



Independent Insurance Agents
& Brokers of America.

July 27, 2020

The Honorable Doug Ommen
Chairman
Annuity Suitability Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Draft Frequently Asked Questions Document

Dear Commissioner Ommen:

On behalf of the Independent Insurance Agents and Brokers of America (IIABA), I write to comment on the draft Frequently Asked Questions (FAQ) document designed to provide guidance concerning the intended effect of some of the revisions recently made to the Suitability in Annuity Transactions Model Regulation. Our comments below focus on two issues.

Section 4(A) / Exemption for “Direct Response Solicitations”

IIABA welcomes the working group’s focus on Section 4(A), which provides a complete exemption from the model’s requirements for “[d]irect response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation.” We believe this exemption is entirely unnecessary and contrary to the underlying goals of the model, and our hope is that a discussion of the intent and effect of this provision will highlight its unwarranted and potentially nature. As you review this particular provision, we urge you to consider the following:

- The model establishes requirements and obligations for a person who recommends an annuity. A mere advertisement or an interaction that does not include a recommendation is not covered by the model in the first place and does not require an exemption of this nature.
- The model includes a separate provision – Section 6(B) – that addresses transactions and provides a limited exemption when there is no recommendation, and this provision further obviates the need for a Section 4(A). Section 6(B) is a narrower and more thoughtfully crafted provision, and it makes clear that an insurer’s issuance of an annuity must be reasonable under the circumstances actually known to the insurer. The Section

4(A) exemption imposes no similar requirement and thus allows the issuance of annuities in instances where the insurer knows it would be unreasonable to do so.

- There are only benefits – and no adverse effects – for states that choose not to adopt or retain Section 4(A). There are no transactions that warrant an exemption of this nature that would be covered if the provision was excluded.
- The FAQ attempts to explain the exemption by noting that “[a] direct-response solicitation is a solicitation through a sponsoring or endorsing entity solely through mails, the Internet, a digital platform, or other mass communication media that does not involve a communication directed to a specific individual by a natural person, or by a simulated human voice.” This does not, however, explain the provision and only adds to the confusion. This explanation seems to suggest, for example, that interactions that take place exclusively via electronic means are somehow completely exempt from the model, even when a recommendation is made. We are also unclear what the references to a “sponsoring or endorsing entity” (which are not found in the regulation itself) are intended to address.

Section 6(E) / Safe Harbor

IIABA also appreciates the working group’s consideration of Section 6(E) and welcomes any additional clarity that can be provided. The previous provision 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, but the new safe harbor was significantly revised and expanded. This new provision has generated questions among our state associations and members, and below are some of the common inquiries we have received.

- Does Section 6(E) allow a person without the appropriate producer licensing credentials to sell, solicit, negotiate, or recommend annuities?
- Is a person utilizing Section 6(E) exempt from the training requirements of Section 7?
- Does Section 6(E) provide an exemption from some or all of the requirements found in Sections 6(A) and 6(D), including instances when the other relevant standard does not impose an identical or analogous requirement?
- Section 6(E) makes clear that it does not relieve insurers of the obligations under Section 6(C)(1), but does the provision exempt companies from all or some of the robust duties and prohibitions established by Section 6(C)(2) and Section 6(D)?
- Section 6(E) makes reference to the authority of regulators to “investigate and enforce the provisions of this regulation,” but what does this mean in practical terms if a financial professional chooses to comply with a different standard? What provisions of the regulation would apply to an individual who is largely exempt from the regulation itself, and how and by what standard will a regulator practically take enforcement action against such a person?

Conclusion

IIABA thanks you for 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 with any questions or if we can assist you in any manner.

Very truly yours,

A handwritten signature in cursive script that reads "Wesley Bissett".

Wesley Bissett
Senior Counsel, Government Affairs