

# United States Senate

WASHINGTON, DC 20510-1502

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SENATOR HARKIN'S  
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AGRICULTURE

APPROPRIATIONS

HEALTH, EDUCATION,  
LABOR, AND PENSIONS

SMALL BUSINESS

The Honorable Christopher Cox  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Cox:

On June 25, the Securities and Exchange Commission (SEC) issued a proposed rule that would extend federal securities regulations to fixed indexed annuities, financial products that are currently regulated by states under their insurance laws. I believe that the case has not been made that the regulation of fixed indexed annuities should be shifted from state insurance regulators to the Securities and Exchange Commission, and that these are insurance products which should be regulated by the states, as provided by the Congress. For that reason, I believe the Commission should not move forward with this proposal.

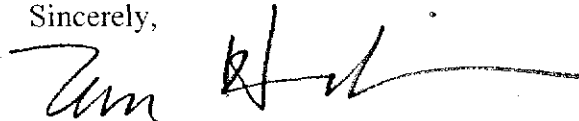
The SEC has a long history of respecting the role of state insurance regulation, and has avoided asserting its authority over traditional insurance products. I do not see why that should be changed at this point. The SEC has properly extended its authority to financial products that merely "wrap" insurance around one or more traditional securities offerings, such as variable rate annuities. However, I believe that a fixed indexed annuity does not share the characteristics of such "wrapped" products. In fact, the proposal fails to distinguish any aspect of a fixed index annuity from other traditional fixed annuity products that have always been regulated by state insurance regulators, not the SEC. The proposed rule offers no specific policy rationale for ignoring the historic dichotomy between state and federal regulation of insurance products provided for in McCarran Ferguson.

In my state of Iowa, the Insurance Commissioner has taken a leadership role in enhancing the regulation of fixed indexed annuities and strengthening consumer safeguards. The Iowa Insurance Division has implemented a series of rules that mandate disclosure to purchasers of fixed indexed annuities and prohibit the sale of products that are not suitable for senior citizens. I also understand that the National Association of Insurance Commissioners (NAIC) has developed a model rule on suitability for fixed indexed annuities, which has already been adopted by nearly forty states. The proposed rule ignores these regulatory efforts, and the benefits that they offer consumers, especially seniors.

I agree with the objective of the rule. But, for the last 60 years, Congress has determined that the proper regulation in this area belongs at the state level. The SEC has not shown that the existing state regulatory scheme is insufficient or ineffective, nor does it describe any potential new safeguards that would benefit consumers under the proposed regulation.

I urge the Commission to withdraw its proposed rule, and to work with the state insurance commissioners to determine what additional assistance the SEC can offer state regulators that further the purpose of ensuring that consumers are protected against unfair, deceptive, or fraudulent practices.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Harkin", with a long horizontal flourish extending to the right.

Tom Harkin  
United States Senator

cc: Commissioner Kathleen L. Casey  
Commissioner Elisse B. Walter  
Commissioner Luis A. Aguilar  
Commissioner Troy A. Paredes