***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?**  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?**  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 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. |
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| **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 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.  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 to maintain their authority to regulate the sale of fixed annuities. | |
| **FACC** | **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 annuities providing that such annuities are exempt 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.  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 to maintain their exclusive authority to regulate the sale of fixed annuities. |
| **Joint Trades[[1]](#footnote-1)** | **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 and fixed indexed annuities and provides an exemption for such annuities 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.  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 to maintain the status of fixed and fixed indexed annuities meeting the requirements of Section 989J as outside the scope of federal securities regulation. |
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| **NEW QUESTION** | |
| **Joint Trades** | **Q2. How did the NAIC develop and promulgate these revisions to the model?**  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?**  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. | |
| **Joint Trades** | **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, telephone, the Internet, or other mass communication media. |
| **National Association of Insurance and Financial Advisors (NAIFA)** | Questions the rationale for this exemption. |
| **Independent Insurance Agents & Brokers of America (BIG i)** | Questions necessity of the exemption and believes contrary to the underlying goals of the model. |
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| **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. | |
| **FACC** | **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 sources and types of compensation, and any material conflicts of interest, as defined by the regulation; and * Document, in writing, any recommendation and the 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. | |
| **FACC** | **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. Insurers providing supervision are responsible for any recommendation contained in an application made for purchase that is submitted to the insurer. 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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| **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. | |
| **Joint Trades** | **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. 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 section. A producer will not be treated as having exercised material control or influence merely because the producer provides or delivers marketing or educational materials, product wholesaling or other back office product support, or general supervision of another producer. |
| **FACC** | **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 applies, if under Section 6A(5), the producer 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). |
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| **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. | |
| **Joint Trades** | **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 by a state insurance regulator related to the model, a producer’s recommendation is compared only to other producers possessing the same insurance license line(s) of authority as the producer making the recommendation 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. |
| **FACC** | **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 with similar authority and licensure 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. |
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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. | |
| **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 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. 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.  **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?**  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?**  A8. A producer can satisfy the disclosure obligation by providing the completed form during the initial client meeting 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.  **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?**  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.  **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.**  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.  **Q8c. Is it permissible for a producer to use the Appendix A disclosure form to disclose any material conflicts of interest?**  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). |
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| **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. | |
| **Joint Trades** | **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.  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.” Cash and non-cash compensation are not considered to be material conflicts of interest, though the revised model does require disclosure about producer compensation and impose restrictions on certain types of non-cash compensation, as described in Q14/A14 below. An ownership interest (such as where a producer has a material ownership interest in an insurance company whose products the producer is authorized to recommend) is one example of a material conflict of interest that would be subject to the revised model’s conflict of interest obligation. Depending on the particular facts and circumstances, a producer could also be deemed to have a material conflict of interest if, for example, he or she, while acting as a producer: 1) Makes a personal loan of money or securities to a customer, or accepts such a loan from a  customer; or 2) Acts as an attorney for the same customer. |
| **FACC** | **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.  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  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?**  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?**  A10.  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 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?**  **A10.**  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). |
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| **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. | |
| **No comments received** |  |
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| **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. | |
| **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 this provision intended to address?**  A12. As the provision 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 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 this provision intended to address?**  A12. The requirements of Section 6C(2)(h) are intended to prohibit sales contests, quotas, bonuses and non-cash compensation based on the sale of a particular product within a limited period of time. 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?**  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.  However, insurers do have important supervisory obligations with respect to annuity recommendations made by financial professionals relying on the safe harbor:  • 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.”  • 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. |

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). [↑](#footnote-ref-1)