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109TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 109–40

MILITARY PERSONNEL FINANCIAL SERVICES PROTECTION ACT

APRIL 13, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 458]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 458) to prevent the sale of abusive insurance and investment products to military personnel, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 458, the Military Personnel Financial Services Protection Act, will protect military services members from the sale of ques-

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tionable financial products, curb abusive sales practices on military installations, and ensure regulatory oversight of financial services sales on military installations. Specifically, H.R. 458 bans the sale of contractual plans, requires written disclosures in conjunction with certain on-installation sales or solicitations, encourages the development of improved products for military personnel, increases investor access to broker registration and disciplinary information, and improves regulatory oversight by coordinating and encouraging contact among insurance companies, Federal and State regulators, and the Secretary of Defense.

To further protect military personnel, a registry of barred and banned agents will be established and maintained by the Secretary of Defense, and the registry information is to be made readily available to the appropriate Federal and State regulators. The Secretary of Defense is directed to notify the appropriate regulatory authorities when an individual is added to or removed from the registry.

BACKGROUND AND NEED FOR LEGISLATION

There is an extensive history of abusive and misleading marketing and sales of financial services products on military installations. Problems have included abusive and coercive sales tactics, expensive and outdated products, and a lack of uniform regulatory oversight for on-installation sales.

A Pentagon-commissioned study by General Thomas Cuthbert and a separate Navy Judge Advocate General Corps report by Lt. Wayne Hildreth documented the problem of abusive sales practices of life insurance agents on domestic and foreign U.S. military installations.[1] These reports detailed improper solicitation on installations, the use of fraternal military organizations to sell insurance products, a lack of uniform oversight or regulation of insurance sales on installations, and routine and systemic violations of Department of Defense rules. These reports were followed by a series of news articles in the summer of 2004 that alleged abusive sales practices on several military installations throughout the country and overseas.

A 1986 Department of Defense Directive limits personal commercial solicitations to licensed and approved entities with specific appointments.[2] The Directive prohibits, among other practices, solicitation of recruits, trainees, and transient personnel in a "mass" or "captive" audience, using misleading advertising and sales literature, and giving the appearance that the Department of Defense endorses any particular company.[3] Despite these prohibitions, "agents have made misleading pitches to 'captive' audiences * * * posed as counselors on veterans benefits and independent financial advisers [and] solicited soldiers in their barracks or while they were on duty, [which are all] violations of Defense Department regulations."[4]

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[1] Final Report, Insurance Solicitation on Department of Defense Installations, May 15, 2000; Litigation Report, Investigation of NCOA Standard Procedures for Selling Insurance, November 19, 1997.

[2] DoD Directive 1344.7, Sect. 6.1.

[3] DoD Directive 1344.7, Sect. 6.4.

[4] Diana B. Henriques, Basic Training Doesn't Guard Against Insurance Pitch to G.I.'s, N.Y. Times, July 20, 2004, at A1.

Witnesses at a September 9, 2004 hearing before the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises criticized these abusive sales practices. Mr. David F. Woods, CEO of the National Association of Insurance and Financial Advisors, testified that, "We condemn * * * deceptive, and unethical sales practices and have consistently worked to eliminate them from sales on and off base."[5] In addition to criticizing the sales practices, witnesses before the Subcommittee discussed the lack of regulatory oversight for on-installation sales. As another witness testified, "We are convinced that the reason these issues continue to come up is because of the lack of clarity over who has the authority to oversee such sales and the absence of clear procedures to ensure the highest standards for dealing with men and women in uniform."[6]

In addition to improper and unethical sales practices, witnesses at the Subcommittee hearing criticized the securities and life insurance products being sold, suggesting that the products were particularly unsuitable for most members of the armed services and superior investments were available for all investors. For example, Ms. Elizabeth Jetton, President of the Financial Planning Association, testified that the American Amicable Insurance Company's sales tactic of pitching insurance as a retirement vehicle was "misguided and misleading" and that "any disinterested third party would have a very difficult time justifying [such] insurance as a rational retirement investment for the typical serviceman."[7] Mr. Mercer Bullard, President and Founder of Fund Democracy, testified that, "it is particularly offensive that insurance agents peddle overpriced, unsuitable products to the men and women who daily put their lives on the line for America's defense * * *."[8]

The Subcommittee investigation in preparation for the hearing revealed that one financial services company was targeting military personnel with the sale of contractual plans, an obscure financial product through which an investor contributes equal monthly payments typically for 15 to 25 years into shares of a designated mutual fund. The hallmark of the contractual plan is a sales load of 50% assessed against the first year of contributions.

First offered in 1930, contractual plans were created to allow the investor of modest means to make monthly payments of as little as $10 and still experience the benefits of investing in the financial markets. Yet, these plans fell quickly into disrepute, beginning a sordid history of abusive selling practices and excessive sales charges.[9]

In congressional hearings on the investment industry in 1940 that led to the passage of the Investment Company Act of 1940, Securities and Exchange Commission attorney John Boland testified that the SEC's investigation into the contractual plan industry revealed gross abuses, including rampant misrepresentations con-

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[5] Hearing entitled "G.I. Finances: Protecting Those Who Protect Us" before the House Subcommittee on Capital Markets, September 9, 2004, written testimony of David F. Woods, p. 3.

[6] Hearing, written testimony of Hon. Frank Keating, President and CEO, American Council of Life Insurers, p. 4.

[7] Hearing, written testimony of Ms. Elisabeth W. Jetton, CFP, on behalf of the Financial Planning Association, p. 5.

[8] Hearing, written testimony of Mr. Mercer E. Bullard, President of Fund Democracy, Inc. and Assistant Professor of Law, University of Mississippi School of Law, p. 3.

[9] Securities and Exchange Commission, Public Policy Implication of Investment Company Growth 224 (1966).

cerning the sales loads.[10] To counter these abuses, Congress included in the Investment Company Act provisions applying to sales of contractual plans. First defining a contractual plan as a "periodic payment plan certificate,"[11] Congress then placed restrictions on sales loads, the most relevant being the sales load cannot exceed 9% of the aggregate payments into the plan and cannot be more than 50% of the first twelve monthly payments into the plan.[12]

Again reviewing these plans in the 1960s in two different congressional reports, the SEC questioned the justification for the high front-end load as well as the product itself. Responding to Congress' request to study investor protection in light of the rules of the securities markets, in 1963 the SEC published the Report of the Special Study of Securities Markets.[13] The report devoted some analysis to the contractual plan, concluding that the high first-year sales load was unjustifiable: "[O]nly compelling reasons can justify the continued existence of the front-end load [on contractual plans]. The study has concluded that the justifications advanced by the industry are hardly persuasive and certainly not compelling."[14]

The Special Study Report then called for considering the elimination of the excessively high first-year front-end load.[15] The Special Study Report also noted the likely unsuitability of the product for investors of modest means: "To some extent the industry is reluctant to concede that questions of suitability can ever arise in the sale of funds or plans, but * * * [the] evidence concerning contractual plan redemptions and lapses leave no doubt that a substantial number of plans are sold to persons for whom, because they have insufficient income or inadequate other financial resources, they are likely to be unsuitable investments."[16]

Following upon the 1963 Report, in 1966 the SEC released the Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth.[17] In the report, the SEC noted that early contractual plan redeemers "pay 'effective' or cumulative average sales loads which often amount to many times the normal sales loads applicable to the underlying fund shares—effective sales loads which clearly would be 'unconscionable or grossly excessive' but for the express provisions of [Section 27(a)] of the [Investment Company] Act with respect to front-end loads."[18] In addition the SEC noted the potential for sales abuses: "Moreover, though the contractual plan is a long-range program for systematic investing, the front-end load only provides retailers with a strong incentive to get purchasers to initiate such a plan, regardless of their circumstances, in order to realize commissions on at least the front-end portion of the load. After these first-year payments are made, the salesman's interest in the completion of the plans he sells is sharply eroded by the fact that his commissions are substantially decreased."[19]

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[10] Hearings Before a Subcommittee of the Committee on Banking and Currency on S. 3580, 76th Cong. 3d. Sess. (1940), Testimony of John Boland, Attorney, General Counsel's Office, Securities and Exchange Commission, pp. 168, 172.
[11] Investment Company Act of 1940, Sec. 2(a)(27).
[12] Investment Company Act of 1940. Sec. 27(a).
[13] H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963).
[14] Id. at 211.
[15] Id.
[16] Id. at 207.
[17] H.R. Rep. No. 2337, 89th Cong., 2d Sess. (1966).
[18] Id. at 237.
[19] Id. at 244.

In concluding its analysis of the structure and sales of contractual plans in the Public Policy Implications of Investment Company Growth, the SEC recommended to Congress the abolition of the front-end load on contractual plans and the reduction of the maximum aggregate load during the plan's term from 9% to 5%.[20] In 1967, the SEC drafted a bill to implement those and other policy recommendations. The bill included a provision to abolish the front-end load on contractual plans. Bowing to industry pressure, Congress refused to follow the SEC's recommendation, passing the Investment Company Act Amendments of 1970, which implemented refund and surrender privileges for contractual plan investors, but did not reduce the front-end load.

After the 1970 Amendments, Congress and regulators focused little attention on contractual plans[21] as sales declined with the advent of no-load and low-load mutual funds and the possibility of dollar cost averaging with minimal monthly contributions. In fact, in a mutual fund market that has over 7 trillion dollars invested, these plans account for only approximately 11 billion dollars of which 90 percent are held by military personnel. Today financial experts decry these investment vehicles. Vanguard Group founder John C. Bogle asserted: "Would I ever recommend that an investor buy contractual plans? No, I would not."[22] Similarly, Morningstar Inc.'s Senior Fund Analyst Bridget Hughes succinctly stated, "There are really no advantages to these contractual funds; they are old-fashioned, based on old ideas of how to force people to commit to systematic investing."[23]

In December 2004, the dominant retailer of contractual plans, a financial services company catering exclusively to military personnel, voluntarily stopped selling them in the wake of last year's Committee action and investigations by the SEC and NASD into its use of misleading contractual plan sales materials. Later that same month the company settled the charges with the SEC and NASD, agreeing to pay $12 million to reimburse certain customers and provide investor education to the military. At the same time NASD issued a warning to investors regarding the high upfront costs associated with contractual plans.

HEARINGS

The Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing on financial product sales to military personnel entitled "G.I. Finances: Protecting Those Who Protect Us" on September 9, 2004. The Subcommittee received testimony from the following witnesses: Specialist Brandon Conger, United States Army; Ms. Elizabeth W. Jetton, President, Financial Planning Association; Mr. Mercer Bullard, Founder and Chief Executive Officer, Fund Democracy, Inc.; Mr. Lamar C.

[20] Id. at 246–47.

[21] The only substantive amendment to Section 27 was passed under the National Securities Markets Improvement Act of 1996, which exempted variable life insurance and variable annuities from the strictures of Section 27. See Section 27(i) of the 1940 Act. Note that in 1971, Congress further amended Section 27(f) to clarify that the 60 day notice provision did not apply to periodic payment plans where the sales load was always under 9% of the total monthly payment (i.e. a plan without a disproportionate front-end load).

[22] Diana B. Henriques, Basic Training Doesn't Guard Against Insurance Pitch to G.I.'s, N.Y. Times, July 20, 2004, at A1.

[23] Gary S. Mogel, Congress Questions Sale of High-Fee Funds to Military: Contractual Plans Come under Scrutiny, Investment News, Vol. 8, Issue 34, Sept. 13, 2004, at 21.

Smith, Chairman and Chief Executive Officer, First Command Financial Planning, Inc.; Mr. Joe W. Dunlap, Executive Vice President, American Amicable Life Insurance Company of Texas; Mr. David Woods, Chief Executive Officer, National Association of Insurance and Financial Agents; Hon. Frank Keating, President and Chief Executive Officer, American Council of Life Insurers.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 15, 2005 and ordered H.R. 458, the Military Personnel Financial Services Protection Act, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed by a voice vote. An amendment offered by Mr. Gutierrez, no. 1, to limit "pay day" lending activities was withdrawn.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings previously and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Secretary of Defense and State and Federal financial regulators will use the authority granted by this legislation to protect members of the military from abusive sales practices on military installations. Further, the Secretary of Defense will use the authority granted by this legislation to create and maintain a registry of agents and broker/dealers who have been banned or barred from selling financial services products on military installations.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

APRIL 13, 2005.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 458, the Military Personnel Financial Services Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Melissa E. Zimmerman (for federal costs), and Craig Cammarata (for the private-sector impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

H.R. 458—Military Personnel Financial Services Protection Act

Summary: H.R. 458 would ban the sale of mutual funds sold though contractual plans. The bill also would require insurance companies to provide certain notices about insurance policies offered by the U.S. government when selling an insurance policy to servicemembers or while marketing on military installations. The bill would require the Department of Defense to maintain a list of agents and advisors barred from doing business on military installations. Finally, the bill would amend securities law to require registered securities associations to provide public access to certain consumer information and to file certain financial information with the Securities and Exchange Commission.

CBO estimates that implementing H.R. 458 would result in no significant cost to the federal government and would not affect direct spending or revenues.

H.R. 458 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), and any costs to state, local, or tribal governments would be voluntary.

H.R. 458 contains private-sector mandates as defined in UMRA related to the sales of mutual fund and life insurance products. Based on information provided by industry and government sources, CBO expects that the aggregate direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: CBO estimates that implementing H.R. 458 would result in no significant cost to the Federal Government and would not affect direct spending or revenues.

Estimated impact on state, local, and tribal governments: H.R. 458 contains no intergovernmental mandates as defined in UMRA, and any costs to state, local, or tribal governments would be voluntary. The bill would encourage state insurance regulators to co-

ordinate with the Department of Defense to protect military personnel from predatory life insurance schemes. Based on information from state insurance commissioners, CBO estimates that the costs of such cooperation would not be significant.

Estimated impact on the private sector: H.R. 458 contains private-sector mandates as defined in UMRA related to the sales of mutual fund and life insurance products. Based on information provided by industry and government sources, CBO expects that the aggregate direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

H.R. 458 would impose private-sector mandates on registered investment companies, registered securities associations, insurers and those selling life insurance products to members of the Armed Forces on military installations of the United States. Specifically, the bill would impose mandates by:

Prohibiting the sales of periodic-payment-plan certificates;

Requiring a registered securities association to provide an electronic or other process to receive and respond to inquiries about disciplinary actions taken against brokers and dealers; and

Requiring insurers and producers of life insurance products to make certain disclosures when selling or soliciting life insurance products on military installations.

Prohibition on the sales of periodic plan certificates

Purchasers of periodic-payment-plan certificates make monthly investment payments into mutual funds, typically for a period of 15 years or more. Under current law, the Investment Company Act limits the sales load on such certificates to 9 percent of the total payments to be made during the life of the plan, but allows that sales load to be significantly front-loaded. Specifically, up to half of the monthly investment payments made in the first year may be deducted for sales load. According to industry sources, current practice is to charge a sales load that amounts to 3.3 percent of the total payments expected to be made over the life of the plan, and to collect that sales charge for the entire plan period by deducting half of the first 12 investment payments.

H.R. 458 would impose a private-sector mandate on registered investment companies by prohibiting them from selling any more periodic-payment-plan certificates. The cost of complying with the mandate would be the income (sales load) forgone net of any operating expenses to generate that income. Based on information from industry sources on sales in 2003 and 2004, CBO estimates that the annual sales load that would be forgone by the prohibition of new sales of periodic-payment-plan certificates would range between $30 million and $35 million.

Disclosure and inquiry response requirements

The bill also would impose private-sector mandates regarding additional disclosures by those selling life insurance on military bases, and responses to inquiries about broker or dealer registration information. Based on information from industry and government sources, CBO estimates that the direct cost to comply with those mandates would be small. Those mandates would:

Require insurers and producers of life insurance products selling or soliciting those products on military installations to provide a written disclosure to the consumer that subsidized life insurance may be available from the federal government, and that the U.S. government has in no way sanctioned, recommended, or encouraged the product being offered; and

Require a registered securities association to establish and maintain a readily accessible electronic or other process to respond to inquiries regarding registration information about brokers and dealers and their associated persons, including disciplinary actions taken against them.

Estimate prepared by: Federal Costs: Melissa E. Zimmerman; State and Local Impact: Sarah Puro; and Private-Sector Impact: Craig Cammarata.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EXCHANGE OF COMMITTEE CORRESPONDENCE

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, March 16, 2005.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On March 16, 2005, the Committee on Financial Services reported H.R. 458, a bill to prevent the sale of abusive insurance and investment products to military personnel. As you know, H.R. 458, as ordered reported, contained provisions within the jurisdiction of the Committee on Armed Services.

Because of your willingness to consult with this Committee, and because of your desire to move this legislation expeditiously, I will waive consideration of the bill by the Committee on Armed Services. By agreeing to waive this consideration of the bill, the Committee does not waive its jurisdiction over H.R. 458. In addition, should a conference be convened on this legislation, the Committee reserves its authority to seek conferees on any provisions of the bill that are within its jurisdiction. I ask for your commitment to support any request for conferees by the Committee on H.R. 458 or similar legislation.

I request that you include this letter and your response in the Congressional Record during your consideration of the legislation on the House floor. Thank you for your consideration of these matters.

With best wishes.

Sincerely,

DUNCAN HUNTER,
Chairman.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, March 16, 2005.

Hon. DUNCAN HUNTER,
Chairman, Committee on Armed Services
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN HUNTER: Thank you for your recent letter regarding your committee's jurisdictional interest in H.R. 458, the Military Personnel Financial Services Protection Act. I appreciate all of your efforts to expedite consideration of this important legislation.

I acknowledge your committee's jurisdictional interest in section 11 of the bill as ordered reported by the Committee on Financial Services and appreciate your cooperation in allowing speedy consideration of the legislation. I agree that your decision to forego further action on the bill will not prejudice the Committee on Armed Services with respect to its jurisdictional prerogatives on this or similar legislation. I will support your request for an appropriate number of conferees should there be a House-Senate conference on this or similar legislation.

Finally, I will include a copy of your letter and this response in Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your assistance.

Yours truly,

MICHAEL G. OXLEY,
Chairman.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title for the bill, the "Military Personnel Financial Services Protection Act".

Section 2. Congressional findings

The section sets forth certain Congressional findings describing the need to protect members of the Armed Forces from the sale of inappropriate financial products and from abusive and misleading sales tactics.

Section 3. Prohibition on future sales of periodic payment plans

This section amends section 27 of the Investment Company Act of 1940 by prohibiting both the issuance of periodic payment plan certificates by registered investment companies and the sales of periodic payment plan certificates by registered investment companies and the depositors and underwriters of such companies. This section does not alter, invalidate, or affect the rights or obligations under any periodic payment plan certificates issued before the aforementioned prohibition takes effect. This section also directs the Securities and Exchange Commission to submit a report to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs within six months of the enactment of the legislation regarding any measures taken by a broker or dealer to voluntarily refund payments made by military personnel on any periodic payment plan certificate, and the amounts of such refunds; the sales practices of such brokers or dealers on military installations over the past 5 years and any legislative or regulatory recommendations to improve such practices; and the revenues generated by such brokers or dealers in the sales of periodic payment plan certificates over the past 5 years and what products such brokers or dealers market to replace the revenue generated from the sales of periodic payment plan certificates.

Section 4. Method of maintaining broker/dealer registration, disciplinary, and other data

This section amends section 15A(i) of the Securities Exchange Act of 1934, which requires a registered securities association to maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and to respond to those inquiries in writing. The amended language requires a registered securities association to establish a system to collect and maintain registration information, and to establish an easily accessible electronic or other process (in addition to the toll-free telephone listing) to respond to inquiries about registration information.

Registration information will be collected on the association's members and their associated persons, as well as the members and associated persons of any registered national securities exchange that uses the system for the registration of such persons. The association may charge persons making inquiries, other than an individual investor, reasonable fees for producing a response.

The registered securities association, in consultation with the participating registered national securities exchanges, also will be required to adopt rules on the process for making inquiries and responses, and on the establishment of an administrative process for disputes that may arise concerning the accuracy of information given in responses to inquiries. As under current law, the association and participating exchanges will not be liable to any persons for actions taken or omitted in good faith under this provision.

Section 5. Filings depositories for investment advisors

This section reorganizes and codifies in the Investment Advisers Act of 1940 provisions of the National Securities Markets Improvement Act of 1996, in which Congress directed the Commission to establish an electronic filing system, and mandated the creation of a public disclosure program, for investment advisers. Pursuant to this directive, the Commission designated the NASD to operate the electronic filing system for investment advisers, which is called the Investment Adviser Registration Depository, and created an Internet-based public disclosure program containing investment adviser registration and disciplinary information.

This section codifies this arrangement, although it requires a toll-free telephone listing, or electronic means, for receiving and responding to inquiries for registration information.

The new provision recognizes that the NASD also operates the public disclosure program on behalf of the Commission and conforms the Investment Advisers Act provision to the terms of the Securities Exchange Act of 1934 so that the NASD has immunity from liability for actions taken in good faith in operating the investment adviser public disclosure program.

Section 6. State insurance jurisdiction on military installations

This section clarifies State jurisdiction over the regulation of the business of insurance as conducted on Federal land or facilities in the United States and abroad, including military installations. State insurance jurisdiction will generally apply to all private insurance activities on Federal land, except to the extent there is direct conflict with applicable and authorized Federal rules or where a State law would not apply to the activity even if it were being conducted on State land.

To the extent there is a conflict among State laws that would apply to insurance activities conducted on Federal land, the section provides that the State law that has priority (and primary enforcement responsibility) is that of the State within which the Federal land is located. If the Federal land or facility is located outside of the United States (such as in a foreign country), then the State with primary jurisdiction is the State that primarily regulates the individual or entity engaged in the insurance activity. For the regulation of any activity involving an insurance producer (e.g., agent or broker), where the producer is licensed in multiple States and there is a conflict among the laws of those States, the law of the State that issued the producer's resident license applies and that State is primarily responsible for enforcing its laws against that producer. For the regulation of any activity involving any other insurance entity where there is a conflict among State laws that would otherwise apply, such as questions regarding an insurance product from an insurer licensed in multiple States, then the law of the State of the entity's domicile applies and that State is primarily responsible for enforcing its laws against that entity.

These provisions are intended to ensure that there are no gaps between Federal and State insurance protections for military personnel, that States are able and required to enforce their insurance laws with respect to private insurance activities on Federal land, and that there is always at least one State that is recognized as

responsible for regulating any private insurance activity conducted on Federal land.

Section 7. Required development of military personnel protection standards regarding insurance sales

This section expresses the intent of Congress that the States collectively work together with the Secretary of Defense to ensure that there are appropriate standards implemented to protect members of the military from dishonest and predatory insurance sales practices while on military installations. The goal of this provision is to promote the development, identification, and implementation of uniform and coordinated protection standards to ensure that members of the military are not exposed to abusive sales tactics on military installations. The Committee intends the National Association of Insurance Commissioners (NAIC) (or NCOIL or similar organization of States) to work collaboratively with the Secretary to determine the appropriate regulatory division of insurance protections, under whose jurisdiction each protection should be implemented, and how each protection should be enforced in a coordinated and uniform manner to avoid regulatory gaps or inappropriate inconsistencies.

To achieve the goal of this section, the Committee expects that each State will identify its role in promoting these uniform standards within 12 months of the date of enactment of this legislation. The NAIC is expected to work with the Secretary of Defense to determine to what extent the States have implemented appropriate and uniform protection standards, and submit a report on how these goals have been met to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The Committee intends that this report will include a description of the work of the States and the Secretary in balancing responsibilities to ensure coordinated and uniform implementation to avoid any gaps in protecting our military personnel from inappropriate insurance products and sales practices.

Section 8. Required disclosures regarding life insurance

The purpose of this section is to ensure that no life insurance is sold to a member of the Armed Forces pursuant to an on-installation solicitation unless certain written disclosures are made first. If an insurer or producer solicits insurance on a military installation, then before the sale of the insurance, the insurer or producer must disclose to the consumer that the Federal Government has not sanctioned, recommended, or encouraged the sale of the product and that subsidized life insurance may be available from the Federal Government. If the solicitation is occurring on Federal land outside of the United States, then the disclosure must also include the address and phone numbers where consumer complaints are received by the appropriate State insurance departments (that primarily regulate the producer and insurer selling the product). The disclosure must be made in plain and readily understandable language in a type font at least as large as the font used for the majority of the policy. These written disclosures will help to ensure that members of the armed forces make an informed decision be-

fore purchasing private life insurance after having been solicited on a military installation.

Penalties have been provided as an enforcement tool for the intentional failure to provide written disclosures. If it is determined by a State or Federal agency, or in a final court proceeding, that the individual or entity intentionally failed to provide a disclosure as required by this section, then that individual or entity will be prohibited from engaging in the business of insurance on Federal facilities. These penalties do not apply to insurance activities that are specifically contracted by or through the Federal or any State Government or are specifically exempted from the applicability of this legislation by Federal or State law, regulation, or order that specifically refers to this section.

States are encouraged to develop and adopt, in materially identical form, a standard setting forth the requirements for disclosures under this section that apply to the business of insurance as sold to military personnel on military installations. The goal is to make this section dynamic to respond to future developments and to allow the States to develop their own standards. If standards are developed by a majority of the States, then those standards will apply in lieu of the requirements of this section for activities governed by those States (so long as there is no direct conflict with any Federal requirement other than this section). For purposes of this provision, the term "materially identical form" means that with respect to a particular activity in question, the exact same conduct is required or prohibited or otherwise regulated in exactly the same manner. The disclosures required by the majority of States may differ from or exceed the disclosures provided for in this section, as long as such disclosures are uniform in all material respects across all those States.

Section 9. Improving life insurance product standards

This section requests that the NAIC work with the Secretary of Defense to study and report to Congress on ways to improve the quality and sale of life insurance products sold by insurers and life insurance agents on military installations. This section is intended to focus the States and the Secretary on stopping not only abusive and misleading sales practices, but also inappropriate products from being sold to the men and women protecting the United States. Among other solutions, Congress intends that the study consider limiting sales authority to companies and producers that are certified as meeting appropriate best practices (such as the Insurance Marketplace Standards Association), and developing appropriate standards to stop bad products from being targeted to military personnel regardless of whether they are on or off installation. If the NAIC does not submit the report to the Committees of jurisdiction as directed by this section, then the Comptroller General of the United States must report to Congress on any proposals that have been made by relevant parties to improve the quality and sale of life insurance products sold to military personnel.

Section 10. Required reporting of disciplined insurance agents

This section effectively requires insurers whose producers are soliciting life insurance on military installations to implement a system to report to the appropriate insurance department any discipli-

nary actions taken against any of those producers by the military that the insurer is aware of, as well as any significant disciplinary action imposed by the insurer. The term "significant" is intended by the Committee to distinguish disciplinary actions for infractions that have bearing on the likelihood of a producer to engage in improper sales activities as opposed to minor actions that have no bearing on the producer's integrity or conduct and that would not otherwise be appropriate to report to a State.

This section also expresses the intent of Congress that the States collectively implement a system to receive reports of disciplinary actions taken against producers with respect to sales on military installations, and to disseminate information on disciplinary actions among themselves and the Secretary of Defense.

These provisions, along with section 11, are intended to prevent life insurance producers disciplined at one military installation from continuing to sell insurance at other Federal facilities, by ensuring that information on disciplinary actions against producers is being effectively communicated among all the relevant parties. The Committee expects the States to fulfill the requirements of this section by using the Producer Database (PDB) system of the National Insurance Producer Registry, a non-profit affiliate of the NAIC that most State insurance departments rely on to both share information regarding the licensing status of producers and make that information available to insurers. The Committee intends that all States utilize the PDB or a similar system, and improve PDB to be able to receive and share relevant information on producer licensing status with the Secretary of Defense.

Section 11. Registry of barred insurance agents and financial advisors

This section directs the Secretary of Defense to create and maintain a registry of banned or barred financial advisors and life insurance agents. The Secretary of Defense will be responsible for updating and maintaining the registry, which will provide the name, address, and other identifying information of the banned or barred agent or advisor. The registry must be accessible and searchable by local installation commanders and appropriate Federal and State financial regulators.

The Secretary of Defense is further required to promptly notify the appropriate Federal and State regulators when an individual has been added to or removed from the registry. The Secretary of Defense is also responsible for implementing an appeal process, and for issuing regulations to ensure the maintenance and operation of the registry.

The Committee intends this section to provide local installation commanders with adequate information to make access determinations for life insurance producers. The Committee expects the Secretary to fulfill the notification requirement by providing and receiving information through an electronic system networked with the NAIC's PDB or other similar system established by the States pursuant to section 10, as well as any similar systems created by the Securities and Exchange Commission or the NASD, to ensure that installation commanders, the Secretary, the appropriate securities and insurance regulators, and financial companies share in-

formation regarding disciplinary actions taken against producers and advisors to prevent the migration of rogue salespersons.

Section 12. Sense of Congress

This section indicates the sense of Congress that the Federal and State agencies responsible for regulation of insurance and securities should provide advice to the appropriate Federal entities to consider significantly increasing the life insurance coverage made available through the Federal Government to members of the military, encouraging greater financial literacy and objective financial counseling for military service members, and improving the benefits and matching contributions under the Thrift Savings Plan for military personnel.

Section 13. Definitions

This section defines certain terms used in the legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 27 OF THE INVESTMENT COMPANY ACT OF 1940

PERIODIC PAYMENT PLANS

SEC. 27. (a) * * *

* * * * * * *

(i)(1) * * *

(2) It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless—

(A) such contract is a redeemable security; and

(B) the insurance company complies with section [26(e)] *26(f)* and any rules or regulations issued by the Commission under section [26(e)] *26(f)*.

(j) TERMINATION OF SALES.—

(1) TERMINATION.—Effective 30 days after the date of enactment of the Military Personnel Financial Services Protection Act, it shall be unlawful, subject to subsection (i)—

(A) for any registered investment company to issue any periodic payment plan certificate; or

(B) for such company, or any depositor of or underwriter for any such company, or any other person, to sell such a certificate.

(2) NO INVALIDATION OF EXISTING CERTIFICATES.—Paragraph (1) shall not be construed to alter, invalidate, or otherwise affect any rights or obligations, including rights of redemption, under any periodic payment plan certificate issued and sold before 30 days after such date of enactment.

SECTION 15A OF THE SECURITIES EXCHANGE ACT OF 1934

REGISTERED SECURITIES ASSOCIATIONS

SEC. 15A. (a) * * *

* * * * * * *

[(i) A registered securities association shall, within one year from the date of enactment of this section, (1) establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing. Such association may charge persons, other than individual investors, reasonable fees for written responses to such inquiries. Such an association shall not have any liability to any person for any actions taken or omitted in good faith under this paragraph.]

(i) OBLIGATION TO MAINTAIN REGISTRATION, DISCIPLINARY AND OTHER DATA.—

(1) MAINTENANCE OF SYSTEM TO RESPOND TO INQUIRIES.—A registered securities association shall—

(A) establish and maintain a system for collecting and retaining registration information;

(B) establish and maintain a toll-free telephone listing, and a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding—

(i) registration information on its members and their associated persons; and

(ii) registration information on the members and their associated persons of any registered national securities exchange that uses the system described in subparagraph (A) for the registration of its members and their associated persons; and

(C) adopt rules governing the process for making inquiries and the type, scope, and presentation of information to be provided in response to such inquiries in consultation with any registered national securities exchange providing information pursuant to subparagraph (B)(ii).

(2) RECOVERY OF COSTS.—Such an association may charge persons making inquiries, other than individual investors, reasonable fees for responses to such inquiries.

(3) PROCESS FOR DISPUTED INFORMATION.—Such an association shall adopt rules establishing an administrative process for disputing the accuracy of information provided in response to inquiries under this subsection in consultation with any registered national securities exchange providing information pursuant to paragraph (1)(B)(ii).

(4) LIMITATION OF LIABILITY.—Such an association, or an exchange reporting information to such an association, shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

(5) DEFINITION.—For purposes of this subsection, the term "registration information" means the information reported in connection with the registration or licensing of brokers and dealers and their associated persons, including disciplinary actions, regulatory, judicial, and arbitration proceedings, and

other information required by law, or exchange or association rule, and the source and status of such information.

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INVESTMENT ADVISERS ACT OF 1940

TITLE II—INVESTMENT ADVISERS

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SEC. 203A. STATE AND FEDERAL RESPONSIBILITIES.

(a) * * *

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[(d) FILING DEPOSITORIES.—The Commission may, by rule, require an investment adviser—

[(1) to file with the Commission any fee, application, report, or notice required by this title or by the rules issued under this title through any entity designated by the Commission for that purpose; and

[(2) to pay the reasonable costs associated with such filing.]

[(e)] *(d)* STATE ASSISTANCE.—Upon request of the securities commissioner (or any agency or officer performing like functions) of any State, the Commission may provide such training, technical assistance, or other reasonable assistance in connection with the regulation of investment advisers by the State.

ANNUAL AND OTHER REPORTS

SEC. 204. [Every investment]

(a) IN GENERAL.—Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 203(b) of this title), shall make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(b) FILING DEPOSITORIES.—The Commission may, by rule, require an investment adviser—

(1) to file with the Commission any fee, application, report, or notice required to be filed by this title or the rules issued under this title through any entity designated by the Commission for that purpose; and

(2) to pay the reasonable costs associated with such filing and the establishment and maintenance of the systems required by subsection (c).

(c) ACCESS TO DISCIPLINARY AND OTHER INFORMATION.—

(1) MAINTENANCE OF SYSTEM TO RESPOND TO INQUIRIES.—The Commission shall require the entity designated by the

Commission under subsection (b)(1) to establish and maintain a toll-free telephone listing, or a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law or rule to be reported) involving investment advisers and persons associated with investment advisers.

(2) RECOVERY OF COSTS.—An entity designated by the Commission under subsection (b)(1) may charge persons making inquiries, other than individual investors, reasonable fees for responses to inquiries made under paragraph (1).

(3) LIMITATION ON LIABILITY.—An entity designated by the Commission under subsection (b)(1) shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

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SECTION 306 OF THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996

[SEC. 306. INVESTOR ACCESS TO INFORMATION.

[The Commission shall—

[(1) provide for the establishment and maintenance of a readily accessible telephonic or other electronic process to receive inquiries regarding disciplinary actions and proceedings involving investment advisers and persons associated with investment advisers; and

[(2) provide for prompt response to any inquiry described in paragraph (1).]

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