

**Draft FAQs on the Comparable Standards Safe Harbor**

**QXX. What types of recommendations or sales does the safe harbor provision (contained in section E of the revised model) apply to?**

AXX. The safe harbor provision applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation.

**QXX. When would a producer be considered to be acting as a financial professional for purposes of the safe harbor provision?**

AXX. A producer would be considered a financial professional for purposes of the safe harbor provision if they are acting as:

- 1) A broker-dealer registered under federal [or state] securities laws or a registered representative of a broker-dealer;
- 2) An investment adviser registered under federal [or state] securities laws or an investment adviser representative associated with the federal [or state] registered investment adviser; or
- 3) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

**QXX. What comparable standards meet the criteria for the safe harbor?**

AXX. The NAIC considers conduct standards adopted by federal regulators under federal securities laws, ERISA, and the IRC to be comparable standards to Model #275. The revised model includes a drafting note indicating states may wish to consider state securities laws as a comparable standard as well. The revised model also makes clear that the safe harbor will apply even if the comparable standard would not otherwise apply to the product or recommendation at issue. For example, a registered representative of a broker-dealer who complies with the requirements of the SEC's Regulation Best Interest when recommending a fixed or fixed indexed annuity (which are not securities under federal securities laws) would be covered by the safe harbor even though Regulation Best Interest does not directly apply to those products.

**QXX. If a financial professional makes a recommendation or sale of an annuity in full compliance with a comparable standard, does the financial professional also have to satisfy all of the specific requirements of the revised model?**

AXX. No, a financial professional who fully satisfies the requirements of a comparable standard is considered to have met their obligations under the revised model, and does not need to also comply

with any additional obligations imposed by the revised model. However, actual compliance with the applicable comparable standard is required; state insurance departments retain the authority to examine and investigate the conduct of a financial professional who is relying on the safe harbor to ensure compliance with the applicable comparable standard and can take enforcement action against a producer who fails to fully comply with that comparable standard when recommending or selling an annuity.

**QXX. Are there specific conditions an insurer must meet for the safe harbor to apply?**

AXX. Yes, a financial professional will only be able to rely on the safe harbor if the insurer whose product is being recommended or sold:

- 1) Monitors the relevant conduct of the financial professional or the entity responsible for supervising the financial professional; and
- 2) Provides the entity responsible for supervising the financial professional with information and reports that will assist that entity with its supervision efforts.

**QXX. Do insurers have any other obligations under the revised model with respect to producers seeking to rely on the safe harbor?**

AXX. Yes, 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.” However, insurers may base their analysis on information received from either the financial professional or the entity supervising the financial professional and are not otherwise required to also perform all of the specific supervisory functions outlined in Section 6C(2) as long as the financial professional’s conduct is being supervised (whether by the insurer or by another entity with responsibility for supervision of the financial professional) in accordance with the relevant comparable standard.

**Producer Training and Reciprocity Under 2020 Version of NAIC MDL 275**

The National Association of Insurance Commissioners (NAIC) [Suitability in Annuity Transactions Model Regulation \(MDL 275\)](#) has, since 2010, required insurance producers who recommend and sell annuities to consumers to complete a one-time, four credit hour training course that covers general annuity principles – including the types and uses of annuities, how annuity contract features affect consumers, and tax implications – as well as information about the requirements of the Model.

The Model also provides that a producer who completes a course that meets the training requirement in one state would not need to re-take the training in other states that impose substantially similar requirements. This is generally referred to as “reciprocity.”

The 2020 amendments to the Model expanded the topics to be covered by the required training to include information about the new best interest standard of conduct applicable to producers when they recommend and sell annuities. In recognition of the fact that many producers completed the required training before this new requirement was added, the Model allows such producers to remain in compliance by taking a one-time, one credit hour course that covers the applicable standard of conduct. The insurance departments in some states where the revised Model has been adopted or enacted have opted to discontinue this one credit hour option after a set period of time, while the others have not set an end-date for this option.

The producer training provision has been the source of significant confusion for the industry and the regulators in several states where the revised Model has been enacted or adopted. This confusion is largely attributable to the fact that any individual producer’s actual training obligations will vary based on when and where the producer is licensed, as well as whether and when the producer has completed any or all of the required training.

The NAIC issued a set of [frequently asked questions \(FAQs\)](#) in July 2021 that, among other things, addressed a number of questions related to the producer training requirement. As a supplement to those FAQs and to further assist the industry and the regulators in navigating this complex situation, a coalition of industry trade organizations developed the following chart to outline precisely what training would be required under a number of different scenarios. Note that this chart does not include every conceivable scenario, but we believe it covers the most common scenarios.

	Licensing Status	Training Status	Training Requirement
SCENARIO #1	<p>Producer applies for license in 2020 Model state<sup>1</sup> ("<b>State A</b>") on or after effective date<sup>2</sup></p> <p><b>AND</b></p> <p>Producer is <u>NOT</u> licensed in any other 2020 Model state before effective date</p>	<p>Producer has <u>NOT</u> completed any version of annuity training course</p>	<p>Producer must complete new 4-credit course in <b>State A</b> before selling annuities in <b>State A</b></p>
SCENARIO #2	<p>Producer applies for a license in 2020 Model state ("<b>State B</b>") on or after effective date</p> <p><b>AND</b></p> <p>Producer is licensed in any other 2020 Model state ("<b>State C</b>") before effective date</p>	<p><b>SCENARIO #2-A</b></p>	
		<p>Producer has <u>NOT</u> completed any version of annuity training course</p>	<p>Producer must complete new 4-credit course in <b>State B</b> before selling annuities in <b>State B</b></p>
		<p><b>SCENARIO #2-B</b></p>	
		<p>Producer has completed old 4-credit course<sup>3</sup> in <b>State C</b> before effective date</p> <p><b>AND</b></p> <p>Producer has <u>NOT</u> completed new 4-credit course<sup>4</sup> <u>OR</u> new 1-credit course<sup>5</sup> in <b>State C</b> (if not discontinued prior to completion) before effective date</p>	<p>Within six months after effective date,<sup>6</sup> producer must complete <u>one of the following</u> in <b>State B</b> or any other 2020 Model state where licensed:</p> <p>(a) new 4-credit course</p> <p><b>OR</b></p> <p>(b) new 1-credit course (if not discontinued in state where taken)</p>
<p><b>SCENARIO #2-C</b></p>		<p>Before effective date, Producer has completed either:</p> <p>(a) new 4-credit course in <b>State C</b></p> <p><b>OR</b></p> <p>(b) old 4-credit course <b>AND</b> new 1-credit course in <b>State C</b></p>	<p>NONE (covered by reciprocity)</p>
SCENARIO #3	<p>Producer is licensed to sell annuities in 2020 Model state ("<b>State D</b>") before effective date</p> <p><b>AND</b></p> <p>Producer is <u>NOT</u> licensed to sell annuities in any other 2020 Model state before effective date</p>	<p><b>SCENARIO #3-A</b></p>	
		<p>Producer has <u>NOT</u> completed any version of annuity training course</p>	<p>Producer must complete new 4-credit course in <b>State D</b> before selling annuities in <b>State D</b></p>
		<p><b>SCENARIO #3-B</b></p>	
<p>Producer has completed old 4-credit course in <b>State D</b> prior to effective date</p>	<p>Within six months after effective date,<sup>6</sup> producer must complete <u>one of the following</u> in <b>State D</b>:</p> <p>(a) new 4-credit course</p> <p><b>OR</b></p> <p>(b) new 1-credit course</p>		

<sup>1</sup> "2020 Model State" means a state in which the 2020 version of MDL 275 has been enacted by legislation or adopted by regulation.

<sup>2</sup> "Effective date" means, for each 2020 Model State, the date on which the 2020 version of MDL 275 takes effect.

<sup>3</sup> "Old 4-credit course" means a course that met the requirements of the 2010 version of MDL 275.

<sup>4</sup> "New 4-credit course" means a course that meets the requirements of the 2020 version of MDL 275.

<sup>5</sup> "New 1-credit course" means a course that meets the requirements for the 1-credit option in the 2020 version of MDL 275.

<sup>6</sup> At least one 2020 Model State adopted the 2020 version of MDL 275 without the six month grace period for existing producers. In such states, the specified training must be completed by all producers seeking to recommend or sell annuities after the effective date.