Draft: 5/23/22

Annuity Suitability (A) Working Group

Virtual Meeting

May 3, 2022

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met May 3, 2022. The following Working Group members participated: Doug Ommen, Chair (IA); Tate Flott, Vice Chair (KS); Jimmy Gunn (AL); Jodi Lerner (CA); Jessica Luff (DE); Karl Fromm (ID); Renee Campbell (MI); Derek Wallman (NE); Denise Lamy (NH); Daniel Bradford and Michelle Brugh Rafeld (OH); Matt Gendron (RI); Brian Hoffmeister (TN); and Richard Wicka (WI).

1. Discussed Adding New FAQ on the Safe Harbor/Comparable Standards Provision

Commissioner Ommen said the purpose of this meeting is for the Working Group to discuss whether to add new frequently asked questions (FAQ) on the safe harbor/comparable standards provisions in the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers. He said included in the notice for today’s meeting were comments the Working Group received from the Joint Trades suggesting new FAQ on the safe harbor/comparable standards provision in Model #275 and additional guidance on the producer training provisions.

Commissioner Ommen asked for comments on moving forward with adding new FAQ on the safe harbor/comparable standards provision and including additional guidance on the producer training provisions. He also suggested using the Joint Trades’ suggested safe harbor/comparable standards provision FAQ as a starting point. The Working Group members expressed support for moving forward on those topics.

Commissioner Ommen discussed the possibility of creating ad hoc drafting groups to work on the new safe harbor/comparable standards provision FAQ and revisions to the current FAQ on producer training and have the Working Group use the drafts created by these ad hoc drafting groups to begin its discussions.

Wes Bissett (Independent Insurance Agents & Brokers of America—IIABA) said the IIABA supports adding new FAQ to the FAQ guidance document on the safe harbor/comparable standards provision. He said the IIABA had submitted suggested FAQ on that provision last year during the Working Group’s discussions on the FAQ guidance document. He offered to resubmit those comments to the Working Group for its consideration. Mr. Bissett also said the IIABA would be concerned with the Working Group using the Joint Trades’ suggested safe harbor/comparable standards provision FAQ as a basis for beginning its work before any discussion of or public comments were received on them. He said this suggests the Working Group supports the FAQ, particularly the FAQ answers on which the IIABA has concerns.

Commissioner Ommen assured Mr. Bissett that in suggesting the Working Group use the Joint Trades’ FAQ as a starting point, it was not his intention to lead anyone into thinking the Working Group supported it prior to any discussion or receiving comments on it. He said he anticipates the Working Group thoroughly discussing the Joint Trades’ FAQ and other comments received during its May 26 meeting. He also asked Mr. Bissett to resubmit the IIABA’s earlier comments on this topic. Jason Berkowitz (Insured Retirement Institute—IRI), speaking on behalf of the Joint Trades, said the Joint Trades FAQ reflect their interpretation of the safe harbor/comparable standards provision in Model #275. He also reminded the Working Group about its deliberative process in developing the 2020 revisions during which not all stakeholder suggested revisions were accepted. In revising the FAQ document, he urged the Working Group not to permit the discussion to devolve into rehashing those issues again. He said the Joint Trades would like the Working Group to focus on the NAIC’s interpretation of the safe harbor/comparable standards provision and how it should be applied.

Mr. Berkowitz also pointed out that as part of the Joint Trades’ suggested FAQs, the Joint Trades included a one-page chart clarifying the producer training provisions. The chart outlines common scenarios with respect to when a producer would need to complete the four-hour training or the one-hour training. Mr. Bissett suggested from a regulatory perspective, the Working Group revisit FAQ #4 in the current FAQ document to specifically clarify whether the four obligations outlined in Section 6A are the only elements a producer or insurer needs to satisfy to meet the best interest standard of care. He said such clarity is essential for a court to determine what duty a producer may owe to a client. He cited a Massachusetts case, which centered on whether a producer has a fiduciary duty to a client, as evidence of why such clarification is needed. Commissioner Ommen asked Mr. Bissett to submit any case citations he may have to support his suggestion.

Commissioner Ommen said that based on the discussion, he would prepare a chair draft of suggested safe harbor/comparable standards FAQ. NAIC staff will circulate the draft for public comment. He encouraged stakeholders to submit comments, including additional suggested FAQ and answers to those FAQ. He said the Working Group would discuss any comments received during its May 26 meeting. Without objection, the Working Group also agreed to include the Joint Trades’ producer training chart in the revised FAQ for future discussion.

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

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