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FEDERAL

Retirement 2.0 Legislation Passes Out of Committee, While Tax Pay-Fors Loom

After much anticipation, Chairman Neal and Ranking Member Brady of the House Ways & Means Committee reintroduced the Securing a Strong Retirement Act of 2021, H.R. 2954. Shortly after introduction the Committee unanimously passed the bill, which now awaits a House Floor vote.

NAFA endorsed the measure last October when it was first introduced. The legislation builds upon the retirement policy reforms contained in the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. NAFA is pleased that **a number of policy provisions we have supported for years** are now moving forward, including facilitating catch-up contributions, providing for expanded auto-enrollment, helping small businesses provide savings plans, increasing the requirement minimum distribution age to 75 and expanding qualified longevity annuity contracts (QLACs). We expect the Securing a Strong Retirement Act to easily pass the House in the coming months, and we have been told that similar legislation will be introduced later this week in the Senate by Senators Portman and Cardin. NAFA looks forward to working with House and Senate leaders to reconcile the bills and move the bills to final passage for the President's signature!

On a parallel track, we are eagerly monitoring further developments on the series of proposals from the President that comprise his Build Back Better Plan. Negotiations between the House, Senate and White House are ongoing, and more detailed contours will be released soon. NAFA will be watching for "pay-fors" that are included to raise revenue to cover the costs of these new plans. There has been discussion about raising capital gains rates as well as raising the corporate tax rate from 21 percent to 28 percent. Unquestionably there will be other pay-fors on the table, and NAFA will work to ensure that there are no harmful impacts on annuities.

Lastly, NAFA has been working with sister trade associations to seek an exemption for financial services professionals from the Protecting the Right to Organize (PRO) Act (H.R. 842). The PRO Act, which is being heavily promoted by the President and Democratic

leaders, contains a series of organized labor and worker protection reforms including changing the definition of employee under the National Labor Relations Act. The bill would reclassify workers from independent contractors to full-time employees under a three-part test (ABC Test). Accordingly, independent insurance agents and brokers, producers who have single carrier relationships, and businesses licensed as direct sellers of insurance products would become employees of carriers. The bill passed the House in March and faces an uphill battle in the Senate. Interestingly, Senator Manchin, who is viewed as a pivotal Senate vote, announced that he supports the bill. And in a related development, Senator Wyden recently released a proposal to reform the unemployment insurance system, which includes a section that adds the ABC test to the tax code and requires that all states use that test for determining which workers are covered under their unemployment insurance programs. While the scope appears limited to unemployment insurance, it nonetheless is an effort to push expansion of the ABC test.

With a new administration and a new Congress in control — and a heightened focus on how pandemic effects are transforming the future of retirement — it's critical for fixed annuity distributors and their partners to understand how our shifting political landscape could impact potential legislation and regulation. Get up to speed from those close to the source at NAFA's 2021 virtual [Annuity Leadership Forum](#) June 15-17. [Register Now!](#)

If there are any questions, please contact [Cliff Andrews](#), Managing Principal at CapCity Advocates and Federal Legislative Strategist & Advocate at NAFA.

STATE

Growing List of States Adopt Best Interest Standard; NAIC Working Group Adopts MDL 275 Guidance; Numerous States Enact New 0.15% Percentage SNF Minimum Guaranty; New York Ins. Reg. 187 Struck Down by NY Court

Montana Latest State to Adopt MDL 275

Montana has joined the growing list of states to adopt the revised NAIC Model Regulation #275 (Suitability in Annuity Transactions), becoming the eleventh state to establish a best interest standard of conduct for annuity transactions. Montana enacted [Senate Bill 363 \(2021 Mont. Laws 432\)](#) on Friday, May 14. NAFA (in conjunction with several other industry trade associations) was engaged in outreach to policymakers in Montana, where we hoped to defeat a House Amendment to SB 363 that was added at the behest of the Montana securities regulators relating to insurance-licensed-only producers who provide securities-related advice. While we did not object to the concern of the securities regulators, we hoped to persuade them to not include this particular language within the best interest standard and to adopt a regulation that more closely aligned with the language of the model regulation. We were unsuccessful in our efforts and will continue to work with Montana legislators and regulators to get additional clarity through Department guidance or through an amendment to this law in a future legislative session. Montana's new rule becomes

effective October 1, 2021. In addition to Montana, the Connecticut Insurance Department of Insurance has approved its proposed best interest regulation, amended [Conn. Agencies Regs. ss. 38a-432a-1 - 38a-4321-8](#). NAFA [requested](#) the CID to allow for a six-month time period from the date of adoption of the proposed regulation to have the new rule become effective; the Department has agreed to this request. The regulation has several more procedural steps to go through before becoming final, which can be tracked [here](#).

There are still only three states (IA, AZ, and RI) that have the new standard in effect, but it will become effective in several states this summer. NAFA maintains a tracking [document](#), listing the current status of adoption by each state and includes topline information and links to the individual regulations, as well as comment letters submitted by NAFA. This tracking document is also available at [NAFA.com](#).

NAIC Working Group Adopts MDL 275 FAQ Guidance Document

To support and encourage state adoption of MDL 275, the NAIC Annuity Suitability (A) Working Group has been meeting since July 2020 to draft and adopt a Frequently Asked Questions guidance document; the Working Group concluded this initiative on Monday, May 10, when it unanimously adopted 25 questions and answers related to the provisions included in the revised model regulation. Eleven of the 25 Q&As are addressed to producer training, an indication of the importance of producer education under the revised MDL 275.

The FAQs do not address issues related to the safe harbor provision, but the Working Group indicated that they may address that in a future compliance bulletin or guidance document. NAFA will continue to engage on this, especially as it relates to the scope and applicability of insurer supervisory obligations under the safe harbor.

The FAQ guidance document adopted on May 10 will be forwarded to the NAIC Life Insurance and Annuities (A) Committee for its consideration during its next open meeting. A link to the adopted FAQs can be found on the [NAIC website](#).

Five States Have Enacted the New 0.15% Minimum Nonforfeiture Interest Rate

Last December, at the recommendation of the Life Actuarial Task Force, the NAIC agreed to lower from 1.0% to 0.15% the minimum nonforfeiture interest rate for individual deferred annuities, amending the NAIC's Standard Nonforfeiture Law for Individual Deferred Annuities (MDL #805). Since that time, five states have enacted the lower rate: Arkansas, Nebraska, North Dakota, Oklahoma and Vermont. A number of other states are currently considering legislation to do so, including Colorado, Delaware, Hawaii, Kansas, Minnesota and New York. View NAFA's [tracking report](#) for complete details.

New York Ins. Reg. 187 Declared Unconstitutional

On April 29, 2021, the New York Supreme Court, Appellate Division Third Judicial Department, struck down NY Insurance Regulation 187, *Suitability and Best Interest in Life Insurance and Annuity Transactions*. The case was on appeal from an August 7, 2020 judgment of the NY Supreme Court in Albany County that upheld the regulation.

The appellate petitioners — the Independent Insurance Agents of New York (IIANY) and Testa Brothers (an IIANY member company) — argued that NY Ins. Reg. 187 violates due process rights as it is unconstitutionally vague; the court **agreed**.

The “void for vagueness” doctrine employs a two-part test in evaluating this particular constitutional challenge: First, whether the regulation is “sufficiently definite so that individuals of ordinary intelligence are not forced to guess at the meaning of the [regulatory] terms”; and second, whether the regulation provides “clear standards for enforcement so as to avoid resolution on an ad hoc and subjective basis.” The unanimous finding of the three-judge panel of the Court found that Reg. 187 failed both prongs of the test and was, therefore, constitutionally vague.

The State — here the New York Department of Financial Services — could appeal the decision to the NY Court of Appeals, the state’s highest court. Meanwhile, the State may request a stay, allowing the regulation to stay in place pending judgment of the Court of Appeals.

*If there are any questions, please contact **Pam Heinrich**, General Legal Counsel & Director of Government Affairs at NAFA.*