

To: NAIC Annuity Suitability Working Group
From: Federation of Americans for Consumer Choice

Via email to: jmatthews@naic.org

RE: Draft Safe Harbor Guidance Document

The Federation of Americans for Consumer Choice (FACC) appreciates the opportunity to comment on the Chair's Draft dated September 23, 2024, entitled Annuity Best Interest Regulatory Guidance and Consideration ("Draft Guidance"). FACC is a trade organization representing independent agents and agencies selling fixed annuities, life insurance, and long-term care insurance that works to ensure fair and equitable regulatory treatment of guaranteed products in the financial services marketplace.

In providing these comments, FACC emphasizes the importance of preserving the original intent of the NAIC Model Suitability in Annuity Transactions Regulation, updated Spring 2020, which sought to balance strong consumer protections with regulatory consistency and efficiency. Expanding the NAIC Model Regulation's requirements could inadvertently disrupt this balance, potentially hampering consumer choice, industry efficiency, and regulatory effectiveness.

FACC along with other industry trade organizations worked closely with the NAIC Annuity Suitability Working Group, comprised of state insurance regulators across the country, to develop the updated NAIC Model Regulation. The NAIC Model Regulation provides strong consumer protection while at the same time preserving consumer choice through carefully designed requirements consistent with different delivery systems in the marketplace.

FACC is concerned the Draft Guidance broadens the scope of the Model Regulation's requirements in ways that could be disruptive and contrary to the original intent of the regulation. In particular, FACC is concerned with expanding insurer obligations regarding reliance on the Model Regulation's section 6(E) safe harbor provisions. While such actions affect insurers directly, they also directly or indirectly impact agents and agencies – our members - who then may become subject to ambiguous, overlapping, or duplicative requirements that add cost and complexity to our business and can lead to confusion in the marketplace for our members' clientele.

In this regard, the Draft Guidance suggests insurers must confirm that comparable standards used by distribution firms are equivalent to standards in the Model Regulation for business not covered by the safe harbor. But there is nothing in the Model Regulation that calls for such duplicative review. Rather, the Model Regulation itself establishes that comparable standards are equivalent to and in effect supersede the Model Regulation standards and requirements. That is the very purpose of the safe harbor.

The Federation of Americans for Consumer Choice, Inc. (FACC) is a 501(c)6 non-profit organization incorporated in the state of Texas whose members are independent marketing organizations, agencies, and agents engaged in the distribution of fixed insurance and annuity products. FACC promotes public policy recognizing the value of guaranteed insurance solutions and preserving freedom of choice for consumers who seek products and services from independent agents representing multiple carriers and product options.



Another area of concern is that the Draft Guidance suggests insurers must ensure that distribution firms are complying with applicable comparable standards. However, FACC maintains it is impractical to expect insurers to manage or control a selling firm's compliance program that operates under a different regulatory regime (e.g., Reg BI). The guidance should be better balanced to convey that insurers can reasonably rely on representations by broker dealers or investment advisory firms that are operating under the safe harbor —combined of course with reasonable due diligence—that those firms are complying with applicable comparable standards and related regulations in lieu of compliance with standards and procedures set forth in the NAIC Model Regulation.

Finally, FACC has concerns to the extent the Draft Guidance suggests that insurers conduct their own independent review of each transaction and retain documentation for the basis of that review. FACC respectfully submits it does not make sense to require an insurer to provide and perform its own oversight on a transactional basis because that defeats the very purpose of the safe harbor which is to rely on other established regulatory compliance systems and thereby avoid duplication of efforts and standards. The Draft Guidance should make clear that insurers may rely on selling firms to apply applicable comparable standards as those firms see fit, with the obligation of the insurer being to ascertain reasonable assurances that the selling firms have systems in place and conducting business consistent with those systems pursuant to applicable comparable standards.

FACC represents independent agents and agencies, some of whom rely on the safe harbor provisions, and many of whom do not. However, FACC has a vital interest either way in ensuring any guidance issued by the NAIC Annuity Working Group does not intentionally or inadvertently create new obligations or requirements not tethered to the provisions and intent of NAIC Model Regulation. Expanding insurer obligations under the safe harbor provisions would create inconsistencies, make compliance more complex without commensurate benefit, drain resources, and ultimately harm consumers by affecting choices and cost in the annuity marketplace.

FACC applauds the Working Group's efforts to provide guidance and clarity with respect to the safe harbor provisions and at the same time recognizes our industry responsibility to comply faithfully with applicable comparable standards. However, for reasons explained, we feel it necessary to remind the Working Group of the importance of adhering to the carefully adopted concepts and carefully chosen language of the NAIC Model Regulation to best serve industry, consumers, and regulators.

Thank you for considering our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim O'Brien".

Kim O'Brien, CEO