

## **Additional Proposed Conflict of Interest FAQ Question and Answer**

Questions: The model regulation defines "material conflict of interest" as a financial interest of the producer that a reasonable person would expect to influence the impartiality of the recommendation. The model regulation also specifically excludes "cash and non-cash compensation" from the requirement for material conflicts of interest. Why did the NAIC determine that "cash and non-cash compensation" is excluded from the requirement to "identify and avoid or reasonably manage and disclose" material conflicts of interest?

**CEJ Proposed Answer:** The NAIC determined that most forms of routine compensation do not create a material conflict of interest and that most conflicts of interest that might be created by compensation arrangements can be addressed through the Insurance Agent (Producer) Disclosure of Annuities, required by the model regulation to be provided to the consumer and which includes a section "How I'm Paid for My Work." The NAIC determined that general incentives regarding the sales of a company's products with no emphasis on any particular product do not create a material conflict of interest. The NAIC identified some types of compensation arrangements that likely create a material conflict of interest and requires the insurer to identify and eliminate sales contests, sales quotas, bonuses and non-cash compensation based on sales of specific annuities within a limited time frame.

**Several States' Proposed Answer:** The NAIC determined that most forms of producer compensation do not present a material conflict of interest with the purchaser, and that purchasers expect producers to be compensated. The revisions to Model #275 make it clear that annuity recommendations by producers must be in the best interest of the consumer, and that producers may not place the producer's financial interest ahead of the consumer's interest. Therefore, the NAIC determined that the requirement to "identify and avoid or reasonably manage and disclose" should not apply to "cash and non-cash compensation". Rather, disclosure of the producer relationship and related compensation is the appropriate management requirement.

Under the new disclosure requirement producers must prominently disclose to a consumer certain information about cash compensation and non-cash compensation to be received by the producer, and must prominently notify the consumer of the right to additional cash compensation information. For clarity, the NAIC developed a model disclosure form (Appendix A) which includes a section "How I'm Paid for My Work." Producers must disclose cash and non-cash compensation on Appendix A or a substantially similar form.

The NAIC also determined that general incentives regarding production levels with no emphasis on any particular product do not create an unanticipated conflict of interest requiring avoidance or management.

However, the NAIC did conclude that sales contests, sales quotas, bonuses and non-cash compensation based on sales of specific annuities within a limited time frame should be avoided. Accordingly, the Model #275 revisions require insurers to identify and eliminate these arrangements.