

Electronically Submitted to: brian.fjeldheim@dcbs.oregon.gov
karen.j.winkel@dcbs.oregon.gov

Mr. Brian Fjeldheim
Division of Financial Regulation
Department of Consumer and Business Services
350 Winter Street, NE
Salem, Oregon 97309

**Re: *Notice of Permanent Rulemaking
Disclosure and Care Obligations for Annuity Recommendations
Proposed OAS 836-080-0172***

Dear Mr. Fjeldheim:

The Federation of Americans for Consumer Choice (FACC) wishes to comment on the above regulation.

While FACC is pleased to see the Division move forward with creating permanent regulations to support SB 536 – designed to establish disclosure and care obligations for annuity sales - FACC stands with other major insurance trade associations in requesting the Oregon Division adhere to the NAIC model regulation and not deviate with any unnecessary and potentially confusing or costly deviations in connection with disclosure forms and record-keeping.

Let us say at the outset that FACC appreciates the opportunity to serve on the Rulemaking Advisory Committee (RAC) and also appreciated the opportunity to be heard at the Division hearing held last week on May 22, 2024. We also appreciate all the effort put into these regulations by the Division staff and the Division’s willingness to take and consider public comments.

Trade associations like FACC have been deeply involved with the NAIC and other state insurance Divisions around the country that have developed and adopted the NAIC Model Regulation. As an organization representing agents and agencies selling annuities in the independent channel, FACC believes strongly the NAIC Model Regulation was designed with great care to provide added consumer protection while preserving consumer choice. That is why it has now been adopted in full in 45 states and counting.

While FACC is pleased the Division revised its earlier proposed disclosure forms to remove confusing statements about fiduciary duty, we believe the newly proposed regulation still contains certain deviations from the NAIC Model Regulation that are unwarranted and will only serve to create unnecessary confusion and cost. As described in more detail below, FACC requests the Division remove the requirement in OAS 836-080-0172 that agents provide in writing to clients the basis for their

The Federation of Americans for Consumer Choice, Inc. (FACC) is a 501(c)6 non-profit organization incorporated in the state of Texas whose members are independent marketing organizations, agencies, and agents engaged in the distribution of fixed insurance and annuity products. FACC promotes public policy recognizing the value of guaranteed insurance solutions and preserving freedom of choice for consumers who seek products and services from independent agents representing multiple carriers and product options.



recommendations and conform the disclosure forms referenced in OAS 836-080-0172 to those prescribed by the NAIC Model Regulation.

Specifically, FACC urges the Division to make three changes to its proposed rulemaking, all in order to align with the NAIC Model Regulation and at the same time ensure adherence to SB 536 which reflected the Oregon Legislature's intent to adhere to the NAIC Model Regulation.

1. The proposed regulation deviates from the NAIC Model Regulation where it provides in OAS 836-080-0172(3)(a):

Provide the consumer a copy of the written record of the producer's annuity recommendation, including the basis of how the producer determined the recommendation.

We urge this be struck. This provision in the proposed regulation is unnecessary to the extent SB 536 is already clear the agent must "communicate" the basis for recommendation to the client and required to keep appropriate records in support of the recommendation. However, this appears to add a requirement that the agent provide a specific "written record" to the consumer without stating what is intended and creating an unnecessary opening for later confusion or challenges that an agent fell short in some way in meeting this undefined requirement. We urge this clause (3)(a) be struck from the regulation or modified to conform to the statute to say only "communicate to the consumer the basis for the producer's recommendation".

2. The proposed disclosure form Exhibit 1A contains a paragraph entitled "What duty of care do I owe You, the customer?" We urge this paragraph that is a deviation from the NAIC Model Regulation be removed. It is this paragraph which states in full:

What duty of care do I owe You, the customer?

ORS 743.262: I am required to exercise reasonable skill, diligence, and care when making a recommendation and I must satisfy all of the care obligation requirements stated in Subsection (4); before recommending or selling an annuity, I am obligated to prominently disclose on this form all of the information required in Subsection (5); I must identify and avoid, or reasonably manage, any material conflicts of interest stated in Subsection (6); and at the time I make a recommendation or sell an annuity, I must record in writing the substance of and basis for My recommendation, and meet all of the documentation requirements stated in Subsection (7).

We submit this added disclosure is gratuitous, unhelpful, and in many ways confusing to consumers who lack any context for disclosures tied to statutory citations. Those statutory sections are replete with defined terms and regulatory nuances. Moreover, this particular paragraph serves no purpose in that it merely recites legal requirements that apply with or without such disclosure. It is notable that SB 536 follows the NAIC Model Regulation closely and thus reasonable to presume the intent of the legislature was to adopt the NAIC Model Regulation including its form without substantial deviation. The legislation describes what information is to be disclosed to consumers and there is nothing there about duty of care. Thus, we ask the Division to remove this unwarranted addition that we believe is ultimately unhelpful to consumers and adds an element of ambiguity.



3. The proposed disclosure form Exhibit 1A also contains a checkbox and statement that mirrors the requirement discussed above contained in OAS 836-080-0172 (3)(a) – i.e., providing the consumer a copy of the written record of the producer’s recommendation including the basis for the recommendation. It specially appears on the form as follows:

- I have provided You with a written copy of the annuity recommendation, including the basis of how it was determined that the recommended product effectively meets your financial situation, insurance needs, and financial objectives.*

For the same reasons explained above as to why the regulation itself should be conformed to NAIC Model Regulation, we strongly urge the Division to remove the checkbox and statement from the proposed form. Aside from the fact the checkbox comes with no instructions (i.e., is it to be checked by the agent signifying compliance), more importantly the checkbox and statement deviate from the NAIC Model Regulation, go beyond requirements of the statute, and serve no purpose given that agents independently have a duty to communicate the basis of their recommendation to clients with or without such a checkbox and statement on the form.

Please note that FACC also supports conforming Exhibits 2A and 3A to corresponding NAIC Model Regulation forms. FACC’s agent members tend not to use those forms as much as Exhibit 1A so we are less concerned but we know other trade organizations are asking the Division to conform those forms as well and we support all such efforts to follow the NAIC Model Regulation as fully as possible. Any deviations invite confusion and result in added industry cost that must be passed on to consumers.

Let us close by reaffirming our faith in the NAIC Model Regulation that has now been adopted by the vast majority of states. It is a very carefully crafted and purposeful regulation that will serve consumers in Oregon and elsewhere very well. We think the Oregon Division should adopt it in full and give it a chance to work and reserve judgement on whether any changes would be helpful. Down the road these matters can be revisited if there is a perceived need. In the meantime, we ask that the Oregon Division adhere to the NAIC Model Regulation in keeping with the letter and spirit of SB 536.

Thank you again for considering our comments and moving this regulation forward.

Sincerely,

Kim O'Brien, CEO