



September 22, 2025

**Submitted electronically to [jmatthews@naic.org](mailto:jmatthews@naic.org)**

To: NAIC Annuity Suitability Working Group

**Re: Letter of Support and Additional Comments on Annuity Best Interest  
Regulatory Guidance and Considerations – August 7, 2025, Draft**

On behalf of our collective members, the undersigned trades write to state our support for the updated draft of the Annuity Best Interest Regulatory Guidance and Considerations (“Draft Guidance”). We appreciate the efforts of the Working Group over the last year to work with interested stakeholders and to update the draft in response to comments received last fall. We believe this updated version of the Draft Guidance appropriately reflects insurers’ supervisory obligations under the Suitability in Annuity Transactions Model Regulation (“Model”) and will be extremely helpful for regulators, companies, and ultimately consumers, as the Model is now the standard across the country.

While we are supportive of the Draft Guidance, we are offering up some recommended edits for the Working Group’s consideration in the attached redline. To aid in the Working Group’s review of these recommendations, we have summarized below the edits within the various sections of the Draft Guidance. Generally, the edits fall in three different buckets: 1) edits that our members view as most important to ensuring accuracy and clarity as to insurers’ obligations, 2) edits that are intended to align with the Model language, and 3) edits that are simply suggestions to improve readability or for clarity. We hope this assists the Working Group as the Draft Guidance is finalized.

**SUMMARY** – The edits in this section are intended to align with the Model language.

**REQUIREMENTS OF THE SAFE HARBOR** – Two edits in this section are important to ensuring accuracy and clarity as to insurers’ obligations:

- We recommend that **Verification** be listed as a best practice since it is not an explicit requirement in the Model. Our goal is to avoid the implication that failure to verify is a violation in and of itself.
- Under **Monitoring**, we recommend that the language be adjusted to clarify that insurers must monitor the relevant conduct of the financial professional, *or the entity responsible for supervising the financial professional*. This ensures alignment with the Model language and is important to include here so that it is clear that insurers may monitor the conduct of the supervising entity.

The other edits in this section are intended to align with the Model language.

**DISCUSSION** - Two edits in this section are important to ensuring accuracy and clarity as to insurers' obligations:

- We recommend moving the last sentence of this section to the **Monitoring Relevant Conduct** under **Onboarding** and adjusting it to ensure that this is a suggested best practice since it is not an explicit requirement under the Model.
- We recommend adjusting "contemplate fixed annuities" to read "help to ensure that recommendations of fixed annuities are in the best interest of customers", which we believe more accurately reflects how the safe harbor functions.

The other edits in this section are simply suggestions for clarity.

**INSURERS' 6(C)(1) OBLIGATION** – One edit in this section is important to ensuring accuracy and clarity as to an insurer's obligation:

- We recommend that the language be adjusted to clarify that insurers must monitor the relevant conduct of the financial professional, *or the entity responsible for supervising the financial professional*. This ensures alignment with the Model language and is important to include here so that it is clear that insurers may monitor the conduct of the supervising entity.

The other edits in this section are simply suggestions to improve readability and clarity.

**SAFE HARBOR USE CASES** – The edits in this section are simply suggestions for clarity.

**MONITORING RELEVANT CONDUCT** – The edits in this section are either intended to align with the Model language or are simply suggestions for clarity.

**PROVIDING INFORMATION AND REPORTS** - The edits in this section are either intended to align with the Model language or are simply suggestions for clarity.

**CONCLUSION** – The edit in this section is important to ensuring accuracy and clarity as to an insurer’s obligation:

- We recommend removing the language “training contracted entities” from the list of the insurer’s responsibilities as this is not an explicit requirement in the Model.

The other edit in this section is simply a suggestion for clarity.

We appreciate your consideration of our recommendations as described above, and overall, we are very supportive of the Draft Guidance. We commend the Working Group for tackling this important issue, and we believe this final version appropriately reflects the Model. Should you have any questions or concerns, please reach out to Sarah Wood at the Insured Retirement Institute at [swood@irionline.org](mailto:swood@irionline.org).

Submitted on behalf of the following trades,

American Council of Life Insurers (ACLI)  
Committee of Annuity Insurers (CAI)  
Finseca  
Financial Services Institute (FSI)  
Indexed Annuity Leadership Council (IALC)  
Insured Retirement Institute (IRI)  
National Association for Fixed Annuities (NAFA)  
National Association for Insurance and Financial Advisors (NAIFA)

Draft: 8/7/25

Comments are being requested on this draft on or before Sept. 22, 2025. Comments should be sent by email only to Jolie Matthews at [jmatthews@naic.org](mailto:jmatthews@naic.org).

## ANNUITY BEST INTEREST REGULATORY GUIDANCE AND CONSIDERATIONS

### SUMMARY

In Spring 2020, the National Association of Insurance Commissioners adopted the *Suitability in Annuity Transactions Model Regulation*, Model 275-1 (“the Model Regulation”). The Model Regulation requires producers to act in the best interest of the consumer when recommending annuities and obligates insurers to establish supervisory systems that ensure recommendations address the consumer’s insurance needs and financial objectives at the time of the transaction.

To account for existing standards applicable to producers also acting as registered representatives, investment adviser representatives, or plan fiduciaries, the Model Regulation includes a safe harbor provision.<sup>1</sup> This provision allows insurance producers to satisfy the Model Regulation’s requirements if they comply with business rules, controls, and procedures and supervisory systems ~~developed under the~~ that satisfy a comparable standard, even if the comparable standard does not directly apply to the annuity product or recommendation.

Central to the purpose of the Model Regulation are the insurers’ supervisory duties. This guidance clarifies supervisory obligations for insurers that issue annuities sold under the safe harbor.

### REQUIREMENTS OF THE SAFE HARBOR

To rely on the safe harbor provision, the financial professional must be subject to or apply a comparable standard (as defined in the Model Regulation), and insurers must also meet the following requirements:

~~Verification: Insurers must determine that the safe harbor conditions are satisfied.~~

1. **Monitoring:** Insurers must monitor the relevant conduct of the financial professionals’ (or entity responsible for supervising the financial professional) conduct using information gathered in the normal course of an insurer’s business.<sup>2</sup>

<sup>1</sup> Section 6(E)(1). The prohibited practices in Section 6(D) still apply in safe harbor transactions.

<sup>2</sup> A financial professional is a producer that is regulated and acting as

- (a) A broker-dealer registered under federal [or state] securities laws or a registered representative of a broker-dealer;
- (b) An investment adviser registered under federal [or state] securities laws or an investment adviser representative associated with the federal [or state] registered investment adviser; or
- (c) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto. *See* Section 6(E)(3).

2. **Reporting:** Insurers must provide supervising entities (e.g., broker-dealers) with sufficient data information and reports reasonably appropriate to assist such entities to maintain effective oversight their supervision systems.<sup>3</sup>

As discussed further in Monitoring Relevant Conduct – Onboarding below, insurers should also reasonably verify that the safe harbor conditions are satisfied, which can be done when an insurer onboards a supervising entity.

## DISCUSSION

The safe harbor applies when insurance producers recommending annuities operate under comparable supervisory standards, such as those required by the SEC’s Regulation Best Interest (Reg BI) and applicable FINRA rules (2330, 3110, 3120, and 3130).<sup>4</sup>

~~For example,~~<sup>5</sup> the safe harbor may be applied if the annuity is a federally registered security and the recommendation is subject to Reg BI and FINRA rules/regulations. However, under appropriate circumstances, the safe harbor may also be applied to fixed annuities (unregistered fixed and fixed indexed annuities). While Reg BI, for example, does not directly apply to fixed annuities, the safe harbor ensures insurance producers supervised under securities regulations can use those supervisory control systems if the business rules, controls, and procedures help to ensure that the recommendations of fixed annuities are in the best interest of customers. contemplate fixed annuities. ~~Insurers, however, must ensure that policies of the supervising entities also address the unique features of annuity contracts, including their long-term guarantees and surrender charges.~~

## INSURERS’ 6(C)(1) OBLIGATION

Even under the safe harbor, insurers must comply with Section 6(C)(1) and have a reasonable basis to believe an annuity meets a consumer’s financial and insurance needs. This is required whether that annuity is a federally registered security or a fixed annuity. An insurer may contract for performance of this supervisory function pursuant to Section 6(C)(3)(a) so long as it monitors the conduct of the supervising entity, including by conducting audits, as appropriate. An insurer that issues an annuity recommended by a producer relying on ~~pursuant to~~ the safe harbor and that contractually assigns the 6(C)(1) obligation has to

- 1) ~~has to:~~ “[m]onitor the relevant conduct of the financial professional[...] or the entity responsible for supervising the financial professional, such as the financial professional’s broker-dealer or an investment adviser registered under federal [or state] securities laws” pursuant to ~~the Section 6(E)(3) safe harbor~~ and
- 2) ~~has to~~ monitor “and, as appropriate, conduct[...] audits to assure the contracted function is properly performed.” pursuant to Section 6(C)(3)(b).

The insurer’s monitoring program must be constructed with these two similar but distinct monitoring obligations in mind.

<sup>3</sup> See Section 6(E)(3)(ba).

<sup>4</sup> <https://www.finra.org/finramanual/rules/r3110>; <https://www.finra.org/finramanual/rules/r3120>; <https://www.finra.org/finramanual/rules/r3130>; <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2330>

<sup>5</sup> While most of the examples and information included address a broker-dealer distribution model, a similar analytical framework, with the appropriate flexibility, would be expected for investment advisers and plan fiduciaries subject to their own comparable standards framework.

### **EXAMPLE SAFE HARBOR USE CASES**

The safe harbor may be used in the following situations:

- A licensed insurance producer is also registered as a registered representative and is subject to the supervisory control system of a registered securities broker-dealer.
- A licensed insurance producer who is also an investment adviser representative is subject to a comparable standard.
- A licensed insurance producer, subject to a comparable standard, may make recommendations of annuities not registered as securities with the SEC, such as fixed annuities or fixed indexed annuities.

An insurer's obligation to ascertain the adequacy of the supervising entity's procedures, discussed further below, does not require the insurer to dictate specific policies to the supervising entity.

### **MONITORING RELEVANT CONDUCT**

To meet safe harbor requirements, insurers must monitor the relevant conduct of the insurance producer or their supervising entity using information collected in the normal course of the insurer's business. An effective monitoring program involves the insurer taking active steps to assure itself that the supervising entity is complying with its obligations. Simply awaiting complaints or regulatory actions after regulatory exams are passive approaches that are inadequate in and of themselves.<sup>6</sup> Effective monitoring can include the following:

- **The Contract** – Where the supervising entity is handling the compliance obligations for the insurer, a written contract reduces misunderstanding between the parties as to who is doing the supervising. Contractual provisions may also be used to convey the insurer's expectations and bind the supervising entity to perform contracted responsibilities on behalf of the insurer.
- **Onboarding** – When an insurer onboards a supervising entity, it should review policies and procedures to ensure the compliance arrangement will satisfy the safe harbor through an adequate supervisory system. Insurers should review the ~~however, must ensure that~~ policies of the supervising entities to see how they also address the unique features of annuity contracts, including their long-term guarantees and surrender charges. An insurer should also review regulatory actions against the supervising entity. For companies that sell both registered and unregistered annuities, one aspect of this inquiry may be to understand if the policies that the broker-dealer or entity developed for the sale of registered annuities also apply to the sale of unregistered annuities (with modest modifications for the product differences). If they do, this is useful evidence on which the insurer may rely.
- **Ongoing monitoring** – To ensure the supervising entity is complying with its obligations, insurers should employ ongoing monitoring, which may include:

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<sup>6</sup> The receipt of a complaint or a supervising entity receiving a regulatory inquiry or action resulting from an exam are risk indicators that require follow-up. Moreover, relying on the lack of regulatory action is insufficient for several reasons, including that an insurer has no way of knowing the status of any regulatory exam and whether that exam focused on annuity sales.

1. Due diligence/compliance questionnaires: these questionnaires may be stand-alone safe harbor questionnaires or wrapped into a larger vendor process that could include cybersecurity, state specific requirements, and other topics.
  2. Periodic engagement: the insurer should periodically engage with the supervising entity's compliance and/or legal team.
  3. Data analytics: categorize sales data to analyze it from a risk perspective. The categorized data could be sorted by number of contracts and by premiums to get a risk-informed review of producers and broker-dealers or entities for key elements such as sales to older consumers, free-look cancellations, early surrenders, replacements, and others. Reviewing this data may inform the audit program, as discussed below, or may otherwise inform the nature of the due diligence an insurer conducts.
  4. Audits: ~~an effective~~strong audit program includes selecting an adequate sample size of transactions on a reasonably -frequent basis and escalation procedures for any ~~supervising broker-dealer or~~ entity that fails to respond, up to and including termination of the relationship. Selection of audit frequency should be risk-based, based on the volume that comes through the entity channel as well as other risk factors available to the insurer. Generally, an insurer should audit a supervising entity with regular frequency. The audit frequency and depth will depend on the strength of the other elements of the monitoring program. Post-audit, the insurer should ensure the supervising entity corrects and identifies the root cause of any identified problem.
  5. Registered Annuities: A regulatory exam that focuses on the supervising entity's annuity sales is strong evidence on which an insurer can rely as part of its monitoring program.
- **Certifications** – Certifications of compliance from the supervising entity are required annually where the partner has assumed the contractual performance of the insurer's 6(C)(1) obligation.<sup>7</sup> Insurers may also require certifications to cover the entity's compliance with a comparable standard since certifications serve other purposes for insurers. A meaningful certification is detailed and active.

## PROVIDING INFORMATION AND REPORTS

Insurers must provide supervising entities with sufficient data that is reasonably appropriate to assist such entity in maintaining its supervision system~~make informed decisions~~. This may include reports on customer demographics, annuity features, and other relevant factors. Data sharing ensures both parties can oversee transactions effectively without duplicating efforts.

The Model Regulation is principles-based, allowing insurers flexibility to design compliance procedures suited to their business.

Information the insurer might share with the supervising entity includes the following:

- Total contracts issued through the producer over the period, including number and type of annuity;

**Commented [SW1]:** We recommend including this sentence prior to the Monitoring Relevant Conduct section as we think this is a good tee-up for that section, as well as this one.

<sup>7</sup> 6(C)(3)(b)(ii).

- Amount of commissions paid for each sale to that producer over the period;
- ~~Whether the insurer issued any other annuities for the same producer, and if so, how many;~~
- Number of internal replacements ~~initiated~~ issued by the same producer;
- Number of contracts issued where the consumer was older than a certain age;
- Number of contracts issued with a death claim pending or complete;
- Number of consumer complaints or lawsuits received by the insurer related to the producer;
- Number of contracts for the producer that were surrendered less than 2 years from policy issue, between years 2-5, between years 6-10, and more than 10 years from issuance; or
- Whether any surrenders were subject to surrender charges.

**Commented [SW2]:** We recommend removal of this bullet point because it appears to be duplicative of the first point.

## CONCLUSION

Annuities ~~are complex products that~~ may not suit all consumers. Insurers are responsible for implementing effective supervisory systems, ~~training contracted entities,~~ and ensuring compliance with the Model Regulation's best interest requirements. By adhering to these principles, insurers can protect consumers while meeting their regulatory obligations. This guidance emphasizes the active monitoring that must occur for insurers to issue annuities pursuant to the safe harbor.