NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

NAIC 2021 SPRING NATIONAL MEETING VIRTUAL

*Virtual Meeting*
*(in lieu of meeting at the 2021 Spring National Meeting)*

# ANNUITY SUITABILITY (A) WORKING GROUP

**Tuesday, March 9, 2021**
**3:30 – 5:00 p.m. ET/2:30 – 4:00 p.m. CT/ 1:30 – 3:00 p.m. MT/12:30 – 2:00 p.m. PT**

## ROLL CALL

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|---|---|---|---|
| Doug Ommen, Chair | Iowa | Bruce R. Ramge | Nebraska |
| Amanda Baird, Vice Chair | Ohio | Keith Nyhan | New Hampshire |
| Jimmy Gunn | Alabama | Linda A. Lacewell | New York |
| Jodi Lerner | California | Andrew Schallhorn | Oklahoma |
| Fleur McKendell | Delaware | Elizabeth Kelleher Dwyer | Rhode Island |
| Dean L. Cameron | Idaho | Brian Hoffmeister | Tennessee |
| Tate Flott | Kansas | Richard Wicka | Wisconsin |
| Renee Campbell | Michigan | | |

NAIC Staff: Jolie H. Matthews

## AGENDA

1. Consider Adoption of Feb. 22, 2021 and Dec. 14, 2020 Minutes
—*Commissioner Doug Ommen (IA)*

2. Continue Discussion of Revisions to the Frequently Asked Questions (FAQ) Document
—*Commissioner Doug Ommen (IA)*

3. Discuss Any Other Matters Brought Before the Working Group—*Commissioner Doug Ommen (IA)*

4. Adjournment

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# Agenda Item #1

**Consider Adoption of its Feb. 22, 2021 and Dec. 14, 2020 Minutes**
***—Commissioner Doug Ommen (IA)***

Draft: 3/4/21

Annuity Suitability (A) Working Group
Virtual Meeting
February 22, 2021

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met Feb. 22, 2021. The following Working Group members participated: Doug Ommen, Chair (IA); Amanda Baird, Vice Chair, represented by Michele Brugh Rafeld (OH); Jimmy Gunn and Steve Ostlund (AL); Jodi Lerner (CA); Tate Flott (KS); Renee Campbell (MI); Bruce R. Ramge (NE); Keith Nyhan (NH); Brian Hoffmeister (TN); Matt Gendron and Sarah Neil (RI); and Richard Wicka (WI).

1. Discussed Comments on a Draft FAQ Guidance Document

During the Working Group's meeting at the 2020 Summer National Meeting, the Working Group agreed to distribute for a 30-day public comment period a draft Frequently Asked Questions (FAQ) guidance document (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities (A) Committee, Attachment ?-A*), 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 purpose of this guidance document is to assist the states as they move forward with adopting the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers, through either an administrative or a legislative process.

Commissioner Ommen said the Working Group received several comment letters in response to its request for comments and discussed the comments during its Dec. 14, 2020, meeting. He said NAIC staff incorporated the comments received into a chart (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities (A) Committee, Attachment ?-B*), which he would like to use to facilitate the Working Group's discussion of potential revisions to the guidance document. There was no objection to his suggestion.

Commissioner Ommen directed the Working Group to the Federation of Americans for Consumer Choice's (FACC) suggestion for Question 1, which explains why the NAIC decided to revise Model #275 to add a best interest standard of conduct, to replace the word "harmonization" with "compatibility." There was no objection to accepting the suggested revision.

The Working next Group discussed the FACC's and 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 2. This question explains how Section 989J of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) applies to the revised model. Commissioner Ommen asked for comments from Working Group members. He said the suggested revisions are meant to be clarifying. After discussion, the Working Group agreed to accept the Joint Trades' suggested revisions.

The Working Group next discussed the Joint Trades' suggestion to add a question discussing the process the Working Group used to develop and adopt the Model #275 revisions. After discussion, the Working Group decided not to add the suggested question because such a question was unnecessary.

The Working Group next discussed Question 3, which relates to the provision in the revised model providing an exemption to for annuities purchased in response to a direct response solicitation. Commissioner Ommen said he believes the Joint Trades' suggestion possibly would expand the exemption with addition of "telephone" communications. Wes Bissett (Independent Insurance Agents & Brokers of America—IIABA) noted the IIABA's comments concerning the direct response solicitation exemption in Model #275. He also agreed that the Joint Trades' suggested revisions appear to expand the exemption. Jason Berkowitz (IRI) said the intent of the Joint Trades' suggested revisions were to align it with the definition of "direct response solicitation" in the *Life Insurance and Annuities Replacement Model Regulation* (#613). After discussion, the Working Group decided not to accept adding the word "telephone," but it agreed to accept the Joint Trades' suggestion to delete "a digital platform."

The Working Group next discussed Question 4, which describes the best interest standard of conduct and how a producer or insurer would satisfy it. Commissioner Ommen said the FACC suggests a few revisions to more closely align the answer to the model's language. The Working Group agreed to accept the FACC's suggested revisions.

The Working Group next discussed Question 5, which describes what types of recommendations fall under the best interest standard of conduct. Commissioner Ommen said the FACC suggests additional language specifying that insurers are only expected to supervise recommendations that result in an application being submitted to the insurer. After discussion, the Working Group decided not to accept the suggested revision.

The Working Group next discussed Question 6, which concerns the application of the best interest standard of conduct to a producer who never meets the client but assists a producer in making a recommendation to that client. Commissioner Ommen noted the importance of this question given its potential application to independent marketing organizations (IMOs). He said the Joint Trades and the FACC submitted suggested revisions. Mr. Gendron expressed support for the FACC's suggestion to add words "the standard applies, if." The Working Group did not believe it was necessary to include a definition of "material control or influence." After discussion, the Working Group agreed to add language from the model describing activities that, in and of themselves, would not constitute material control or influence instead of adding a definition of "material control or influence." The Working Group also agreed to modify the FACC's language to add "the standard can apply."

The Working Group next discussed Question 7, which describes the provisions of Section 6A(1)(c) of the revised model requiring producers to be held to standards applicable to other producers with similar authority and licensure. Commissioner Ommen said the Joint Trades and the FACC suggest revisions to this question. The Working Group discussed what is meant by the language "similar authority and licensure" with respect to the care obligation, which is extensively outlined in the model. Mr. Gendron expressed concern with Joint Trades' suggested language which appears to be limiting.

Duane Thompson (XY Planning Network) discussed the XY Planning Network's comments on Question 7. The XY Planning Network suggests revisions to the question to include more information to remind and guide producers holding other licenses that require fiduciary accountability about the overlapping regulatory authorities with respect to market conduct standards. Mr. Thompson said it should be made clear that in one capacity, such as that of an investment adviser representative (IAR), an individual has a fiduciary obligation to consider reasonable products and alternative products or strategies that are best-suited, at the time of the recommendation, in meeting the client's financial goals and objectives. In addition, the XY Planning Network suggests the question should disclose that, separately in the capacity of an insurance producer, product availability is limited to those insurance contracts for which the producer is licensed to sell.

The Working Group discussed the suggested revisions, including the XY Planning Network's comments, and whether the current language needed to be clarified with respect to dual registrants. The Working Group decided not to accept the Joint Trades' or the FACC's suggested revisions. The Working Group asked Mr. Thompson and Mr. Gendron to work together to provide language for the Working Group's consideration that would clarify the question's application to dual registrants, who may be subject to a different standard of conduct, such as a fiduciary standard of conduct, than the best interest standard of conduct provided in the revised model.

The Working Group next discussed Question 8. Question 8 describes how a producer or insurer can use the "Insurance Agent (Producer) Disclosure for Annuities" form to satisfy the disclosure obligation by providing it during an initial client meeting and/or at later date when it requires updating. The Joint Trades and the FACC submitted comments. The Working Group agreed to accept the Joint Trades' suggestion to add "or sale of an annuity" for consistency with the revised model's language. Some Working Group expressed concern with the FACC's suggested revisions related to the timing of providing the form. After additional discussion, the Working Group decided not to accept the FACC's suggested revisions.

The Working Group discussed the Joint Trades' suggestion to add a new question to the FAQ guidance document on the application of the safe harbor provision in Section 6E of the revised model with respect to providing the Insurance Agent (Producer) Disclosure for Annuities" form. The Working Group agreed that it was unnecessary to add such a question, particularly in this section of the FAQ guidance document.

The Working Group next discussed Question 9. Question 9 describes Section 5I(2) of the revised model concerning the definition of "material conflict of interest." The Joint Trades and the FACC provided comments. Commissioner Ommen noted his concerns with providing examples and the possibility of stakeholders believing these examples are the only examples that meet the definition of "material conflict of interest." Mr. Berkowitz directed the Working Group's attention to the Joint Trades' comments on this question it submitted following the Working Group's previous meeting. He discussed the Joint Trades' intent behind its comments. He also suggested that the Joint Trades would not object to not including examples.

Commissioner Ommen said the Working Group would need to schedule another meeting to continue its discussion of revisions to the FAQ guidance document beginning where it ended during this meeting with Question 9. He said the Working Group also needs to discuss the training piece. The Working Group requested NAIC staff to prepare a working draft of the FAQ guidance document for the Working Group's consideration during its next meeting reflecting the discussion during this meeting.

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

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Draft: 1/26/21

Annuity Suitability (A) Working Group
Virtual Meeting
December 14, 2020

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met Dec. 14, 2020. The following Working Group members participated: Doug Ommen, Chair (IA); Amanda Baird, Vice Chair (OH); Jimmy Gunn and Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Tate Flott and Shannon Lloyd (KS); Renee Campbell (MI); Bruce R. Ramge (NE); Keith Nyhan (NH); Jim Everett (NY); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); and Richard Wicka (WI).

1. Discussed Comments on a Draft FAQ Guidance Document

Commissioner Ommen said during the Working Group's meeting at the 2020 Summer National Meeting, the Working Group agreed to distribute for a 30-day public comment period a draft Frequently Asked Questions (FAQ) guidance document (Attachment ?-A), 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." He explained that the purpose of this guidance document is to assist the states as they move forward with adopting the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers, through either an administrative or a legislative process.

Commissioner Ommen said the Working Group received several comment letters in response to its request for comments by Oct. 2, 2020. He said NAIC staff incorporated the comments received into a chart (Attachment ?-B), which he would like to use to facilitate the Working Group's discussion of the comments. There was no objection to his suggestion.

The Working Group discussed the comments received on Question 1, which explains why the NAIC decided to revise Model #275 to add a best interest standard of conduct. Kim O'Brien (Federation of Americans for Consumer Choice—FACC) said the FACC suggests replacing the word "harmonization" with "compatibility." She said this change would clarify how the revised model should work with other regulatory authorities. The Working Group took this suggestion under advisement.

The Working Group discussed the comments received on Question 2. This question explains how Section 989J of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) applies to the revised model. Commissioner Ommen said the FACC and 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)—submitted comments. Ms. O'Brien said the FACC's comments are intended to ensure that the explanation of Section 989J is accurate. Jason Berkowitz (IRI) said the Joint Trades suggest revisions to Question 2 to also ensure its accuracy and emphasize state insurance regulatory authority over fixed and fixed indexed annuities. Wesley Bissett (Independent Insurance Agents and Brokers of America—IIABA) expressed concern with the suggested revisions because the IIABA believes the revisions could possibly expand the scope of the Section 989J exemption. Commissioner Ommen said the Working Group would take a closer look at Section 989J to make sure Question 2 is consistent.

The Working Group next discussed the Joint Trades' suggestion to add a question discussing the process the Working Group used to develop and adopt the Model #275 revisions. Mr. Berkowitz said the Joint Trades suggest adding this question because they believe it would be helpful to stakeholders, including state insurance regulators who were not a part of the drafting process, to understand how the revisions were developed. Robbie Meyer (ACLI) said the ACLI believes this is an important addition to the FAQ guidance document because it is starting to see proposals introduced in the states that deviate from the revised model's provisions. The ACLI believes that including this question would show what a robust inclusive process the NAIC used to develop the model revisions. Birny Birnbaum (Center for Economic Justice—CEJ) expressed concern with including the suggested question. Mr. Bissett also suggested not including this question in the FAQ guidance document, given its subjective nature. The Working Group took this suggestion under advisement.

The Working Group next discussed Question 3, which relates to the provision in the revised model on exemptions. Gary Sanders (National Association of Insurance and Financial Advisors—NAIFA) suggested that the proposed answer to the question does not actually answer the question. Mr. Berkowitz said the Joint Trades' suggested revision to the question aligns with the actual language in the model. Ms. Meyers said the ACLI is concerned with the reference to a simulated voice; as such, she suggested the revisions. The Working Group discussed the meaning of a "direct response solicitation." Mr. Birnbaum suggested that the Working Group focus on the idea of the meaning of a "solicitation without a recommendation" and try to clarify that instead of the medium used to make the solicitation. Mr. Sanders reiterated the NAIFA's concern with the exemption in Section 4A because it exempts certain recommendations from having to comply with the revised model's provisions. The Working Group did not make any decisions based on the discussion. It plans to revisit the question and potentially consider revisions reflecting the discussion later.

The Working Group next discussed Question 4, which describes the best interest standard of conduct and how a producer or insurer would satisfy it. Ms. O'Brien said the FACC recognizes that the purpose of the FAQ guidance document is not to restate what is in the revised model word-for-word, but the FACC believes it is important to add "sources and types of" in the next to last bullet to avoid confusion that the best interest standard of conduct requires the discussion of actual compensation. She said the FACC also requests replacing the word "justification" with "basis" in the last bullet to mirror the revised model's language because the FACC believes there is a legal distinction between the two words. The Working Group took the suggestions under advisement.

Mr. Birnbaum suggested that the Working Group consider adding language to the FAQ guidance document that would illustrate the differences between the revised model's best interest standard of conduct and the prior model's suitability standard. The Working Group took this suggestion under advisement.

The Working Group next discussed Question 5, which discusses what types of recommendations fall under the best interest standard of conduct. Ms. O'Brien said the FACC requests additional language to clarify that insurers are only expected to supervise recommendations that result in an application being submitted to the insurer. The Working Group took this suggestion under advisement.

The Working Group next discussed Question 6, which concerns the application of the best interest standard of conduct to a producer who never meets the client but assists a producer in making a recommendation to that client. The Joint Trades and the FACC submitted comments. Mr. Berkowitz said the Joint Trades suggest revisions to this question to provide additional context and clarity related to the provision's intent. He referenced the revisions related to the meaning of "direct compensation' as an example. Ms. O'Brien said the FACC suggests revisions to clarify the meaning of "material control and influence" because the FACC believes the term is ambiguous. She said the FACC also recommends that the question explicitly state that a producer exercising material control or influence is not required to provide a disclosure notice to the client because such a requirement could create unnecessary confusion. Mr. Birnbaum said the CEJ has concerns about the way the question is written. He suggested rewriting the question to highlight the circumstances when certain requirements of the best interest standard of conduct would not apply.

The Working Group next discussed Question 7, which describes the provisions of Section 6A(1)(c) of the revised model requiring producers to be held to standards applicable to other producers with similar authority and licensure. The FACC suggests revisions to align the language more closely with the revised model's language. The Joint Trades suggest clarifying language. The Working Group took the suggested revisions under advisement.

The Working Group next discussed Question 8. Question 8 describes how a producer or insurer can use the "Insurance Agent (Producer) Disclosure for Annuities" form to satisfy the disclosure obligation. The Joint Trades and the FACC submitted comments. Mr. Berkowitz said the Joint Trades suggest changes to make the question more understandable. He said the Joint Trades also suggest deleting the word "yes" because the Joint Trades believe the answer is not absolute and is more nuanced. Mr. Gendron expressed support for removing the word "yes." Mr. Berkowitz said the Joint Trades also suggest adding a question to clarify how the disclosure obligation applies to producers relying on the safe harbor in Section 6E of the revised model, particularly with respect to completing the "Insurance Agent (Producer) Disclosure for Annuities" form to satisfy the disclosure obligation. Ms. O'Brien said the FACC suggests several revisions and additional questions related to the "Insurance Agent (Producer) Disclosure for Annuities" form intended to clarify whether this form is a relationship document or a transactional document. The Working Group took the suggested revisions under advisement.

The Working Group next discussed Question 9. Question 9 describes Section 5I(2) of the revised model concerning the definition of "material conflict of interest." The Joint Trades and the FACC provided comments. Mr. Berkowitz said the Joint Trades struggled with this proposed question and proposed answer. He said the Joint Trades' suggested revisions revise the proposed answer to more closely align with the question and the Model #275 revisions. The Joint Trades also suggest additional examples of what could be considered a material conflict of interest. The Working Group discussed the suggested revisions and the proposed examples. Ms. O'Brien said the FACC supports the Joint Trades' comments. However, the FACC would have concerns with adding the example concerning a producer acting as an attorney for the client and any other similar examples, such as a financial advisor acting as an accountant for the client because of concerns about how an insurer would supervise such conduct. The Working Group discussed the FACC's concerns regarding the potential additional examples the Joint Trades suggest and the FACC's potential additional examples. The Working Group also discussed how an insurer could possibly supervise producer compliance.

Duane Thompson (XY Planning Network) discussed the XY Planning Network's comments on this issue and other issues previously discussed and its support for additional clarity to this question, particularly for dual registrants. The Working Group discussed whether there should be separate questions included in the FAQ guidance document for dual registrants. Mr. Berkowitz suggested that the Working Group keep in mind that the FAQ guidance document concerns obligations imposed under the revised model that relate to the conduct of a financial professional as an insurance producer. As such, any conduct that such a producer engages in as a state licensed investment advisor most likely falls outside the scope of the FAQ guidance document. However, Mr. Berkowitz noted that there are most likely issues that could be addressed in the FAQ guidance document related to dual registrants to ensure that they are providing the appropriate information to consumers, but this question may not be the appropriate place to include such language.

The Working Group deferred discussion of Question 10, which discusses how a producer could satisfy the conflict of interest obligation required under Section 6A(3). No comments were received on Question 11.

The Working Group next discussed the comments received on Question 12, which describes the provisions of Section 6C(2)(h). The Joint Trades and the FACC submitted comments. Ms. O'Brien said the FACC would appreciate any additional clarity on sales contests with respect to Section 6C(2)(h).

The Working Group next discussed the Joint Trades' suggestion to add a new question concerning the revised model's safe harbor provision. The proposed new question concerns whether insurers and producers in compliance with rules imposed by other regulators that meet or exceed the requirements in the revised model must comply with the revised model's requirements. Mr. Berkowitz said the Joint Trades suggest adding this question to clarify the Working Group's intent related to the safe harbor provision. Mr. Bissett suggested that the Working Group provide more clarity on what specific provisions in the revised model still apply to financial professionals that fall under the safe harbor provision. The Working Group took the suggestions under advisement, recognizing the complexity of the regulatory scheme and the difficulty of reflecting that in a FAQ guidance document.

The Working Group next discussed the comments received related to the revised model's training requirements. The new training requirements require producers, who have already completed the existing training requirements prior to a state's effective date of adoption of the revised model within six months after that effective date, to complete either a four-credit training course or an additional one-credit training course on the appropriate sales practices, replacement and disclosure requirements under the revised model. NAIC staff incorporated those comments into a chart (Attachment ?-C) that was distributed prior to the meeting.

Mr. Berkowitz discussed the Joint Trades' comments and suggested revisions, which reflect discussions with the states that have already adopted the revised model. He explained that the Joint Trades' suggested revisions, including additional questions on the topic, reflect their interpretation of the revised model's training provisions. He said the Joint Trades believe it is critical to get clarity on these issues to ensure consistent interpretation and application amongst the states as they move forward with adopting the revised model. He discussed some of the issues, including the difference between the one-credit training versus the four-credit training, when it is appropriate for a producer to take the one-credit training versus the four-credit training, and any implications with respect to state reciprocity. He also discussed one state's interpretation of the six-month grace period that appears to be contrary to the Working Group's intent.

Mr. Sanders said the NAIFA also submitted comments on the training requirement and suggested revisions to the FAQ guidance document that it also received from the states and producers. Mr. Bissett expressed concern with the Joint Trades' suggested revision that suggest that a financial professional using the safe harbor provision is not required to complete the four-credit training or the one-credit training. He said this would create an unlevel playing field. Commissioner Ommen asked Mr. Bissett if his concerns remained if the financial professional is in compliance with comparable standards, including the content of such standards. Mr. Bissett said in theory, it could address his concerns, but such comparable standards, including content, may not address specific annuity provisions in the revised model.

Mr. Berkowitz said the Joint Trades believe their suggested additional question and the other questions related to the safe harbor provision reflect their belief that, in including the safe harbor provision, the Working Group implicitly recognized that the provisions of the revised model as compared to the components and specific requirements from other comparable standards would be roughly equivalent, including those provisions related to the training requirement. He questioned the value of the safe harbor provision if financial professionals relying on comparable standards are required to comply with specific provisions in the revised model. He also noted that if an insurance commissioner determines that a producer has failed to comply with the requirements of the comparable standard that the producer is relying on for compliance with the revision model, the insurance commissioner can hold the producer responsible for compliance with the revised model's provisions. Commissioner Ommen pointed out that in some respects, the Working Group is working in the dark with respect to the safe harbor provision, particularly with respect to the U.S. Securities and Exchange Commission's (SEC's) best interest regulation because the SEC is not that far ahead of the states in implementing its regulation. As such, it is hard to know what is comparable because the Working Group does not have that information yet.

Commissioner Ommen said as next steps, he believes that the Working Group should hold a regulator-to-regulator call to discuss any revisions to the FAQ guidance document based on the discussion during this meeting. There was no objection to this suggestion.

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

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# Agenda Item #2

**Continue Discussion of Revisions to the Frequently Asked Questions (FAQ) Document**
**—*Commissioner Doug Ommen (IA)***

Draft: 2/22/21

Comments are being requested on this draft document ?. Comments should be sent only by email to Jolie Matthews at jmatthews@naic.org.

# *SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION (#275)*

## BEST INTEREST STANDARD OF CONDUCT REVISIONS

## *FREQUENTLY ASKED QUESTIONS*

This Frequently Asked Questions (FAQ) document is intended to specifically address those questions that are likely to arise as the states work to adopt the revised *Suitability in Annuity Transactions Model Regulation* (#275) and to assist in the uniform implementation and enforcement of its provisions across all NAIC member jurisdictions. No provision of this FAQ document is intended to supersede the specific language in Model #275.

This FAQ document is offered to any state that chooses to use it. It is not intended to expand the content of the model regulation but provides interpretive guidance regarding certain aspects of its provisions.

**<u>GENERAL</u>**

**Q1. Why did the NAIC decide to revise the model to include a best interest standard of conduct?**

A1. The revised model was developed, in part, in response to the U.S. Department of Labor's (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in March 2018. The DOL fiduciary rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 (ERISA) retirement plans and individual retirement accounts (IRAs) to include a broader set of insurance agents, insurance brokers and insurers. Separately, the U.S. Securities and Exchange Commission (SEC) released a proposed rule package in May 2018, which included Regulation Best Interest (Reg BI). The SEC finalized Reg BI in June 2019. The final Reg BI establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. Recognizing the SEC's and the DOL's role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is ~~harmonization of~~<u>compatibility with</u> the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model's current suitability standard but not a fiduciary standard.

**Q2. How does the Harkin amendment, Section 989J of the Dodd-Frank Act apply to the revised model?**

A2. Section 989J confirms state authority to regulate the sale of fixed <u>and fixed</u> indexed annuities and <u>provides an</u> exemption <u>for such annuities</u> from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled:1) has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of the NAIC's *Suitability in Annuity Transactions Model Regulation* (#275); and 2) "adopts rules that substantially meet or exceed the minimum requirements of any **<u>successor modifications</u>** to the model regulation[]" within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and **<u>any successor thereto</u>**," and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products.

The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1—Purpose:

 

"Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation."

As such, states need to work toward adopting the 2020 revisions within 5 years after its adoption by the full NAIC membership in February 2020, which, in this case, would require state adoption of the 2020 model revisions by February 2025, to maintain ~~their authority to regulate the sale of fixed annuities~~the status of fixed and fixed indexed annuities meeting the requirements of Section 989J as outside the scope of federal securities regulation.

**EXEMPTIONS**

**Q3. What is the intent of the exemption to the revised model's provisions under Section 4A to allow a consumer in response to a direct response solicitation to purchase an annuity product where no recommendation is made based on information collected from the consumer?**

A3. This exception from the rule was in the 2010 model rule and was not changed in the 2020 version. A direct-response solicitation is a solicitation through a sponsoring or endorsing entity solely through mails, the Internet, ~~a digital platform,~~ or other mass communication media that does not involve a communication directed to a specific individual~~ by a natural person, or by a simulated human voice~~.

**BEST INTEREST STANDARD OF CONDUCT**

**Q4. What is the best interest standard of conduct and how would a producer or insurer satisfy it?**

A4. To satisfy the best interest obligation, a producer or an insurer must satisfy ~~the~~ four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation.

To satisfy the four obligations, when making a recommendation, producers must:

- Know the consumer's financial situation, insurance needs and financial objectives;
- Understand the available recommendation options;
- Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives;
- Communicate the basis of the recommendation to the consumer;
- Disclose their role in the transaction, their compensation, and any material conflicts of interest; and
- Document, in writing, any recommendation and the justification for such recommendation.

**Q5. What types of recommendations fall under the best interest standard of conduct?**

A5. All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, as defined in Section 5M, a "recommendation" is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. A recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

**Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?**

 

A6. Yes, the standard can apply, if under Section 6A(5), a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

## CARE OBLIGATION

**Q7. What is the intent of language in Section 6A(1)(c), which states "Producers shall be held to standards applicable to producers with similar authority and licensure?"**

A7. The intent of this language is to help to ensure that in any compliance or enforcement action, a producer's recommendation is compared only to other producers as opposed to being compared to investment advisers or possibly higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA) for compliance and enforcement purposes.

## DISCLOSURE OBLIGATION

**Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A prior to a recommendation or sale of an annuity~~,~~. ~~can~~Can a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?**

A8. Yes, a producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting.

~~However~~Yes, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation or sale, the producer is expected to provide the consumer with an updated form.

## CONFLICT OF INTEREST OBLIGATION

**Q9. As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation, what other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)?**

A9. A producer who is also dually registered as an investment advisor under state securities law is required under Section 6A(3) to reasonably manage and disclose the related conflicts of interest. This management must commence when the producer first meets with a potential customer even before the dually licensed producer knows the ultimate capacity in which the producer will be acting. The actual capacity when the producer executes a specific transaction may not be known early in the relationship and the related professional or contractual obligations may not be determined based upon the specific facts and circumstances and the consumer profile information until later in the relationship, thus creating a conflict of interest for the producer. The dually licensed producer should assume that both Model #275 and the Investment Advisers Act apply, and that the producer must manage and disclose the conflict of interest.

**Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage a material conflict of interest? Examples?**

A10. The differences in professional and contractual obligations between a producer acting in the consumer's best interest at the time of the transaction and an investment advisor acting in the consumer's best interest over the term of a professional advisory contract are substantial. Managing this conflict of interest will require more than simple disclosure. The dually licensed producer must ensure that the customer has a timely comprehension of the producer's varied interests in the relationship decisions and the producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's recommended professional relationship or capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives.

## SUPERVISION SYSTEM

**Q11. Do these revisions require insurers to set up new supervision systems to ensure producer compliance with this new standard of conduct?**

A11. No, but the revisions do add additional insurer supervision requirements by requiring insurers to establish and maintain reasonable procedures in three additional areas:

- To assess whether a producer has provided to the consumer the information required by the revised model.
- To identify and address suspicious consumer refusals to provide consumer profile information.
- To identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

**Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices is provision intended to address?**

A12. The requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on a particular product. As the provisions states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of a specific annuity or annuities within a specified or limited period of time are prohibited and should be identified and eliminated.

## TRAINING

**Q13. Do producers complete additional training on the new standard of conduct even if they have already completed the existing annuity training requirements?**

A13. Yes, Section 7 requires a producer who has already completed the existing annuity training requirements prior to a state's effective date of the revised model to complete within 6 months of that date either a four credit training course or an additional one-time one credit training course on the appropriate sales practices, replacement an disclosure requirements under the revised model. In adopting this section, a state could choose a different timeframe for this requirement.

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*__FREQUENTLY ASKED QUESTIONS IMPLEMENTATION DOCUMENT__*

Stakeholder Oct. 2 Comments

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| **GENERAL** | |
| **Q1. Why did the NAIC decide to revise the model to include a best interest standard of conduct?**<br><br>A1. The revised model was developed, in part, in response to the U.S. Department of Labor's (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in March 2018. The DOL fiduciary rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 (ERISA) retirement plans and individual retirement accounts (IRAs) to include a broader set of insurance agents, insurance brokers and insurers. Separately, the U.S. Securities and Exchange Commission (SEC) released a proposed rule package in May 2018, which included Regulation Best Interest (Reg BI). The SEC finalized Reg BI in June 2019. The final Reg BI establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. Recognizing the SEC's and the DOL's role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is harmonization of the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model's current suitability standard but not a fiduciary standard. | |
| **FACC** | **Q1. Why did the NAIC decide to revise the model to include a best interest standard of conduct?**<br><br>A1. The revised model was developed, in part, in response to the U.S. Department of Labor's (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in March 2018. The DOL fiduciary rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 (ERISA) retirement plans and individual retirement accounts (IRAs) to include a broader set of insurance agents, insurance brokers and insurers. Separately, the U.S. Securities and Exchange Commission (SEC) released a proposed rule package in May 2018, which included Regulation Best Interest (Reg BI). The SEC finalized Reg BI in June 2019. The final Reg BI establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. Recognizing the SEC's and the DOL's role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is ~~harmonization of~~compatibility with the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model's current suitability standard but not a fiduciary standard. |
| | |
| **Q2. How does the Harkin amendment, Section 989J of the Dodd-Frank Act apply to the revised model?**<br><br>A2. Section 989J confirms state authority to regulate the sale of fixed indexed annuities and exemption from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled:1) has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of the NAIC's *Suitability in Annuity Transactions Model Regulation* (#275); and 2) "adopts rules that substantially meet or exceed the minimum requirements of any **successor modifications** to the model regulation[]" within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and **any successor thereto**," and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products. | |

<table>
<tr><td colspan="2">The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1—Purpose:<br><br>“Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) specifically refers to this model regulation as the “Suitability in Annuity Transactions Model Regulation.” Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.”<br><br>As such, states need to work toward adopting the 2020 revisions within 5 years after its adoption by the full NAIC membership in February 2020 to maintain their authority to regulate the sale of fixed annuities.</td></tr>
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[1] Joint submission from 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).

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| | |
| **NEW QUESTION** | |
| **Joint Trades** | **Q2. How did the NAIC develop and promulgate these revisions to the model?**<br><br>A2. The NAIC had a robust, collaborative and transparent process that included a wide array of stakeholders through the drafting and vetting processes. The NAIC's Annuity Suitability (A) Working Group completed the revisions to the model with the input of consumer groups, regulators, academics, and industry trade associations in open deliberations. Ultimately, the revised model is a work product that will provide enhanced consumer protections and amend regulation of annuity transactions in a sensible way. |
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| **EXEMPTIONS** | |
| **Q3. What is the intent of the exemption to the revised model's provisions under Section 4A to allow a consumer in response to a direct response solicitation to purchase an annuity product where no recommendation is made based on information collected from the consumer?**<br><br>A3. This exception from the rule was in the 2010 model rule and was not changed in the 2020 version. A direct-response solicitation is a solicitation through a sponsoring or endorsing entity solely through mails, the Internet, a digital platform, or other mass communication media that does not involve a communication directed to a specific individual by a natural person, or by a simulated human voice. | |

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<tr><td>National Association of Insurance and Financial Advisors (NAIFA)</td><td>Questions the rationale for this exemption.</td></tr>
<tr><td>Independent Insurance Agents & Brokers of America (BIG i)</td><td>Questions necessity of the exemption and believes contrary to the underlying goals of the model.</td></tr>
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<tr><td colspan="2"><u>BEST INTEREST STANDARD OF CONDUCT</u></td></tr>
<tr><td colspan="2">Q4. What is the best interest standard of conduct and how would a producer or insurer satisfy it?<br><br>A4. To satisfy the best interest obligation, a producer or an insurer must satisfy the four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation.<br><br>To satisfy the four obligations, when making a recommendation, producers must:<br>• Know the consumer’s financial situation, insurance needs and financial objectives;<br>• Understand the available recommendation options;<br>• Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives;<br>• Communicate the basis of the recommendation to the consumer;<br>• Disclose their role in the transaction, their compensation, and any material conflicts of interest; and<br>• Document, in writing, any recommendation and the justification for such recommendation.</td></tr>
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- Communicate the basis of the recommendation to the consumer;
- Disclose their role in the transaction, their sources and types of compensation, and any material conflicts of interest, as defined by the regulation; and
- Document, in writing, any recommendation and the ~~justification~~basis for such recommendation.

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**Q5. What types of recommendations fall under the best interest standard of conduct?**

A5. All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, as defined in Section 5M, a "recommendation" is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. A recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

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**FACC**

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**Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?**

A6. Yes, under Section 6A(5), a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer.

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**Joint Trades**

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**Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?**

A6. ~~Yes, under~~ Under Section 6A(5), a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, has an obligation to comply with the revised model's best interest standard regardless of whether the producer has had any direct contact with the consumer. Compensation tied to overall sales volume of a firm or a producer would not be considered "direct compensation" for purposes of this

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<tr><td>FACC</td><td>Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?<br><br>A6. Yes, the standard applies, if under Section 6A(5), <del>a</del>the producer <del>who has</del> exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. “Material control or influence” means the producer from a position of authority over another producer directs selection of the product for recommendation and how the recommendation is communicated to the client. A producer who exercises material control or influence, but has no direct contact with the consumer, is subject to the standard of conduct but not required to provide a disclosure form as provided for under Section 6a(2)(a).</td></tr>
<tr><td colspan="2"></td></tr>
<tr><td colspan="2"><u>CARE OBLIGATION</u></td></tr>
<tr><td colspan="2">Q7. What is the intent of language in Section 6A(1)(c), which states “Producers shall be held to standards applicable to producers with similar authority and licensure?”<br><br>A7. The intent of this language is to help to ensure that in any compliance or enforcement action, a producer’s recommendation is compared only to other producers as opposed to being compared to investment advisers or possibly higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA) for compliance and enforcement purposes.</td></tr>
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**DISCLOSURE OBLIGATION**

**Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A prior to a recommendation, can a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?**

A8. Yes, a producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting. However, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation, the producer is expected to provide the consumer with an updated form.

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| **Joint Trades** | **Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A prior to a recommendation or sale of an annuity. Can~~, can~~ a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?**<br><br>A8. ~~Yes, a~~A producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting. However, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation or sale, the producer is expected to provide the consumer with an updated form.<br><br>**Q. Do producers who are relying on the safe harbor in Section 6E have to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A?**<br><br>A. No, a producer operating in compliance with business rules, controls and procedures that satisfy a "comparable standard" (as defined under the revised model) is not required to also provide disclosure on the form in Appendix A. Under such circumstances, the producer need only comply with the disclosure requirements imposed under the applicable comparable standard (e.g., the disclosures contemplated by Reg BI and Form CRS). |
| **FACC** | **Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A prior to a recommendation, can a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?**<br><br>A8. ~~Yes, a~~A producer can satisfy the disclosure obligation by providing ~~a~~the completed form during the initial client meeting~~.~~ ~~However, if,~~ or at any time prior to the recommendation or sale. A separate completed form must be provided by the producer to the client for each recommendation or sale. A form substantially similar to Appendix A is deemed to satisfy the requirements set forth in Section 6A((2)(a). If, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation or sale, the producer is expected to provide the consumer with an updated form prior to consummation of the transaction. For purposes of supervision, insurers may accept attestation from the producer that the completed form was presented to the client, and insurers are not responsible for content of the completed disclosure form except to the extent it applies to the relationship between the insurer and the producer or products offered by the insurer. |

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| | **Q8a. On the Appendix A disclosure form where it asks "whose annuities can I sell to you," how should producers differentiate between "two or more" and "two or more although I primarily sell annuities from" a specific insurer in cases where the producer sells mostly for one insurer but is not required to do so by contract?**<br><br>A8a. When answering the question "whose annuities can I sell to you", the response "two or more" is appropriate rather than "two or more although I primarily sell annuities from" a specific insurer if the agent has no contractual obligation to work exclusively or semi-exclusively with a single company or family of companies. The fact that an agent sells products mostly for a certain insure in a given time period, absent a contractual obligation, should not affect how that item is completed on the disclosure form.<br><br>**Q8b. For the Appendix A disclosure form section titled "How I'm Paid for My Work," does that only apply to cash compensation paid to the producer for sale of the annuity that is being recommended, as opposed to any compensation paid to the producer for other kinds of financial services.**<br><br>Q8b. Yes, the producer is expected to disclose information on the form concerning compensation paid to the producer that is directly related to purchase of the annuity which in most cases will either be commission paid by the insurance company or fees paid by the consumer in the case of fee-based annuities. However, to the extent the agent provides any other kinds of services (for example, investment advice, accounting, tax consulting, legal services), compensation for such services are not required to be disclosed on this form if unrelated to purchase of the annuity though in most cases other laws and regulations will require separate disclosure of such compensation and agreement to the same by the consumer.<br><br>**Q8c. Is it permissible for a producer to use the Appendix A disclosure form to disclose any material conflicts of interest?**<br><br>Q8c. Yes, producers are required to make disclosures required by the regulation using a form substantially similar to Appendix A. This means producers may modify the form to include additional information disclosing material conflicts of interest as required by Section 6(A)(3), or absence of any such conflicts, provided the additional information does not interfere with presentation of the required information described in Section 6(A)(2). |

**CONFLICT OF INTEREST OBLIGATION**

**Q9. As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation, what other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)?**

A9. A producer who is also dually registered as an investment advisor under state securities law is required under Section 6A(3) to reasonably manage and disclose the related conflicts of interest. This management must commence when the producer first meets with a potential customer even before the dually licensed producer knows the ultimate capacity in which the producer will be acting. The actual capacity when the producer executes a specific transaction may not be known early in the relationship and the related professional or contractual obligations may not be determined based upon the specific facts and circumstances and the consumer profile information until later in the relationship, thus creating a conflict of interest for the producer. The dually licensed producer should assume that both Model #275 and the Investment Advisers Act apply, and that the producer must manage and disclose the conflict of interest.

 

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| **FACC** | **Q9. As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation~~,~~. ~~what~~What other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)?**<br><br>A9. ~~A producer who is also dually registered as an investment advisor under state securities law is required under Section 6A(3) to reasonably manage and disclose the related conflicts of interest. This management must commence when the producer first meets with a potential customer even before the dually licensed producer knows the ultimate capacity in which the producer will be acting. The actual capacity when the producer executes a specific transaction may not be known early in the relationship and the related professional or contractual obligations may not be determined based upon the specific facts and circumstances and the consumer profile information until later in the relationship, thus creating a conflict of interest for the producer. The dually licensed producer should assume that both Model #275 and the Investment Advisers Act apply, and that the producer must manage and disclose the conflict of interest.~~<br>The revised model defines material conflict of interest as "a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation." As stated in the model regulation, material conflict of interest could include ownership interest in the insurance company issuing the recommended annuity if that ownership interest is significant enough that a reasonable person would expect it to influence the producer's impartiality in comparing annuity product options. Ownership interest is mentioned in the model regulation as an example and is not exclusive. Depending on facts and circumstances, other examples would include situations where a producer or the producer's agency has borrowed funds from an insurance company or the producer's relative such as spouse/partner or parent holds an executive position at an insurance company if in those situations a |

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| | reasonable person would expect the producer's impartiality to be affected when making a recommendation of an annuity. |
| **Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage a material conflict of interest? Examples?**<br><br>A10. The differences in professional and contractual obligations between a producer acting in the consumer's best interest at the time of the transaction and an investment advisor acting in the consumer's best interest over the term of a professional advisory contract are substantial. Managing this conflict of interest will require more than simple disclosure. The dually licensed producer must ensure that the customer has a timely comprehension of the producer's varied interests in the relationship decisions and the producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's recommended professional relationship or capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives. | |
| **Joint Trades** | **Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage and disclose a material conflict of interest? Examples?**<br><br>A10. ~~The differences in professional and contractual obligations between a producer acting in the consumer's best interest at the time of the transaction and an investment advisor acting in the consumer's best interest over the term of a professional advisory contract are substantial. Managing this conflict of interest will require more than simple disclosure. The dually licensed producer must ensure that the customer has a timely comprehension of the producer's varied interests in the relationship decisions and the~~ The appropriate steps to satisfy the obligation to identify and avoid or reasonably manage and disclose material conflicts of interest will depend on the specific facts and circumstances. In some cases, material conflicts of interest can be effectively managed by a producer by informing his or her client of the conflict, and answering any questions the client may have regarding the conflict and confirming that the client is willing to continue working with the producer. In other instances, informed disclosure alone may be insufficient and the producer will have to take additional steps to ensure that the conflict does not cause the producer to make a recommendation that is not in the client's best interest or that puts the producer's own financial interests ahead of the client's. In such instances, a producer could, for example, consult with his or her manager, supervisor or agency principal to assess whether a conflict is inappropriately influencing the impartiality of the producer's recommendations. Finally, there may be material conflicts of interest that cannot be effectively mitigated through informed disclosure and additional measures. In those situations, the producer would have to avoid engaging in the activity or relationship that would give rise to the conflict, or, alternatively, abstain from making the recommendation. In all cases, the producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's ~~recommended~~ professional relationship or capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives. |
| **FACC** | **Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage and disclose a material conflict of interest? Examples?**<br><br>**A10. ~~The differences in professional and contractual obligations between a producer acting in the consumer's best interest at the time of the transaction and an investment advisor acting in the consumer's best interest over the term of a professional advisory contract are substantial. Managing this conflict of interest will require more than simple disclosure. The dually licensed producer must ensure that the customer has a timely comprehension of the producer's varied interests in the relationship decisions and the~~** |

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| | ~~producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's recommended professional relationship or capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives.~~<br>As noted above, a material conflict of interest for purposes of the model regulation means a "financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation." The regulation is concerned with whether the producer is motivated by financial interests other than compensation in recommending one annuity over anther that may conflict with the interests of the client. In all cases, the producer must identify such conflicts, and if they exist, the producer must either avoid the conflict or disclose and reasonably manage the conflict. For example, if the producer's agency has borrowed money from an insurance company, the producer must identify whether that debt obligation rises to a material conflict of interest, and if it does, the producer must either avoid the conflict by refraining from recommending annuities issued by that insurer, or disclosing the conflict to the consumer and taking steps to ensure recommendations of an annuity issued by that insurance company would effectively address the needs and objectives of the consumer in accordance with the model regulation. It should be noted here that a producer who is also an investment advisor, lawyer, CPA, or other kind of professional who "wears more than one hat" would not have a material conflict of interest based solely on the fact the producer serves in that dual capacity based on the definition of material conflict of interest in this regulation but may have a conflict of interest under protocols pertaining to those other professions. From an insurance regulatory perspective, the obligation of the producer is to disclose that he or she is in the business of selling annuities and compensated for such sales which is accomplished by compliance with the disclosure obligation under Section 6(A)(2). |

**SUPERVISION SYSTEM**

**Q11. Do these revisions require insurers to set up new supervision systems to ensure producer compliance with this new standard of conduct?**

A11. No, but the revisions do add additional insurer supervision requirements by requiring insurers to establish and maintain reasonable procedures in three additional areas:

- To assess whether a producer has provided to the consumer the information required by the revised model.
- To identify and address suspicious consumer refusals to provide consumer profile information.
- To identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

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| **No comments received** | |

**Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices is provision intended to address?**

A12. The requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on a particular product. As the provisions states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of a specific annuity or annuities within a specified or limited period of time are prohibited and should be identified and eliminated.

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| **Joint Trades** | **Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices ~~is~~this provision intended to address?**<br><br>A12. ~~The requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on a particular product.~~ As the provision~~s~~ states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of a specific annuity or annuities within a ~~specified or~~ limited period of time are prohibited and should be identified and eliminated. For example, this provision would apply where a producer's eligibility for a particular bonus is tied to his or her sales of one particular annuity product during a particular month. However, the requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on the sale of specific annuities within a limited period of time. |
| **FACC** | **Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to establish reasonable procedures to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices ~~is~~this provision intended to address?**<br><br>A12. The requirements of Section 6C(2)(h) are ~~not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on a particular product. As the provisions states, insurer business practices involving~~ intended to prohibit sales contests, quotas, bonuses and non-cash compensation based on the sale of a ~~specific annuity or annuities~~particular product within a ~~specified or~~ limited period of time ~~are prohibited and should be identified and eliminated~~. It is not intended to prohibit an insurance company from providing general incentives to producers with no emphasis on any particular product. The purpose of this provision is to prevent short-term targeted incentives that put undue pressure on producers to sell particular annuities in a manner that could be contrary to the best interest of the consumer. In general, this means incentives that reward sale of a particular annuity product (identified commonly by a product name) over a shorter period of time (for example a month or a quarter) should be identified and eliminated. because they put undue pressure on the producer to promote that product over other annuities that may more effectively address the consumer's needs and objectives. |
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| **NEW SECTION – SAFE HARBOR** | |
| **Joint Trades** | **Q15. Are insurers and producers required to comply with the requirements of the revised model if they are acting in compliance with rules imposed by other regulators that meet or exceed the requirements of the revised model?**<br><br>A15. No, Section 6E provides a safe harbor for recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy "comparable standards" (as defined in the revised model), such as the best interest standard under Reg BI, the fiduciary standard applicable to federally regulated investment advisers under the Investment Advisers Act of 1940, or the fiduciary standard imposed under ERISA. Under such circumstances, producers and insurers need not comply with any of the specific requirements included in the revised model, including the care, disclosure, conflict of interest, and documentation obligations, as well as the insurer supervision and producer training requirements.<br>However, insurers do have important supervisory obligations with respect to annuity recommendations made by financial professionals relying on the safe harbor: |

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| | • Section 6E(2) specifies that, even where the safe harbor applies, insurers remain subject to the obligation under Section 6C(1) to "not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information."<br>• Section 6E(3) provides that an insurer must monitor the conduct of the financial professional relying on the safe harbor or the entity responsible for supervising the financial professional based on information collected in the normal course of the insurer's business. |

 

*FREQUENTLY ASKED QUESTIONS IMPLEMENTATION DOCUMENT*

Stakeholder Comments on Continuing Education/Training Requirements

| **Questions on Training Completed in a State Prior to State Adoption of the Revised Model** | |
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| **Joint Trades**[1] | **Q. Can producers satisfy their training obligations under the revised model by taking the new four credit training course or the new one credit training course before the revised model takes effect in a particular state?**<br><br>A. The revised model provides for reciprocity so producers that operate in multiple jurisdictions do not have to retake the same training multiple times. If a producer has completed a properly approved training course in a state where the revised model has been adopted (whether or not such revised model has become effective), the producer should not be required to complete the required training again in that same state after the effective date or in another state that subsequently adopts the revised model.<br><br>**Q. Can producers satisfy their training obligations under the prior version of the model in a state which has not yet adopted the revised model by taking the new four credit training course?**<br><br>A. The new four-credit training course includes all of the topics that were required to be covered under the prior version of the model (with information on the best interest standard of conduct now required under the revised model). As such, if a producer has completed a properly approved four credit training course in a state that has adopted the revised model, the producer should not be required to also complete a course that satisfies the requirements of the prior version of the model in a state that has not yet adopted the revised model. |
| **National Association of Insurance and Financial Advisors (NAIFA)** | **Q. If a producer takes a new four credit and/or one credit training course--which complies with the requirements of Section 7 of the Amended Model and has been approved by the appropriate state authorities-- prior to the effective date of a state's amended annuity suitability regulation, would successful completion of that course i) count towards compliance with the state's amended annuity suitability regulation once it becomes effective, and/or ii) count towards compliance with Section 7 B (9) of the Amended Model and be deemed to satisfy the training requirements of another state if/when that other state adopts the Amended Model?**<br><br>A. Yes—an approved training course taken prior to the effective date of a state's amended regulation would count towards compliance with that state's or another state's amended regulation (including Section 7 B (9)) once it becomes effective.<br><br>**Q. If a producer takes an approved four credit training course in a state that has not adopted the Amended Model, would that producer be able to satisfy the training requirements in another state that has already adopted the Amended Model by taking the new one credit course specified in Section 7 B (6) (b) of the Amended Model?** |

[1] Joint submission from 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).

 

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| | A. Yes—completing both the old four credit course—at any time-- and the new one credit course is "substantially similar" to completing the new four credit course provided for in Section 7 of the Amended Model, and would comply with the requirements of Section 7 B (6) of the Amended Model.<br><br>**Q. If a producer takes the new four credit training course in a state that has adopted the Amended Model, would that producer be deemed to have satisfied the training requirement of a state that has not adopted the Amended Model?**<br><br>A. Yes—the new four credit training course provided for in the Amended Model is "substantially similar" to the four credit training course required under the prior version of Model #275, and would meet the requirements of Section 7 B (9) of the prior version of Model #275. |
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| **Questions on Training and the Safe Harbor** | |
| **Q13. Do producers complete additional training on the new standard of conduct even if they have already completed the existing annuity training requirements?**<br><br>A13. Yes, Section 7 requires a producer who has already completed the existing annuity training requirements prior to a state's effective date of the revised model to complete within 6 months of that date either a four credit training course or an additional one-time one credit training course on the appropriate sales practices, replacement an disclosure requirements under the revised model. In adopting this section, a state could choose a different timeframe for this requirement. | |
| **Joint Trades** | **Q13. Do producers who are not relying on the safe harbor in Section 6E have to complete additional training on the new standard of conduct even if they have already completed the existing annuity training requirements?**<br><br>A13. Yes, Section 7 requires a producer who has already completed the existing annuity training requirements prior to a state's effective date of the revised model to complete within 6 months of that date either a four credit training course or an additional one-time one credit training course on the appropriate sales practices, replacement and disclosure requirements under the revised model. ~~In adopting this section, a state could choose a different timeframe for this requirement.~~<br><br>**Q. Are producers who are relying on the safe harbor required to complete the 4-hour training course (or, if eligible, the optional 1-hour training course), which includes training on the new standard of conduct under the revised model?**<br><br>A. No. Producers relying on the safe harbor are not required to take the training prescribed by the revised model; the training required under the appropriate "comparable standards" (as defined in the revised model) will suffice. Insurers should, however, ensure that producers operating under the safe harbor have nonetheless completed appropriate training on the specific annuity products they are authorized to recommend and sell. |
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| Questions about the One-Hour Training Requirement versus the Four-Hour Training Requirement | |
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| **Joint Trades** | **Q. Under what circumstances would a producer be permitted to take the additional one credit training course rather than the full four credit training course? What is the difference between the one credit and four credit training courses? For how long should the one credit training course be available as an option?**<br><br>A. The one credit training course is available as an option only to producers who have previously completed a four-credit training course that met the requirements of the prior version of the model. The four-credit training course would include information on all of the topics listed in Section 7B(3) of the revised model, whereas the one credit training course would include only information on the appropriate standard of conduct, sales practices, replacement and disclosure requirements. The one credit option was included in the revised model because the NAIC recognized that adoption of the revised model would not cause any changes in the information provided on the other topics covered by the four credit training course required under the prior version of the model.<br><br>The option to complete the one credit training course should be left available for as long as the prior version of the model remains in effect in any jurisdiction. This will ensure that producers who satisfy the training requirements in states where the prior version is still in effect would not have to retake the entire four credit training course, and can instead take the one credit training course to ensure that they understand how the rules have changed.<br><br>In sum, producers who are not relying on the safe harbor should be permitted to satisfy their training obligations by completing either (a) the four credit training course under the revised model OR (b) a combination of the four credit training course under the prior version of the model AND the one credit training course under the revised model.<br><br>The preceding applies to situations where a producer has taken an approved four credit training course in a state that has not adopted the amended NAIC Model and then seeks to satisfy the training requirement by taking the new one credit course in a state that has adopted the amended NAIC Model. |
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| **Failure to Timely Complete the Updated Four-Hour or One-Hour Training Course** | |
| **Joint Trades** | **Q. Under Section 7B(6), if a producer who was already qualified by taking the old four credit training course fails to take the updated four credit training course or the one hour training course within six months after the effective date of the amended regulation, what training must a producer take to become requalified to offer annuities again?**<br><br>A. A producer who does not timely meet the requirements to take the training courses but has already taken the old 4 credit training course may satisfy such new requirements by taking either the one credit or the four credit training course (which shall remain available) at any point after the expiration of the six month time period. The producer should cease all annuity sales activities until the updated training courses have been completed. |

# Agenda Item #3

**Discuss Any Other Matters Brought Before the Working Group**
**—*Commissioner Doug Ommen (IA)***