



October 5, 2019

Submitted electronically to:

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TO: Members of the Annuity Suitability Working Group
Director Jillian Froment, Ohio Department of Insurance
Chair, Annuity Suitability Working Group

FROM: Kim O'Brien, FACC Spokesperson
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RE: September 2019 Working Group Draft Comments & Redline

Dear Ms. Matthews:

Jolie, as indicated in our submission earlier this week, we have continued to work on the redline and are now submitting an updated version with further suggested edits. We ask that you incorporate these additional edits into your summary chart. You will see in some cases we also provide further commentary to clarify our position or explain what we did with the redline. This redline should be considered in conjunction with our comment letter dated September 30, 2019.

Thank you again for consideration of these comments and our abbreviated redline suggestions.

Respectfully submitted,

Kim O'Brien
FACC Campaign
Vice Chair Americans for Asset Protection

Attachment: FACC Redline_Model #275 Sept Draft_100419F

Model #275

Comments are being requested on this draft. The revisions to this draft reflect changes made from the existing model. Comments should be sent only by email to Jolie Matthews at jmatthews@naic.org by Monday, Sept. 30, 2019.

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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Section 1. Purpose

A. The purpose of this regulation is to require that producers abide by obligations regarding care, disclosure, conflict of interest, and documentation to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed. Nothing herein shall be construed to guarantee an outcome for consumers in connection with such transactions.

[FACC SUPPORTS THE JOINT TRADES CLARIFICATION THAT THE RULE SHOULD NOT GUARANTEE AN OUTCOME. THIS CONCERN IS SIGNIFICANT GIVEN THE HUSCH BLACKWELL OPINION THAT "BEST INTEREST" IS UNAMBIGUOUS AND COULD BE INTERPRETED TO MEAN "ABSOLUTE BEST." HOWEVER, THE BETTER APPROACH IS TO REMOVE THE TERM "BEST INTEREST," THEREBY AVOIDING THIS CONUNDRUM, AND INSTEAD ACHIEVING THE REGULATION'S PURPOSE BY CLARIFYING THE CARE OBLIGATION AS DONE IN FACC'S PROPOSAL BELOW.]

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.

Drafting Note: 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 exempts confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed reaffirmed exclusive state regulatory authority over such annuities. This regulation is a successor regulation that meets or exceeds the requirements of the 2010 model regulation. [THIS DRAFTING NOTE SHOULD BE MORE CAREFULLY REVIEWED BY THE NAIC GIVEN ITS IMPORTANCE.]

Section 2. Scope

This regulation shall apply to any sale or recommendation of an annuity.

Section 3. Authority

This regulation is issued under the authority of [insert reference to enabling legislation].

Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

Section 4. Exemptions

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
- B. Contracts that are not individually solicited and are used to fund:
 - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the IRC; or
 - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- C. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- D. Formal prepaid funeral contracts.

Section 5. Definitions

- A. “Annuity” means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
- B. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the ~~recommendation or~~ sale of an annuity from an insurer, intermediary, or directly from the consumer.
- C. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:
 - (1) Age;
 - (2) Annual income;
 - (3) Financial situation and needs, including debts and other obligations;
 - (4) Financial experience;
 - (5) Financial objectives;
 - (6) Intended use of the annuity;

- (7) Financial time horizon;
 - (8) Existing assets or financial products, including investment, annuity and insurance holdings;
 - (9) Liquidity needs;
 - (10) Liquid net worth;
 - (11) Risk tolerance, ~~including willingness to accept non-guaranteed elements in the annuity, including variability in premium, death benefit or fees;~~
 - (12) Financial resources used to fund the annuity; and
 - (13) Tax status.
- D. “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].
- E. “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].
- F. ~~“FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.~~
- G. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- H. “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.
- I. (1) “Material conflict of interest” 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.
- (2) “Material conflict of interest” does not include cash compensation or non-cash compensation.
- [THE PROPOSAL BY THE JOINT TRADES TO EXCLUDE OTHER FORMS OF NON-CASH COMPENSATION UNDER THE DEFINITION OF “MATERIAL CONFLICT OF INTEREST” IS UNNECESSARY AND IS ADDRESSED MORE APPROPRIATELY UNDER THE DEFINITION OF NON-CASH COMPENSATION.]
- J. “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, ~~merchandise, gifts, prizes, unfunded deferred compensation, meals, lodging, health insurance, office rent, office support, retirement benefits and discounted goods, services and programs.~~ ~~health insurance, office rent, office support and retirement benefits.~~
- [NON-CASH COMPENSATION IS A COMPLEX AREA THAT WARRANTS CLOSER REVIEW BY THE NAIC AND POSSIBLY DESERVES ITS OWN REGULATION. THESE MATTERS HAVE BEEN STUDIED AND ADDRESSED BY FINRA FOR MANY YEARS. CONSIDERATION SHOULD BE GIVEN TO WHETHER THERE IS A DE MINIMUS THRESHOLD, WHETHER TRAINING IS CONSIDERED NON-CASH COMPENSATION, ETC.]
- K. “Producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this regulation, “producer” includes an insurer where no producer is involved.
- L. (1) “Recommendation” means 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.

- (2) 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.
- M. “Replacement” means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing insurance policy or contract has been or is to be any of the following:
- (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
 - (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
 - (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
 - (4) Reissued with any reduction in cash value; or
 - (5) Used in a financed purchase.

Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

- N. ~~“SEC” means the United States Securities and Exchange Commission.~~

Section 6. Duties of Insurers and Producers

- A. Best Interest Recommendation Obligations. A producer, when making a recommendation of an annuity, ~~shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest. A producer~~ is deemed to comply with this subsection by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation:
- (1) (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:
 - (i) Know the consumer’s financial situation, insurance needs and financial objectives;
 - (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
 - (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives ~~over the life of the product,~~ as evaluated in light of the consumer profile information; ~~and~~
 - (iv) Not allow producer compensation or any material conflict of interest to affect the evaluation described in clause (iii) in forming the recommendation; and,
 - (iv) Communicate a reasonable summary of the basis or bases of the recommendation.
 - (b) The requirements under subparagraph (a) of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

- (c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.
- ~~(d)~~ The requirement for a reasonable basis under subparagraph (a) (iii) of this paragraph does not necessarily mean a majority of all insurance and investment professionals could agree that the recommended option was the single best option, but only that it was reasonable for an ordinary producer in similar circumstances and with similar authority and license, to believe that the recommended annuity would effectively address the consumer's financial situation, insurance needs and financial objectives as evaluated in light of the consumer profile information.
- ~~(d)~~(e) The requirements under this subsection do not create a fiduciary obligation but create a regulatory obligation as established in this regulation.
- (~~e~~f) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.
- (~~f~~g) The requirements under subparagraph (a) of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.
- (~~g~~h) The requirements under subparagraph (a) of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.
- (~~h~~i) The requirements under subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.
- (~~h~~) The requirements under subparagraph (a) of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.
- (~~i~~) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:
- (i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;
 - (ii) The replacing product would ~~substantially~~ benefit the consumer in comparison to the replaced product over the life of the product; and
 - (iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding ~~60~~36 months.
- ~~(j)~~ Nothing in this regulation should be construed to require an insurance producer to obtain any license other than the authority to sell, solicit or negotiate insurance in [STATE],

including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation.

(2) Disclosure obligation.

(a) Prior to or at the time of the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer: ~~on a form substantially similar to the “Producer Relationship Disclosure Form” in Appendix A:~~

- (i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
- (ii) Any limitations the producer or the insurer has concerning the following:
 - (I) The type of products that the producer is authorized and licensed to recommend or sell; and
 - (II) Whether only products issued by a specific insurer or an otherwise limited range of annuity products may be offered;
- (iii) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and
- (iv) A notice of the consumer’s right to request additional information regarding cash compensation described in subparagraph (b) of this paragraph;

A producer is deemed to satisfy this disclosure obligation by providing the consumer with the “Producer Relationship Disclosure Form” in Appendix A. Producers may provide supplemental information or make other modifications to the form that are deemed useful to the consumer provided the form, at a minimum, contains the information included in Appendix A.

Drafting Note: If a state approves forms, a state should add language to subparagraph (a) reflecting such approvals.

- (b) Upon request by the consumer, the producer shall disclose:
 - (i) A reasonable estimate of the amount of cash compensation, which may be stated as a range of amounts or percentages; and
 - (ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and
- (c) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in subparagraph (c) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

- (3) ~~Material c~~Conflict of interest obligation. A producer shall identify and ~~avoid or otherwise reasonably manage~~ prominently disclose to the consumer a reasonable description of any material conflicts of interest, including material conflicts of interest related to an ownership interest in an insurer whose annuity is being recommended by the producer to the consumer.

[TO THE EXTENT THAT THERE IS ANY CONFLICT OF INTEREST, WHICH UNDER THIS PROPOSAL WILL OCCUR RARELY, THE PROPER REMEDY IS THE PRODUCER SHOULD DISCLOSE THE CONFLICT OF INTEREST. THE NOTION OF “REASONABLY MANAGE” IS SUBJECTIVE AND IS UNWORKABLE FOR A PRODUCER RELATIVE TO HIMSELF OR HERSELF. THE NOTION OF “AVOID” IS INHERENTLY REDUNDANT BECAUSE IF THE CONFLICT IS AVOIDED, THE CONFLICT DOES NOT EXIST.]

- (4) Documentation obligation. A producer shall at the time of recommendation or sale:
- (a) Make a written reasonable summary record of any recommendation and the basis for the recommendation subject to this regulation;
 - (b) Obtain a customer signed statement on a form substantially similar to the “Consumer Refusal to Disclose All or Partial Consumer Profile Information” form in Appendix B documenting:
 - (i) A customer’s refusal to provide the consumer profile information, if any; and
 - (ii) A customer’s understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and
 - (c) Obtain a customer signed statement acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer’s recommendation.

Drafting Note: If a state approves forms, a state should add language to subparagraph (b) of this paragraph reflecting such approvals.

~~NOTE: THE PROVISION BELOW IS STILL UNDER CONSIDERATION. THE WORKING GROUP IS REQUESTING COMMENT ON IT.~~

~~[?. Any requirement applicable to a producer under this section shall apply to every producer who has materially participated in the making of a recommendation and received compensation as a result of the sales transaction, regardless of whether the producer has had any direct contact with the consumer, provided that product wholesaling or product support based on generic client information, or the provision of education or marketing material, does not constitute participating in the making of a recommendation.]~~

B. Transactions not based on a recommendation.

- (1) Except as provided under paragraph (2), a producer shall have no obligation to a consumer under subsection A(1) related to any annuity transaction if:
- (a) No recommendation is made;
 - (b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
 - (c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or
 - (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

- (2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

C. Supervision system.

- (1) Except as permitted under subsection B, an insurer may 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.
- (2) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this regulation in connection with annuities issued by the insurer, including, but not limited to, the following:
 - (a) The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant producer training manuals;
 - (b) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of section 7 of this regulation;
 - (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;
 - (d) The insurer shall establish and maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
 - (e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information after issuance or delivery of the annuity;
 - (f) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;
 - (g) The insurer shall establish and maintain reasonable procedures to identify and address potentially suspicious consumer refusals to provide consumer profile information;
 - (h) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities or specific types of annuities within a limited period of time; and

AS WITH THE DEFINITION OF NON-CASH COMPENSATION ABOVE, THIS SUBSECTION WARRANTS CLOSER REVIEW BY THE NAIC. THESE TYPES OF ISSUES HAVE BEEN STUDIED AND ADDRESSED BY FINRA FOR MANY YEARS. CLARIFICATIONS MAY BE NEEDED TO ENSURE SUCH PROVISIONS

WOULD NOT IMPINGE ON COMPENSATION PRACTICES BASED ON TOTAL ANNUITY PRODUCT SOLD NOR PREVENT THE OFFERING OF A LIMITED RANGE OF PRODUCTS.]

- (i) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- (3) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
- (b) An insurer's supervision system under this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
 - (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
- (4) Notwithstanding the foregoing, aAn insurer is not required to include in its system of supervision:
 - (a) a producer's recommendations to consumers of products other than the annuities offered by the insurer;-
 - (b) consideration of or comparison to products other than annuities offered by the insurer; and,
 - (c) compensation relating to products recommended, considered, or compared other than annuities offered by the insurer.

Nothing herein, however, shall override an insurer's obligations to comply with applicable replacement regulations.

D. Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

- (1) Truthfully responding to an insurer's request for confirmation of the consumer profile information;
- (2) Filing a complaint; or
- (3) Cooperating with the investigation of a complaint.

~~E. Safe harbor.~~

~~(1) Sales made in compliance with SEC regulations and applicable FINRA rules pertaining to best interest obligations and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker dealer sales of annuities if, in connection with the sale of an annuity, the broker dealer and the producer, who also is appropriately registered as a representative with FINRA, have complied with the business rules, controls and procedures for securities transactions. However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce the provisions of this regulation.~~

~~Drafting Note: Non compliance with SEC and FINRA requirements means that the broker dealer transaction is subject to compliance with the requirements of this regulation.~~

~~_____ (2) For paragraph (1) to apply, an insurer shall:~~

~~_____ (a) Monitor the FINRA member broker dealer using information collected in the normal course of an insurer's business; and~~

~~_____ (b) Provide to the FINRA member broker dealer information and reports that are reasonably appropriate to assist the FINRA member broker dealer to maintain its supervision system.~~

Section 7. Producer Training

- A. A producer shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- B. (1) (a) A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
- (b) Producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
- (2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
- (3) The training required under this subsection shall include information on the following topics:
- (a) The types of annuities and various classifications of annuities;
- (b) Identification of the parties to an annuity;
- (c) How product specific annuity contract features affect consumers;
- (d) The application of income taxation of qualified and non-qualified annuities;
- (e) The primary uses of annuities; and
- (f) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.
- (4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- (5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].
- (6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].

- (7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].
- (8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.
- (9) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.
- (10) An insurer shall verify that a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Section 8. Compliance Mitigation; Penalties

- A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:
 - (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer, an entity contracted to perform the insurer's supervisory duties or by the producer;
 - (2) A general agency, independent agency or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this regulation; and
 - (3) Appropriate penalties and sanctions.
- B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Drafting Note: Subsection B above is intended to be consistent with the commissioner's discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

Drafting Note: A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, "shall" should be substituted for "may" in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State's statute that authorizes the commissioner to impose penalties and fines.

Section 9. Recordkeeping

- A. Insurers, general agents, independent agencies and producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some States this time period may be five (5) years.

- B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

Section 10. Effective Date

The amendments to this regulation shall take effect months after the date the regulation is adopted or on [insert date], whichever is later.

APPENDIX A

PRODUCER RELATIONSHIP DISCLOSURE FORM

[FACC believes this disclosure template is on the right track but needs considerable work to make it workable for agents and more meaningful to consumers.

1. FACC proposed a comprehensive “Client Relationship Summary” and urges the Working Group to consider that form; it is substantive and addresses issues in a consumer-friendly manner.
2. It is unclear whether the proposed form here is to be provided on a one-time basis as part of the producer-client relationship or each time a sale is made.
3. Use of the term “producer” may be confusing to a consumer who considers the salesperson to be an “agent”.
4. Regarding available products, we believe the form should explain what insurance products are offered by the agent and not digress into products outside insurance regulation. The form could make clear the agent possibly offers other products under other licenses but that information should be disclosed pursuant to relevant requirements under those respective laws.
5. Regarding the checkboxes on Only One Insurer vs Multiple Insurers vs Primarily Contracted with One Insurer, those categories must be distinguished and defined. The third category in particular – i.e., primarily contracted with one insurer – must be defined in a practical way so agents know when that applies. Also, is this categorization only in reference to annuities offered by the agent or other products as well.
6. Regarding the checkboxes One Time Transaction vs On-Going Relationship, those abbreviated descriptions need definition at a minimum and should be rewritten to avoid inherent bias. Typically agents who are transaction based would not characterize their relationship as a “one-time transaction” which devalues the agent’s work to develop relationships, provide advice and service, and sell more than one product over time where appropriate.
7. Regarding the checkboxes on compensation structure, no descriptions are provided to consumers so this information may not be very helpful. It should be made clear what commission is and how it differs from AUM fees. Commission is paid by the insurer based typically on amount of premium deposited in the policy and not deducted from policy value; AUM fees are typically paid on some continuing basis by the client based on amount of assets under management.
8. Regarding sources of compensation, we think there are complexities in trying to break out IMOs as a separate category. It would make better sense to include IMOs within the Insurance Company checkbox so it reads “Insurance Company or third parties related to the insurer such as intermediary insurance agencies.”

Again, FACC urges the Working Group to review our proposed Client Relationship Summary which was designed to be informative, balanced, user-friendly, and helpful to consumers in understanding the nature and scope of their relationship with an insurance agent.]

INSURANCE AGENT/PRODUCER INFORMATION (“Me”, “I”, “My”)

First Name: _____ Last Name: _____

Firm Name: _____ Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

Insurance License # _____

CLIENT INFORMATION (“You”, “Your”)

First Name: _____ Last Name: _____

INSURANCE AUTHORIZATION

I am licensed and authorized to sell insurance products, including annuities in [State] in accordance with state laws. I offer the following products:

- Fixed or Fixed Index Annuities
- Variable Annuities
- Options
- Other Investments _____
- Mutual Funds
- Stocks/Bonds
- Certificates of Deposits

I am authorized and contracted or appointed or have access to offer:

- Products from **ONLY ONE INSURER** or Insurance Holding Company Group
- Products from Multiple Insurers
As an insurance agent, I am appointed with and represent various insurance companies. Those insurance companies do not restrict the insurance products I sell or recommend but the range of products I offer are limited to products available from those insurance companies. A list of the companies I represent may be obtained upon request.
- ~~Products from Multiple Insurers although I am primarily contracted with one insurer~~

~~**NOTE: THE WORKING GROUP REQUESTS COMMENTS ON WHAT ADDITIONAL INFORMATION (OR BOXES), IF ANY, SHOULD BE ADDED BELOW TO REFLECT THE PROVISIONS OF SECTION 6A(2), THE DISCLOSURE OBLIGATION, TO DESCRIBE THE SCOPE AND TERMS OF THE RELATIONSHIP BETWEEN THE PRODUCER AND THE CONSUMER.**~~

~~My Relationship with You:~~

- ~~One Time Transaction~~
- ~~On Going Relationship~~

My Compensation Structure (you may receive additional information about compensation paid to me upon request):

- Commissioned Transaction

A commission is the percentage amount of compensation an Insurance Company pays Me when you purchase an annuity. Typically, the amount of commission will vary based on the type of annuity You purchase, the amount of premium You pay for that annuity, and the commission schedule of the Insurance Company.

You do not directly pay the commission I receive. 100% of Your premium is applied to the annuity. Commission is one of costs which the Insurance Company factors into its products to provide the benefits and other features offered under that annuity.

- An asset under management fee

An assets under management (AUM) fee is any fee that investment advisers, mutual funds, and other financial professionals charge You based on Your assets under management (AUM). AUM measures the total market value of all financial assets which an investment company, financial adviser, or institution manages on behalf of their clients/investors. You pay the AUM fee directly from Your assets.

- Other, please describe: _____

I am likely to be compensated by the following sources for this relationship:

- Insurance Company

- The Consumer
- Third parties such as an Independent Marketing Organization (IMO) related to the Insurer

Other Sources _____

ADDITIONAL INFORMATION

You may obtain further information regarding the cash compensation paid to me.

~~NOTE: THE WORKING GROUP REQUESTS COMMENTS ON WHETHER THE CONSUMER SHOULD SIGN AND ACKNOWLEDGE THIS FORM AND/OR SHOULD THIS FORM BE RETAINED BY THE PRODUCER OR GIVEN TO THE CONSUMER, OR BOTH.~~

Material Conflicts of Interest

“Material conflict of interest” 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. My material conflicts of interest, if any, are listed below:

Client Signature

Agent Signature

Date

Date

APPENDIX B

CONSUMER REFUSAL TO DISCLOSE ALL OR PARTIAL CONSUMER PROFILE INFORMATION FORM

I understand that should I decline to provide the requested information or should I provide inaccurate information, I am limiting the protection afforded me by the Insurance Code of this [state] regarding this purchase.

- I **REFUSE** to provide this information at this time.
- I have chosen to provide LIMITED information at this time.
- My annuity purchase IS NOT BASED on the recommendation of this producer or the insurer.

Client Signature

Date

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