

May 23, 2022

The Honorable Doug Ommen

Chairman

Annuity Suitability Working Group

National Association of Insurance Commissioners

1100 Walnut Street, Suite 1500

Kansas City, MO 64106

Dear Commissioner Ommen:

On behalf of the Independent Insurance Agents and Brokers of America (IIABA), I write to address the draft Frequently Asked Questions that were released on May 12. These comments supplement our more comprehensive and detailed May 11 letter and provide suggested responses and related comments concerning two of the proposed questions.

***NAIC Draft Question* – Do insurers have any other obligations under the revised model with respect to producers seeking to rely on the safe harbor?**

*Recommended Answer* – Yes. The safe harbor expressly applies to the recommendations and sales activities of certain producers, and, regardless of whether one of its producers relies on the safe harbor, insurers remain responsible for complying with the supervisory requirements of Section 6(C), the prohibitions of Section 6(D), the enforcement provisions of Section 8, and the recordkeeping obligations of Section 9. While insurers are ultimately responsible for a producer’s actions and compliance with the regulation, they are permitted by Section 6(C)(3) to enter into arrangements and contracts with other parties for the performance of supervisory functions.

*Additional Comments* – The safe harbor addresses the duties of producers making recommendations (and to insurers in transactions where no producer is involved) and does not exempt insurers from the model’s supervisory obligations. Section 6(E)(1) affirmatively creates an exemption for intermediaries in certain instances but includes no analogous provision for insurers. And, even if the safe harbor is interpreted to exempt insurers from some of their supervisory mandates, it certainly is not as sweeping as some have proposed.

The notion that the safe harbor should be interpreted to expansively waive the obligations imposed on insurers raises a number of practical issues and questions. As you consider these topics, we recommend that you consider some of the individual provisions in the model and what the marketplace and public policy outcomes would be if insurers were deemed exempt from those requirements as a result of the safe harbor. In order to help frame this examination, we urge the working group to, for example, consider the following:

* Section 6(C)(2)(c) requires insurers to “provide product-specific training and training materials which explain all material features of its annuity products to its producers.” In transactions involving a financial professional relying on the safe harbor, are insurers exempt from the obligation to directly or indirectly provide such product-specific information to the person making the recommendation?
* Section 6(C)(2)(d) requires insurers “to establish and maintain procedures for the review of each recommendation prior to the issuance of an annuity that are designed to ensure 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.” In transactions involving a financial professional relying on the safe harbor, must insurers comply with this requirement? The fact that Section 6(E)(3)(a) conditions the application of the safe harbor on an insurer monitoring that person’s relevant conduct offers additional support for the view that this requirement would still apply.
* Section 6(C)(2)(e) requires insurers to “establish and maintain procedures to detect recommendations that are not in compliance” with key elements of the model (including Section 6(E)). In transactions involving a financial professional relying on the safe harbor, must an insurer comply with Section 6(C)(2)(e)? We presume that insurers must satisfy the requirements of this subparagraph, especially in light of the very explicit reference to Section 6(E). Stated another way, it is unclear how Section 6(E) can provide an exemption from a provision that requires insurers to detect recommendations that are not in compliance with the safe harbor itself.
* Section 6(C)(2)(g) requires insurers to “establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.” Again, since Section 6(E)(3)(a) conditions the application of the safe harbor on an insurer monitoring a financial professional’s relevant conduct, this requirement would presumably apply.
* Section 6(D) prohibits insurers from engaging in certain activities, such as dissuading a consumer from providing truthful consumer profile information or filing a complaint. Although we hope insurance regulators would take action whenever such troubling conduct might arise, the expansive view of Section 6(E) outlined by some suggests that insurers would be exempt from this prohibition when a producer is relying on the safe harbor provision.

***NAIC Draft Question* – Do the record-keeping obligations of the revised model apply when the safe harbor provision is invoked?**

*Recommended Answer* – Yes. The safe harbor creates an exemption from certain of the model’s affirmative requirements, but it does not affect the application of the recordkeeping, training, enforcement, and similar provisions.

IIABA appreciates having the opportunity to submit these comments. We are happy to assist your working group’s consideration of these issues in any way you deem appropriate. Please feel free to contact me at 202-302-1607 or via email at [wes.bissett@iiaba.net](mailto:wes.bissett@iiaba.net) with any questions or if we can assist in any manner.

Very truly yours,



Wesley Bissett

Senior Counsel, Government Affairs