

Suitability in Annuity Transactions Model Regulation (#275)
 Stakeholder Suggested Revisions Received by Sept. 30, 2019, Comment Deadline
 (Assuming the Sept. 17 proposed revisions are accepted)

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| Title | |
| Suitability in Annuity Transactions Model Regulation | |
| IIABA | Suitability in Annuity Transactions Model Law Regulation |
| 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. | |
| Joint Trades¹ and Nationwide | 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. <u>The best interest standard set forth in this regulation requires a producer to adhere to a standard of conduct but does not guarantee an outcome.</u> |
| FACC | A. The purpose of this regulation is to require <u>that</u> producers <u>abide by obligations regarding care, disclosure, conflict of interest, and documentation to act in the best interest of the consumer</u> 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. |
| IIABA | The purpose of this law regulation is to <u>address the conduct of producers</u> 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. | |
| Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B. | |

¹ Joint submission from American Council of Life Insurers, Committee of Annuity Insurers, Financial Services Institute, Indexed Annuity Leadership Council, Insured Retirement Institute, National Association for Fixed Annuities, National Association of Insurance and Financial Advisers and Association for Advanced Life Underwriting.

Drafting Note: Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) specifically refers to this model regulation as the “Suitability in Annuity Transactions Model Regulation.” Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.

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| IIABA | <p>Nothing herein shall be construed to create or imply a private cause of action for a violation of this <u>law</u>regulation.</p> <p>Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.</p> <p>Drafting Note: Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) specifically refers to this model regulation as the “Suitability in Annuity Transactions Model Regulation.” Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.</p> |
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Section 2. Scope

This regulation shall apply to any sale or recommendation of an annuity.

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| IIABA | This <u>law</u> regulation shall apply to any sale or recommendation of an annuity. |
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Section 3. Authority

This regulation is issued under the authority of [insert reference to enabling legislation].

Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

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| IIABA | <p>This regulation is issued under the authority of [insert reference to enabling legislation].</p> <p>Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.</p> |
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Section 4. Exemptions

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

No comments received

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A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;

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| Joint Trades and Nationwide | A. Direct response solicitations, <u>sales or purchases of annuities</u> where there is no recommendation based on information collected from the consumer pursuant to this regulation; |
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B. Contracts used to fund:

- (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
- (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
- (3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC; or
- (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

No comments received

C. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

No comments received

D. Formal prepaid funeral contracts.

No comments received

Additional Suggested Subsections

None suggested

Section 5. Definitions

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| A. Annuity | "Annuity" means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity. |
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No comments received

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| B. Cash compensation | B. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer. |
| <i>No comments received</i> | |
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| C. Consumer profile information | <p>C. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:</p> <ul style="list-style-type: none"> (1) Age; (2) Annual income; (3) Financial situation and needs, including debts and other obligations; (4) Financial experience; (5) Financial objectives; (6) Intended use of the annuity; (7) Financial time horizon; (8) Existing assets or financial products, including investment, annuity and insurance holdings; (9) Liquidity needs; (10) Liquid net worth; (11) Risk tolerance, including willingness to accept non-guaranteed elements in the annuity, including variability in premium, death benefit or fees; (12) Financial resources used to fund the annuity; and (13) Tax status. |
| Joint Trades and Nationwide | <p>C. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:</p> <ul style="list-style-type: none"> (1) Age; |

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| | <p>(2) Annual income;</p> <p>(3) Financial situation and needs, including debts and other obligations;</p> <p>(34) Financial experience;</p> <p>(5) Financial objectives;</p> <p>(46) Intended use of the annuity;</p> <p>(5) Financial time horizon;</p> <p>(6) Existing assets or financial products, including investment, annuity and insurance holdings;</p> <p>(79) Liquidity needs;</p> <p>(810) Liquid net worth;</p> <p>(911) Risk tolerance, including willingness to accept non-guaranteed elements in the annuity, including variability in premium, death benefit or fees;</p> <p>(1012) Financial resources used to fund the annuity; and</p> <p>(1113) Tax status.</p> |
| D. Continuing education credit or CE credit | “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval]. |
| <i>No comments received</i> | |
| E. Continuing education provider or CE provider | “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval]. |
| <i>No comments received</i> | |
| F. FINRA | “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency. |

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| No comments received | |
| G. Insurer | “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities. |
| No comments received | |
| H. Intermediary | “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers. |
| No comments received | |
| I. Material conflict of interest | <p>(1) “Material conflict of interest” means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.</p> <p>(2) “Material conflict of interest” does not include cash compensation or non-cash compensation.</p> |
| Joint Trades and Nationwide | <p>(1) “Material conflict of interest” means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.</p> <p>(2) “Material conflict of interest” does not include cash compensation or non-cash compensation. <u>“Material conflict of interest” also does not include health insurance, office rent, office support, retirement benefits or employee benefits provided to employees (including, but not limited to, statutory employees).</u></p> |
| J. Non-cash compensation | “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits. |
| Joint Trades and Nationwide | “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, <u>merchandise, gifts, prizes, travel expenses, meals, and lodging.</u> <u>“Non-cash compensation” does not include</u> health insurance, office rent, office support and retirement benefits <u>or employee benefits provided to employees (including, but not limited to, statutory employees).</u> |
| K. Producer | “Insurance producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this regulation, “producer” includes an insurer where no producer is involved. |
| No comments received | |
| L. Recommendation | (1) “Recommendation” means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. |

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| | (2) “Recommendation” does not include general communication to the public, generalized consumer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material. |
| Joint Trades and Nationwide | <p>(1) “Recommendation” means advice provided by a producer to an individual consumer that was intended to result or does result in to a purchase, an exchange or a replacement of an annuity in accordance with that advice.</p> <p>(2) “Recommendation” does not include general communication to the public, generalized consumer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material <u>or information</u>.</p> |
| M. Replacement | <p>“Replacement” means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing insurance policy or contract has been or is to be any of the following:</p> <p>(1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;</p> <p>(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;</p> <p>(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;</p> <p>(4) Reissued with any reduction in cash value; or</p> <p>(5) Used in a financed purchase.</p> <p>Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.</p> |
| Joint Trades | <p>“Replacement” means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing <u>annuity or other</u> insurance policy or contract has been or is to be any of the following:</p> |
| N. SEC | “SEC” means the United States Securities and Exchange Commission |
| <i>No comments received</i> | |
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| Additional Suggested Definitions | |
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| Joint Trades and Nationwide | <p><u>"Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.</u></p> |
| IRI² and Nationwide | <p><u>"Comparable standards" means fiduciary or best interest standards imposed under federal or state laws or rules governing the conduct of financial professionals, including but not limited to:</u></p> <p><u>(1) SEC Regulation Best Interest,</u></p> <p><u>(2) rules and interpretations adopted by the SEC under the Investment Advisers Act of 1940,</u> <u>And</u></p> <p><u>(3) standards imposed on fiduciaries under ERISA or Section 4975 of the Internal Revenue Code (including but not limited to regulations adopted thereunder).</u></p> <p>***</p> <p><u>"Financial professional" means a producer who is</u></p> <p><u>(1) a broker-dealer registered under federal or state securities laws,</u></p> <p><u>(2) a natural person who is a registered representative of a broker-dealer,</u></p> <p><u>(3) an investment adviser registered under federal or state securities laws,</u></p> <p><u>(4) a natural person who is an investment advisory representative, or</u></p> <p><u>(5) any other entity or natural person who provides financial services to retail consumers.</u></p> |
| Jackson³ | <p><u>"Fee-Based Annuity" means an Annuity that has no surrender period or surrender charge, does not include in the premium or any other term of the contract any sales charge, commission, or fee for any level of distribution, and the fiduciary or agent of the customer in the purchase of the annuity does not receive and retain any sales incentives in connection with the sale of the Annuity.</u></p> <p>***</p> |

² Insured Retirement Institute submitted its own comments in addition to those it submitted with the Joint Trades. These proposed definitions are for terms used in its proposed amendments to Section 6E, Safe Harbor.

³ These proposed definitions are for terms used in its proposed amendments to Section 6E, Safe Harbor.

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| | <p><u>"Regulated Fiduciary" means an entity (and a person acting as an associated or affiliated person of an entity), registered, regulated, and acting (1) as an investment adviser under Section 203 of the Investment Advisers Act of 1940 ("Advisers Act") or under a state securities commission (or agency or office performing like functions), or (2) a bank as that term is defined in Section 202(a)(2) of the Advisers Act.</u></p> |
| <p>Section 6. Duties of Insurers and Producers</p> | |
| <p>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 is deemed to comply with this subsection by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation:</p> | |
| <p>Joint Trades and Nationwide</p> | <p>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 is deemed to comply with this subsection by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation, <u>independent of the performance of the recommended annuity:</u></p> |
| <p>FACC</p> | <p>A. Best Interest Recommendation 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 is deemed to comply with this subsection by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation:</p> |
| <p>IIABA</p> | <p>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 is deemed to comply with this subsection by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation:</p> |
| <p>(1) (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to: (i) Know the consumer's financial situation, insurance needs and financial objectives; (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer; (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and (iv) Communicate the basis or bases of the recommendation.</p> <p>(b) The requirements under subparagraph (a) of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.</p> <p>(c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.</p> | |

(d) The requirements under this subsection do not create a fiduciary obligation but create a regulatory obligation as established in this regulation.

(e) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

(f) The requirements under subparagraph (a) of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.

(g) The requirements under subparagraph (a) of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.

(h) The requirements under subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

(i) The requirements under subparagraph (a) of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.

(j) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether: (i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements; (ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and (iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

Joint Trades and Nationwide

(1) (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to: (i) Know the consumer's financial situation, insurance needs and financial objectives; (ii) Understand the products the producer is authorized and licensed to recommend or sell~~available recommendation options after making a reasonable inquiry into options available to the producer;~~ (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives ~~over the life of the product~~, as evaluated in light of the consumer profile information provided to the producer; and (iv) Communicate the basis or bases of the recommendation.

(j) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether: (i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements; (ii) The replacing product would ~~substantially~~ benefit the consumer in comparison to the replaced product over the life of the product; and (iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding ~~60~~ 36 months.

FACC

(1) (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to: (i) Know the consumer's financial situation, insurance needs and financial objectives; (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer; (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives ~~over the life of the product~~, as evaluated in light of the consumer profile information; ~~and~~ (iv) Not allow producer compensation or any material conflict of interest to affect the evaluation described in clause (iii) in forming the recommendation; and, (iv) Communicate a reasonable summary of the basis or bases of the recommendation.

(b) The requirements under subparagraph (a) of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

(c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.

(d) The requirement for a reasonable basis under subparagraph (a) (iii) of this paragraph does not necessarily mean a majority of all insurance and investment professionals could agree that the recommended option was the single best option, but only that it was reasonable for an ordinary producer in similar circumstances and with similar authority and license, to believe that the recommended annuity would effectively address the consumer's financial situation, insurance needs and financial objectives as evaluated in light of the consumer profile information.

~~(e)~~ The requirements under this subsection do not create a fiduciary obligation but create a regulatory obligation as established in this regulation.

~~(e)~~ The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

~~(f)~~ The requirements under subparagraph (a) of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.

~~(h)~~ The requirements under subparagraph (a) of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.

~~(h)~~ The requirements under subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

~~(i)~~ The requirements under subparagraph (a) of this paragraph do not mean the producer has ongoing monitoring obligations under the

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| | <p>care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.</p> <p>(jk) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether: (i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements; (ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and (iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.</p> |
| <p>IIABA</p> | <p>(1) (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to: (i) Know the consumer’s financial situation, insurance needs and financial objectives; (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer; (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and (iv) Communicate the basis or bases of the recommendation.</p> <p>***</p> <p>(c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of <u>annuity</u> products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.</p> <p>(d) The requirements under this subsection do not create a fiduciary obligation <u>or relationship and only but</u> create a regulatory obligation as established in this regulation.</p> |
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| <p>(2) Disclosure obligation.</p> <p>(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:</p> <p>(i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;</p> <p>(ii) Any limitations the producer or the insurer has concerning the following: (I) The type of products that the producer is authorized and licensed to recommend or sell; and (II) Whether only products issued by a specific insurer or an otherwise limited range of annuity products may be offered;</p> <p>(iii) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and</p> <p>(iv) A notice of the consumer’s right to request additional information regarding cash compensation described in subparagraph (b) of this paragraph;</p> | |

Drafting Note: If a state approves forms, a state should add language to subparagraph (a) reflecting such approvals.

(b) Upon request, the producer shall disclose: (i) A reasonable estimate of the amount of cash compensation, which may be stated as a range of amounts or percentages; and (ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

(c) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in subparagraph (c) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

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(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:

(i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(ii) Any limitations the producer or the insurer has concerning the following: (I) The type of products that the producer is authorized and licensed to recommend or sell; and (II) Whether only products issued by a specific insurer or an otherwise limited range of annuity products may be offered;

(iii) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, ~~including whether the producer is to be compensated~~ for the sale of ~~the a~~-recommended annuity including whether the producer is to be compensated (A) by commission as part of premium or other remuneration received from the insurer, intermediary or other producer, or (B) or by fee as a result of a contract for advice or consulting services; and

(iv) A notice of the consumer’s right to request additional information regarding cash compensation described in subparagraph (b) of this paragraph; and

(v) Any material conflict of interest.

Drafting Note: If a state approves forms, a state should add language to subparagraph (a) reflecting such approvals.

(b) Upon request of the consumer, the producer shall disclose: (i) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages, provided, however, that producers who are

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| | <p><u>employees of an insurer and are not directly compensated for the sale of particular annuity products, shall only be required to provide a description of general compensation practices relevant to the producer;</u> and (ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and</p> <p>(c) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.</p> <p>Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in subparagraph (c) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.</p> |
| <p>IIABA</p> | <p>(2) Disclosure obligation.</p> <p>(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:</p> <p>(i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;</p> <p>(ii) Any limitations the producer or the insurer has concerning the following: (I) The type of products that the producer is authorized and licensed to recommend or sell; and (II) Whether only products issued by a specific insurer or an otherwise limited range of annuity products may be offered;</p> <p><u>(ii) A description of the type of annuity and securities products that the producer is authorized and licensed to recommend or sell; and</u></p> <p><u>(iii) A description of whether the producer offers annuity products from one only insurer or insurance holding company group or annuity products from multiple insurers;</u></p> <p>(iv) (iii) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and</p> <p>(iv) A notice of the consumer’s right to request additional information regarding cash compensation described in subparagraph (b) of this paragraph; <u>and</u></p> <p>(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.</p> |

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| | <p>Drafting Note: If a state approves forms, a state should add language to subparagraph (a) reflecting such approvals.</p> <p>(b) Upon request, the producer shall disclose: (i) A reasonable estimate of the amount of cash compensation, which may be stated as a range of amounts or percentages; and (ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and</p> <p>(c) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.</p> <p>Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in subparagraph (c) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.</p> |
| <p>(3) Conflict of interest obligation. A producer shall identify and avoid or otherwise reasonably manage material conflicts of interest, including material conflicts of interest related to an ownership interest.</p> | |
| <p>Joint Trades and Nationwide</p> | <p>(3) Conflict of interest obligation. A producer shall identify and avoid or otherwise reasonably manage material conflicts of interest, including material conflicts of interest related to <u>a material an-ownership interest the producer has in an insurer whose annuities the producer is licensed and authorized to recommend or sell.</u></p> |
| <p>FACC</p> | <p>(3) Conflict of interest obligation. A producer shall identify and avoid or otherwise reasonably manage <u>prominently disclose to the consumer</u> material conflicts of interest, including material conflicts of interest related to an ownership interest.</p> |
| <p>IIABA</p> | <p>(3) Conflict of interest obligation. A producer shall identify and avoid or otherwise reasonably manage material conflicts of interest, including material conflicts of interest related to an ownership interest.</p> |
| <p>(4) Documentation obligation. A producer shall at the time of recommendation or sale:</p> <p>(a) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;</p> <p>(b) Obtain a customer signed statement on a form substantially similar to the “Consumer Refusal to Disclose All or Partial Consumer Profile Information” form in Appendix B documenting: (i) A customer’s refusal to provide the consumer profile information, if any; and (ii) A customer’s understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and</p> | |

(c) Obtain a customer signed statement acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer’s recommendation.

Drafting Note: If a state approves forms, a state should add language to subparagraph (b) of this paragraph reflecting such approvals.

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| <p>Joint Trades and Nationwide</p> | <p>(4) Documentation obligation. A producer shall at the time of recommendation or sale:</p> <p>(a) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;</p> <p>(b) If applicable, obtain Obtain a customer-consumer signed statement on a form substantially similar to the “Consumer Refusal to Disclose All or Partial Consumer Profile Information” form in Appendix B documenting: (i) A customer’s refusal to provide the consumer profile information, if any; and (ii) A customer’s understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and</p> <p>(c) If applicable, obtain Obtain a customer-consumer signed statement acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer’s recommendation.</p> <p>Drafting Note: If a state approves forms, a state should add language to subparagraph (b) of this paragraph reflecting such approvals.</p> |
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| <p>FACC</p> | <p>(4) Documentation obligation. A producer shall at the time of recommendation or sale:</p> <p>(a) Make a written <u>reasonable summary</u> record of any recommendation and the basis for the recommendation subject to this regulation;</p> <p>(b) Obtain a customer signed statement on a form substantially similar to the “Consumer Refusal to Disclose All or Partial Consumer Profile Information” form in Appendix B documenting: (i) A customer’s refusal to provide the consumer profile information, if any; and (ii) A customer’s understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and</p> <p>(c) Obtain a customer signed statement acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer’s recommendation.</p> <p>Drafting Note: If a state approves forms, a state should add language to subparagraph (b) of this paragraph reflecting such approvals.</p> |
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NOTE: THE PROVISION BELOW IS STILL UNDER CONSIDERATION. THE WORKING GROUP IS REQUESTING COMMENT ON IT.

[?. Any requirement applicable to a producer under this section shall apply to every producer who has materially participated in the making of a recommendation and received compensation as a result of the sales transaction, regardless of whether the producer has had any direct contact with the consumer, provided that product wholesaling or product support based on generic client information, or the provision of education or marketing material, does not constitute participating in the making of a recommendation.]

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| <p>Joint Trades and Nationwide</p> | <p>NOTE: THE PROVISION BELOW IS STILL UNDER CONSIDERATION. THE WORKING GROUP IS REQUESTING COMMENT ON IT. <i>[? Any requirement applicable to a producer under this section shall apply to every producer who has materially participated in the making of a recommendation and received compensation as a result of the sales transaction, regardless of whether the producer has had any direct contact with the consumer, provided that product wholesaling or product support based on generic client information, or the provision of education or marketing material, does not constitute participating in the making of a recommendation.]</i></p> |
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B. Transactions not based on a recommendation.

(1) Except as provided under paragraph (2), a producer shall have no obligation to a consumer under subsection A(1) related to any annuity transaction if:
(a) No recommendation is made; (b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; (c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

(2) An insurer’s issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

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| <p>Joint Trades and Nationwide</p> | <p>B. Transactions not based on a recommendation.</p> <p>(1) Except as provided under paragraph (2), <u>neither</u> a producer <u>nor an insurer</u> shall have <u>any no</u> obligation to a consumer under subsection A(1) related to any annuity transaction if: (a) No recommendation is made; (b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; (c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.</p> <p>(2) An insurer’s issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.</p> |
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C. (1) Except as permitted under subsection B, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer’s financial situation, insurance needs and financial objectives based on the consumer’s consumer profile information.

(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:

(a) The insurer shall establish and maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant producer training manuals;

(b) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its

producers to comply with the requirements of section 7 of this regulation;

(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;

(d) The insurer shall establish and maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that 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. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information after issuance or delivery of the annuity;

(f) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;

(g) The insurer shall establish and maintain reasonable procedures to identify and address potentially suspicious consumer refusals to provide consumer profile information;

(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 or specific types of annuities within a limited period of time; and

(i) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(3) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.

(b) An insurer's supervision system under this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(4) An insurer is not required to include in its system of supervision a producer's recommendations to consumers of products other than the annuities offered by the insurer.

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~~C. (1) Except as permitted under subsection B, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.~~

(21) 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 in connection with the insurer's annuities, including, but not limited to, the following:

(a) The insurer shall establish and maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant producer training manuals;

(b) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of section 7 of this regulation;

(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;

(d) The insurer shall establish and maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that 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. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) The insurer shall establish and maintain reasonable procedures to detect recommendations ~~that where there is not a reasonable basis to determine the recommendation would effectively address the particular consumer's financial situation, insurance needs and financial objectives are not in compliance with subsections A, B, D and E.~~ This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information after issuance or delivery of the annuity. An insurer is not required to warrant the producer is acting in the consumer's best interest;

~~(f) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;~~

(fg) The insurer shall establish and maintain reasonable procedures to identify and address potentially suspicious consumer refusals to provide consumer profile information;

(hg) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation provided by the insurer that are based on the sales of specific annuities ~~or specific types of annuities~~ within a limited period of time; and the requirements of this subsection: (i) do not apply to compensation practices based on total annuity products sold; (ii) would not prevent the offering of only proprietary products, placing material limitations on the menu of products or incentivizing the sale of such products through its compensation practices, so long as the incentive is not based on the sale

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| | <p><u>of a specific annuity product of the insurer within a limited period of time; and (iii) are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or employee benefits by employees (including but not limited to statutory employees).</u></p> <p>(h) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.</p> <p>(32) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer’s compliance with subparagraph (b) of this paragraph.</p> <p>(b) An insurer’s supervision system under this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following: (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.</p> <p>(43) An insurer is not required to include in its system of supervision a producer’s recommendations to consumers of products other than the annuities offered by the insurer.</p> |
| <p>FACC</p> | <p>C. (1) Except as permitted under subsection B, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer’s financial situation, insurance needs and financial objectives based on the consumer’s consumer profile information.</p> <p>***</p> <p>(4) <u>Notwithstanding the foregoing</u>, an insurer is not required to include in its system of supervision:</p> <p><u>(a) a producer’s recommendations to consumers of products other than the annuities offered by the insurer;</u></p> <p><u>(b) consideration of or comparison to products other than annuities offered by the insurer; and,</u></p> <p><u>(c) compensation relating to products recommended, considered, or compared other than annuities offered by the insurer. Nothing herein, however, shall override an insurer’s obligations to comply with applicable replacement regulations.</u></p> |
| <p>IIABA</p> | <p>C. (1) Except as permitted under subsection B, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer’s financial situation, insurance needs and financial objectives based on the consumer’s consumer profile information.</p> <p>***</p> <p>(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 or specific types of annuities within a limited period of time; and</p> |

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| <p>D. Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:</p> <p>(1) Truthfully responding to an insurer’s request for confirmation of the consumer profile information;</p> <p>(2) Filing a complaint; or</p> <p>(3) Cooperating with the investigation of a complaint.</p> | |
| <p><i>No comments received</i></p> | |
| <p>E. Safe Harbor.</p> <p>(1) Sales made in compliance with SEC regulations and applicable FINRA rules pertaining to best interest obligations and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if, in connection with the sale of an annuity, the broker-dealer and the producer, who also is appropriately registered as a representative with FINRA, have complied with the business rules, controls and procedures for securities transactions. However, nothing in this subsection shall limit the insurance commissioner’s ability to investigate and enforce the provisions of this regulation.</p> <p>Drafting Note: Non-compliance with SEC and FINRA requirements means that the broker-dealer transaction is subject to compliance with the requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer’s business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</p> | |
| <p>IRI and Nationwide</p> | <p>E. Safe Harbor.</p> <p>(1) Recommendations and sales of annuities Sales made in compliance with <u>comparable standards</u> SEC regulations and applicable FINRA rules pertaining to best interest obligations and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer recommendations and sales of annuities <u>by financial professionals who comply if, in connection with the sale of an annuity, the broker-dealer and the producer, who also is appropriately registered as a representative with FINRA, have complied</u> with the business rules, controls and procedures for securities transactions <u>subject to a comparable standard, regardless of whether the particular recommendation or sale is required to comply with such comparable standard</u>. However, nothing in this subsection shall limit the insurance commissioner’s ability to investigate and enforce the provisions of this regulation.</p> <p>Drafting Note: Non-compliance with <u>comparable standards</u> SEC and FINRA requirements means that the broker-dealer transaction is subject to compliance with the requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the <u>relevant conduct of the financial professional seeking to rely on paragraph (1) or the financial professional’s</u> FINRA member broker-dealer using information collected in the normal course of an insurer’s</p> |

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| | business; and (b) Provide to the <u>entity responsible for supervising the financial professional seeking to rely on paragraph (1), such as the financial professional's</u> FINRA member broker-dealer information and reports that are reasonably appropriate to assist <u>such entity the</u> FINRA member broker-dealer to maintain its supervision system. |
| Jackson | <p>E. Safe Harbor.</p> <p>(1) Sales made in compliance with SEC regulations and applicable FINRA rules pertaining to best interest obligations and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if, in connection with the sale of an annuity, the broker-dealer and the producer, who also is appropriately registered as a representative with FINRA, have complied with the business rules, controls and procedures for securities transactions. However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce the provisions of this regulation.</p> <p>Drafting Note: Non-compliance with SEC and FINRA requirements means that the broker-dealer transaction is subject to compliance with the requirements of this regulation.</p> <p>(2) For paragraph (1) to apply, an insurer shall: (a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and (b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.</p> <p><u>(3) Sales of a Fee-Based Annuity by a Regulated Fiduciary, in compliance with the laws and regulations applicable to such Regulated Fiduciary, shall satisfy the requirements under this regulation. Nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce the provisions of this regulation.</u></p> |
| Suggested Additional Subsections | |
| <i>None suggested</i> | |
| Section 7. Producer Training | |
| A. A producer shall not solicit the sale or replacement of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection. | |
| <i>No comments received</i> | |
| B. (1) (a) A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider. | |
| (b) Producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed. | |

(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(3) The training required under this subsection shall include information on the following topics: (a) The types of annuities and various classifications of annuities; (b) Identification of the parties to an annuity; (c) How product specific annuity contract features affect consumers; (d) The application of income taxation of qualified and non-qualified annuities; (e) The primary uses of annuities; and (f) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.

(4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].

(6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].

(7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].

(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

(9) The satisfaction of components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

(10) An insurer shall verify that a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

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B. (1) (a) A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.

(b) Producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(3) The training required under this subsection shall include information on the following topics: (a) The types of annuities and various classifications of annuities; (b) Identification of the parties to an annuity; (c) How product specific annuity contract features affect consumers; (d) The application of income taxation of qualified and non-qualified annuities; (e) The primary uses of annuities; and (f) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.

(4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].

(6) A producer who has completed an annuity training course approved by the department of insurance prior to [insert effective date of amended regulation] shall, within six (6) months after [insert effective date of amended regulation], complete either: (a) a new four (4) credit training course approved by the department of insurance after [insert effective date of amended regulation], or (b) an additional one-time one (1) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended regulation.

~~(76)~~ Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].

~~(87)~~ Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].

~~(98)~~ The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

~~(109)~~ The satisfaction of components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

~~(1140)~~ An insurer shall verify that a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

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| Additional Suggested Subsections | |
| <i>None suggested</i> | |
| Section 8. Compliance Mitigation; Penalties | |
| <p>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:</p> <p>(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;</p> <p>(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</p> <p>(3) Appropriate penalties and sanctions.</p> | |
| Joint Trades and Nationwide | <p>A. An insurer is responsible for compliance with this regulation <u>by the insurer and the producer in connection with the insurer’s annuity products</u>. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:</p> <p>(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;</p> <p>(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</p> <p>(3) Appropriate penalties and sanctions.</p> |
| <p>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.</p> <p>Drafting Note: Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.</p> <p>Drafting Note: A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State’s statute that authorizes the commissioner to impose penalties and fines.</p> | |

| | |
|---|--|
| <i>No comments received</i> | |
| Additional Suggested Subsections | |
| <i>None suggested</i> | |
| Section 9. Recordkeeping | |
| <p>A. Insurers, general agents, independent agencies and producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.</p> <p>Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some States, this time period may be five (5) years.</p> | |
| <i>No comments received</i> | |
| <p>B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.</p> <p>Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.</p> | |
| <i>No comments received</i> | |
| Section 10. Effective Date | |
| <p>The amendments to this regulation shall take effect [X] months after the date the regulation is adopted or on [insert date], whichever is later.</p> | |
| <i>No comments received</i> | |
| Additional Suggested Model Regulation Sections | |
| <i>None suggested</i> | |

APPENDIX A

PRODUCER RELATIONSHIP DISCLOSURE FORM

Date: _____

INSURANCE AGENT/PRODUCER INFORMATION ("Me", "I", "My")

First Name: _____ Last Name: _____

Firm Name: _____ Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

Insurance License # _____

CLIENT INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

INSURANCE AUTHORIZATION

I am licensed and authorized to sell insurance products, including annuities in [State] in accordance with state laws. I offer the following products:

- | | |
|---|---|
| <input type="checkbox"/> Fixed or Fixed Index Annuities | <input type="checkbox"/> Mutual Funds |
| <input type="checkbox"/> Variable Annuities | <input type="checkbox"/> Stocks/Bonds |
| <input type="checkbox"/> Options | <input type="checkbox"/> Certificates of Deposits |
| <input type="checkbox"/> Other Investments _____ | |

I am authorized and contracted or appointed or have access to offer:

- | | |
|--|--|
| <input type="checkbox"/> Products from ONLY ONE INSURER or Insurance Holding Company Group | <input type="checkbox"/> Products from Multiple Insurers |
|--|--|

- Products from Multiple Insurers although I am primarily contracted with one insurer**

My Relationship with You:

- One-Time Transaction**
- On-Going Relationship**

My Compensation Structure:

- Commissioned Transaction**
- An asset under management fee**
- Other, please describe: _____**

I am likely to be compensated by the following sources for this relationship:

- Insurance Company**
- The Consumer**
- Third parties such as an Independent Marketing Organization (IMO) related to the Insurer**

Other Sources _____

ADDITIONAL INFORMATION

You may obtain further information regarding the cash compensation paid to me.

Client Signature

Date

Comments:

No comments received

APPENDIX B

CONSUMER REFUSAL TO DISCLOSE ALL OR PARTIAL CONSUMER PROFILE INFORMATION FORM

I understand that should I decline to provide the requested information or should I provide inaccurate information, I am limiting the protection afforded me by the Insurance Code of this [state] regarding this purchase.

- I REFUSE to provide this information at this time.
- I have chosen to provide LIMITED information at this time.
- My annuity purchase IS NOT BASED on the recommendation of this producer or the insurer.

Client Signature

Date

| |
|-----------------------------|
| Comments: |
| <i>No comments received</i> |