November 27, 2019

The Honorable Doug Ommen
Chairman
Life Insurance and Annuities Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Draft Revisions to the Suitability in Annuity Transactions Model Regulation

Dear Commissioner Ommen:

On behalf of the Independent Insurance Agents and Brokers of America (IIABA), I write to comment on the draft revisions to the Suitability in Annuity Transactions Model Regulation recently presented to your committee. IIABA is the largest association of insurance producers in the United States and represents the industry constituency most impacted by this proposal. Our organization strongly opposes the draft in its current form, but our objections are narrowly focused on a small number of provisions (including, most notably, the introductory text found in Section 6(A)). We have identified these items below and have also outlined possible ways to eliminate or lessen these concerns.

The Draft Proposes a Comprehensive and Robust Regulatory Framework

The proposed revisions to the model primarily address insurance agent conduct in annuity transactions and would establish a wide range of new requirements for producers who recommend an annuity to a consumer. The new obligations are comprehensive and robust, and they are set forth in detail in paragraphs (1)-(4) of Section 6(A). Among other features, the proposal would require an agent recommending an annuity transaction to do all of the following:

- Exercise reasonable diligence, care, and skill to know a consumer's financial situation, insurance needs, and financial objectives and to collect a more extensive universe of consumer profile information than is required today;

- Believe that the product ultimately recommended effectively addresses the consumer's situation, needs, and objectives over the life of the product and in light of that individual's consumer profile information;

- Understand the recommendation options available to the producer and consider the types of products that address the consumer's financial situation, insurance needs, and financial objectives;

- Consider and evaluate an additional series of factors when recommending a transaction involving the exchange or replacement of an annuity;

- Provide a description of the scope and terms of the producer's relationship with the consumer and the role of the producer in the transaction;

- Disclose the types of relevant products the producer is authorized to sell and whether the producer offers the products of one insurer or multiple insurance companies;

- Describe the sources and types of compensation the producer would receive from the purchase of a particular annuity and describe how the customer can obtain additional and more detailed information about that compensation;

- Ensure that the consumer has received important information about the key features of the recommended annuity;

- Satisfy new annuity-specific continuing education requirements; and

- Perhaps most notably, make a written record of any annuity recommendation (including the basis for the recommendation) and communicate the basis for the recommendation to the consumer.

The proposed requirements listed above are the heart of the proposal, and IIABA is not asking the committee to alter this extensive list of items. Insurance producers may not welcome or relish the heightened compliance obligations and burdens that will come with these new requirements, but we appreciate that these particular provisions are objective and straightforward, identify what must be done to comply, and do not expose agents to new and unwarranted litigation exposure. Any changes to the regulatory framework must be clear and comprehensible and identify the rules of road, and these requirements generally accomplish this goal. The adoption of these provisions alone – without the more controversial items we discuss later – would dramatically raise the level of regulatory scrutiny that applies to annuity sales and establish an array of consumer protections that do not exist today.

The "Best Interest" Standard of Care

Agent Concerns with Establishing Such a Standard

The most troubling element of the NAIC draft – and IIABA's most significant concern – is the introductory or prefatory text found in Section 6(A). This provision states:

> *Best Interest 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 has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation.*

IIABA objects to and strongly opposes this provision and its establishment of a "best interest" standard of care for insurance producers. Some may believe that requiring producers by law to act in the best interest of a customer is innocuous and unremarkable, but the reality is that the establishment of such a standard would create considerable uncertainty and have other adverse consequences. It would toss out the common law standards of care that have been developed in states over decades and replace them with a new, unclear, and undefined alternative.

While the proposal sets forth with clarity what should be required of agents in the paragraphs that follow, the introductory text in Section 6(A) undermines that effort by also establishing a standard that is inherently abstract, nebulous, and subjective. Courts and other observers typically equate an obligation to act in one's best interest with a fiduciary duty (an outcome the proposal seeks to avoid[1]), but the draft offers no insight into what this standard actually means or how it differs from a fiduciary one. The addition of this amorphous standard would place agents in an untenable position because it is unclear what specific actions, steps, or compliance measures it would require and what behavior it would prohibit. Most elements of the draft recognize that insurance producers must know what their specific regulatory obligations are, but the Section 6(A) text takes a very different approach.

Without definitive direction and guidance about what the best interest standard actually requires, determinations will be made in potentially inconsistent ways by courts and regulators across the country. Findings about what the vague standard means and how it should be applied are likely to vary, and the mandate could be interpreted in conflicting and uneven ways from state to state, court to court, and regulator to regulator. The likely result is a lack of consistency, clarity, and uniformity.

The inclusion of the unnecessary references to a best interest standard will alter the common law and expose agents to heightened litigation exposure without offering any countervailing benefit to consumers. The addition of this particular provision (which was notably not included in the November 2018 draft previously submitted to your committee) does not alter or improve the customer experience, but it creates an ability for private plaintiffs to bring unwarranted lawsuits against main street insurance agents. We live in a very litigious society, and there is little doubt that subjecting agents to a vague standard of care will open the door to litigation of this nature. Agents who acted properly at the time of a recommendation will have their actions and judgment second-guessed in hindsight, and those that find themselves in this unfortunate position will face the costly proposition of defending themselves in court.[2] In short, the addition of this narrow provision in Section 6(A) will increase costs and litigation exposure for insurance producers without providing commensurate benefit to consumers or improving the customer experience.

The most frustrating aspect of the discussion concerning the introductory text in Section 6(A) and the "best interest" standard is that this provision is entirely unnecessary. It adds nothing. It does not bolster the model, benefit consumers, or enhance the regulatory framework. Paragraphs (1)-(4) already outline in detail and over the course of several pages the substantive and robust obligations that a producer would be required to satisfy for the first time, and the additional troubling text does not offer any independent value. The provision does not require any action or

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[1] Section 6(A)(1)(d) of the proposal states that "[t]he requirements under this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation."

[2] In the securities sector, consumer disputes are typically addressed in an arbitration proceeding. In the insurance world, analogous disputes are handled by the courts in what is often a lengthier and more expensive process.

prohibit any activity that is not already addressed in the substantive provisions that follow, and it does not prevent improper behavior that would otherwise exist or close any specified regulatory gap. There would be no adverse consequences if this text is excluded from the model, and the committee should remove or revise this provision in order the avoid the adverse consequences that will otherwise occur.

Responses to Arguments Made in Defense of the Best Interest Standard

During discussions of this proposal at the working group level, some regulators suggested that IIABA's concerns with the inclusion of the Section 6(A) text were unfounded or overblown. We thought it would be helpful to respond to some of these arguments and have done so below.

Some regulators have suggested that the regulatory requirements outlined in paragraphs (1)-(4) of Section 6(A) operate as a definition of the "best interest" standard. IIABA appreciates that regulators recognize the need for clear and objective directives and the problems associated with an ambiguous standard, but this suggestion fails to assuage our concerns for several reasons:

- First, although some view paragraphs (1)-(4) as offering a *definition* of what it means to act in a person's best interest, the reality is that those provisions operate as a *safe harbor*. This distinction is important. The introductory text in Section 6(A) expressly and unequivocally establishes the duty to act in one's best interest, and the provision includes a safe harbor that extinguishes the obligation and deems it to have been satisfied if a producer satisfies the care, disclosure, and other requirements set forth in paragraphs (1)-(4). One result of this framework is that agents who make inadvertent and inconsequential errors in their efforts to satisfy the requirements of paragraphs (1)-(4) may be unable to take advantage of the safe harbor and will be subjected instead to the undefined and unclear parameters of the fiduciary duty-like best interest standard.

- Second, even if paragraphs (1)-(4) are intended to provide a definition for the best interest standard, the result is an interpretation of the standard that differs dramatically from its commonly accepted connotation. Those who suggest that the proposal offers a definition for the term are effectively saying that the best interest standard should not be of concern to the agent community because it has been defined in a manner that defies and is inconsistent with its widely understood meaning. This offers little comfort, and we fear that courts and regulators will inevitably interpret the phrase as it has been for decades.

- Third, those who suggest that the proposal defines the parameters of the best interest standard essentially argue that the focus should be on the substantive requirements that are set forth in paragraphs (1)-(4) and that the introductory text found in Section 6(A) imposes no additional mandates. This argument observes that the provision is extraneous and provides no substantive benefit of its own. Our concern with this suggestion is that words have meaning, and courts attempt to give effect to all statutory and regulatory provisions and avoid outcomes where clauses are ignored or overlooked. This canon of statutory interpretation – the rule against surplusage – assumes that lawmakers do not include unnecessary and redundant elements in the law and directs courts to give effect to each provision. Since the most critical and operational aspects of this proposal are included in paragraphs (1)-(4) and can stand on their own, there is no reason to additionally include the introductory text in Section 6(A). The text is superfluous and unnecessary, and it should be deleted in order to avoid having courts give it some additional meaning and effect.

Some have also argued that IIABA's fears about increased private litigation are unlikely to come to fruition because the draft would be enforced by insurance regulators and would not open the door to new lawsuits. Supporters of this perspective point to Section 1(B)[3] and Section 6(A)(1)(d)[4] in support of this assertion. These two provisions are helpful, but they would still enable private litigants to utilize a best interest standard to bring causes of action that do not have a legal foundation today. IIABA encourages the committee to revise Section 1(B) and Section 8 to make undoubtedly clear that the proposal is to be enforced and implemented exclusively by regulators and to further clarify that it should not be interpreted to create or imply causes of action and civil liability that do not exist today. Our proposed amendments – which are consistent with the stated intent of the working group drafters – are included in the technical revisions we outline in Appendix B.

Finally, some have suggested that IIABA's concerns about the best interest standard being interpreted as either equivalent or similar to a fiduciary duty are unfounded because Section 6(A)(1)(d) already indicates that "[t]he requirements of [Section 6(A)] do not create a fiduciary obligation or relationship." While we welcome and strongly support this subparagraph, we also note that it does not provide any guidance about what is actually required by the introductory text of Section 6(A). The provision makes clear that the best interest standard is not a fiduciary obligation, but it does not explain the differences between the two or whether the distinction is significant or inconsequential. In order to further distinguish between the draft's proposed standard of care and a fiduciary duty (and to reflect the stated intent of the working group), we urge the committee to amend Section 6(A)(1)(d) and make clear that the proposal does not create a duty of loyalty to the consumer. This proposed amendment is also included in the technical revisions we outline in Appendix B.

IIABA Recommendations

There is no compelling reason to include the introductory Section 6(A) text in the proposal, and there would be no adverse repercussions if the provision is removed. The draft already establishes a wide range of new and robust requirements in paragraphs (1)-(4), and those provisions can and should stand on their own. The controversial text adds nothing meaningful and offers no additional consumer protection value, and the ambiguous and subjective references to a "best interest" standard of care only conflict with and undermine efforts to achieve clarity and objectivity. Stated another way, if regulators want producers to do "A, B, and C" in connection with the sale of an annuity, then the proposal should simply say so. We urge the committee not to muddy the waters by including references to an undefined standard that carries such troubling consequences and promises to produce needless litigation and uncertainty.

> Recommendation – IIABA urges the committee to eliminate the introductory text found in Section 6(A) and to reformat the proposal accordingly or, in the alternative, delete the references to a best interest standard that are found in this provision and elsewhere. These specific recommendation options are outlined in Appendix A. If the committee elects to retain Section 6(A) in its current or some similar form, it is imperative that the committee incorporate the technical revisions discussed earlier and outlined in Appendix B of this letter.

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[3] Section 1(B) of the proposal states that "[n]othing herein shall be construed to create or imply a private cause of action for a violation of this regulation."

[4] Section 6(A)(1)(d) of the proposal indicates that "[t]he requirements of [Section 6(A)] … only create a regulatory obligation as established in this regulation."

Other Issues

Section 6(A)(3) – Disclosure of Material Conflicts of Interest

Section 6(A)(3) requires producers to "identify and avoid or reasonably manage and disclose material conflicts of interest," and IIABA is troubled by this paragraph in its current form for several reasons. This provision does not make clear what constitutes a material conflict of interest and what actions must be taken or avoided if such a conflict exists, and it puts main street insurance producers in an untenable position of trying to deduce what is required.

Other provisions would already require producers to make disclosures about their role and relationship to the consumer, the cash and non-cash compensation they expect to receive, the types of products they offer, whether they only offer proprietary products, and other items. It is unclear what further information this paragraph is intended to address. If there are additional pieces of information that regulators believe should be disclosed to consumers (such as whether a producer has a material ownership interest in the insurer issuing the annuity contract), then the model should identify these items and specifically require their disclosure.

> Recommendation – IIABA urges the committee to replace the existing provision with an explicit and objective requirement (which we propose as Section 6(A)(2)(vi)) that directs producers to disclose any material ownership or other financial interests they have in the insurer issuing the annuity contract. Our specific proposal is outlined in Appendix A.

Section 6(C)(2)(h) – Incentive Compensation Prohibition

The draft revisions submitted to your committee include a provision that would effectively prohibit insurers from paying any form of incentive compensation to agents. There was little discussion of this provision by the working group, and we note that no such provision was included in the November 2018 proposal initially submitted to your committee. A ban on incentive compensation is unwarranted and unjustified, and we believe it is especially unnecessary given the other significant public policy changes that would take effect with this proposal. This provision is likely to generate considerable controversy, and prohibiting the payment of longstanding forms of compensation is not the type of action and public policy decision that can typically be implemented unilaterally by regulators.

> Recommendation – IIABA urges the committee to delete this paragraph altogether.

Section 6(E) – Safe Harbor

During more than two years of discussion and deliberation, the working group held many meetings and conference calls and ultimately presented your committee with two separate proposals for consideration (in November 2018 and again earlier this month). The draft that is before your committee now includes a dramatically revised safe harbor provision that was only briefly discussed on the working group's final conference call. Elements of the revised subsection appear very broad, and we worry that the implications of the new provision have not been fully vetted. The safe harbor provision found in the existing model was narrowly tailored to address instances where a producer might have been subject to multiple regulatory frameworks in the same transaction and offered a limited exemption. The new subsection appears to allow forum shopping in many situations (and even in instances in which a professional is recommending the purchase of product that is regulated exclusively by insurance regulators) and provides an exemption from every

requirement found the proposed regulation. We urge the committee to take a closer look at this provision and consider its implications before taking any final action.

Appendix A – Producer Relationship Disclosure Form

The proposal developed by the working group also includes a "Producer Relationship Disclosure Form," and IIABA appreciates the development of such a template. Having a model form of this nature provides guidance about the desired effect of the proposal's disclosure requirements and should assist insurance agents in satisfying those obligations. While we believe the template can be a helpful compliance tool, we note that the draft was not discussed in detail by the working group before its submission to your committee and believe a review of the document (by either the working group or full committee) would be helpful. The form will be very important to producers, and this critical piece of the puzzle should not be overlooked.

IIABA worries that the draft form could convey inaccurate information to consumers and leave mistaken impressions about producers, and we are concerned in particular about the confusion that might arise when consumers work with agents that offer a wide array of different insurance products. This form could be confusing for consumers that have a longstanding relationship with a multi-line agent and have obtained various types of non-annuity insurance products (e.g. personal lines, business, health, etc.) from that person. We believe the form needs a review and some modest editing, and we offer some initial thoughts on the draft below:

- Title – Referring to this form as the "Producer Relationship Disclosure Form" is likely to leave consumers with the mistaken impression that it applies to all transactions performed by and all interactions with a producer. It would be helpful to indicate that the form applies narrowly to the particular annuity transaction in question (and not to any other past or future insurance transactions with the agent). One possible alternative is to refer to this as the "Annuity Transaction Disclosure Form: Producer Summary."

- Firm Name – The "Firm Name" field should be replaced with "Business Entity Name" to mirror the terminology used by insurance producers and their regulators.

- Insurance License # – An individual producer can have dozens of separate insurance license numbers, and we encourage the committee to replace this field with a more clearly defined identifier. Specifically, we recommend that this field ask for a producer's "Home State Insurance License Number" or "National Producer Number (NPN)."

- Insurance Authorization – This field would have a producer disclose the types of products that are available from that individual, but the only insurance products mentioned are annuity and life insurance products. We wonder whether the use of the current version of this form will create confusion if that same producer provides the customer with property-casualty, health, or other insurance coverages. As noted previously, it may be helpful to convey that this form is intended to address and apply to annuity transactions only and is not intended to apply to the producer's offering of other products.

- My Relationship with You – This field presents two options and would require an agent to select "One-Time Transaction" or "On-Going Relationship." It is unclear which option an agent should select and what relevant information this is intended to convey, and we worry this will produce confusing and inaccurate impressions. We also wonder how a multi-line

agent that has a longstanding relationship with a client would respond. This field (at least in its current form) does not seem necessary, and we recommend its deletion.

- My Compensation Structure – We encourage the committee to revise this field to more clearly indicate that it is providing information about the producer's compensation in connection with the particular annuity (and not other products or transactions). The committee might also consider consolidating and simplifying the compensation structure and compensation sources fields.

- I am likely to be compensated by the following sources for this relationship – Again, IIABA believes it is critically important for the form to be transaction-specific and to not convey inaccurate information about the producer. Accordingly, we recommend replacing the word "relationship" with "annuity transaction." We also recommend that the phrase "The consumer" be replaced with "You" or "Fees paid by you."

Regulators Likely Lack the Authority to Act Unilaterally

The draft before your committee is in the form of a model regulation, and a significant and largely overlooked question is whether state insurance officials possess the authority needed to promulgate this proposal on their own. IIABA urges the committee to consider the guidance it is providing to states on this question and to more clearly point out the need for regulators to have clear and specific authority before implementing a proposal of this nature.

By crafting this proposal as a model regulation, the NAIC is encouraging state insurance departments to engage in a level of policymaking that is reserved for elected state legislators. The draft does not merely implement or provide an interpretation of an existing statute, and it would instead establish a broad array of new marketplace rules and alter the legal standard of care that insurance professionals owe to their customers. Lawmaking of this significance requires the legislative authorization. In our view, the typical insurance department does not possess the power to implement these measures on its own and that any attempt to do so would likely constitute a usurpation of legislative authority and a violation of the doctrine of separation of powers.

Although the NAIC has adopted annuity-related requirements via model regulation in the past, the proposal presented to your committee is of a very different nature and magnitude. The proposed revisions under consideration are not modest actions; they are vast changes in public policy that have no clear legislative basis.

We can think of no comparable NAIC proposal that has taken the form of a model regulation in the past, and, in particular, we are unaware of any past attempts by the NAIC to alter longstanding common law standards of care in the manner that has been proposed. It is also notable that very similar proposals adopted by the NAIC (including the producer compensation disclosure provisions approved in 2005[5]) have taken the form of model acts and have recognized the need for express legislative authorization. If the NAIC and individual regulators are able to act unilaterally and implement all of the elements of the proposal without such authorization, then it would suggest that there are no limitations on the ability of insurance departments to impose new requirements and alter existing law.

The proposal acknowledges that regulatory action requires legislative authorization, and it retains a drafting note from the existing version of the model indicating that "[s]tates may wish to use the

[5] NAIC Producer Licensing Model Act, Section 18.

Unfair Trade Practices Act (UTPA) as enabling legislation or may pass a law with specific authority to adopt this regulation."[6] The passing reference to the UPTA, however, seems inadequate and misplaced. We can identify no provision of the Unfair Trade Practices Model Act that could conceivably provide the statutory basis for adopting the proposed revisions, and it seems inappropriate and misleading to suggest reliance on the UTPA unless such authority clearly exists. Accordingly, we urge the committee to examine the drafting note and delete the reference to using the UTPA as enabling legislation or to at least identify the specific provision of the UTPA it believes can relied on for this purpose.

The suggestion that the proposed revisions to the model can be adopted without express legislative authority is in contrast to the manner in which the SEC's best interest rule was developed. The SEC acted pursuant to the clear and unambiguous approval of Congress, which came in the form of Section 913(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. That provision of federal law empowered the SEC to "commence a rulemaking, as necessary or appropriate to the public interest and for the protection of retail customers (and such other customers as the Commission may by rule provide), to address the legal or regulatory standards of care for brokers, dealers … [and] persons associated with brokers or dealers … for providing personalized investment advice about securities to such retail customers." Whatever one's views of the SEC's action, it was clearly and plainly authorized by Congress. There is, however, no analogous authorization for state insurance regulators to promulgate the measures proposed.

Measures of this nature require clear and express legislative action, and the committee should ideally consider designating its proposal as a model *law* and not a model *regulation.*

Conclusion

On behalf of the hundreds of thousands of insurance professionals that we represent, IIABA sincerely thanks you for the opportunity to submit these comments. We are happy to assist your committee's consideration of these issues in any way you deem appropriate. Committee members and others should feel free to contact me at 202-302-1607 or via email at wes.bissett@iiaba.net with any questions or if we can assist you in any manner.

Very truly yours,

Wesley Bissett
Senior Counsel, Government Affairs

[6] NAIC Suitability in Annuity Transactions Model Regulation, Section 3.

Appendix A – Substantive Revisions to the November 5 Draft Proposed by the Independent Insurance Agents & Brokers of America

Section 6. Duties of Insurers and Producers

~~A. Best Interest 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 has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:~~

or

A. Best Interest Obligations. A producer, when making a recommendation of an annuity, shall do so ~~act in the best interest of the consumer~~ under the circumstances known at the time the recommendation is made and without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

[. . .]

(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:

[. . .]

(vi) A description of any material ownership interest the producer has in the insurer that would issue the recommended annuity or any parent, subsidiary, or affiliate of that insurer.

[. . .]

~~(3) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.~~

C. Supervision System

[. . .]

(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, including, but not limited to, the following:

[. . .]

~~(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 within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and~~

Appendix B – Technical Revisions to the November 5 Draft Proposed by the Independent Insurance Agents & Brokers of America

Section 1. Purpose

A. The purpose of this regulation is to require producers 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.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation or to subject an insurance producer to civil liability under the best interest standard of care outlined in Section 6 or under standards governing the conduct of a fiduciary or a fiduciary relationship.

Section 6. Duties of Insurers and Producers

A.

(1)

(d) The requirements under this subsection do not create a duty of loyalty or a fiduciary obligation or relationship and only create a regulatory obligation as established under this regulation.

Section 8 Compliance Mitigation; Penalties; Enforcement

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.

C. The authority to enforce compliance with this regulation is vested exclusively with the commissioner.