

Draft: 3/31/21

Annuity Suitability (A) Working Group
Virtual Meeting (*in lieu of meeting at the 2020 Fall National Meeting*)
March 25 and March 9, 2021

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met March 25 and March 9, 2021. The following Working Group members participated: Doug Ommen, Chair (IA); Amanda Baird, Vice Chair, and Michelle Brugh Rafeld (OH); Jimmy Gunn and Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Dean L. Cameron (ID); Shannon Lloyd and Tate Flott (KS); Renee Campbell (MI); Bruce R. Ramge, Martin Swanson and Tom Green (NE); Keith Nyhan and Denise Lamy (NH); Andrew Schallhorn and Cuc Nguyen (OK); Brian Hoffmeister (TN); Matt Gendron and Sarah Neil (RI); and Richard Wicka (WI). Also participating was: Robert Wake (ME).

1. Adopted its Feb. 22, 2021, and Dec. 14, 2020, Minutes

The Working Group met Feb. 22, 2021, and Dec. 14, 2020. During these meetings, the Working Group discussed the draft Frequently Asked Questions (FAQ) guidance document (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities Committee, Attachment ?-B*), which the Working Group developed as one way for it to complete the second part of its 2020 charge to “[c]onsider how to promote greater uniformity across NAIC member jurisdictions.” The Working Group also discussed the comments received on the draft and revisions to the draft based on the comments received.

Mr. Ostlund made a motion, seconded by Ms. Rafeld, to adopt the Working Group’s Feb. 22, 2021 (Attachment ?-A) and Dec. 14, 2020, minutes (Attachment ?-B). The motion passed unanimously.

2. Discussed Comments on a Draft FAQ Guidance Document

Commissioner Ommen said that during its Feb. 22 meeting, the Working Group began discussion, but did not finish, of revisions based on the comments received to the draft FAQ guidance document. The Working Group continued with the discussion of comments received on Question 9 in the conflict of interest section using the comment chart NAIC staff developed (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities (A) Committee, Attachment ?-B*).

Commissioner Ommen directed the Working Group’s attention to the Joint Trades’—the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI) and the National Association for Fixed Annuities (NAFA)—suggested revisions to Question 9. Jason Berkowitz (IRI) said the Joint Trades submitted a supplemental comment letter revising its suggested revisions to Question 9 to address concerns discussed during the Working Group’s Dec. 14, 2020, meeting. He discussed the revised suggested revisions. Birny Birnbaum (Center for Economic Justice—CEJ) suggested that before considering this question, the Working Group should add a question describing why the Working Group decided to define “material conflict of interest” as not including cash or non-cash compensation. The Working Group discussed Mr. Birnbaum’s suggestion. After additional discussion, the Working Group decided to add a new question reflecting Mr. Birnbaum’s suggestion. The Working Group also decided to include the Joint Trades’ revised suggested revisions to Question 9 in the next FAQ draft for additional discussion during its next meeting.

The Working Group next discussed the suggested revisions to Question 10, which discusses what a producer must do to identify and avoid or reasonably manage a material conflict of interest as provided in Section 6A(3). The Federation of Americans for Consumer Choice’s (FACC’s) and the Joint Trades’ suggested revisions to this question. After discussion, the Working Group decided to accept the Joint Trades’ suggested revisions.

No comments were received on Question 11.

The Working Group discussed the Joint Trades’ and the FACC’s suggested revisions to Question 12. Question 12 discusses the types of business practices Section 6C(2)(h) is intended to address. After discussion, the Working Group agreed to accept the Joint Trades’ suggested revisions. The Working Group also accepted Mr. Gendron’s suggested addition to the Joint Trades’ suggested revisions concerning the language’s consistency with other state and federal regulatory requirements. The Working Group also discussed further detailing the meaning of “specific” or “particular” annuity product. After additional discussion on the issue, the Working Group decided not to add anything to the FAQ on the subject because of unintended consequences

of such language of potentially narrowing the scope or intent the language in Section 6C(2)(h). In addition, for similar reasons, the Working Group decided not include language related to the intent of “limited period of time.”

The Working Group next discussed the Joint Trades’ suggestion to add a new FAQ under a new Safe Harbor section. The proposed question discusses whether insurers and producers are required to comply with the requirements of the revised *Suitability in Annuity Transactions Model Regulation* (#275) if they are acting in compliance with rules imposed by other regulators that meet or exceed the revised model’s requirements—so-called “comparable standards.” Mr. Berkowitz said that the Joint Trades suggest adding this question because there seems to be some differences of opinion in terms of what was intended by the safe harbor provision. This question is meant to clarify this for the states and based on their understanding of its intent, which is that recommendations and sales of annuities made in compliance with comparable standards shall satisfy the revised model’s requirements.

The Working Group discussed to what extent the comparable standards in the safe harbor apply to specific requirements in the revised model, such as producer training. Mr. Berkowitz acknowledged that for some of the comparable standards, those standards may not always have listed the explicit training requirements in Section 7 of the revised model. However, he said the Joint Trades believe that it would be difficult for a registered broker-dealer or a registered investment advisor to satisfy their U.S. Securities and Exchange Commission (SEC) best interest rule obligations or fiduciary obligations if they are not properly training on the products they are recommending.

Commissioner Ommen acknowledged Mr. Berkowitz’s comments, but he noted that one issue that remains unclear is whether training provided for variable annuities is going to be adequate in terms of comparability with training for fixed or fixed indexed annuities. Wes Bissett (Independent Insurance Agents & Brokers of America—IIABA) expressed his concern with the Joint Trades’ proposed new question and answer and their interpretation of the safe harbor provision. He said the IIABA interprets the safe harbor as applying to a financial professional’s recommendations and sales of annuities—not broadly as an exemption from all the supervisory obligations for insurers. Mr. Berkowitz disagreed with Mr. Bissett’s characterization that the Joint Trades’ interpretation of the safe harbor as an exemption from all supervisory obligations for insurers. He pointed out the language in the new question on the subject. He also explained how the Joint Trades view the safe harbor provision with respect to an insurer’s supervisory responsibilities. Commissioner Ommen explained his concerns with the Joint Trades’ question and answer, which appears to exempt financial professionals relying on the same harbor and its comparable standard provisions from the revised model’s requirements. The Working Group discussed his concerns. After additional discussion, the Working Group deferred deciding on the Joint Trades’ suggested new FAQ to allow the Joint Trades time to submit revised language addressing the Working Group’s concerns.

3. Discussed Producer Training Comments on a Draft FAQ Guidance Document

Commissioner Ommen said NAIC staff prepared a comment chart reflecting the comments and suggested revisions to the FAQ guidance document on the revised model’s producer training requirements (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities Committee, Attachment ?-B3*). He said he would like to use this chart to facilitate the Working Group’s discussion. There was no objection.

Commissioner Ommen explained that most of the comments received on the producer training section of the FAQ suggest adding new questions to identify and address issues the FAQ did not cover or were not fully developed. Mr. Berkowitz discussed the Joint Trades’ suggested new questions and answers on producer training completed prior to a state’s adoption of the model. He explained that the Joint Trades wanted to clarify this issue to assist producers and the states in understanding when and under what circumstances a producer would need to take the updated four-hour credit training or the one-hour credit alternative training. He said the intent of the Joint Trades’ suggested questions was to help ensure that a producer does not have to unnecessarily be required to take either the four-hour credit course or the one-hour credit course more than one time as the states move to adopt the revised model.

Commissioner Ommen acknowledged that this issue with training has arisen in some states that have adopted the revised model. The Working Group discussed the Joint Trades’ suggested revisions. Mr. Gendron suggested that the Joint Trades’ questions could be more concise. Mr. Berkowitz agreed that it could be possible, but he noted that there has been a lot of confusion related to these issues and that one goal of the Joint Trades’ questions was to provide additional context and background on the issue. Mr. Wicka suggested the Joint Trades’ answer for its first question could be revised to state: “Yes, the revised model allows for states to recognize courses taken in other states before the model is adopted in their state. The revised model is intended to provide for reciprocity so producers that operate in multiple jurisdictions would not have to retake the same training multiple times.” Mr. Birnbaum expressed support for Mr. Wicka’s suggested revisions, but he said the Joint Trades’ questions

also could be simplified. He provided suggested language. After additional discussion, the Working Group decided to try to simplify the Joint Trades' suggested questions and answers. The Working Group also asked Mr. Birnbaum to submit his suggested language to NAIC staff for the Working Group's consideration during its next meeting.

The Working Group next discussed the Joint Trades' suggested revisions to Question 13 in the FAQ, which concerns whether a producer must complete the additional training on the best interest standard of conduct even if they have already completed the existing annuity training requirements with the prior suitability standard of conduct. The Joint Trades suggest revising Question 13 to have it apply only to producers who are not relying on the safe harbor in Section 6E.

Mr. Berkowitz said the Joint Trades' suggested revision supports its belief that the safe harbor provision applies to producer training. He acknowledged that the Joint Trades' position on that issue is still being debated and that additional discussion of the issue will most likely occur later during the meeting. The Working Group discussed the Joint Trades' suggestion, specifically the Joint Trades' interpretation that the safe harbor extends to producer training. Mr. Berkowitz discussed the Joint Trades' reasoning for its interpretation. He said the Joint Trades submitted additional suggested revisions on the safe harbor issue for the Working Group's consideration (Attachment ?-C). Some Working Group members discussed why they disagreed with this interpretation because those financial professionals using the safe harbor provision are still producers and would need to take the training described in Section 7 of the model. Mr. Bissett discussed the IIABA's position on the issue and noted that the IIABA submitted written comments to the Working Group for its consideration on the issue (Attachment ?-D). After additional discussion, the Working Group requested that Mr. Berkowitz provide revised language for the Working Group's consideration that would include the ability for state insurance regulators to review and approve a training course that a producer, who is a dual registrant, believes is substantially similar to the state's training course and would satisfy the model's training requirements. The Working Group also agreed that the Joint Trades should use some of the language offered by the IIABA to redraft its question and answer.

The Working Group next discussed the Joint Trades' suggested new FAQ on the appropriateness of a producer taking the four-hour training course versus the one-hour training course. After discussion, the Working Group agreed that adding such a question would be beneficial. However, the Working Group agreed that it could be simplified and made clearer. Ms. Rafeld and Mr. Gendron agreed to work with Mr. Berkowitz to revise the FAQ for the Working Group's consideration at its next meeting.

The Working Group discussed the Joint Trades' suggested new FAQ to address situations when a producer fails to timely complete the updated four-hour training course or the one-hour training course. After discussion, the Working Group agreed that adding this FAQ would be helpful to provide clarification for producers. Ms. Rafeld agreed to work Mr. Berkowitz to simplify the FAQ for the Working Group's consideration during its next meeting. Mr. Birnbaum offered suggested language to clarify the FAQ. Mr. Berkowitz and Ms. Rafeld agreed to take Mr. Birnbaum's suggested language into consideration as they work to clarify and simplify the Joint Trades' suggested new FAQ.

4. Discussed a New FAQ Conflict of Interest Question

Mr. Birnbaum discussed his suggested language for a new FAQ explaining why cash and non-cash compensation is not considered a material conflict of interest (Attachment ?-E). This new FAQ would precede Question 9. The Working Group discussed the suggested language. Ms. Baird suggested that the CEJ's suggested language was a good beginning. However, she said she believes the Working Group should review for discussion later the several states' suggested language because it provides more background and context on the issue. She explained why that was important. The Working Group deferred deciding on the FAQ language until the Working Group's next meeting.

The Working Group decided its next meeting would be sometime in late April or early May, during which it hopes to complete its work.

Having no further business, the Annuity Suitability (A) Working Group adjourned.