baby Boomer Retirement Security Society or by the Society of Retirement Investment Specialists. This is no more appropriate than if an individual producer were to use a misleading or deceptive certification or designation.

The removal of insurers from coverage by the regulation is unnecessary because an insurer who does not use a certification or designation is not affected by the regulation.

While we appreciate the concept of "narrowly-targeted" regulation, the problem with the current regulation is that it effectively invites the shift of the use of sham designations from producers to insurers. Instead of narrowly targeting a problem, the exclusion of insurers provides a road map to the next type of market sales problem. This can be easily avoided by including insurers in the regulation as originally drafted.

The simple changes needed are (in bold underline):

Section 2. Scope

This regulation shall apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by an **insurer or** insurance producer.

Section 5 Prohibited Uses of Senior-Specific Certifications and Professional Designations

A(1) It is an unfair and deceptive act or practice in the business of insurance within the meaning of [insert the reference to State unfair trade practices act] for an **insurer or** insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that **insurer or** insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance or annuity product.

Thank you for your consideration.

Sincerely,



Birny Birnbaum
Executive Director
e-mail: birny@sbcglobal.net