NAFA
National Association for Fixed Annuities
*Securing the Future!*

# Advertising and Disclosure Principles For Fixed Annuities

Fixed annuities play a vital role in helping consumers to provide for their own financial security in retirement. All stakeholders touched by fixed annuities – government, the industry, and consumers – share a common objective to protect consumers.

NAFA, as the only independent, non-profit organization dedicated exclusively to promote the awareness and understanding of fixed annuities, has created a series of Principles papers to provide stakeholders with guidance and education on key issues affecting fixed annuities.

Accurate and reliable advertising promotes consumer confidence in the fixed annuity industry. This paper discusses advertising considerations involved in fixed annuity sales and offers guidance in shaping accurate advertising messages.

**For Further Assistance and Training, Contact:**

**ImagiSOFT, Inc.**

**877-510-4702**

**www.imagisoft.com**

## Background Discussion on Advertising & Disclosure and its History

One of the primary functions of NAFA is to educate all parties about fixed annuities. In furtherance of this task, NAFA is a proponent of insurers, marketing organizations, and producers developing effective advertising according to principles which will promote consumer confidence as well as an efficient market. These principles should be the foundation of any procedures within the industry as well as any regulatory framework. This paper will provide an overview of the function of advertising in the sales and marketing of fixed annuities, guidelines and principles for advertising fixed annuities, and specific examples of how the principles can be applied.

One of the most important elements in making consumers aware of a product is advertising. Advertising is used to sell nearly every product produced or service delivered in our society. The powerful effect that advertising can have on consumers has caused it to come under increased scrutiny to ensure that advertising does not mislead consumers. Misleading advertising can cause consumers to make decisions that are not in their best interests. Additionally, misleading advertising can eventually tar the entire industry if consumers begin to feel that insurance advertising cannot be relied upon as a source of accurate and reliable information. Even worse is the prospect of advertising deceiving or luring consumers into making harmful decisions. As a result, accurate, honest, understandable, and appropriately informative advertising is an important goal for the fixed annuity industry.

Every state has enacted regulations for insurance advertising. Most are based upon the NAIC's model law which both provides general principles for advertising and details some specific prohibitions. However, a balance must be achieved between highly prescriptive regulation and influential commercial speech. Mandating everything which can or cannot be said or exhibited in advertising could stifle creativity, eradicate innovation, limit ability to distinguish a company or product in attracting consumers, and actually decrease consumer understanding and motivation to consider products which may meet their needs. This could harm consumers by preventing them from making educated decisions to meet their needs. An efficient market with companies innovating and competing with good price, service, and benefits to informed consumers includes creative, honest, and accurate advertising that meets regulatory standards.

To this end, NAFA supports the framework of state regulation of insurance advertising as laid down in the current NAIC Model Law 570-1. Further, NAFA is supportive of the evolving nature of regulation and is a proponent of periodic review and updating of state advertising regulation to accommodate dynamic products and a dynamic marketplace. Overarching both the existing regulation and its evolution, NAFA believes there are certain unchanging principles which have and should in the future guide such regulation. The purpose of this paper is to elucidate these principles, show how current regulation is derived from them, and apply them to generate examples of an advertising compliance regimen which could be used by regulators, insurers, and producers.

# contents



# appendix

## What Is Advertising?

The NAIC model regulations on advertising state that any material designed to create public interest in life insurance, annuities, investment products, an insurer, or in an insurance or registered representative is considered advertising. Both marketing pieces and sales literature fit within the definition of advertising.

- Advertisements are pieces used to reach multiple clients or prospects directed at the public at large or targeting a segment or segments of the general public (e.g., TV or radio commercials, billboards, websites, etc.). This includes sales literature, which is any piece designed for distribution to multiple clients or prospects in which there is a measure of control over who will receive or view it (e.g., consumer brochures, direct mail ads and letters, etc).

Additionally, if any piece does not fall within the strict definition of advertising, but may be used to solicit the sale of financial products, it still should be considered advertising. If it could reasonably end up in a prospect's hands so that a purchase decision could be made, it should be considered advertising. For example:

- Any material that an insurer, marketing organization, producer, or representative intends to distribute or prepares for distribution to the public for use in connection with the sale or proposed sale of annuities (including general material that does not reference a specific product or company, but is intended to promote the sale of an annuity and create interest in a company or its products) IS advertising.
- Communication used purely for internal purposes and not intended for public dissemination or designed to create public interest in an insurer, an investment company, or its products, producers, or brokers IS NOT advertising.[1] Internal communications are intended for sophisticated audiences and are not intended to influence consumers or come into their possession.
- However, recruiting material that is designed to attract producers to your firm and training material that is used in conjunction with the promotion, marketing, or sale of any company products MAY BE considered advertising, although to a more sophisticated recipient. Therefore, while most principles herein apply, those that specifically reference a consumer's place in the purchase process don't generally apply. While a producer is clearly a more sophisticated recipient of insurance advertising than a consumer would be, such information could be seen by a client through public distribution or may become embedded in an eventual client presentation because of its influence on a producer.
- Any communication designed exclusively for providing customer service to contract holders that does not promote the insurer, product changes, or new products IS NOT advertising. It is not designed to solicit a sale.
- Materials used solely for the training and education of an insurer's producers ARE NOT advertising provided that they are neither product training nor used to induce the public to purchase, increase, or change an insurance policy and are clearly labeled "For Internal or Producer/Agent Use Only – Not for Use with the Public". Note that any product training materials or training which include language that will be used in a sales presentation or used to describe products and will be conveyed to the public SHOULD BE considered advertising.[2]

NAFA believes the following principles underlie most current advertising regulation and should be the foundation for future enhancements by regulators.

The principles underlying a regulatory framework form the foundation for developing and enforcing a rule-based structure. In applying specific regulations, it is critical to understand the principles underlying them. Additionally, using a principles-based regulatory model can be a more effective structure while providing a measure of freedom for those operating within those regulations.

Principles-based regulation means moving away from reliance on detailed, prescriptive rules and relying more

1 It should be noted that states do classify this type of communication as advertising. Furthermore, state regulations change over time and specific state laws should be understood and applied by all advertisers.

2 See Footnote 1

on high-level principles to set the standards by which regulated persons or entities must conduct business. It is vital to give insurers, marketing organizations, and producers the responsibility to decide how best to align their business objectives and processes with the regulatory outcomes desired. Current tools still rely on a large number of detailed rules and often very specific process requirements. While such detailed regulations may occasionally be necessary, we see real benefits for insurers, marketing organizations, producers, and consumers in tipping the balance towards a greater reliance on principles and high-level rules.

## Accuracy and Truthfulness Principles

These first principles direct advertising toward information which will give a recipient a factual, comprehensible, "whole-picture" basis for making a decision. Core principles are as follows.

- Accuracy - Statements should be accurate and not have the potential to mislead. Descriptions should not exaggerate benefits, interest rates, guarantees, or other features. Products issued by insurers should be described as insurance contracts.

- Omission - Information important to the recipient should not be omitted. This includes advertising only what is available (approved for sale) or disclose otherwise.

- Understandability - Advertisements as a whole and in detail should be understandable. Terms should be defined if the average recipient would otherwise misunderstand them.

- Completeness - Information about specific products or insurers should be complete enough to be appropriate for the recipient's situation and position in the purchase process.

- Form - Physical presentation of the advertising should not obscure information or be misleading. Each piece of information should be prominent enough and proximate enough to other information so as not to mislead an average client.

A second set of Accuracy and Truthfulness principles arise from a consumer's need for fair competitive and comparative information relative to other products, insurers, and producers. The insurance industry benefits from the public's trust in insurance protection and the ability of the industry to meet its promises for long time periods in the future. Insurance products should not be advertised in such a manner as to confuse them with other non-insurance products, and advertising should not damage confidence in insurers and their products.

- Non-disparagement - Statements should not be made which disparage insurers, producers, marketing organizations, products, regulators, and marketing methods. This derives from the need for public trust in the industry's promises as a whole. Fair competition which does not destroy that trust is necessary for good consumer decisions.

- False urgency - Statements should not be designed to inflame or imply the need for urgency which could encourage consumers to make unsound decisions against their interests. Introductory offers or specials should not imply limited availability or time periods for purchase unless that is a fact.

- Illustrations – Illustrations should accurately portray the mechanics in calculating the contract values of the product being represented. Illustrations should not use interest rates or values in excess of the rates on policies currently issued. The guaranteed minimum interest values should also be shown, and, if the product features a market value adjustment, the potential adverse effect on surrender values should be indicated.

- Testimonials – Testimonials and third party endorsements should be genuine and represent the current opinion of the author. They must be based upon actual statements made for endorsement purposes and should be properly attributed to the subject(s) of the endorsement. If the person making the statement has any financial interest or relationship to the producer or has been compensated for the testimonial, it should be disclosed.

For a more specific list of the application of Accuracy and Truthfulness Principles, see Appendix A.

## Principles for Identification of Advertiser and Product

For a consumer to make an educated decision, they must know what entities are presenting and fulfilling the insurance promises and be able to access information which helps them determine whether they want to do business with that company. Additionally, the generic, common terms for insurance features, functions, restrictions, etc. should be understood by the consumer. This enables a customer to find more information about and make judgments as to suitability for their individual situation. Core principles are as follows.

- Insurer and producer - Identify the insurer's name and location and the same information for any producer involved.
- Product - If advertising references a product, clearly identify the product and the insurer. Don't obscure its true nature or attempt to confuse the recipient.
- Producer self-representations - No reference should be made about the producer that exaggerates the producer's qualifications or obscures the producer's role in the sales process.

For a more specific list of the Principles for Identification of Advertiser and Product, see Appendix B.

## Disclosure Principles

The purpose of disclosures is to give a consumer specific information of which they may be unaware and which may be critical to making an informed decision about an insurance product. Such information may include exceptions or mitigating facts to ideas, concepts, or statements of general fact presented in the advertising. This prevents a consumer from proceeding too far with decision-making based upon generalizations or bad assumptions in areas where they may not be educated or informed. Core principles are as follows.

- Hypothetical values - If hypothetical values or any non-guaranteed values are displayed, factors affecting them should be disclosed, as well as the fact that they are not guaranteed. Values should not be selected to create a false impression of future contract values.
- Attribution - Statistics should be referenced. Trademarks and service marks should be attributed.
- Bank sales - Insurance products advertised in a bank venue or under their jurisdiction require a disclaimer distinguishing them from bank products and banking regulations.
- Taxes - If tax advantages are referenced in any way, they should be explained, and any restrictions, penalties, and mitigating circumstances should be disclosed. Tax advice should be disavowed, explained, or referred to the prospective client's counsel.

For a more specific list of recommendations regarding the use of Disclosures, see Appendix C.

## Principles for Use of Professional Designations by Producers

NAFA is a strong proponent of all efforts to improve the education and training for those licensed to sell fixed annuities in any areas relating to insurance, insurance products, consumer financial needs and planning, taxation, and any other area impacting their function as seller and servicer of insurance products. This may include financial professional designations earned through testing, professional continuing education, or producer continuing education. Core principles of designation use are as follows:

- A designation used in advertising should be current and verifiable.
- A designation should represent some significant achievement of knowledge which could be relevant to the advertised insurance and which will benefit the recipient of the advertising.
- A designation should be awarded by a reputable, accredited organization within the insurance and financial industry.

As a result of this principle, some designations may be eschewed entirely by insurers or regulators because they are deemed of insufficient rigor, scope, or applicability to the sale of insurance or are deemed to have no significant benefit to the advertising recipient. Therefore, they could easily mislead a consumer.

## Fixed Indexed Annuity-Specific Principles

NAFA is a strong proponent of fixed indexed annuities as a useful, suitable product for many consumers. They are an evolution of the traditional fixed annuity, generally offering to policyowners:

- An alternative index-linked interest crediting method,
- The protection of a minimum interest rate guarantee (often zero), and
- A secondary guaranteed value complying with state standard non-forfeiture laws.

As such, some specific principles of advertising for fixed indexed annuities are worth noting. The alternative crediting method calls for several additional advertising and disclosure principles which result in an informed customer who is not misled about the nature of these insurance products. Core principles are:

- Guaranteed versus potential interest - Since fixed annuities and life insurance are not securities products, guarantees should be emphasized more than potential indexed interest credits, just as in non-indexed fixed annuities. Emphasis on the minimum guarantees of indexed products is probably even more important than for non-indexed annuities so that there is no tendency to confuse indexed products with securities.
- Definitions and boundaries of indexed interest - If indexed interest is highlighted, it should be described with reference to method, any components (such as caps, spreads, and participation rates) which may be changed by the company, and in what range the company may make changes. References to indices and rates should indicate whether dividends are included.
- Investment terminology - References should be avoided which position fixed indexed annuities as securities products or investments. For example, terms such as market participation, gains, returns, etc. should be avoided.
- Comparison to securities products - While it is theoretically possible to compare indexed annuities to equities or to discuss index composition in detail, it is generally wise to avoid doing so in advertising as it is quite difficult to sufficiently contrast them in a way which is complete and balanced enough to avoid a misleading association to the advertising recipient.
- Trademarks - Index service marks and registered trademarks should be respected.

For a more specific list of recommendations regarding the application of Fixed Indexed Annuity-Specific Advertising Principles, see Appendix D.

## Prohibited Statements and Words

The following are statements and words which do meet these principles. Some words and statements may be deemed so fraught with potential for misunderstanding and misleading consumers that no context or additional explanation can reasonably undo the misimpression for a significant proportion of consumers. NAFA recommends following these additional guidelines concerning the marketing and advertising of insurance products, and companies or regulators may wish to prohibit and excise them entirely from advertising:

- Don't use statements which create the impression that insurer's specific financial strength is irrelevant because of government guarantees.
- Don't use adjectives which imply that premiums will disappear unless absolutely guaranteed to do so.
- Don't use terms so closely associated with bank products, securities, retirement plans, or other non-annuity or non-insurance products that their use implies the annuity is that type of product.

- Don't use statements that imply some benefit is not available to other people of the same class or that they are unique to an individual.
- Don't imply in any way that the contract or insurer is affiliated with a government entity.

For a more specific list of recommendations regarding the application of Prohibited Statements and Words Principles, see Appendix E.

## Advertising Regimen and Procedures

As insurers, marketing organizations, and producers seek to promote and enforce good advertising practices, it becomes necessary to develop processes and procedures. By using a well planned advertising regimen, the standards and principles discussed in this document can be uniformly taught and applied to those within an organization. One of the key elements of implementing an advertising regimen is the procedures which are used to maintain and enforce its application. Core principles are as follows.

- Accountability – Individuals are trained on the applicability of advertising standards in their areas of responsibility and are held accountable for adhering to established standards.
- Consistency – The regimen should be applied consistently to all advertising whether originated by the insurer or not. Consider the use of a checklist through which all advertising is submitted.
- Prevalence – Advertising standards and practices should be widely understood and practiced throughout an organization.
- Applicability – Standards and practices should be used in a common sense fashion to all materials which fall within the definition of advertising.
- Adaptability – Advertising procedures should be flexible and capable of being adapted to changing regulations and concerns.
- Recordkeeping – Recordkeeping should be done at both the insurer and producer level. An easily understandable, clear, and consistent system should be used, and records should be retained for the life of the product or service advertised or for a reasonably designated period of time.
- Document Tracking - Ad numbers are assigned by most companies to approved pieces, and one of the most effective accountability and chain-of-responsibility methods is to place such numbers on all drafts, versions, and in the final ad itself.

## CONCLUSION

One of NAFA's primary functions is to educate those within the insurance and financial industry on issues concerning fixed annuities. As the fixed annuity industry grows and the regulatory environment evolves, the importance of ensuring accurate, honest, understandable, and appropriately informative advertising increases. As products become more sophisticated and complicated and our volume of advertising increases, the need to help the consumer make an educated and informed decision increases. NAFA hopes the principles set forth in this document will serve as a guide and standard for those within the industry. By creating a greater awareness of good advertising principles and educating industry members on these standards, we can better serve the interests of both the industry and consumers.

## Appendix A

Following is just one example of how NAFA's Accuracy and Truthfulness Principles might be expressed in more specific do's and don'ts:

- Written or oral statements should not misrepresent or inaccurately compare the terms, conditions, or benefits contained within a contract or policy for the purpose of inducing or attempting to induce the owner to lapse, forfeit, surrender, retain, exchange, or convert an insurance or investment contract.
- Do not make, publish, disseminate, circulate, or place before the public an advertisement or statement containing any untrue, deceptive, or misleading statement with respect to any insurer or investment company in the conduct of its business.
- Make certain that no aspect of the advertisement is untrue, deceptive, or misleading based on the information included or omitted.
- Advertisements should be fair and balanced and include limitations or negative features.
- Limitations should be clearly defined and should not be worded positively to imply a benefit.
- Products issued by insurers should be described as life insurance policies or annuity contracts, and no alternative references to such products should be made that would tend to obscure the true nature of those products.
- If a product is being advertised or referenced, it should have been approved in the state(s) in which the advertisement will be used, or there is a clear indication that the product may not be approved in all states.
- Any advertisement, when examined as a whole, should not be constructed in such a way as to lead a person of average intelligence and education to any false conclusions they might reasonably rely upon. Any conclusion likely to be made should be based on the literal meaning of the words, impressions from nonverbal portions of the advertisement (e.g. pictures, charts, or diagrams), and from materials and descriptions omitted from the advertisement.
- Advertisements shall not utilize or describe non-guaranteed policy elements in a manner which is misleading. There should be no indication that non-guaranteed elements and/or values are guaranteed. All illustrations of and references to non-guaranteed elements should contain a statement that they are not guarantees or estimates of amounts to be paid in the future and are subject to change. If a consumer advertisement contains illustrations or statements containing or based upon non-guaranteed policy elements, it shall set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed elements.
- If interest rates higher than those guaranteed are referred to or illustrated, they should not be higher than those being currently credited.
- Consider the sophistication of the intended audience, and take particular care in developing communications for elderly and first-time purchasers, to ensure that material facts are explained in a way they can understand and terms which the average recipient may not understand are defined.
- Materials should not disparage other insurers, producers, services, or methods of marketing.

## Appendix B

Following is just one example of a more detailed expression of NAFA's Principles for Identification of Advertiser and Product:

- Use the issuing company's full name in the first / most prominent reference.
- No advertisement should use the group or parent company name to mislead or deceive as to the true identity of the insurer or to create the impression that any entity other than the insurer is financially responsible for a policy.
- Indicate the home office location whenever the company or its products are referenced.
- If the advertisement refers to a product or its features/ projected values, then the contract type, product names, and form number should be clearly identified.
- No combinations of words should be used that could mislead prospective insureds into believing that the solicitation is connected or endorsed by any governmental agency or program.
- Any information regarding the insurer's financial condition, asset size, asset portfolio, and corporate lineage should be accurate and up to date.
- Reference to any third party/commercial rating of the insurer – A.M. Best for example – should incorporate the full description of the rating, including a statement about the number of categories that a rating service would use to rank an insurer and where a particular ranking would fall within the total number of categories.
- Include producer or agency name as it appears on insurance license.
- No reference should indicate or imply that the producer, if directly compensated for product sales, is not so compensated.

## Appendix C

*Appendix C does not incorporate any changes/additions from the NAIC Disclosure Model Working Group and will be updated when that group completes its work and a Model is adopted.*

The following is just one example of a more detailed expression of Disclosure Principles:

- All advertising material that references projected values of annuity products should indicate clearly any elements that may affect such values, including, but not limited to, surrender charges, index cap rates, participation rates, market value adjustments, etc. Such disclosures should be prominently displayed, easily found by the reader, and in a font size sufficient to be easily readable.
- All hypothetical illustrations of performance should reflect at least 10 years worth of data. Actual performance charts should reflect at least 10 years worth of data or since inception, whichever is longer. Use complete product names.
- Any advertising material that references guaranteed elements of features should indicate whether the guarantee is subject to any requirements and conditions and where disclosure of those requirements and conditions can be found.
- How the participation rates are determined and set by the insurer in relation to the index should be disclosed. Some fixed indexed annuities use an index spread, margin, or asset fee in addition to, or instead of, a participation rate. They will be subtracted from any gain in the index linked to the annuity and should be explained with the sales materials.
- Some fixed indexed annuities may put an index cap or upper limit on credited interest. This cap rate is generally stated as a percentage. This is the maximum rate of interest the annuity will earn and should be explained verbally and within sales material.
- If the insurer is allowed to change participation rates, index cap rates, or index spread/ margin fees at any time, this must be disclosed.
- The indexing method used to calculate the amount of interest to be credited to the contract based on a change in the index should be disclosed.
- Any statistics should be recent and relevant, and the source and date of statistics should be disclosed.
- References to any index should be consistent with its proper disclosures, for example: appropriate S&P 500® Index abbreviations include: Standard & Poor's, S&P, S&P 500, Standard & Poor's 500, and the S&P 500 Index.
- All pieces designed for producer use should clearly describe the audience the material is intended for, as well as the audience the material is not intended for. For example "For Producer/Agent Use Only. Not to be used with consumers".
- If an agency or producer is located in a bank or other financial institution, the following or similar disclosure should be included: Annuities and life insurance products are products of the insurance industry. They are not deposits in, obligations of, or guaranteed by the bank. They are not insured by the FDIC.
- Any advertising material that discusses or references the tax aspects of life insurance or annuity products should (1) explain, or cite the authority for, such tax treatment, (2) contain a clear statement that the reference to tax treatment does not constitute tax, legal, or accounting advice, and (3) contain a clear statement that consumers should consult their own legal or tax counsel to confirm how the tax treatment may apply to them.
- Describe the potential cash value accumulation of deferred annuities as "tax-deferred," not as "tax-free."
- Ads that discuss withdrawals or income features or riders should include the statement, "A 10% federal tax penalty may apply to certain distributions if taken before the owner's age 59½."

## Appendix D

Following is just one example of a more detailed expression of Fixed Indexed Annuity-Specific Advertising Principles:

- Emphasize the guarantees, including protection of premium and the guaranteed interest rates, assuming the basis for these guarantees are clearly disclosed.
- Emphasize the principal protection feature, and refrain from describing the product as similar to a variable annuity with a guaranteed floor or principal protection.
- Advertising for fixed indexed annuities should not place undue emphasis on the index.
- Avoid the use of investment terms such as "investment performance," "trading day," "investment returns," "maximizing returns," "Wall Street," or the "stock market" except with extreme care (and appropriate caveats) in the advertisement of fixed indexed annuities.
- Advertising for fixed indexed annuities should not describe the product's indexing feature or formula as a means of "participation" in the "stock markets" or the "equity markets," although indexing may be appropriately described as providing the potential for higher excess interest rates over the long term.
- Avoid providing a partial or complete list of the stocks or the companies that comprise the index, as such a list might suggest that the owner is indirectly investing in those stocks.
- Avoid emphasizing the similarities of fixed indexed annuities in advertising to variable annuities, mutual funds, or other investment vehicles.
- Refer to the applicable index only as a factor that in part determines the interest to be credited at the end of an index period and not as a vehicle for participation in stock market gains or returns.
- Fixed indexed annuity advertising should clearly indicate the index does not contain dividends if that is the case.
- Emphasize that the insurer credits interest; don't refer to "market gains" or "market growth."
- Clearly state that the product is not an investment in the "market" or in the applicable index.
- Indicate that the participation rate, cap rate, and/or any other non-guaranteed components of the indexing formula may change and may be different in the future.
- Be clear that the insurer is the entity backing the guarantees provided by the product.
- Disclose that the index interest could be less than with a traditional product, and could be zero (if applicable).
- Include the index service mark or registered trademark as applicable, along with index name disclosure for any listed index.

## Appendix E

Following is just one example of a more detailed expression of Prohibited Statements and Words:

The following words, terms and phrases should not be used in any advertising.

- Statements that are patently false or misleading.
- Statements that describe or attribute benefits that do not exist.
- Statements that fail to clearly identify a product as a life insurance or annuity product.
- Statements that contain omissions of material information which are likely to result in an incomplete understanding of the subject or a misdirection of the audience.
- Statements that make false, unfair, or incomplete comparisons to other financial products.
- Statements that refer to a state guaranty association or state guaranty fund as an inducement to purchase an insurance product.
- Statements designed to disparage competitors.
- The words "CD annuity" or "certificate of annuity."
- The words "savings account," "savings plan," "retirement plan," "investment," "investment account," or "side fund."
- The word "risk-free."
- Statements that imply some benefit is not available to other people of the same class by using terms such as "special," "special relationship with the sponsor," etc.
- Implication, through text or graphics, that contract or insurer is affiliated with a government entity.